MERCANTILE LAW

Case Digests for 2018

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BY:

DEAN'S CIRCLE 2019

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MERCANTILE LAW

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FEDERAL EXPRESS CORPORATION, Petitioner, -versus- LUWALHATI R. ANTONINO AND ELIZA BETTINA RICASA ANTONINO, Respondents.
G.R. No. 199455, THIRD DIVISION, June 27, 2018, LEONEN, J

It is settled in jurisprudence that ***checks****, being only negotiable instruments, are only* ***substitutes for money and are not legal tender****; more so when the check has a named payee and is not payable to bearer.*

The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are order instruments. They are not payable to their bearer, i.e., bearer instruments. Under the Negotiable Instruments Law, aside from following the requisites as stated in Section 1, ***an order instrument*** *requires an* ***indorsement*** *from the payee or holder before it may be validly negotiated. A* ***bearer instrument****, on the other hand,* ***does not require an indorsement*** *to be validly negotiated. An order instrument, which has to be endorsed by the payee before it may be negotiated,* ***cannot be a negotiable instrument equivalent to cash****. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash.*

FACTS

Eliza was the owner of Unit 22-A in Allegro Condominium, located at New York, United States. In November 2003, monthly common charges on the Unit became due for the period of July 2003 to November 2003, and were for a total amount of US$9,742.81. On December 15, 2003, while Luwalhati and Eliza were in the Philippines they decided to send several Citibank checks, amounting to US$17,726.18 for the payment of monthly charges and US$11,619.35 for the payment of real estate taxes **to Veronica Z. Sison**, who was based in New York and such were sent by Luwalhati through FedEx. The package was addressed to Sison who was tasked to deliver the checks **payable to Maxwell- Kates, Inc. and to the New York County Department of Finance**. Sison allegedly **did**

not receive the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit. Upon learning that the checks were sent on December 15, 2003, Sison contacted FedEx to inquire about the non-delivery. She was informed that the package was **delivered to her neighbor** but there was no signed receipt.

On March 14, 2004, Luwalhati and Eliza **sent a demand letter** to FedEx for payment of damages due to the non-delivery of the package, but FedEx **refused to heed their demand.** Hence, on April 5, 2004, they filed their Complaint for damages. As for FedEx defenses, it claimed that Luwalhati and Eliza "had no cause of action against it because **they failed to comply with a condition precedent**, that of filing a written **notice of claim within the 45 calendar days** from the acceptance of the shipment." It added that it was absolved of liability as Luwalhati and Eliza shipped **prohibited items and misdeclared** these items as "documents." It pointed to conditions under its Air Waybill prohibiting the "transportation of money".

The Regional Trial Court ruled for Luwalhati and Eliza. The Court of Appeals affirmed the ruling of the RTC.

ISSUE

Whether or Not petitioner Federal Express Corporation may be held liable for damages on account of its failure to deliver the checks shipped by respondents Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino to the consignee Veronica Sison? (YES)

RULING

SUBSTANTIAL COMPLIANCE TO THE PROVISION OF CONTRACT OF CARRIAGE

The **provision** in a contract of carriage requiring the filing of a formal claim within a specified period is a **valid stipulation**. Jurisprudence maintains that compliance with this provision is a **legitimate condition precedent** to an action for damages arising from loss of the shipment. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to **give it an opportunity to examine the nature and extent of the injury**.

For their claim to prosper, respondents must, thus, surpass 2 hurdles: the filing of their **formal claim within 45 days**; and the subsequent **filing of the action within 2 years**. There is no dispute on respondents' compliance with the second period as their Complaint was filed on April 5, 2004. For the former, this Court is guided by settled standards in the case of PAL v. CA; "xxx there was **substantial compliance** with the period because of the **zealous efforts** demonstrated by Mejia in following up her claim. These efforts coupled with Philippine Airlines' "tossing around the claim and leaving it unresolved for an indefinite period of time" led this Court to deem the requisite period satisfied. This is pursuant to Article 1186 of the New Civil Code which provides that the condition shall be **deemed fulfilled** when the **obligor voluntarily prevents its fulfillment**."

Luwalhati showed **ardent campaign** in following up the claim. It is beyond her control why the demand letter for damages was only sent subsequent to her infuriating follow-ups regarding the

whereabouts of the said package. Petitioner has been unable to persuasively refute Luwalhati's recollection of the efforts that she and Sison exerted, and of the responses it gave them. It instead insists that the 45-day period stated in its Air Waybill is sacrosanct. It is one with the RTC and the CA in stressing that **respondents' inability** to expediently **file a formal claim** can only be **attributed to petitioner** hampering its fulfillment. Thus, respondents must be deemed to have substantially complied with the requisite 45-day period for filing a formal claim.

EXTRAORDINARY DILIGENCE OF COMMON CARRIERS

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting. **Extraordinary diligence** is that **extreme measure of care and caution** which persons of unusual prudence and circumspection use for securing and preserving their own property or rights." The Civil Code stipulates that in case of loss or damage to goods, common carriers are **presumed to be negligent or at fault**, **except** in the following instances: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4) The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. In all other cases, common carriers **must prove that they exercised extraordinary diligence** in the performance of their duties, if they are to be absolved of liability.

The responsibility of common carriers to exercise extraordinary diligence lasts **from the time the goods are unconditionally placed in their possession until they are delivered** "to the consignee, or to the person who has a right to receive them." Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them." Common carriers must **ascertain the identity of the recipient.** Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. It is nothing but an alphanumeric code that outside of petitioner's personnel and internal systems signifies nothing. Reliance on this code is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive" the package. Given the circumstances in this case, the more reasonable conclusion is that the **package was not delivered**. The package shipped by respondents should **then be considered lost**, thereby engendering the liability of a common carrier for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this, **it failed to identify that neighbor**.

VIOLATION OF THE TERMS OF THE AIRWAY BILL

Petitioner's International Air Waybill states:

> Items Not Acceptable for Transportation. We do not accept transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as endorsed stocks and bonds). We exclude all liability for shipments of such items accepted by mistake. xxx

The prohibition has a singular object: **money**. The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Money is "what is **generally acceptable in exchange for goods**." Laws usually define what can be considered as a generally acceptable medium of exchange. The New Central Bank Act, defines **legal tender** as; "**All notes and coins issued by the Bangko Sentra**l shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private. It is settled in jurisprudence that **checks**, being only negotiable instruments, are only **substitutes for money and are not legal tender**; more so when the check has a named payee and is not payable to bearer.

The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments per se but to "negotiable instruments equivalent to cash." The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are order instruments. They are not payable to their bearer, i.e., bearer instruments. Under the Negotiable Instruments Law, aside from following the requisites as stated in Section 1, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. An order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash

What this Court's protracted discussion reveals is that petitioner's **Air Waybill lends itself to a great deal of confusion**. The clarity of its terms leaves much to be desired. This lack of clarity can only militate against petitioner's cause. The contract between petitioner and respondents is a **contract of adhesion**; it was prepared solely by petitioner for respondents to conform to. Although not automatically void, any ambiguity in a contract of adhesion is **construed strictly against the party that prepared it**. Accordingly, the prohibition against transporting money must be restrictively construed against petitioner and liberally for respondents. Viewed through this lens, with greater reason should respondents be exculpated from liability for shipping documents or instruments, which are reasonably understood as not being money, and for being unable to declare them as such.

D. Rights of the holder

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E. Checks

METROPOLITAN BANK AND TRUST COMPANY, *Petitioner,* -versus - JUNNEL'S MARKETING CORPORATION, PURIFICACION DELIZO, AND BANK OF COMMERCE, *Respondents.*
G.R. No. 235511, (THIRD DIVISION) June 20, 2018, VELASCO JR., *J.*

BANK OF COMMERCE, *Petitioner,* -versus - JUNNEL'S MARKETING CORPORATION, PURIFICACION DELIZO, AND METROPOLITAN BANK AND TRUST COMPANY,, *Respondents.*
G.R. No. 235565, (THIRD DIVISION) June 20, 2018, VELASCO JR., *J.*

The instant case involves the unauthorized payment of valid checks (the payment of checks to persons other than the payee named therein or his order) involving crossed checks payable to the order of a specified payee (Junnel's Marketing Corp. or "JMC") that were deposited in a collecting bank (Bank of Commerce or "BankCom") under an account not belonging to the payee or his endorsee but which, upon presentment, were subsequently honored by the drawee bank (Metropolitan Bank and Trust Comp. or "Metrobank"). In this case, the ***Rule on Sequence of Recovery*** *in Cases of Unauthorized Payment of Checks applies and not the Doctrine of Comparative Negligence.*

In check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check. In other words, Metrobank is liable to JMC, subject to its right to reimbursement against BankCom which in turn may seek recourse against the vey persons who caused the unauthorized payments.

FACTS

Junnel's Marketing Corporation (JMC) is a domestic corporation engaged in the business of selling wines and liquors. It has a current account with Metrobank from which it draws checks to pay its different suppliers. Among JMC's suppliers are Jardine Wines and Spirits (Jardine) and Premiere Wines (Premiere)

In 2000, during an audit of its financial records, JMC discovered an anomaly involving eleven 11 checks it had issued to the orders of Jardine and Premiere on various dates between October 1998 to May 1999. The subject checks amounting to P1,481,292.00 in total had already been charged against JMC's current account but were not covered by any official receipt from Jardine or Premiere.

Examination of the dorsal portion of the subject checks revealed that all had been deposited with Bankcom, Dau branch, under Account No. 0015-32987-7.6 However, JMC was able to confirm from Jardine and Premiere that neither of the them owns Bankcom Account No. 0015-32987-7.

On 30 April 2000, Purificacion Delizo (Delizo), a former accountant of JMC, executed a handwritten letter addressed to one Nelvia Yusi, President of JMC where she confessed that she stole several company checks drawn against JMC's current account. Said checks were never given to the named payees but were forwarded by her to one Lita Bituin (Bituin). Delizo further admitted that she, Bituin and an unknown bank manager colluded to cause the deposit and encashing of the stolen checks and shared in the proceeds thereof. JMC surmised that the subject checks are among the checks purportedly stolen by Delizo. On 28 January 2002, JMC filed before the RTC of Pasay City a complaint for sum of money against Delizo, Bankcom and Metrobank. JMC alleged that the wrongful conversion of the subject checks was caused by a combination of the "tortious and felonious" scheme of Delizo and the "negligent and unlawful acts" of Bankcom and Metrobank and prayed they be held solidarily liable in its favor for the amount of the subject checks. On the other hand, Delizo, Bankcom and Metrobank filed their individual answers denying liability. In Metrobank's answer is a cross-claim against Bankcom and Delizo wherein Metrobank asks for the right to be reimbursed in the event it is ordered liable in favor of JMC.

RTC held Bankcom and Metrobank liable to JMC-on a 2/3 to 1/3 ratio (applying the doctrine of comparative negligence), respectively-for the amount of subject checks plus interest as well as attorney's fees, but absolving Delizo from any liability. The trial court also dismissed Metrobank's cross-claim against Bankcom.

CA affirmed the decision but differed with the trial court with respect to the basis of Metrobank's liability. According to the CA, Metrobank's negligence consisted, not in its inability to notice that Bankcom's ID band does not contain any initials, but in its failure to ascertain that only four (4) out of the 11 subject checks were stamped by Bankcom with the express guarantees "ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED" and "NON¬-NEGOTIABLE" as required by Section 17 of the PCHC Rules and Regulations. CA also modified the rate of interest due on the amount of the subject checks that was fixed by the RTC and also deleted the RTC's award of attorney's fees in favor of JMC.

Bankcom and Metrobank filed their motions for reconsideration, but the CA remained steadfast. Hence the present consolidated appeals. Both Metrobank and Bankcom pray for absolution but they differ in the arguments they raise in support of their prayer.

ISSUE:

Whether or not Metrobank or Banckcom may be absolved. (NO.)

RULING:

The consolidated appeals must be denied as neither Metrobank nor Bankcom are entitled to absolution. Instead of holding both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio, we find that the two banks should have been ordered sequentially liable for the entire amount of the subject checks pursuant to the seminal case of Bank of America v. Associated Citizens Bank. We rule: (1) Metrobank liable to return to JMC the entire amount of the subject checks plus interest and (2) Bankcom liable to reimburse Metrobank the same amount plus interest.

The Rule on Sequence of Recovery in Cases of Unauthorized Payment of Checks; The Case of Bank of America

The instant case involves the unauthorized payment of valid checks (the payment of checks to persons other than the payee named therein or his order). The subject checks herein are considered valid because they are complete and bear genuine signatures. Bank of America is the leading jurisprudence that illustrates the respective liabilities of a collecting bank and a drawee bank in cases of unauthorized payment of valid checks. Notably, the facts of Bank America are parallel to the facts of the present case. Both Bank of America and the present case involved crossed checks payable to the order of a specified payee that were deposited in a collecting bank under an account not belonging to the payee or his endorsee but which, upon presentment, were subsequently honored by the drawee bank.

Bank of America held that, in cases involving the unauthorized payment of valid checks, the drawee (Metrobank) bank becomes liable to the drawer (owner of the acct/client) for the amount of the checks but the drawee bank, in turn, can seek reimbursement from the collecting bank (Bankocm). The rationale of this rule on sequence of recovery lies in the very basis and nature of the liability of a drawee bank and a collecting bank in said cases. The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other than the payee named in the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.

On the other hand, the liability of the collecting bank is anchored on its guarantees as the last endorser of the check. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting."

It has been repeatedly held that in check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check.

Metrobank is Liable to JMC

Metrobank, as drawee bank, is liable to return to JMC the amount of the subject checks. A drawee bank is contractually obligated to follow the explicit instructions of its drawer-clients when paying checks issued by them. The drawer's instructions-including the designation of the payee or to whom the check should be paid-are reflected on the face and by the terms thereof. When a drawee bank pays a person other than the payee named on the check, *it essentially commits a breach of its obligation and renders the payment it made unauthorized*. In such cases and under normal

circumstances, the drawee bank may be held liable to the drawer for the amount charged against the latter's account.

The liability of the drawee bank to the drawer in cases of unauthorized payment of checks has been regarded in jurisprudence to be *strict by nature*. This means that once an unauthorized payment on a check has been made, the resulting liability of the drawee bank to the drawer for such payment attaches even if the former (drawee bank) had acted merely upon the guarantees of a collecting bank. Indeed, it is only when the unauthorized payment of a check had been caused or was attended by the fault or negligence of the drawer himself can the drawee bank be excused, whether wholly or partially, from being held liable to the drawer for the said payment.

In the present case, it is apparent that Metrobank had breached JMC's instructions when it paid the value of the subject checks to Bankcom for the benefit of a certain Account No. 0015-32987-7. The payment was unauthorized as it was established that the said account does not belong to Jardine or Premiere, the payees or to their endorsees and causal or concurring negligence on the part of JMC had not been proven.

Metrobank's insistence that it should be absolved for it merely complied with Section 17 of the PCHC Rules and Regulations and thereby only relied upon the concomitant guarantees of Bankcom when it paid the subject checks, cannot stand insofar as JMC is concerned. In Bank of America, we rejected a similar argument interposed by a drawee bank precisely on the ground of the latter's strict liability to its drawer. The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order.

Bankcom is Liable to Metrobank

While Metrobank's reliance upon the guarantees of Bankcom does not excuse it from being liable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom-the collecting bank.

A collecting or presenting bank-i.e., the bank that receives a check for deposit and that presents the same to the drawee bank for payment-is an indorser of such check. *When a collecting bank presents a check to the drawee bank for payment, the former thereby assumes the same warranties assumed by an indorser of a negotiable instrument pursuant to Section 66 of the Negotiable Instruments Law.* These warranties are: (1) that the instrument is genuine and in all respects what it purports to be; (2) that the indorser has good title to it; (3) that all prior parties had capacity to contract; and (4) that the instrument is, at the time of the indorsement, valid and subsisting. If any of the foregoing warranties turns out to be false, a collecting hank becomes liable to the drawee bank for payments made under such false warranty. Here, it is clear that Bankcom had assumed the warranties of an indorser when it forwarded the subject checks to PCHC for presentment to Metrobank. By such presentment, Bankcom effectively guaranteed to Metrobank that the subject checks had been deposited with it to an account that has good title to the same. This guaranty, however, is a complete falsity because the subject checks were, in truth, deposited to an account that neither belongs to the payees of the subject checks nor to their indorsees. Hence, as the subject

checks were paid under Bankcom's false guaranty, the latter-as collecting bank-stands liable to return the value of such checks to Metrobank.

Bankcom's assertion that it should be absolved as the subject checks were allegedly never deposited with it must fail. Such allegation is readily disproved by the fact that the subject checks all contained, at their dorsal side, a stamp bearing Bankcom's tracer/ID band. Under the PCHC Rules and Regulations, the stamped tracer/ID band of Bankcom signifies that the checks had been deposited with it and that Bankcom indorsed the said checks and sent them to PCHC. To begin with, jurisprudence has it that a collecting bank's mere act of presenting a check for payment to the drawee bank is itself an assertion, on the part of the former, that it had done its duty to ascertain the validity of prior indorsement. In other words the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. Moreover, *Sec. 17 of the PCHC Rules and Regulations* expressly provides that checks "cleared through the PCHC" that do not bear the mentioned guarantees shall nonetheless "be deemed guaranteed by the [collecting bank] as to all prior endorsements and/or lack of endorsement" such that "no drawee bank shall return any [check] received by it through clearing by reason only of the absence or lack of such guarantee ... *as long as there is evidence appearing on the [check] itself that the same had been deposited with the [collecting bank]."*

In the present case, all the subject checks have been transmitted by Bankcom to the PCHC for clearing and presentment to Metrobank. All of the said checks also bear the PCHC machine sprayed tracer/ID band of Bankcom. Such circumstances, pursuant to prevailing banking practices as laid out under the PCHC Rules and Regulations, are enough to fix the liability of Bankcom as an indorser of the subject checks even sans the stamp "ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED" and "NON-¬NEGOTIABLE." As the stamping of such guarantees are not required before the warranties of an indorser could attach against Bankcom, we find the latter liable to reimburse Metrobank the value of all the subject checks.

Recourse of Bankcom

The sequence of recovery in cases of unauthorized payment of checks, however, does not ordinarily stop with the collecting bank. In the event that it is made to reimburse the drawee bank, the collecting bank can seek similar reimbursement from the very persons who caused the checks to be deposited and received the unauthorized payments. Such persons are the ones ultimately liable for the unauthorized payments and their liability rests on their absolute lack of valid title to the checks that they were able to encash. Unfortunately-as none of such persons were impleaded in the case before us-no pronouncement as to this matter can be made in favor of Bankcom. We express our concurrence to the absolution of Delizo. The RTC and the CA were uniform in their finding that the participation of Delizo-as the supposed thief of the subject checks-had not been established in this case. We reviewed the evidence on hand and saw no cogent reason to deviate from this factual finding.

Doctrine of Comparative Negligence Does Not Apply to the Instant Case

Instead of applying the rule on the sequence of recovery to the case at bench, the RTC and the CA held both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio. In so doing, the RTC and the CA seemingly relied on the doctrine of comparative negligence3 as applied in the cases of Bank of the Philippine Islands v. Court of Appeals and Allied Banking Corporation v. Lio Sim Wan.40 In both cases, the Court held the drawee bank and collecting bank liable for the wrongful encashment of checks under a 60% and 40% ratio.

A glaring peculiarity in the cases of Bank of the Philippine Islands and Allied Banking Corporation is that the drawee bank-which is essentially also the drawer in the scenario-is not only guilty of wrongfully paying a check but also of negligence in issuing such check. Indeed, this is the very reason why the drawee bank in the two cases were adjudged co-liable with the collecting bank under a fixed ratio and the former was not allowed to claim reimbursement from the latter. The drawee bank cannot claim that its participation in the wrongful payment of a check was merely limited to its reliance on the guarantees of the collecting bank. In other words, the drawee bank was held liable in its own right because it was the one that negligently issued the checks in the first place.

That, however, is clearly not the situation in the case at bench. Here, no negligence similar to that committed by the drawee banks in Bank of the Philippine Islands and Allied Banking Corporation-whether in type or in magnitude-can be attributed to Metrobank. *Metrobank, though guilty of the unauthorized check payments, only acted upon the guarantees deemed made by Bankcom under prevailing banking practices.* While Metrobank's reliance upon the guarantees of Bankcom did not excuse it from being answerable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom on the ground of the breach in the latter's warranties as a collecting bank. Under such circumstances, we cannot deny Metrobank's right to seek reimbursement from Bankcom.

Hence, we find that the doctrine of comparative negligence cannot be applied so as to apportion the respective liabilities of Metrobank and Bankcom. The liabilities of Metrobank and Bankcom, as already discussed in length, must be governed by the rule on sequential recovery pursuant to Bank of America.

III. INSURANCE (PD 612, as amended by RA 10607)

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  - **1. Concealment**

2. Misrepresentation or omissions
3. Breach of warranties

The Insular Life Assurance Co., Ltd. v. Heirs of Alvarez
G.R. Nos. 207526 & 210156, October 3, 2018, Third Division, J. Leonen

The Insurance Code dispenses with proof of fraudulent intent in cases of rescission due to concealment, but not so in cases of rescission due to false representations. When an abundance of available documentary evidence can be referenced to demonstrate a design to defraud, presenting a singular document with an erroneous entry does not qualify as clear and convincing proof of fraudulent intent.

Facts:

Alvarez applied for and was granted a housing loan by. This loan was secured by a promissory note, a real estate mortgage over the lot, and a mortgage redemption insurance taken on the life of Alvarez with UnionBank as beneficiary. Alvarez was among the mortgagors included in the list of qualified debtors covered by the Group Mortgage Redemption Insurance that UnionBank had with Insular Life.

Alvarez died and subsequently, UnionBank filed with Insular Life a death claim under Alvarez's name pursuant to the Group Mortgage Redemption Insurance. Insular Life denied the claim after determining that Alvarez was not eligible for coverage as he was supposedly more than 60 years old at the time of his loan's approval.

With the claim's denial, the monthly amortizations of the loan stood unpaid. Subsequently, the lot was foreclosed and sold at a public auction with UnionBank as the highest bidder.

The Heirs of Alvarez filed a complaint for specific performance to demand against Insular Life to fulfill its obligation as an insurer under the Group Mortgage Redemption Insurance, and for nullification of foreclosure against UnionBank.

Both Court of Appeals and Regional Trial Court ruled in favor of the Heirs of Alvarez. They noted that the errors assigned by Insular Life and UnionBank boiled down to the issue of whether or not Alvarez was guilty of fraudulent misrepresentation as to warrant the rescission of the Group Mortgage Redemption Insurance obtained by UnionBank on Alvarez's life. Insular Life only relied on Alvarez's Health Statement Form where he wrote "1942" as his birth year. However, this form alone was insufficient to prove that he fraudulently intended to misrepresent his age. It noted that aside from the Health Statement Form, Alvarez had to fill out an application for insurance. This application would have supported the conclusion that he consistently wrote "1942" in all the documents that he had submitted to UnionBank. However, the records made no reference to this document.

Issues:

1. Whether or not The Insular Life Assurance Co., Ltd. is obliged to pay UnionBank the balance of Alvarez's loan given the claim that he lied about his age at the time of the approval of his loan; and

2. Whether or not UnionBank was correct in proceeding with the foreclosure following Insular Life Assurance Co., Ltd.'s refusal to pay.

Ruling:

1. **Yes, Insular life is liable to pay UnionBank for its failure to prove intent to defraud on the part of Alvarez.**

Citing Section 27 of the Insurance Code, however, Insular Life asserts that in cases of rescission due to concealment, *i.e.*, when a party "neglect[s] to communicate that which [he or she] knows and ought to communicate," proof of fraudulent intent is not necessary. Section 27 of the Insurance Code reads:

"A concealment *whether intentional or unintentional* entitles the injured party to rescind a contract of insurance."

While Insular Life correctly reads Section 27 as making no distinction between intentional and unintentional concealment, it erroneously pleads Section 27 as the proper statutory anchor of this case. The Insurance Code distinguishes representations from concealments. What this case involves, instead, is an allegedly false representation. Section 44 of the Insurance Code states, "A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations." If indeed Alvarez misdeclared his age such that his assertion fails to correspond with his factual age, he made a false representation, not a concealment.

In relation to Section 44, Section 45 of the Insurance Code reads:

"If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false."

Not being similarly qualified as rescission under Section 27, rescission under Section 45 remains subject to the basic precept of fraud having to be proven by clear and convincing evidence. Consistent with the requirement of clear and convincing evidence, it was Insular Life's burden to establish the merits of its own case.

At bar, Insular Life basically relied on the Health Statement form personally accomplished by Jose Alvarez wherein he wrote that his birth year was 1942. The Court, however posited that Alvarez must have accomplished and submitted many other documents when he applied for the housing loan and executed supporting instruments like the promissory note, real estate mortgage, and Group Mortgage Redemption Insurance. A design to defraud would have demanded his consistency. He needed to maintain appearances across all documents. However, the best that Insular Life could come up with before the Regional Trial Court and the Court of Appeals was a single document. The Court of Appeals was straightforward, *i.e.*, the most basic document that

Alvarez accomplished in relation to Insular Life must have been an insurance application form. Strangely, Insular Life failed to adduce even this document — a piece of evidence that was not only commonsensical, but also one which has always been in its possession and disposal.

Insular Life had all the opportunity to demonstrate Alvarez's pattern of consistently indicating erroneous entries for his age. All it needed to do was to inventory the documents submitted by Alvarez and note the statements he made concerning his age. This was not a cumbersome task, yet it failed at it. Its failure to discharge its burden of proving must thwart its plea for relief from this Court.

2. The foreclosure is null and void.

UnionBank insists that the real estate mortgage is a contract separate and distinct from the Group Mortgage Redemption Insurance; thus, it should not be affected by the validity or invalidity of Insular Life's rescission.

While the mortgagee's right to proceed with foreclosure is settled, this Court finds the debacle at the heart of this case to have been borne in large, if not equal measure, by UnionBank's oversight. UnionBank contributed to setting in motion a course of events that culminated in the unjust foreclosure of Alvarez's mortgaged lot. As such a contributor, its profiting from the wrongful foreclosure cannot be condoned.

The Regional Trial Court was correct in emphasizing that Alvarez entered into the Group Mortgage Redemption Insurance entirely upon UnionBank's prodding. Bank clients are generally unaware of insurance policies such as a mortgage redemption insurance unless brought to their knowledge by a bank. The processing of a mortgage redemption insurance was within UnionBank's regular course of business. It knew the import of truthfully and carefully accomplished applications. To facilitate the principal contract of the loan and its accessory obligations such as the real estate mortgage and the mortgage redemption insurance, UnionBank completed credit appraisals and background checks. Thus, the Regional Trial Court was correct in noting that UnionBank had been in possession of materials sufficient to inform itself of Alvarez's personal circumstances.

UnionBank approved Alvarez's loan and real estate mortgage, and endorsed the mortgage redemption insurance to Insular Life. Fully aware of considerations that could have disqualified Alvarez, it nevertheless acted as though nothing was irregular. It itself acted as if, and therefore represented that, Alvarez was qualified. Yet, when confronted with Insular Life's challenge, it readily abandoned the stance that it had earlier maintained and capitulated to Insular Life's assertion of fraud.

Citing the case of *Poole-Blunden v. Union Bank of the Philippines*, the Court emphasized that the high degree of diligence required of banks "equally holds true in their dealing with mortgaged real properties, and subsequently acquired through foreclosure." It specifically drew attention to this requisite high degree of diligence in relation to "[c]redit investigations [which] are standard practice for banks before approving loans." Under the circumstances, UnionBank failed to observe the diligence required from it and hence, the foreclosure must be nullified.

E. Loss

IV. TRANSPORTATION

A. Common carriers

1. Concept

2. Common carrier vs. private carrier

3. Diligence required

Cacho v. Manahan
G.R. No. 203081 January 17, 2018 THIRD DIVISION (Martires, *J.*)

Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection.

On this point, the Court noticed at how prompt Dagupan Bus had allowed Manahan to drive one of its buses considering he had no prior experience driving one. The only time he was actually able to drive a bus was probably during his driving examination and a few more times while undergoing apprenticeship. The Court cannot simply brush aside and ignore Dagupan Bus' haste to hire Manahan; to our mind, this is negligence on its part.

FACTS:

A vehicular accident occurred along the national highway at Pogo, Alaminos, Pangasinan, near the Embarcadero Bridge. At around 5:00 A.M petitioners' husband, Bismark Cacho (Cacho) was driving a Nissan Sentra from Alaminos, Pangasinan to Bani, Pangasinan, when it collided with respondent Dagupan Bus traversing on the opposite lane. The car had already crossed the bridge when it collided with the bus which was just about to enter the bridge. The collision caused heavy damage to the front of the bus, the total wreckage of the Nissan Sentra, Cacho's instant death, and multiple injuries to three (3) passengers inside the car.

In the complaint for damages filed, it alleged that Cacho's car was hit by the bus because the latter swerved to the left lane as it tried to avoid a pile of boulders placed on the shoulder of the road. These boulders were negligently placed by *R.M. De Vera Construction* (De Vera Construction) contracted by the local government to do some work on the Embarcadero Bridge. Opposingly, Dagupan Bus, the owner and operator of the bus, and Manahan, the bus driver, jointly filed their answer with counterclaim and cross-claims. They claimed that it was Cacho who drove fast coming from the bridge and bumped into the bus that was on full stop; and that Cacho had to swerve to the left because there were boulders of rocks scattered on his lane.

In the RTC, it explained that Manahan was negligent in driving the bus because it was traversing at the speed of 80-100 KM/H and was about to enter a very narrow bridge. The trial court held that the proximate cause of the incident was the negligence of Manahan in driving the bus as well as the negligence on the part of De Vera for allowing his employees to place boulders near the bridge.

Meanwhile, CA reversed the trial court's ruling, effectively dismissing the complaint for damages against Manahan, Dagupan Bus, and De Vera. Contrary to the trial court's findings, the CA did not believe that the bus was running very fast and that it suddenly swerved to the left to avoid the boulders.

ISSUE:

Whether or not Dagupan Bus and its driver is negligent as a common carrier and thus should be held liable for damages.

RULING:

YES. In *Picart v. Smith* the Court laid down the test by which we determine the existence of negligence, *viz:*

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence.**

Using this test, Manahan was clearly negligent when he was relatively driving fast on a narrow highway and approaching a similarly narrow bridge. We must bear in mind that a bus is a significantly large vehicle which would be difficult to maneuver and stop if it were travelling at a high speed. On top of this, the time of the accident was on or about sunrise when visibility on the road was compromised. Moreover, we can also say that Manahan was legally presumed negligent under Article 2185 of the Civil Code, which provides: "unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was [in violation of] any traffic regulation."

Considering that the bus was already approaching the Embarcadero Bridge, Manahan should have already slowed down a few meters away from the bridge. Actually, he should have stopped farther away from the bridge because he would have been able to see that Cacho's car was already crossing the bridge. An experienced and competent bus driver would be able to know how to properly react upon seeing another vehicle ahead that is about to exit a narrow bridge. Obviously, Manahan failed to do so. Having established Manahan's negligence, he is liable with Dagupan Bus to indemnify Cacho's heirs.

FEDERAL EXPRESS CORPORATION, Petitioner, -versus- LUWALHATI R. ANTONINO AND ELIZA BETTINA RICASA ANTONINO, Respondents.
G.R. No. 199455, THIRD DIVISION, June 27, 2018, LEONEN, J

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting. ***Extraordinary diligence*** *is that* ***extreme measure of care and caution*** *which persons of unusual prudence and circumspection use for securing and preserving their own property or rights. The responsibility of common carriers to exercise extraordinary diligence lasts* ***from the time the goods are unconditionally placed in their possession until they are***

delivered *"to the consignee, or to the person who has a right to receive them." Common carriers must* ***ascertain the identity of the recipient.*** *Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.*

Petitioner is ***unable to prove that it exercised extraordinary diligence*** *in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. The package shipped by respondents should* ***then be considered lost****, thereby engendering the liability of a common carrier for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this,* ***it failed to identify that neighbor****.*

FACTS

Eliza was the owner of Unit 22-A in Allegro Condominium, located at New York, United States. In November 2003, monthly common charges on the Unit became due for the period of July 2003 to November 2003, and were for a total amount of US$9,742.81. On December 15, 2003, while Luwalhati and Eliza were in the Philippines they decided to send several Citibank checks, amounting to US$17,726.18 for the payment of monthly charges and US$11,619.35 for the payment of real estate taxes **to Veronica Z. Sison**, who was based in New York and such were sent by Luwalhati through FedEx. The package was addressed to Sison who was tasked to deliver the checks **payable to Maxwell- Kates, Inc. and to the New York County Department of Finance**. Sison allegedly **did not receive** the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit. Upon learning that the checks were sent on December 15, 2003, Sison contacted FedEx to inquire about the non-delivery. She was informed that the package was **delivered to her neighbor** but there was no signed receipt.

On March 14, 2004, Luwalhati and Eliza **sent a demand letter** to FedEx for payment of damages due to the non-delivery of the package, but FedEx **refused to heed their demand.** Hence, on April 5, 2004, they filed their Complaint for damages. As for FedEx defenses, it claimed that Luwalhati and Eliza "had no cause of action against it because **they failed to comply with a condition precedent**, that of filing a written **notice of claim within the 45 calendar days** from the acceptance of the shipment." It added that it was absolved of liability as Luwalhati and Eliza shipped **prohibited items and misdeclared** these items as "documents." It pointed to conditions under its Air Waybill prohibiting the "transportation of money".

The Regional Trial Court ruled for Luwalhati and Eliza. The Court of Appeals affirmed the ruling of the RTC.

ISSUE

Whether or Not petitioner Federal Express Corporation may be held liable for damages on account of its failure to deliver the checks shipped by respondents Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino to the consignee Veronica Sison? (YES)

RULING

SUBSTANTIAL COMPLIANCE TO THE PROVISION OF CONTRACT OF CARRIAGE

The **provision** in a contract of carriage requiring the filing of a formal claim within a specified period is a **valid stipulation**. Jurisprudence maintains that compliance with this provision is a **legitimate condition precedent** to an action for damages arising from loss of the shipment. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to **give it an opportunity to examine the nature and extent of the injury**.

For their claim to prosper, respondents must, thus, surpass 2 hurdles: the filing of their **formal claim within 45 days**; and the subsequent **filing of the action within 2 years**. There is no dispute on respondents' compliance with the second period as their Complaint was filed on April 5, 2004. For the former, this Court is guided by settled standards in the case of PAL v. CA; "xxx there was **substantial compliance** with the period because of the **zealous efforts** demonstrated by Mejia in following up her claim. These efforts coupled with Philippine Airlines' "tossing around the claim and leaving it unresolved for an indefinite period of time" led this Court to deem the requisite period satisfied. This is pursuant to Article 1186 of the New Civil Code which provides that the condition shall be **deemed fulfilled** when the **obligor voluntarily prevents its fulfillment**."

Luwalhati showed **ardent campaign** in following up the claim. It is beyond her control why the demand letter for damages was only sent subsequent to her infuriating follow-ups regarding the whereabouts of the said package. Petitioner has been unable to persuasively refute Luwalhati's recollection of the efforts that she and Sison exerted, and of the responses it gave them. It instead insists that the 45-day period stated in its Air Waybill is sacrosanct. It is one with the RTC and the CA in stressing that **respondents' inability** to expediently **file a formal claim** can only be **attributed to petitioner** hampering its fulfillment. Thus, respondents must be deemed to have substantially complied with the requisite 45-day period for filing a formal claim.

EXTRAORDINARY DILIGENCE OF COMMON CARRIERS

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting. **Extraordinary diligence** is that **extreme measure of care and caution** which persons of unusual prudence and circumspection use for securing and preserving their own property or rights." The Civil Code stipulates that in case of loss or damage to goods, common carriers are **presumed to be negligent or at fault**, **except** in the following instances: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4) The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. In all other cases, common carriers **must prove that they exercised extraordinary diligence** in the performance of their duties, if they are to be absolved of liability.

The responsibility of common carriers to exercise extraordinary diligence lasts **from the time the goods are unconditionally placed in their possession until they are delivered** "to the

consignee, or to the person who has a right to receive them." Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them." Common carriers must **ascertain the identity of the recipient.** Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. It is nothing but an alphanumeric code that outside of petitioner's personnel and internal systems signifies nothing. Reliance on this code is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive" the package. Given the circumstances in this case, the more reasonable conclusion is that the **package was not delivered**. The package shipped by respondents should **then be considered lost**, thereby engendering the liability of a common carrier for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this, **it failed to identify that neighbor**.

VIOLATION OF THE TERMS OF THE AIRWAY BILL

Petitioner's International Air Waybill states:

> Items Not Acceptable for Transportation. We do not accept transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as endorsed stocks and bonds). We exclude all liability for shipments of such items accepted by mistake. xxx

The prohibition has a singular object: **money**. The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Money is "what is **generally acceptable in exchange for goods**." Laws usually define what can be considered as a generally acceptable medium of exchange. The New Central Bank Act, defines **legal tender** as; "**All notes and coins issued by the Bangko Sentra**l shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private. It is settled in jurisprudence that **checks**, being only negotiable instruments, are only **substitutes for money and are not legal tender**; more so when the check has a named payee and is not payable to bearer.

The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments per se but to "negotiable instruments equivalent to

cash." The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are order instruments. They are not payable to their bearer, i.e., bearer instruments. Under the Negotiable Instruments Law, aside from following the requisites as stated in Section 1, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. An order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash.

What this Court's protracted discussion reveals is that petitioner's **Air Waybill lends itself to a great deal of confusion**. The clarity of its terms leaves much to be desired. This lack of clarity can only militate against petitioner's cause. The contract between petitioner and respondents is a **contract of adhesion**; it was prepared solely by petitioner for respondents to conform to. Although not automatically void, any ambiguity in a contract of adhesion is **construed strictly against the party that prepared it**. Accordingly, the prohibition against transporting money must be restrictively construed against petitioner and liberally for respondents. Viewed through this lens, with greater reason should respondents be exculpated from liability for shipping documents or instruments, which are reasonably understood as not being money, and for being unable to declare them as such.

B. Obligations and liabilities

1. Vigilance over goods

2. Safety of passengers

C. Defenses available to a common carrier

1. Proof of negligence

ASIAN TERMINALS, INC. (ATI), Petitioner, -versus- PADOSON STAINLESS STEEL CORPORATION, Respondent.

G.R. No. 211876, FIRST DIVISION, June 25, 2018, TIJAM, J.

*The Respondent Padoson failed to prove that its shipment sustained damage while in ATI's custody. Although Padoson presented photographs as proofs of failure of ATI to exercise extraordinary diligence, the said **photographs were not pre-marked as evidence**. The RTC had already ruled that the photographs were **inadmissible and were not admitted in evidence**. Additionally, the sheriff's declaration in the Sheriff's Report on Ocular Inspection that the steel coils which were part of the shipment, were "already in a deteriorating condition," is a **mere uncorroborated conclusion for having no evidence to back it up**. There is no showing that Sheriff Diaz had personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises. Mere allegation and speculation is not evidence, and is not equivalent to proof.*

*As such, there can be **no basis for Padoson to claim** that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson **cannot impute negligence** upon ATI.*

FACTS

Respondent Padoson hired the Petitioner ATI to provide **for arrastre, wharfage and storage services** at the Port of Manila in relation to a shipment consisting of 9 stainless steel coils and 72 hot-rolled steel coils, with Padoson as a consignee. The shipment were imported on October 5, 2001 and October 30, 2001, respectively and were stored within ATI's premises until they were discharged on July 29, 2006. Meanwhile, **the shipments became the subject of a Hold-Order issued by the Bureau of Customs** (BOC) on September 7, 2001. This was an offshoot of a Customs case filed by the BOC against Padoson due to the latter's tax liability over its own shipments.

For the storage services it rendered**, ATI made several demands** from Padoson for the payment of arrastre, wharfage and storage services amounting to P540,474.48 for the 9 stainless steel coils and P8,374,060.80 for the 72 hot-rolled steel coils stored at the ATI premises. The demands, however, **went unheeded**. Thus, on August 4, 2006, ATI filed a Complaint for a Sum of Money and Damages with Prayer for the Issuance of Writ of Preliminary Attachment.

In its Answer, **Padoson claimed** among others that; (1) during the time when the shipments were in ATI's custody and possession, they **suffered material and substantial deterioration**; (2) that **ATI failed to exercise the extraordinary diligence required of an arrastre operator**; (3) the **Hold-Order issued by the BOC was merely a leverage** to claim Padoson's alleged unpaid duties; (4) Upon a Motion for Ocular Inspection and in the course of the inspection, Sheriff Diaz discovered that the shipments were found in an open area and **were in a deteriorating state**. During the trial, Padoson presented a certain Mr. Ventura, who allegedly took pictures of the shipments. The pictures, however, were not pre-marked during the pre-trial. Consequently, the RTC issued an Order disallowing the marking of the said pictures and Ventura's testimony thereon.

The RTC dismissed ATI's complaint. The RTC reasoned out that by virtue of the Hold-Order over Padoson's shipments, the BOC has acquired constructive possession over the same. Consequently, the BOC should be the one liable to ATI's money claims. The RTC, however, pointed out that since ATI did not implead the BOC in its complaint, the BOC cannot be held to answer for the payment of the storage fees. The CA affirmed the RTC that Padoson's shipments were under the BOC's constructive possession upon its issuance of the Hold-Order.

ISSUE

Whether or Not the CA erred in affirming the RTC decision? (YES)

RULING

In *SBMA v. Rodriguez, et al.* it is the **BOC**, and not the RTC, which **has exclusive original jurisdiction over seizure and forfeiture** of the subject shipment from the moment imported goods are **actually in the possession or control of the Customs authorities**, even if no warrant for seizure or detention had previously been issued by the Collector of Customs for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court.

It is clear that once the BOC is **actually in possession** of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. Here, the **actual possession over Padoson's shipment remained with ATI** since they were stored at its premises. We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient the collection of import and export duties due the State. It has nothing to do with the collection by a private company, like ATI, of the storage fees for the services it rendered to its client, Padoson. Accordingly, there is no basis for the CA in holding that the RTC did not err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment. The alleged constructive possession by virtue of BOC's Hold-Order of Padoson's shipment was not even raised as an issue in this case. In fact, it was the RTC, through its Decision, that brought up the concept of constructive possession by misapplying the SBMA case, as explained earlier.

Furthermore, it was Padoson, and not BOC, is liable to ATI for the payment of storage fees for the services rendered by ATI. The fact remains that it was Padoson, and not BOC, that entered into a contract of service with ATI and consequently was the one who was benefited therefrom. 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. Padoson, cannot shift the burden of paying the storage fees to BOC since the latter has never been privy to the contract of service between Padoson and ATI.

Padoson, also **failed to prove that its shipment sustained damage while in ATI's custody**. Although Padoson presented photographs which were allegedly taken by Ventura, as proofs of failure of ATI to **exercise extraordinary diligence,** the said photographs were **not pre-marked as evidence** and that the **pre-trial orders did not contain a reservation** for presentation of additional evidence for Padoson. The RTC had already ruled that the photographs were **inadmissible and were not admitted in evidence.** Additionally, the sheriff's declaration in the Sheriff's Report on Ocular Inspection that the steel coils which were part of the shipment, were "already in a deteriorating condition," is a **mere uncorroborated conclusion** for having no evidence to back it up. There is no showing that Sheriff Diaz had personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises. Mere allegation and speculation is not evidence, and is not equivalent to proof. Sheriff Diaz, was further not presented to testify on the contents thereof. Evidently, ATI was not given a chance to cross-examine him to test the truthfulness of the allegations made in the said Return.

Anent the **photographs** on the shipment allegedly taken, the same **were not properly authenticated and identified**. "Indeed, photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced." "The value of this kind of evidence lies in its being a correct representation or reproduction of the original." However, in this case, Padoson's witness, Ms. Lorenzo simply admitted that she did not take the pictures and that the salve do not indicate that they pertain to the shipments.

In addition, we have observed from the records that **Padoson did not present any evidence on the supposed condition of the shipment at the time they were already discharged from the vessels**. As such, there can **be no basis for Padoson to claim** that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson **cannot impute negligence** upon ATI.

2. Due diligence in the selection and supervision of employees
3. Fortuitous event
4. Contributory negligence
5. Doctrine of last clear chance

D. Extent of liability
1. Recoverable damages
2. Stipulations limiting liability

FEDERAL EXPRESS CORPORATION, Petitioner, -versus- LUWALHATI R. ANTONINO AND ELIZA BETTINA RICASA ANTONINO, Respondents.
G.R. No. 199455, THIRD DIVISION, June 27, 2018, LEONEN, J

*The **provision** in a contract of carriage requiring the filing of a formal claim within a **specified period** is a **valid stipulation**. Jurisprudence maintains that compliance with this provision is a **legitimate condition precedent** to an action for damages arising from loss of the shipment. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to **give it an opportunity to examine the nature and extent of the injury**.*

*There was **substantial compliance** with the **period stipulated** because of the **zealous efforts** demonstrated by Luwalhati in following up her claim. This is pursuant to Article 1186 of the New Civil Code which provides that the condition shall be **deemed fulfilled** when the **obligor voluntarily prevents its fulfillment**.*

FACTS

Eliza was the owner of Unit 22-A in Allegro Condominium, located at New York, United States. In November 2003, monthly common charges on the Unit became due for the period of July 2003 to November 2003, and were for a total amount of US$9,742.81. On December 15, 2003, while Luwalhati and Eliza were in the Philippines they decided to send several Citibank checks, amounting to US$17,726.18 for the payment of monthly charges and US$11,619.35 for the payment of real estate taxes **to Veronica Z. Sison**, who was based in New York and such were sent by Luwalhati through FedEx. The package was addressed to Sison who was tasked to deliver the checks **payable to Maxwell- Kates, Inc. and to the New York County Department of Finance**. Sison allegedly **did not receive** the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit. Upon learning that the checks were sent on December 15, 2003, Sison contacted FedEx to inquire about the non-delivery. She was informed that the package was **delivered to her neighbor** but there was no signed receipt.

On March 14, 2004, Luwalhati and Eliza **sent a demand letter** to FedEx for payment of damages due to the non-delivery of the package, but FedEx **refused to heed their demand.** Hence, on April 5, 2004, they filed their Complaint for damages. As for FedEx defenses, it claimed that Luwalhati and Eliza "had no cause of action against it because **they failed to comply with a condition precedent**, that of filing a written **notice of claim within the 45 calendar days** from the acceptance of the shipment." It added that it was absolved of liability as Luwalhati and Eliza shipped **prohibited items and misdeclared** these items as "documents." It pointed to conditions under its Air Waybill prohibiting the "transportation of money".

The Regional Trial Court ruled for Luwalhati and Eliza. The Court of Appeals affirmed the ruling of the RTC.

ISSUE

Whether or Not petitioner Federal Express Corporation may be held liable for damages on account of its failure to deliver the checks shipped by respondents Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino to the consignee Veronica Sison? (YES)

RULING

SUBSTANTIAL COMPLIANCE TO THE PROVISION OF CONTRACT OF CARRIAGE

The **provision** in a contract of carriage requiring the filing of a formal claim within a specified period is a **valid stipulation**. Jurisprudence maintains that compliance with this provision is a **legitimate condition precedent** to an action for damages arising from loss of the shipment. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to **give it an opportunity to examine the nature and extent of the injury**.

For their claim to prosper, respondents must, thus, surpass 2 hurdles: the filing of their **formal claim within 45 days**; and the subsequent **filing of the action within 2 years**. There is no dispute on respondents' compliance with the second period as their Complaint was filed on April 5, 2004. For the former, this Court is guided by settled standards in the case of PAL v. CA; "xxx there was **substantial compliance** with the period because of the **zealous efforts** demonstrated by Mejia in following up her claim. These efforts coupled with Philippine Airlines' "tossing around the claim and leaving it unresolved for an indefinite period of time" led this Court to deem the requisite period satisfied. This is pursuant to Article 1186 of the New Civil Code which provides that the condition shall be **deemed fulfilled** when the **obligor voluntarily prevents its fulfillment**."

Luwalhati showed **ardent campaign** in following up the claim. It is beyond her control why the demand letter for damages was only sent subsequent to her infuriating follow-ups regarding the whereabouts of the said package. Petitioner has been unable to persuasively refute Luwalhati's recollection of the efforts that she and Sison exerted, and of the responses it gave them. It instead insists that the 45-day period stated in its Air Waybill is sacrosanct. It is one with the RTC and the CA in stressing that **respondents' inability** to expediently **file a formal claim** can only be

attributed to petitioner hampering its fulfillment. Thus, respondents must be deemed to have substantially complied with the requisite 45-day period for filing a formal claim.

EXTRAORDINARY DILIGENCE OF COMMON CARRIERS

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting. **Extraordinary diligence** is that **extreme measure of care and caution** which persons of unusual prudence and circumspection use for securing and preserving their own property or rights." The Civil Code stipulates that in case of loss or damage to goods, common carriers are **presumed to be negligent or at fault**, **except** in the following instances: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4) The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. In all other cases, common carriers **must prove that they exercised extraordinary diligence** in the performance of their duties, if they are to be absolved of liability.

The responsibility of common carriers to exercise extraordinary diligence lasts **from the time the goods are unconditionally placed in their possession until they are delivered** "to the consignee, or to the person who has a right to receive them." Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them." Common carriers must **ascertain the identity of the recipient.** Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. It is nothing but an alphanumeric code that outside of petitioner's personnel and internal systems signifies nothing. Reliance on this code is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive" the package. Given the circumstances in this case, the more reasonable conclusion is that the **package was not delivered**. The package shipped by respondents should **then be considered lost**, thereby engendering the liability of a common carrier for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this, **it failed to identify that neighbor**.

VIOLATION OF THE TERMS OF THE AIRWAY BILL

Petitioner's International Air Waybill states:

> Items Not Acceptable for Transportation. We do not accept transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as

endorsed stocks and bonds). We exclude all liability for shipments of such items accepted by mistake. Xxx

The prohibition has a singular object: **money**. The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Money is "what is **generally acceptable in exchange for goods**." Laws usually define what can be considered as a generally acceptable medium of exchange. The New Central Bank Act, defines **legal tender** as; "**All notes and coins issued by the Bangko Sentra**l shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private. It is settled in jurisprudence that **checks**, being only negotiable instruments, are only **substitutes for money and are not legal tender**; more so when the check has a named payee and is not payable to bearer.

The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments per se but to "negotiable instruments equivalent to cash." The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are order instruments. They are not payable to their bearer, i.e., bearer instruments. Under the Negotiable Instruments Law, aside from following the requisites as stated in Section 1, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. An order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash

What this Court's protracted discussion reveals is that petitioner's **Air Waybill lends itself to a great deal of confusion**. The clarity of its terms leaves much to be desired. This lack of clarity can only militate against petitioner's cause. The contract between petitioner and respondents is a **contract of adhesion**; it was prepared solely by petitioner for respondents to conform to. Although not automatically void, any ambiguity in a contract of adhesion is **construed strictly against the party that prepared it**. Accordingly, the prohibition against transporting money must be restrictively construed against petitioner and liberally for respondents. Viewed through this lens, with greater reason should respondents be exculpated from liability for shipping documents or instruments, which are reasonably understood as not being money, and for being unable to declare them as such.

3. Limitations under the Warsaw Convention

V. CORPORATION LAW (Provisions of BP 68, not affected by RA 11232)

A. General principles

1. Nationality of corporations

a. Place of incorporation test

b. Control test

c. Grandfather rule

2. Doctrine of separate juridical personality

Stradcom Corporation v. Orpilla
G.R. No. 206800, July 2, 2018, Tijam, J.

It is well-settled that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Here, appellant is not liable because his acts were official acts, done in his capacity as an officer of appellant corporation on its behalf. There is no showing of any act, or that he acted without or in excess of his authority or was motivated by personal ill-will toward appellee.

Respondent Orpilla was employed by Stradcom as HRAD Head, a managerial position with a monthly salary of P60,000 while Chua is the President and Chief Executive Officer (CEO) of Stradcom who issued a Memorandum announcing the reorganization of the HRAD. After the turn-over of the documents and equipment of HRAD, respondent inquired from Chua as to her status in the light of the said reorganization. Chua, on the other hand, replied that the management has lost its trust and confidence in her because of her mishandling of Stradcom's 2002 Christmas Party. Dishonesty in preparing the budget thereof, misrepresentation in her application for employment and using company personnel and resources for purposes not beneficial to the interest of Stradcom. Chua advised the respondent that it would be better if she resigned. Respondent alleged that she was refused entry when she reported for work one day. She thereafter filed a complaint for constructive dismissal against Stradcom and Chua.

Issue:

Whether or not Chua as the president of Stradcom is solidarily liable with Stradcom for the payment of the monetary awards to respondent.

Ruling:

No. It is well-settled that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Absence of any evidence that a corporate officer and/or director has exceeded their authority, or their acts are tainted with malice or bad faith, they cannot be held personally liable for their official acts. Here, there was neither any proof that Chua acted without or in excess of his authority nor was he motivated by personal ill-will towards respondent to be solidarily liable with the company.

Appellant Chua's acts were official acts, done in his capacity as an officer of appellant corporation on its behalf. There is no showing of any act, or that he acted without or in excess of his authority or was motivated by personal ill-will toward appellee. Stated simply, appellant Chua was merely doing his job. In fact, he even tried to save appellee from undue embarrassment.

Tumagan v. Kairuz
G.R. No. 198124, September 12, 2018, First Division, J. Jardaleza

Here, the Court considers two elements in determining the existence of an intra-corporate controversy, namely: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy. Here, the parties involved in the controversy are respondent Mariam (a shareholder of BIRI and successor to her late husband's position on the ManCom), petitioner John (then the branch manager, shareholder, and part of the BIRI ManCom), and petitioners Bot and Alam (licensed geodetic engineers engaged by BIRI for a contract to survey the property subject of the dispute). The controversy also involves BIRI itself, the corporation of which Mariam is a shareholder, and which through Board Resolutions No. 2006-0001, 2007-0004 and 2007-0005 authorized John, its branch manager, to do all acts fit and necessary to enforce its corporate rights against the Kairuz family, including the posting of guards to secure the property. The controversy is thus intra-corporate in nature.

Moreover, the CA erred in characterizing the action as an ejectment case filed by a co-owner who was illegally deprived of her right to possess the property by the presence of armed men. The CA ruled that since the Kairuzes own 30% of the shares of stocks of BIRI, Mariam, as a co-owner who was unlawfully ousted from BIRI property by its employees, may bring an action for ejectment against the employees. This is not correct.

Here, it is undisputed that the property has already been transferred to BIRI and registered in its name. It is likewise undisputed that based on the MOA, the Kairuzes own 30% of the outstanding capital stock of BIRI. This, however, does not make Mariam a co-owner of the property of BIRI, including the property subject of this case. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person. At most, Mariam's interest as a shareholder is purely inchoate, or in sheer expectancy of a right, in the management of the corporation and to share in its profits, and in its properties and assets on dissolution after payment of the corporate debts and obligations.

Facts:

In her complaint for ejectment filed before the MCTC, respondent Mariam K. Kairuz (Mariam) alleged that she had been in actual and physical possession of a 5.2-hectare property located at Tadiangan, Tuba, Benguet (property) until May 28, 2007. She alleged that in the afternoon of May 28, 2007, petitioners John Cary Tumagan (John), Alam Halil (Alam), and Bot Padilla (Bot) conspired with each other and forcibly took possession of the property Mariam likewise sought the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI) against petitioners.

In their answer, petitioners averred that Mariam could not bring the present action for forcible entry because she was never the sole owner or possessor of the property. They alleged that Mariam is the spouse of the late Laurence Ramzy Kairuz (Laurence), who co-owned the property with his sisters. Petitioners claimed that the property is a good source of potable water and is publicly known as Kairuz Spring. During his lifetime, Laurence, in his own capacity and as attorney-in-fact for his sisters, entered into a Memorandum of Agreement (MOA) with Balibago Waterworks System Incorporated (BWSI) and its affiliate company, PASUDECO, to establish a new corporation, Bali Irisan Resources, Inc. (BIRI). As stipulated in the MOA, Laurence and his

sisters will sell the property containing Kairuz Spring and other improvements to BIRI for P115,000,000.00. Eventually, the Kairuz family sold the property, including the bottling building, Kairuz Spring, machineries, equipment, and other facilities following the terms of the MOA. BIRI took full possession over the property and caused new certificates of title to be issued. BIRI is 30% owned by the Kairuz family and 70% owned by BWSI and its allied company, PASUDECO. Its Board of Directors is composed of seven members, with a three-person Management Committee (ManCom) handling its day-to-day operations. The one seat accorded to the Kairuz family in the ManCom was initially occupied by Laurence, while the two other seats in the ManCom were occupied by John and one Victor Hontiveros. Petitioners alleged that Mariam was aware of the MOA, the ManCom, and of the operations of the BIRI properties precisely because she succeeded Laurence's seat in the Board of Directors and ManCom after his death.

Petitioners also asserted that under the MOA, the Kairuz family assigned their Baguio Spring Mineral Water Corporation (BSMWC) shares and water rights through the BSMWC water permit. The MOA also stipulated the continued operation of the truck water business by the Kairuzes and this was honored by BIRI. However, this privilege enjoyed by the Kairuzes is contingent on their compliance with their own obligations and conditions as set forth in the MOA. Unfortunately, upon Mariam's assumption of the truck water business as well as Lexber Subdivision water service, she started to commit actions in conflict with the best interest of BIRI, such as: (a) she opposed the required transfer of the BSMWC water permit to BIRI before the National Water Resources Board; (b) she intervened in the case filed by Baguio Water District against BIRI, weakening BIRI's position; (c) she filed a complaint before the RTC of Angeles City questioning the Deed of Assignment of the BSMWC shares executed by the Kairuz family in favor of BIRI; and (d) she asked the barangay officials at Tadiangan, Tuba and *Sangguniang Bayan* Members of Tuba to deny BIRI's offer to service the water requirements of Tuba residents. This prompted BIRI's shareholders to write Mariam regarding her default on the provisions of the MOA, warning her that unless appropriate remedies are fulfilled, the MOA will be terminated. Mariam ignored their official communications, choosing instead to file the present ejectment complaint against petitioners.

Both the MCTC and RTC dismissed the Complaint on the ground of lack of jurisdiction. On appeal, however, the CA reversed the decisions of the lower courts.

Issue:

Whether MCTC has jurisdiction over the Complaint for forcible entry filed by Mariam.

Ruling:

The petition is meritorious. The MCTC has no jurisdiction over Mariam's Complaint for forcible entry.

From the beginning, petitioners were consistent in their position that the MCTC has no jurisdiction over the action filed by Mariam. They claim that Mariam is not only a shareholder of BIRI, she is also the successor of her late husband, Laurence, and the case involves management of corporate property, an intra-corporate dispute which falls under the jurisdiction of the

appropriate commercial court. Thus, pursuant to Article XII of the MOA, Mariam should have brought the case before the RTC of Angeles, Pampanga.

Here, the Court considers two elements in determining the existence of an intra-corporate controversy, namely: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy. Here, the parties involved in the controversy are respondent Mariam (a shareholder of BIRI and successor to her late husband's position on the ManCom), petitioner John (then the branch manager, shareholder, and part of the BIRI ManCom), and petitioners Bot and Alam (licensed geodetic engineers engaged by BIRI for a contract to survey the property subject of the dispute). The controversy also involves BIRI itself, the corporation of which Mariam is a shareholder, and which through Board Resolutions No. 2006-0001, 2007-0004 and 2007-0005 authorized John, its branch manager, to do all acts fit and necessary to enforce its corporate rights against the Kairuz family, including the posting of guards to secure the property. The controversy is thus intra-corporate in nature.

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3. Doctrine of piercing the corporate veil

LUIS JUAN L. VIRATA and UEMMARA PHILIPPINES CORPORATION (now known as CAVITEXINFRASTRUCTURE CORPORATION), *Petitioners* -versus- ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOSTAN, and MANUEL ESTRELLA, *Respondents*
G.R. No. 220926

WESTMONT INVESTMENT, CORPORATION, Petitioner -versus-ALEJANDRO NG WEE, *Respondent*
G.R. No. 221058

MANUEL ESTRELLA, Petitioner -versus- ALEJANDRO NG WEE, Respondent
G.R. No. 221109

SIMEON CUA, VICENTE CUALOPING, and HENRY CUALOPING, Petitioners -versus- ALEJANDRO NG WEE, Respondent
G.R. No. 221135

ANTHONY T. REYES, Petitioner -versus- ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, and MANUEL ESTRELLA, Respondents
G.R. No. 221218
March 21, 2018, SPECIAL THIRD DIVISION, VELASCO, JR., *J.*

A corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. Thus, authorities discuss that when the notion of separate juridical personality is used (1) to defeat public convenience, justify wrong, protect fraud or defend crime; (2) as a device to defeat the labor laws; or (3) when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced.

To elucidate, case law lays down a three-pronged test to determine the application of the alter-ego theory, namely:
(1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiffs legal right; and
(3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

To restate, basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. Following this, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and said personalities are generally not held personally liable thereon.

By way of exception, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation under Sec. 31 of the Corporation Code

FACTS:

Ng Wee was a valued client of Westmont Bank. Sometime in 1998, he was enticed by the bank manager to make money placements with Westmont Investment Corporation (Wincorp), a domestic corporation organized and licensed to operate as an investment house. Offered to him were *"sans recourse"* transactions with the following mechanics:

A corporate borrower who needs financial assistance or funding to run its business or to serve as working capital is screened by Wincorp. Once it qualifies as an accredited borrower, Wincorp enters into a Credit Line Agreement for a specific amount with the corporation. The corporation can draw upon the credit line in a series of availments over a period of time. Every drawdown by the accredited borrower shall be evidenced by a promissory note executed in favor of Wincorp and/or the investor/s who has/have agreed to extend the credit facility. Wincorp then scouts for investors willing to provide the funds needed by the accredited borrower. The investor is matched with the accredited borrower. An investor who provides the fund is issued a Confirmation Advice which indicates the amount of his investment, the due date, the term, the yield, the maturity and the name of the borrower.

Lured by representations that the *"sans recourse"* transactions are safe, stable, high-yielding, and involve little to no risk, Ng Wee, placed investments thereon under accounts in his own name, or in those of his trustees.

Ng Wee's initial investments were matched with Hottick Holdings Corporation (Hottick), one of Wincorp's accredited borrowers, the majority shares of which was owned by a Malaysian national by the name of Tan Sri Halim Saad (Halim Saad). Halim Saad was then the controlling shareowner of UEM-MARA.

Hottick was extended a credit facility with a maximum drawdown of ₱l,500,908,026.87 in consideration of the following securities it issued in favor of Wincorp: (1) a Suretyship Agreement executed by herein petitioner Luis Juan Virata (Virata); (2) a Suretyship Agreement executed by YBHG Tan Sri Halim Saad; and (3) a Third Party Real Estate Mortgage executed by National Steel Corporation (NSC).

Hottick fully availed of the loan facility extended by Wincorp, but it defaulted in paying its outstanding obligations when the Asian financial crisis struck. As a result, Wincorp filed a collection suit against Hottick, Halim Saad, and NSC for the repayment of the loan and related costs.

To induce the parties to settle, petitioner Virata offered to guarantee the full payment of the loan. The guarantee was embodied in a Memorandum of Agreement between him and Wincorp. Virata was then able to broker a compromise between Wincorp and Halim Saad that paved the way for the execution of a Settlement Agreement. In the Settlement Agreement, Halim Saad agreed to pay USDl,000,000.00 to Wincorp in satisfaction of any and all claims the latter may have against the former under the Surety Agreement that secured Hottick's loan.

Thereafter, Wincorp executed a Waiver and Quitclaim in favor of Virata, releasing the latter from any obligation arising from the Memorandum of Agreement, except for his obligation to transfer forty percent (40%) equity of UEM Development Philippines, Inc. (UPDI)..

Alarmed by the news of Hottick's default and financial distress, Ng Wee confronted Wincorp and inquired about the status of his investments. Wincorp assured him that the losses from the Hottick account will be absorbed by the company and that his investments would be transferred instead to a new borrower account. In view of these representations, Ng Wee continued making money

placements, rolling over his previous investments in Hottick and even increased his stakes in the new borrower account - Power Merge Corporation (Power Merge).

Incorporated on August 4, 1997, Power Merge is a domestic corporation, the primary purpose of which is to *"invest in, purchase, or othe-rwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real or personal property of every kind and description."* Petitioner Virata is the majority stockholder of the corporation, owning 374 ,996 out of its 375, 000 subscribed capital stock.

In a special meeting of Wincorp's board of directors held on February 9, 1999, the investment house resolved to file the collection case against Halim Saad and Hottick, and, on even date, approved Power Merge' s application for a credit line, extending a credit facility to the latter in the maximum amount of ₱l,300,000,000.00. Based on the minutes of the special meeting, board chairman John Anthony B. Espiritu, Wincorp President Antonio T. Ong (Ong), Mariza Santos-Tan (Santos-Tan), Manuel N. Tankiansee (Tankiansee), and petitioners Manuel A. Estrella (Estrella), Simeon Cua, Henry T. Cualoping, and Vicente Cualoping (Cua and the Cualopings) were allegedly in attendance. Thus, on February 15, 1999, Wincorp President Ong and Vice-President for Operations petitioner Anthony Reyes (Reyes) executed a Credit Line Agreement in favor of Power Merge with petitioner Virata's conformity.

Barely a month later, on March 11, 1999, Wincorp, through another board meeting allegedly attended by the same personalities, increased Power Merge's maximum credit limit to ₱2,500,000,000.00.

Power Merge made a total of six (6) drawdowns from the amended Credit Line Agreement in the aggregate amount of P2,183,755,253.11. Following protocol, Power Merge issued Promissory Notes in favor of Wincorp for each drawdown.

After receiving the promissory notes from Power Merge, Wincorp, in turn, issued Confirmation Advices to Ng Wee and his trustees, as well as to the other investors who were matched with Power Merge. A summary of the said Confirmation Advices reveals that out of the ₱2,183,755,253.11 drawn by Power Merge, the aggregate amount of ₱213,290,410.36 was sourced from Ng Wee's money placements under the names of his trustees

Unknown to Ng Wee, however, was that on the very same dates the Credit Line Agreement and its subsequent Amendment were entered into by Wincorp and Power Merge, additional contracts (Side Agreements) were likewise executed by the two corporations absolving Power Merge of liability as regards the Promissory Notes it issued.

By virtue of these contracts, Wincorp was able to assign its rights to the uncollected Hottick obligations and hold Power Merge papers instead. However, this also meant that if Power Merge subsequently defaults in the payment of its obligations, it would refuse, as it did in fact refuse, payment to its investors.

Despite repeated demands, Ng Wee was not able to collect Power Merge's outstanding obligation under the Confirmation Advices in the amount of ₱213,290,410.36. This prompted Ng Wee to institute a Complaint for Sum of Money with Damages

In his Complaint, Ng Wee claimed that he fell prey to the intricate scheme of fraud and deceit that was hatched by Wincorp and Power Merge. As he later discovered, Power Merge's default was inevitable from the very start since it only had subscribed capital in the amount of ₱37,500,000.00, of which only ₱9,375,000.00 is actually paid up. He then attributed gross negligence, if not fraud and bad faith, on the part of Wincorp and its directors for approving Power Merge's credit line application and its subsequent increase to the amount of ₱2,500,000,000.00 despite its glaring inability to pay.

Wincorp officers Ong and Reyes were likewise impleaded for signing the Side Agreements that would allow Power Merge to avoid paying its obligations to the investors.

Wincorp admitted that it brokered Power Merge Promissory Notes to investors through *"sans recourse"* transactions. It contended, however, that its only role was to match an investor with corporate borrowers and, hence, assumed no liability for the monies that Ng Wee loaned to Power Merge. *"Sans recourse"* transactions, Wincorp added, are perfectly legal under Presidential Decree No. 129 (PD 129), otherwise known as the *Investment Houses Law,* and forms part of the brokering functions of an investment house. As a duly licensed investment house, it was authorized to offer the *"sans recourse"* transactions to the public, even without a license to perform quasi-banking functions.

For their part, the Wincorp directors argued that they can only be held liable under Section 31 of the Corporation Code, if they assented to a patently unlawful act, or are guilty of either gross negligence or bad faith in directing the affairs of the corporation. They explained that the provision is inapplicable since the approval of Power Merge's credit line application was done in good faith and that they merely relied on the vetting done by the various departments of the company.

Petitioners Virata and UEM-MARA harped on the underlying arrangement between Hottick, Power Merge, and Wincorp. Under the framework, Hottick will issue Promissory Notes to Wincorp, which will then transfer the same to Power Merge. In exchange for the transfer, Power Merge will issue its own Promissory Notes to Wincorp. That way, Wincorp will be holding Power Merge papers, instead of Hottick.

To implement this arrangement, Wincorp and Power Merge entered into a Credit Line Agreement with the understanding that Power Merge and Virata's only obligation thereunder would be to collect payments on the Hottick papers. The Credit Line Agreement and the issuance of the promissory notes, according to Virata, were mere accommodations to help Wincorp enforce the outstanding obligations of Hottick. It was then contrary to their agreement for Wincorp to have offered the Power Merge papers to investors since it was allegedly agreed upon that Power Merge would incur no liability to pay the promissory notes it issued Wincorp.

The RTC rendered a Decision in favor of Ng Wee ordering the defendants Luis L. Virata, UEM-MARA Philippines Corporation, Westmont Investment Corporation (Wincorp), Antonio T. Ong,

Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella to jointly and severally pay plaintiff The sum of P213,290,410.36

The CA substantially affirmed the decision.

ISSUE:

From whom can Ng Wee recover the ₱213,290,410.36 investment?

RULING:

A. Only Wincorp is liable to Ng Wee for fraud; Power Merge is liable based on contract

Wincorp is liable to Ng Wee for perpetrating an elaborate scheme to defraud its investors.

Ng Wee would not have placed funds or invested in the *"sans recourse"* transactions under the Power Merge borrower account had he not been deceived into believing that Power Merge is financially capable of paying the returns of his investments/money placements. Wincorp accredited Power Merge as a borrower, given it a credit line in the maximum amount of ₱2,500,000,000.00, Philippine Currency, allowed it to make drawdowns up to ₱2,183,755,253.ll, Philippine Currency, matched it with [Ng Wee's] investments/ money placements to the extent of ₱213,290,410.36, Philippine Currency, notwithstanding telling signs which immediately cast doubt on its ability to perform its obligations under the Credit Line Agreements, Promissory Notes and Confirmation Advices, to wit:

(1) Power Merge had only been in existence as a corporation for barely two (2) years when it was accredited as borrower by Wincorp; (2) Power Merge is a thinly capitalized corporation with only ₱37,500,000.00 subscribed capital stock; (3) Power Merge is not an ongoing concern because (a) Despite the fact that Power Merge's principal place of business is at 151 Paseo de Roxas St., Makati City, it has neither registered nor conducted any business at Makati City as evident from the Certification dated January 3, 2006 issued by the Business Permits Office Of Makati City; (b) it is not engaged in any lucrative business to finance its operation; Despite the fact that its primary purpose is to "invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real or personal property of every kind and description ... ," no proof was adduced to show that it was carrying out or has carried out this mandate in accordance with the law; (c) From the time of its incorporation until the revocation of its Certificate of Incorporation on March 15, 2004, Power Merge has failed to file annual reports required by the SEC such as General Information Sheets and Financial Statements; (4) No security whatsoever was demanded by Wincorp or furnished by Power Merge in relation to its credit line and drawdowns. Indeed, no person in his proper frame of mind would venture to lend hundreds of millions of pesos to a business entity having such a financial setup.

B. Power Merge is not guilty of fraud, but is liable under contract nonetheless

Power Merge and Virata were not active parties in defrauding Ng Wee. Instead, the company was used as a mere conduit in order for Wincorp to be able to conceal its act of directly borrowing funds for its own account.

Power Merge is liable to Ng Wee under its Promissory Notes. It is crystal clear that Power Merge, through Virata, obligated itself to pay Wincorp and those who invested through it the values stated in the Promissory Notes.

Power Merge cannot escape liability to Ng Wee under the Credit Line Agreement. That Power Merge did not directly transact with Ng Wee and the other investors does not exonerate it from civil liability, for its liability also finds basis on the language of the Credit Line Agreement.

To recall, Power Merge obtained a ₱2,500,000,000.00 credit facility from Wincorp, as one of the latter's corporate borrowers. Under the terms of the credit facility, Power Merge obligated itself to issue Promissory Notes in favor of Wincorp, for itself *"or on behalf of certain investors"* for each of its drawdowns.

Virata and Power Merge cannot then deny knowledge that the amounts that were drawn against the credit facility may not necessarily be from Wincorp's own coffers, but may potentially be from the monies pooled by its clients, even though their identities were at that time anonymous to Power Merge. As can be gleaned, Power Merge was informed through the plain text of the Credit Line Agreement that Wincorp may indorse portions of the investment, and the corresponding interest in the Promissory Notes, to its willing clients and act on the latter's behalf. It then matters not that Power Merge and Virata never personally dealt with Ng Wee for given the setup; Ng Wee became privy to the Credit Line Agreement when he was assigned his shares in the investment, and when he expressed his conformity therewith through the Confirmation Advices.

C.1 Virata is liable for the obligations of Power Merge

Petitioner Virata reiterates his claim that piercing the corporate veil of Power Merge for the sole reason that he owns majority of its shares is improper. He adds that the Credit Line Agreements and Side Agreements were valid arm's length transactions, and that their executions were in the performance of his official capacity, which he cannot be made personally liable for in the absence of fraud, bad faith, or gross negligence on his part.

The Court rejects these arguments. A corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. Thus, authorities discuss that when the notion of separate juridical personality is used (1) to defeat public convenience, justify wrong, protect fraud or defend crime; (2) as a device to defeat the labor laws; or (3) when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced.

The circumstances of Power Merge clearly present an alter ego case that warrants the piercing of the corporate veil.

To elucidate, case law lays down a three-pronged test to determine the application of the alter-ego theory, namely:

(1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiffs legal right; and
(3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

In the present case, Virata not only owned majority of the Power Merge shares; he exercised complete control thereof. He is not only the company president, he also owns 374,996 out of 375,000 of its subscribed capital stock. Meanwhile, the remainder was left for the nominal incorporators of the business. The reported address of petitioner Virata and the principal office of Power Merge are even one and the same. The clearest indication of all: Power Merge never operated to perform its business functions, but for the benefit of Virata. Specifically, it was merely created to fulfill his obligations under the Waiver and Quitclaim, the same obligations for his release from liability arising from Hottick's default and non-payment.

Virata would later on use his control over the Power Merge corporation in order to fulfill his obligation under the Waiver and Quitclaim. Impelled by the desire to settle the outstanding obligations of Hottick under the terms of the settlement agreement, Virata effectively allowed Power Merge to be used as Wincorp's pawn in avoiding its legal duty to pay the investors under the failed investment scheme. Pursuant to the alter ego doctrine, petitioner Virata should then be made liable for his and Power Merge's obligations.

C2. UEM-MARA cannot be held liable

According to the trial court, Virata laundered the proceeds of the Power Merge borrowings and stashed them in UEM-MARA to prevent detection and discovery and hence, UEM-MARA should likewise be held solidarily liable.

We disagree. UEM-MARA is an entity distinct and separate from Power Merge, and it was not established that it was guilty in perpetrating fraud against the investors. It was a non-party to the *"sans recourse"* transactions, the Credit Line Agreement, the Side Agreements, the Promissory Notes, the Confirmation Advices, and to the other transactions that involved Wincorp, Power Merge, and Ng Wee. There is then no reason to involve UEM-MARA in the fray. Otherwise stated, respondent Ng Wee has no cause of action against UEM-MARA. UEM-MARA should not have been impleaded in this case.

Respondent Ng Wee cannot point to a specific wrong committed by UEM-MARA against him in relation to his investments in Wincorp, other than being the object of Wincorp's desires. He merely alleged that the proceeds of the Power Merge loan was used by Virata in order to acquire interests

in DEM-MARA, but this does not, however, constitute a valid cause of action against the company even if we were to assume the allegation to be true. It would indeed be a giant leap in logic to say that being Wincorp' s objective automatically makes UEM-MARA a party to the fraud. DEM-Mara's involvement in this case is merely incidental, not direct.

C3.Petitioner Anthony Reyes is liable

To restate, basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. Following this, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and said personalities are generally not held personally liable thereon.

By way of exception, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation under Sec. 31 of the Corporation Code

Petitioner Reyes claims that he is not a director of Wincorp, but its Vice-President for Operations. Thus, he can only be held liable under the second paragraph of Sec 31. As can be read, officers are only precluded from acquiring or attempting to acquire any interest in conflict with that of the company he is serving. There being no allegation of him being guilty of conflict of interest, Reyes argues that he cannot be held liable under the provision.

The argument is bereft of merit. Ascribing liability to a corporate director, trustee, or officer by invoking Sec. 31 of the Corporation Code is distinct from the remedial concept of piercing the corporate veil. While Sec. 31 expressly lays down specific instances wherein the mentioned personalities can be held liable in their personal capacities, the doctrine of piercing the corporate veil, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime.

Applying the doctrine, petitioner cannot escape liability by claiming that he was merely performing his function as Vice-President for Operations and was duly authorized to sign the Side Agreements in Wincorp's behalf. The Credit Line Agreement is patently contradictory if not irreconcilable with the Side Agreements, which he executed on the same day as the representative for Wincorp. The execution of the Side Agreements was the precursor to the fraud. Taken with Wincorp's subsequent offer to its clients of the *"sans recourse"* transactions allegedly secured by the Promissory Notes, it is a clear indicia of fraud for which Reyes must be held accountable.

C4.Cua and the Cualopings are liable

On the other hand, the liabilities of Cua and the Cualopings are more straightforward. They admit of approving the Credit Line Agreement and its subsequent Amendment during the special meetings of the Wincorp board of directors, but interpose the defense that they did so because the screening committee found the application to be above board. They deny knowledge of the Side Agreements and of Power Merge's inability to pay.

We are not persuaded.Cua and the Cualopings cannot effectively distance themselves from liability by raising the defenses they did.

The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business. Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders.

Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings. It was then incumbent upon the board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge' s application before agreeing to expose it to a ₱2,500,000,00.00 risk.

Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste.

This only goes to show that even if Cua and the Cualopings are not guilty of fraud, they would nevertheless still be liable for gross negligence in managing the affairs of the company, to the prejudice of its clients and stakeholders. Under such circumstances, it becomes immaterial whether or not they approved of the Side Agreements or authorized Reyes to sign the same since this could have all been avoided if they were vigilant enough to disapprove the Power Merge credit application. Neither can the business judgment rule apply herein for it is elementary in corporation law that the doctrine admits of exceptions: bad faith being one of them, gross negligence, another.

C5.Manuel Estrella is liable

The minutes clearly state that Estrella was present during the meetings when the body approved the grant of a credit line facility to Power Merge. Estrella would even admit being present during the February 9, 1999 meeting, but attempted to evade responsibility by claiming that he left the meeting before the "other matters," including Power Merge's application, could have been discussed.

Unfortunately, no concrete evidence was ever offered to confirm Estrella's alibi. Aside from his mere say-so, no other credible evidence was presented to substantiate his claim. Thus, the Court is not inclined to lend credence to Estrella's self-serving denials.

MARICALUM MINING CORPORATION, *Petitioner*, -versus- ELY G. FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, *Respondents.*
G.R. No. 221813, THIRD DIVISION, July 23, 2018, GESMUNDO*, J.*

A holding company may be held liable for the acts of its subsidiary only when it is adequately proven that: a) there was control over the subsidiary; b) such control was used to protect a fraud (or gross negligence amounting to bad faith) or evade an obligation; and c) fraud was the proximate cause of

another's existing injury. In this case, complainants have not successfully proven that G Holdings fraudulently exercised its control over Maricalum Mining to fraudulently evade any obligation.

Accordingly, complainants failed to satisfy the second and third tests to justify the application of the alter ego theory. This inevitably shows that the CA committed no reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

FACTS:

The dispute traces its roots back to when the Philippine National Bank and the Development Bank of the Philippines transferred its ownership of Maricalum Mining to the National Government for disposition or privatization because it had become a non-performing asset.

On October 2, 1992, the National Government thru the Asset Privatization Trust executed a Purchase and Sale Agreement (PSA) with **G Holdings**, a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies. G Holding bought 90% of Maricalum Mining's shares and financial claims in the form of company notes.

Upon the signing of the PSA and paying the stipulated down payment, G Holdings immediately took physical possession of Maricalum Mining's Sipalay Mining Complex, as well as its facilities, and took full control of the latter's management and operations

Afterwards, some of Maricalum Mining's employees retired and formed several manpower cooperatives. Each of the said cooperatives executed identical sets of Memorandum of Agreement with Maricalum Mining wherein they undertook, among others, to provide the latter with a steady supply of workers, machinery and equipment for a monthly fee.

On June 1, 2001, Maricalum Mining's Vice President and Resident Manager Jesus H. Bermejo wrote a Memorandum to the cooperatives informing them that Maricalum Mining has decided to stop its mining and milling operations in order to avert continuing losses brought about by the low metal prices and high cost of production. Thereafter, the properties of Maricalum Mining, which had been mortgaged to secure the PNs, were extrajudicially foreclosed and eventually sold to G Holdings as the highest bidder.

On September 23, 2010, some of Maricalum Mining's workers, including complainants, and some of Sipalay General Hospital's employees jointly filed a Complaint with the LA against G Holdings, its president, and officer-in-charge, and the cooperatives and its officers for illegal dismissal, underpayment and nonpayment of salaries, among others.

ISSUE:

Whether or not liability can be imposed against G Holding under the doctrine of piercing the veil of a corporate entity. (NO)

RULING:

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. This principle is basically applied only to determine established liability. However, piercing of the veil of corporate fiction is frowned upon and must be done with caution. This is because a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.

A parent or holding company is a corporation which owns or is organized to own a substantial portion of another company's voting shares of stock enough to control or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4 (a) of Republic Act (*R.A.*) No. 2629[61] as "any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."

In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself-being a separate entity-does not own the assets of and does not answer for the liabilities of the subsidiary or affiliate. The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation.

While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company. **It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong. Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth.**

In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of corporate fiction may be allowed only if the following elements concur:

1) Control-not mere stock control, but complete domination-not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and

3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.[70]

The elements of the alter ego theory were discussed in *Philippine National Bank v. Hydro Resources Contractors Corporation*, to wit:

The first prong is the "**instrumentality" or "control" test**. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."

The second prong is the "**fraud" test**. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."

The third prong is the "**harm" test**. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.

To summarize, piercing the corporate veil based on the *alter ego* theory **requires the concurrence of three elements**: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil.**

In the instant case, there is no doubt that G Holdings-being the majority and controlling stockholder-had been exercising significant control over Maricalum Mining. This is because this Court had already upheld the validity and enforceability of the PSA between the APT and G Holdings. It was stipulated in the PSA that APT shall transfer 90% of Maricalum Mining's equity securities to G Holdings and it establishes the presence of absolute control of a subsidiary's

corporate affairs. Moreover, the Court evinces its observation that Maricalum Mining's corporate name appearing on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives is being superimposed with G Holding's corporate name. Due to this observation, it can be reasonably inferred that G Holdings is paying for Maricalum Mining's salary expenses. Hence, the presence of both circumstances of dominant equity ownership and provision for salary expenses may adequately establish that Maricalum Mining is an instrumentality of G Holdings.

However, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that **mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.**

In this case, the complainants did not satisfy the requisite quantum of evidence to prove fraud on the part of G Holdings. They merely offered allegations and suppositions that, since Maricalum Mining's assets appear to be continuously depleting and that the same corporation is a subsidiary, G Holdings could have been guilty of fraud. As emphasized earlier, **bare allegations do not prove anything**. There must be proof that fraud-not the inevitable effects of a previously executed and valid contract such as the PSA-was the cause of the latter's total asset depletion.

Further, complainants **have not yet even suffered any monetary injury. They have yet to enforce their claims against Maricalum Mining.** It is apparent that complainants are merely anxious that their monetary awards will not be satisfied because the assets of Maricalum Mining were allegedly transferred surreptitiously to G Holdings. However, as discussed earlier, since complainants failed to show that G Holdings's mere exercise of control had a clear hand in the depletion of Maricalum Mining's assets, no proximate cause was successfully established. The transfer of assets was pursuant to a valid and legal PSA between G Holdings and APT.

Accordingly, complainants failed to satisfy the second and third tests to justify the application of the alter ego theory. This inevitably shows that the CA committed no reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

B. Stock vs. non-stock corporations

Bases Conversion and Development Authority v. Commissioner of Internal Revenue, G.R. No. 205925, June 20, 2018, Reyes, Jr., J.

Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends". Since BCDA is neither a stock nor a non-stock corporation, it is exempt from payment of docket fees.

Bases Conversion and Development Authority (BCDA) filed a petition for review with CTA in order to preserve its right to pursue its claim for refund of Creditable Withholding Tax (CWT) in the amount of Php122,079,442.53, which was paid under protest. Said petition was filed with a Request

for Exemption from Payment of Filing Fees, the position of BCDA being that it is exempt from the payment of such fees.

Before the CTA *En Banc*, the petition was returned and not deemed filed without the payment of the correct legal fees.

Issue:

Whether or not BCDA is exempt from the payment of legal fees.

Ruling:

Yes. BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees. In order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x."

> Section 6 of R.A. No. 7227 (BCD Act of 1992) provides for BCDA's capitalization, to wit:
>
> Sec. 6. *Capitalization.* — The Conversion Authority shall have an authorized capital of One hundred billion pesos (P100,000,000,000.00) which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act or by transferring to the Conversion Authority properties valued in such amount.
>
> An initial operating capital in the amount of seventy million pesos (P70,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated which shall be covered by preferred shares of the Conversion Authority retireable within two (2) years.

Based on the foregoing, it is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation.

Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury.

BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code namely charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof.

A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses.

From the foregoing, it is clear that BCDA is neither a stock nor a non-stock corporation. BCDA is a government instrumentality vested with corporate powers. Under Section 21, Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.

C. De facto corporations and corporations by estoppel

MISSIONARY SISTERS OF OUR LADY OF FATIMA, ***Petitioner***, **-versus- AMANDO V. ALZONA**, ***Respondent*.**
G.R. No. 224307, DIVISION, August 6, 2018, REYES, JR., *J.*

Jurisprudence settled that "[t]he filing of articles of incorporation ***and*** *the issuance of the certificate of incorporation are essential for the existence of a de facto corporation." In fine, it is the act of registration with SEC through the issuance of a certificate of incorporation that marks the beginning of an entity's corporate existence.*

The doctrine of corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when a non-existent corporation enters into contracts or dealings with third persons. In which case, the person who has contracted or otherwise dealt with the non-existent corporation is estopped to deny the latter's legal existence in any action leading out of or involving such contract or dealing. While the doctrine is generally applied to protect the sanctity of dealings with the public, nothing prevents its application in the reverse, in fact the very wording of the law which sets forth the doctrine of corporation by estoppel permits such interpretation. Such that a person who has assumed an obligation in favor of a non- existent corporation, having transacted with the latter as if it was duly incorporated, is prevented from denying the existence of the latter to avoid the enforcement of the contract.

At the outset, it must be stated that as correctly pointed out by the CA, the RTC erred in holding that the petitioner is a de facto corporation. Petitioner filed its Articles of Incorporation and by-laws on August 28, 2001. However, the SEC issued the corresponding Certificate of Incorporation only on August 31, 2001, two (2) days after Purificacion executed a Deed of Donation on August 29, 2001. Clearly, at the time the donation was made, the Petitioner cannot be considered a corporation de facto. Rather, a review of the attendant circumstances reveals that it calls for the application of the doctrine of corporation by estoppel as provided for under Section 21 of the Corporation Code.

FACTS:

The Missionary Sisters of Our Lady of Fatima, known as the Peach Sisters of Laguna, is a religious and charitable group established under the patronage of the Roman Catholic Bishop of San. Its primary mission is to take care of the abandoned and neglected elderly persons. The petitioner came into being as a corporation by virtue of a Certificate issued by the SEC on August 31,

2001. Mother Concepcion is the petitioner's Superior General. The respondents, on the other hand, are the legal heirs of the late Purificacion Y. Alzona.

Purificacion, is the registered owner of parcels of land located in Calamba City, Laguna. In 1996, Purificacion, impelled by her unmaterialized desire to be nun, decided to devote the rest of her life in helping others. In the same year, she then became a benefactor of the petitioner by giving support to the community and its works. In 1997, during a doctor's appointment, Purificacion then accompanied by Mother Concepcion, discovered that she has been suffering from lung cancer. Considering the restrictions in her movement, Purificacion requested Mother Concepcion to take care of her in her house, to which the latter agreed.

In October 1999, Purificacion called Mother Concepcion and handed her a handwritten letter dated October 1999. Therein, Purificacion stated that she is donating her house and lot at Calamba, Laguna, to the petitioner through Mother Concepcion. Purificacion, instructed her nephew to give a share of the harvest to Mother Concepcion, and informed her niece that she had given her house to Mother Concepcion.

Sometime in August 2001, at the request of Purificacion, Mother Concepcion went to see Atty. Arcillas in Los Baños, Laguna. During their meeting, Atty. Arcillas asked Mother Concepcion whether their group is registered with the SEC, to which the latter replied in the negative. Acting on the advice given by Atty. Arcillas, Mother Concepcion went to SEC and filed the corresponding registration application on August 28, 2001

On August 29, 2001, Purificacion executed a Deed of Donation *Inter Vivos* in favor of the petitioner, conveying to her the properties. The Deed was notarized by Atty. Arcillas and witnessed by Purificacion's nephews Francisco and Diosdado Alzona, and grandnephew, Atty. Fernando M. Alonzo. The donation was accepted on even date by Mother Concepcion for and in behalf of the petitioner.

Thereafter, Mother Concepcion filed an application before the BIR that the petitioner be exempted from donor's tax as a religious organization. The application was granted by the BIR. Subsequently, the Deed, together with the owner's duplicate copies, and the exemption letter from the BIR was presented for registration. The Register of Deeds, however, denied the registration on account of the Affidavit of Adverse Claim dated September 26, 2001 filed by the brother of Purificacion, respondent Amando.

On October 30, 2001, Purificacion died without any issue, and survived only by her brother of full blood, Amando, who nonetheless died during the pendency of this case and is now represented and substituted by his legal heirs, joined as herein respondents.

On April 9, 2002, Amando filed a Complaint before the RTC, seeking to annul the Deed executed between Purificacion and the petitioner, on the ground that at the time the donation was made, the latter was not registered with the SEC and therefore has no juridical personality and cannot legally accept the donation.

RTC dismissed the petition. CA modified, declaring the donation void.

ISSUE:
1. Whether or not the Deed executed by Purificacion in favor of the petitioner is valid and binding. (YES)
2. Whether or not petitioner as done has the legal capacity, as donee, to accept the donation, and the authority Mother Concepcion to act on behalf of the petitioner in accepting the donation (YES)

RULING:

At the outset, it must be stated that as correctly pointed out by the CA, the RTC erred in holding that the petitioner is a *de facto* corporation. Petitioner filed its Articles of Incorporation and by-laws on August 28, 2001. However, the SEC issued the corresponding Certificate of Incorporation only on August 31, 2001, two (2) days after Purificacion executed a Deed of Donation on August 29, 2001. Clearly, at the time the donation was made, the Petitioner cannot be considered a corporation de facto. Rather, a review of the attendant circumstances reveals that it calls for the application of the doctrine of corporation by estoppel as provided for under Section 21 of the Corporation Code.

In this controversy, Purificacion dealt with the petitioner as if it were a corporation. This is evident from the fact that Purificacion executed two (2) documents conveying her properties in favor of the petitioner – first, on October 11, 1999 *via* handwritten letter, and second, on August 29, 2001 through a Deed; the latter having been executed the day after the petitioner filed its application for registration with the SEC.

In this case, while the underlying contract which is sought to be enforced is that of a donation, and thus rooted on liberality, it cannot be said that Purificacion, as the donor failed to acquire any benefit therefrom so as to prevent the application of the doctrine of corporation by estoppel. To recall, the subject properties were given by Purificacion, as a token of appreciation for the services rendered to her during her illness. In fine, the subject deed partakes of the nature of a remuneratory or compensatory donation, having been made "for the purpose of rewarding the donee for past services, which services do not amount to a demandable debt."

Precisely, the existence of the petitioner as a corporate entity is upheld in this case for the purpose of validating the Deed to ensure that the primary objective for which the donation was intended is achieved, that is, to convey the property for the purpose of aiding the petitioner in the pursuit of its charitable objectives.

Further, apart from the foregoing, the subsequent act by Purificacion of re-conveying the property in favor of the petitioner is a ratification by conduct of the otherwise defective donation.

In this controversy, while the initial conveyance is defective, the genuine intent of Purificacion to donate the subject properties in favor of the petitioner is indubitable. Also, while the petitioner is yet to be incorporated, it cannot be said that the initial conveyance was tainted with fraud or misrepresentation. Contrarily, Purificacion acted with full knowledge of circumstances of the Petitioner. This is evident from Purificacion's act of referring Mother Concepcion to Atty. Arcillas, who, in turn, advised the petitioner to apply for registration. Further, with the execution of two (2)

documents of conveyance in favor of the petitioner, it is clear that what Purificacion intended was for the sisters comprising the petitioner to have ownership of her properties to aid them in the pursuit of their charitable activities, as a token of appreciation for the services they rendered to her during her illness. To put it differently, the reference to the petitioner was merely a descriptive term used to refer to the sisters comprising the congregation collectively. Accordingly, the acceptance of Mother Concepcion for the sisters comprising the congregation is sufficient to perfect the donation and transfer title to the property to the petitioner. Ultimately, the subsequent incorporation of the petitioner and its affirmation of Mother Concepcion's authority to accept on its behalf cured whatever defect that may have attended the acceptance of the donation.

The Deed sought to be enforced having been validly entered into by Purificacion, the respondents' predecessor-in-interest, binds the respondents who succeed the latter as heirs.

D. Board of Directors and Trustees

1. Basic principles

a. Doctrine of centralized management

FRANCISCO C. EIZMENDI JR., JOSE S. TAYAG JR., JOAQUIN L. SAN AGUSTIN, EDUARDO D. FRANCISCO, EDMIDIO V. RAMOS, JR., ALBERT G. BLANCAFLOR, REY NATHANIEL C. IFURUNG, MANUEL H. ACOSTA JR., and VALLE VERDE COUNTRY CLUB, INC., *Petitioners* – versus – TEODORICO P. FERNANDEZ, *Respondent*

G.R. No. 215280, THIRD DIVISION, September 05, 2019, PERALTA, *J.*

The 15-day reglementary period within which to file an election contest under the Interim Rules is meant to hasten the submission and resolution of corporate election controversies, so that the state of uncertainty in the corporate leadership is settled; and that the said period not meant to block suits questioning the unlawful acts of winning directors, including the legitimacy of their authority.

To allow Fernandez to indirectly question the validity of the February 23, 2013 election would be a clear violation of the 15-day reglementary period to file an election contest under the Interim Rules.

FACTS:

On November 28, 2013, respondent Teodorico P. Fernandez filed a Complaint for Invalidation of Corporate Acts and Resolutions with Application for Writ of Preliminary Injunction against the individual petitioners, namely: Francisco C. Eizmendi Jr., Jose S. Tayag Jr., Joaquin San Agustin, Eduardo Francisco, Edmidio Ramos, Jr., Albert Blancaflor, Rey Nathaniel Ifmung, Manuel Acosta Jr., who allegedly constituted themselves as new members of the Board of Directors (*BOD*) of Valle Verde Country Club, Inc. (*VVCCI*), despite lack of quorum during the annual members' meeting on February 23, 2013. VVCCI is a duly organized non-stock corporation engaged in promoting sports, recreational and social activities, and the operation and maintenance of a sports and clubhouse, among other matters.

Fernandez averred that the individual petitioners held a meeting on October 18, 2013 during which they supposedly acted for and in behalf of VVCCI, and found him guilty of less serious violations of

the by-laws and imposed on him the penalty of suspension of membership for six (6). He asserted that since petitioners were not validly constituted as the new BOD in the place of the hold-over BOD of VVCCI, they had no legal authority to act as such BOD, to find him guilty and to suspend him. He added that he was not accorded due process, as petitioners failed to give him opportunity to defend himself by notifying him of the charge and the verdict against him.

Fernandez prayed that after hearing on the merits, judgment be rendered:

(a) making the injunction permanent;

(b) invalidating the claims of the individual petitioners to the office of director of the VVCCI;

(c) nullifying the annual members' meeting on February 23, 2013, as well as subsequent board meetings similarly held and conducted by the individual petitioners, including resolutions and measures approved thereat, particularly those which are related to his suspension from the VVCCI;

(d) ordering the individual petitioners, jointly and severally, to pay him ₱500,000.00 as attorney's fees and not less than ₱500,000.00 as exemplary damages, and ₱500,000.00 as moral damages.

In an Urgent Motion or Request for Production/Copying of Documents, Fernandez cited Rule 27 of the Rules of Court and requested the VVCCI, as owner and custodian of corporate documents, to produce them and allow him to copy the matters in connection with the hearing of his application for issuance of a writ of preliminary injunction. Petitioners opposed the Urgent Motion or Request for Production/Copying of Documents, and prayed that it be denied for lack of merit, for being unreasonable and for not being in their possession.

During the hearing, Judge Maria Rowena San Pedro of RTC of Pasig Branch 158 stressed that she will not touch on the election contest aspect of the Complaint, but only on the issue of his suspension from the VVCCI. Petitioners filed their Answer with Counterclaim and Grounds for Dismissal.[6] Petitioners specifically denied the material allegations of Fernandez's Complaint, and sought the dismissal thereof on the following grounds:

(1) he has no cause of action against the individual petitioners who acted as members of the BOD of VVCCI which is a collegial body;

(2) ***the case is an election contest filed more than 15 days from the date of election, in violation of Section 3, Rule 6 of the Rules Governing Intra-Corporate Controversies***;

(3) non-exhaustion of intra-corporate remedies and non-compliance with condition precedent under the By-Laws of VVCCI; and

(4) violation of rules on notarial practice.

In an Order, the RTC pointed out that the application of a Writ of Preliminary Injunction has been rendered moot. The RTC also reminded the parties that it shall not entertain any issue respecting the February 23, 2013 elections; otherwise, the mandatory period within which to file an Election Contest would be rendered nugatory. The trial court stressed that is cannot allow indirectly what is barred directly by the Rules and, accordingly, the only issue remaining is whether due process was observed in suspending Fernandez. Also in a Resolution, the RTC denied the Urgent Motion or Request for Production/Copying of Documents.

Aggrieved by the RTC Order and Resolution, Fernandez filed a petition for *certiorari* before the CA.

In its decision, the CA granted Fernandez's petition for *certiorari*, nullified and set aside the assailed Order and Resolution of the RTC insofar as it did not allow any evidence to be presented relating to the February 23, 2013 elections of the board of directors of VVCCI. The CA ruled that in order to fully resolve the issue regarding the legality of the suspension of Fernandez from VVCCI, it was also necessary for the trial court to admit pieces of evidence which relate to the composition of the BOD of VVCCI during the time when the penalty of suspension from club membership was imposed upon petitioner.

ISSUE:

Whether or not Fernandez may question the authority of the petitioners to act as the BOD of VVCCI and approve the board resolution suspending his club membership.

RULING:

To allow Fernandez to **indirectly question the validity of the February 23, 2013 election would be a clear violation of the 15-day reglementary period to file an election contest** under the *Interim Rules*.

The Court agrees with Fernandez that the 15-day reglementary period within which to file an election contest under the *Interim Rules* is meant to hasten the submission and resolution of corporate election controversies, so that the state of uncertainty in the corporate leadership is settled; and that the said period not meant to block suits questioning the unlawful acts of winning directors, including the legitimacy of their authority. However, if the Court were to entertain one of the causes of action in Fernandez's complaint, which is partly an election contest raised beyond the said reglementary period, then the salutary purposes of the said period under the *Interim Rules* would be rendered futile; the floodgates to election contests would be opened, to the detriment of the regime of efficient and stable corporate governance.

The RTC committed no grave abuse of discretion in disallowing Fernandez from presenting evidence during the hearing of his application for preliminary injunction, relative to the lack of authority of the individual petitioners to suspend him because it would inevitably question the validity of the February 23, 2013 election.

The RTC's action of virtually dismissing the first cause of action in Fernandez's complaint for being an election contest filed beyond the 15-day reglementary period, is indeed consistent with the following provisions of the *Interim Rules*:

(a) Section 3, Rule 1, because such act promotes the objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding; and

(b) Section 4, Rule 6, which authorizes the court to dismiss outright the complaint if the allegations thereof is not sufficient in form and substance.

The RTC's action is, likewise, consistent with the inherent power of courts to amend and control its process and orders so as to make them conformable to law and justice, under Section 5, Rule 135 of the Rules of Court.

In sum, the CA gravely erred in allowing Fernandez to present evidence in connection with the election of the individual petitioners as members of the BOD of VVCCI conducted on February 23, 2013 to invalidate their claims to the office of director, because that is akin to entertaining an election contest filed beyond the 15-day period under the *Interim Rules*.

b. Business judgment rule

2. Duties, liabilities, and responsibility for unlawful acts

Presidential Commission on Good Government v. Gutierrez
G.R. No. 189800, July 9, 2018, Reyes, Jr., J.

As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code.

Bicolandia Sugar Development Corporation (BISUDECO) is a domestic corporation engaged in the business of sugarcane milling. Its incorporators were the private respondents. In 1971, BISUDECO filed a loan request with Philippine National Bank (PNB) for the issuance of a stand-by letter of credit.

In 1987, PNB's rights, titles and interests were transferred to the Philippine Government through a Deed of Transfer, including the account of BISUDECO. In 1994, after study and investigation, the Presidential Ad Hoc Fact Finding Committee (Committee), in reference to Memorandum No. 61, found that the loan accounts of BISUDECO were behest loans due to the following characteristics: a) the accounts were under collateralized; and b) the borrower corporation was undercapitalized. It was discovered that BISUDECO was extended by PNB undue and unwarranted accommodations from 1977 to 1985 thus PCGG filed a complaint with the Ombudsman against private respondents in their capacities as members of PNB's Board) for violation of Anti-Graft and Corrupt Practices Act (R.A. No. 3019).

Issue:

Whether or not private respondents are personally liable for the grant of the subject loans.

Ruling:

No. A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of. In the case of *Kara-an v. Office of the Ombudsman,* the Court ruled that approval of a loan during

incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan.

As a general rule, a corporation has a separate and distinct personality from those who represent it. Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code which states:

Sec. 31. Liability of Directors, Trustees or Officers. — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

From the foregoing it can be deduced that personal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith. PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof. Even in its Resolution, dated June 23, 2006, the Ombudsman likewise observed that the affiant seemed to have no personal knowledge of the allegations in the complaint.

Metroheights Subdivision Homeowners Association, Inc. v. CMS Construction and Development Corp.
G.R. No. 209359, October 17, 2018

Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Facts:

Petitioner Metroheights Subdivision Homeowners Association, Inc. filed with the Regional Trial Court (RTC) of Quezon City a complaint for damages against respondents CMS Construction and Development Corporation (CMS Construction), Tomasito Cruz, Tita Cruz, Simonette Cruz, Angel Cruz, Ernesto Cruz (the Cruzes), and Metropolitan Waterworks and Sewerage System (MWSS).

Petitioner alleged, among others, that it sought the assistance of respondent MWSS to address the insufficient supply of water in its subdivision to which the latter advised the improvement and upgrading of its private internal water distribution lines, foremost of which was the transfer or change in the location of its tapping source and the change in size of its water service line from the old line tapped at Sanville Subdivision to a new tapping source on Visayas Avenue, Quezon City;

that on November 16, 1990, petitioner entered into a contract with respondent MWSS for the new water service connection, and respondent MWSS awarded the project to a contractor which implemented the same, the cost of which was solely shouldered by contribution from petitioner's members amounting to P190,000.00, inclusive of labor, materials, and respondent MWSS' fees and charges; and that since then, there was already sufficient and strong water pressure twenty-four (24) hours a day in the petitioner's subdivision.

However, sometime in April 1992, respondent CMS Construction made diggings and excavations, and started to lay water pipes along Fisheries Street and Morning Star Drive in Sanville Subdivision, Quezon City, petitioner's neighboring subdivision; that in the process, respondent CMS Construction, with the knowledge and consent of respondent MWSS but without petitioner's knowledge and consent, unilaterally cut-off and disconnected the latter's new and separate water service connection on Visayas Avenue; that on May 28, 1992, petitioner's members were waterless, which lasted for three (3) days, and that petitioner's polyvinyl chloride (PVC) pipes and radius elbow, valued at around P30,000.00, were stolen by respondent CMS Construction's workers; that when petitioner's officers discovered the illegal cutting of the water connection on May 30, 1992, they immediately complained to the respondents and demanded for the restoration of their water line; that respondent CMS Construction only made a temporary reconnection with the use of a 2-inch rubber hose to the new water line it constructed at Sanville Subdivision; and that despite petitioner's verbal and written demands, respondents have failed to restore petitioner's water line connection in its original state and to return the missing PVC pipes and radius elbow.

The RTC found, among others, that respondents did not have the authority to simply cut, disconnect and transfer petitioner's water supply with impunity, without notice to or without getting its consent; and that respondents acted in concert and in bad faith, which made them jointly and severally liable for damages.

On appeal, CA reversed the decision of the RTC ruling that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system, an exercise which includes water rehabilitation and improvement within the area, pursuant to a prior agreement for the water supply system; and that the alleged abuse of right was not sufficiently established.

Issue:

Whether the respondents should be held liable for damages for the cutting off, disconnection and transfer of petitioner's existing separate water service connection on Visayas Avenue without the latter's knowledge and consent which also resulted in petitioner's subdivision being waterless.

Ruling:

We do not agree with the CA's finding that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system. "Having the right should not be confused with the manner by which such right is to be exercised." Article 19 of the New Civil Code sets the standard in the exercise of one's rights and in the performance of

one's duties, *i.e.*, he must act with justice, give everyone his due, and observe honesty and good faith.

Here, it was admitted by Engr. Victor Cariaga, an MWSS consultant, and Mr. Tomasito Cruz, respondent CMS Construction's President, that petitioner has its own pipeline or source of water coming from Visayas Avenue. Respondents also admitted that because of the rehabilitation project they were undertaking, petitioner's water pipeline, measuring 100 mm in diameter along the side of the creek, was replaced with a PVC plastic pipe 150 mm in diameter; and that petitioner's water line had to be transferred, and in the process of transferring, petitioner's existing water line had to be cut off. Considering that respondents would disconnect and change petitioner's existing water line tapped from Visayas Avenue to another tapping source, good faith and prudence dictate that petitioner should be informed or notified of such actions, as respondents admitted that prior notice to affected areas is a standard operating procedure. More so, petitioner's members had spent their own money to pay for their existing water connection on Visayas Avenue to address the perennial problem of the lack of water supply in their area.

We find that respondents MWSS and CMS Construction should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit:

"Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons."

We find that petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable.

Ayala Land, Inc. v. ASB Realty Corp.

G.R. No. 210043, September 26, 2018, First Division, J. Del Castillo

*A perusal of the August 3, 1993 letter shows that EMRASON, through Ramos, Sr. authorized Ramos, Jr. and Antonio merely to "**collaborate and continue negotiating and discussing with [ALI] terms and conditions** that are mutually beneficial" to the parties therein. Nothing more, nothing less. To construe the letter as a virtual carte blanche for the Ramos children to enter into a Contract to Sell regarding the Dasmariñas Property would be unduly stretching one's imagination. "[A]cts done by [the] corporate officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or is estopped from denying them." What is clear from the letter is that EMRASON authorized the Ramos children **only** to negotiate the terms of a **potential** sale over the Dasmariñas Property, and not to sell the property in an absolute way or act as signatories in the contract.*

Facts:

Petitioner Ayala Land, Inc. (ALI) claimed that, sometime in August 1992, respondent E.M. Ramos & Sons, Inc. (EMRASON) sent a proposal for a joint venture agreement (JVA) between ALI and EMRASON for the development of EMRASON's Dasmariñas Property. ALI initially declined but eventually negotiated with Ramos, Jr., Antonio B. Ramos (Antonio), and Januario to discuss the terms of the JVA. According to ALI, EMRASON made it appear that Ramos, Jr., Antonio, and Januario had full authority to act on EMRASON's behalf in relation to the JVA. ALI alleged that Emerito Ramos, Sr. (Ramos, Sr.), then EMRASON's President and Chairman, wrote to ALI and therein acknowledged that Ramos, Jr. and Antonio were fully authorized to represent EMRASON in the JVA, as shown in Ramos, Sr.'s letter dated August 3, 1993. ALI and the Ramos children subsequently entered into a Contract to Sell dated May 18, 1994, under which ALI agreed to purchase the Dasmariñas Property.

ALI alleged that it came to know that a Letter-Agreement dated May 21, 1994 (Letter-Agreement) and a Real Estate Mortgage respecting the Dasmariñas Property had been executed by Ramos, Sr. and Antonio for and in behalf of EMRASON, on one hand, and ASB Realty Corporation (ASBRC) on the other.

For their part, respondents averred that ALI submitted to EMRASON and Ramos, Sr. its proposal to purchase the Dasmariñas Property which proposal was however rejected. On May 17, 1994, EMRASON, through Ramos, Sr., informed ALI that it had decided to accept the proposal of ASBRC because the latter's terms were more beneficial and advantageous to EMRASON. As a result, ASBRC and EMRASON entered into a Letter-Agreement on May 21, 1994. The following day, or on May 22, 1994, EMRASON executed a Real Estate Mortgage in compliance with its obligations under the said Letter-Agreement.

Prior to the execution of the Letter-Agreement, a special stockholders' meeting was held on May 17, 1994 during which EMRASON's stockholders "authorized, approved, confirmed and ratified" the Resolution of EMRASON's Board of Directors (Board Resolution). The Board Resolution, which approved the Letter-Agreement and authorized Ramos, Sr. and Antonio to sign the same, was in turn likewise approved by EMRASON's stockholders on the same date, May 17, 1994.

After ASBRC learned about the Contract to Sell executed between ALI and the Ramos children and the annotation of the Contract to Sell on the transfer certificates of title (TCTs) covering the Dasmariñas Property, ASBRC and EMRASON filed a Complaint for the nullification of the Contract to sell and the cancellation of the annotations on the TCTs over the Dasmariñas Property.

The RTC declared the Contract to Sell between ALI and the Ramos children void because of the latter's lack of authority to sign the Contract to Sell on behalf of EMRASON. CA dismissed the appeal and affirmed the RTC's findings.

Issue:

Whether the Contract to Sell to sell is void on the ground of lack of authority of Ramos children to execute the same for and in behalf of EMRASON.

Ruling:

The Contract to Sell is void.

Although the general rule is that "no person, not even its officers, can validly bind a corporation" without the authority of the corporation's board of directors, this Court has recognized instances where third persons' actions bound a corporation under the doctrine of apparent authority or ostensible agency. ALI insists that the August 3, 1993 letter of Ramos, Sr. to ALI was proof that EMRASON had acknowledged the authority of the Ramos children to transact with ALI and that such letter met the requisites for the application of the doctrine. The letter reads:

"We deeply appreciate the privilege of receiving your letter-proposal dated July 28, 1993 signed by Mr. Victor H. Manarang regarding your interest in the development of our properties at Barrios Bucal and Langkaan, Dasmariñas, Cavite on a joint venture basis. Your said letter-proposal was taken up by the Board of EMRASON during its regular meeting last Saturday, July 31, 1993 for our usual study and consideration. Messrs. Emerito B. Ramos, Jr. and Antonio B. Ramos, corporation officials, have been authorized to collaborate and continue negotiating and discussing with you terms and conditions that are equitable and profitable and mutually beneficial to both ALI and EMRASON."

A perusal of the August 3, 1993 letter shows that EMRASON, through Ramos, Sr. authorized Ramos, Jr. and Antonio merely to "*collaborate and continue negotiating and discussing with [ALI] terms and conditions* that are mutually beneficial" to the parties therein. Nothing more, nothing less. To construe the letter as a virtual *carte blanche* for the Ramos children to enter into a Contract to Sell regarding the Dasmariñas Property would be unduly stretching one's imagination. "[A]cts done by [the] corporate officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or is estopped from denying them." What is clear from the letter is that EMRASON authorized the Ramos children **only** to negotiate the terms of a **potential** sale over the Dasmariñas Property, and not to sell the property in an absolute way or act as signatories in the contract.

E. Powers of corporations

1. How powers are exercised

DE LA SALLE MONTESSORI INTERNATIONAL OF MALOLOS, INC., *Petitioner*, *-versus-* DE LA SALLE BROTHERS, INC., DE LA SALLE UNIVERSITY, INC., LA SALLE ACADEMY, INC., DE LA SALLE-SANTIAGO ZOBEL SCHOOL, INC. (FORMERLY NAMED DE LA SALLE-SOUTH INC.), DE LA SALLE CANLUBANG, INC. (FORMERLY NAMED DE LA SALLE UNIVERSITY-CANLUBANG, INC.), *Respondents*.

G.R. No. 205548, FIRST DIVISION, February 07, 2018, JARDELEZA, J.

A corporation's right to use its corporate and trade name is a property right, a right in rem, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion.

The Court held in the case of Lyceum of the Philippines, Inc. v. Court of Appeals that the word "Lyceum" today generally refers to a school or institution of learning. It is as generic in character as the word "university." Since "Lyceum" denotes a school or institution of learning, it is not unnatural to use this word to designate an entity which is organized and operating as an educational institution. Moreover, the Lyceum of the Philippines, Inc.'s use of the word "Lyceum" for a long period of time did not amount to mean that the word had acquired secondary meaning in its favor because it failed to prove that it had been using the word all by itself to the exclusion of others. More so, there was no evidence presented to prove that the word has been so identified with the Lyceum of the Philippines, Inc. as an educational institution that confusion will surely arise if the same word were to be used by other educational institutions.

Here, the phrase "De La Salle" is not generic in relation to respondents. It is not descriptive of respondent's business as institutes of learning, unlike the meaning ascribed to "Lyceum." Moreover, respondent De La Salle Brothers, Inc. was registered in 1961 and the De La Salle group had been using the name decades before petitioner's corporate registration. In contrast, there was no evidence of the Lyceum of the Philippines, Inc.'s exclusive use of the word "Lyceum," as in fact another educational institution had used the word 17 years before the former registered its corporate name with the SEC. Also, at least nine other educational institutions included the word in their corporate names. There is thus no similarity between the Lyceum of the Philippines case and this case that would call for a similar ruling.

FACTS:

Petitioner reserved with the SEC its corporate name *De La Salle Montessori International Malolos, Inc.*from June 4 to August 3, 2007, after which the SEC indorsed petitioner's articles of incorporation and by-laws to the Department of Education (DepEd) for comments and recommendation. The DepEd returned the indorsement without objections. Consequently, the SEC issued a certificate of incorporation to petitioner. Afterwards, DepEd Region III, City of San Fernando, Pampanga granted petitioner government recognition for its pre-elementary and elementary courses and for its secondary courses.

On January 29, 2010, respondents De La Salle Brothers, Inc., De La Salle University, Inc., La Salle Academy, Inc., De La Salle-Santiago Zobel School, Inc. (formerly De La Salle-South, Inc.), and De La Salle Canlubang, Inc. (formerly De La Salle University-Canlubang, Inc.) filed a petition with the SEC seeking to compel petitioner to change its corporate name. Respondents claim that petitioner's corporate name is misleading or confusingly similar to that which respondents have acquired a prior right to use, and that respondents' consent to use such name was not obtained. According to respondents, petitioner's use of the dominant phrases "La Salle" and "De La Salle" gives an erroneous impression that De La Salle Montessori International of Malolos, Inc. is part of the "La Salle" group, which violates Section 18 of the Corporation Code of the Philippines.

The SEC OGC issued an Order directing petitioner to change or modify its corporate name. It held, among others, that respondents have acquired the right to the exclusive use of the name "La Salle" with freedom from infringement by priority of adoption, as they have all been incorporated using the name ahead of petitioner. Furthermore, the name "La Salle" is not generic in that it does not particularly refer to the basic or inherent nature of the services provided by respondents. Neither

is it descriptive in the sense that it does not forthwith and clearly convey an immediate idea of what respondents' services are. In fact, it merely gives a hint, and requires imagination, thought and perception to reach a conclusion as to the nature of such services. Hence, the SEC OGC concluded that respondents' use of the phrase "De La Salle" or "La Salle" is arbitrary, fanciful, whimsical and distinctive, and thus legally protectable.

As regards petitioner's argument that its use of the name does not result to confusion, the SEC OGC held otherwise, noting that confusion is probably or likely to occur considering not only the similarity in the parties' names but also the business or industry they are engaged in, which is providing courses of study in pre-elementary, elementary and secondary education. The SEC OGC disagreed with petitioner's argument that the case of *Lyceum of the Philippines, Inc. v. Court of Appeals* (*Lyceum of the Philippines*) applies since the word "lyceum" is clearly descriptive of the very being and defining purpose of an educational corporation, unlike the term "De La Salle" or "La Salle." Hence, the Court held in that case that the Lyceum of the Philippines, Inc. cannot claim exclusive use of the name "lyceum."

The SEC *En Banc* affirmed the Order of the SEC OGC. It held, among others, that the *Lyceum of the Philippines* case does not apply since the word "lyceum" is a generic word that pertains to a category of educational institutions and is widely used around the world. Further, the Lyceum of the Philippines failed to prove that "lyceum" acquired secondary meaning capable of exclusive appropriation. Petitioner also failed to establish that the term "De La Salle" is generic for the principle enunciated in *Lyceum of the Philippines* to apply.

The CA affirmed the Order of the SEC OGC and the Decision of the SEC *En Banc in toto*.

ISSUE:

Whether the CA erred in not applying the ruling in the *Lyceum of the Philippines* case which petitioner argues have "the same facts and events" as in this case (NO)

RULING:

No. As early as *Western Equipment and Supply Co. v. Reyes*, the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion.

Recognizing the intrinsic importance of corporate names, our Corporation Code established a restrictive rule insofar as corporate names are concerned. Thus, Section 18 thereof provides:

> Sec. 18. *Corporate name*. - No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation

under the amended name. (*Section 17 under the Revised Corporation Code of the Philippines – Republic Act No. 11232)*

The policy underlying the prohibition in Section 18 is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations.

In *Philips Export B.V. v. Court of Appeals*, the Court held that to fall within the prohibition of Section 18, two requisites must be proven, to wit: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical, or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law.

With respect to the first requisite, the Court has held that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption.

In this case, respondents' corporate names were registered on the following dates: (1) De La Salle Brothers, Inc. on October 9, 1961 under SEC Registration No. 19569; (2) De La Salle University, Inc. on December 19, 1975 under SEC Registration No. 65138; (3) La Salle Academy, Inc. on January 26, 1960 under SEC Registration No. 16293; (4) De La SalleSantiago Zobel School, Inc. on October 7, 1976 under SEC Registration No. 69997; and (5) De La Salle Canlubang, Inc. on August 5, 1998 under SEC Registration No. Al998-01021. On the other hand, petitioner was issued a Certificate of Registration only on July 5, 2007 under Company Registration No. CN200710647. It being clear that respondents are the prior registrants, they certainly have acquired the right to use the words "De La Salle" or "La Salle" as part of their corporate names.

The second requisite is also satisfied since there is a confusing similarity between petitioner's and respondents' corporate names. While these corporate names are not identical, it is evident that the phrase "De La Salle" is the dominant phrase used.

In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. In so doing, the Court must look to the record as well as the names themselves.

Petitioner's assertion that the words "Montessori International of Malolos, Inc." are four distinctive words that are not found in respondents' corporate names so that their corporate name is not identical, confusingly similar, patently deceptive or contrary to existing laws, does not avail. As correctly held by the SEC OGC, all these words, when used with the name "De La Salle," can reasonably mislead a person using ordinary care and discretion into thinking that petitioner is an affiliate or a branch of, or is likewise founded by, any or all of the respondents, thereby causing confusion.

Petitioner's argument that it obtained the words "De La Salle" from the French word meaning "classroom," while respondents obtained it from the French priest named Saint Jean Baptiste de La Salle, similarly does not hold water.

We affirm that the phrase "De La Salle" is not merely a generic term. Respondents' use of the phrase being suggestive and may properly be regarded as fanciful, arbitrary and whimsical, it is entitled to legal protection. Petitioner's use of the phrase "De La Salle" in its corporate name is patently similar to that of respondents that even with reasonable care and observation, confusion might arise. The Court notes not only the similarity in the parties' names, but also the business they are engaged in. They are all private educational institutions offering pre-elementary, elementary and secondary courses.

Finally, the Court's ruling in *Lyceum of the Philippines* does not apply.

In that case, the Lyceum of the Philippines, Inc., an educational institution registered with the SEC, commenced proceedings before the SEC to compel therein private respondents who were all educational institutions, to delete the word "Lyceum" from their corporate names and permanently enjoin them from using the word as part of their respective names.

The Court there held that the word "Lyceum" today generally refers to a school or institution of learning. It is as generic in character as the word "university." Since "Lyceum" denotes a school or institution of learning, it is not unnatural to use this word to designate an entity which is organized and operating as an educational institution. Moreover, the Lyceum of the Philippines, Inc.'s use of the word "Lyceum" for a long period of time did not amount to mean that the word had acquired secondary meaning in its favor because it failed to prove that it had been using the word all by itself to the exclusion of others. More so, there was no evidence presented to prove that the word has been so identified with the Lyceum of the Philippines, Inc. as an educational institution that confusion will surely arise if the same word were to be used by other educational institutions.

Here, the phrase "De La Salle" is not generic in relation to respondents. It is not descriptive of respondent's business as institutes of learning, unlike the meaning ascribed to "Lyceum." Moreover, respondent De La Salle Brothers, Inc. was registered in 1961 and the De La Salle group had been using the name decades before petitioner's corporate registration. In contrast, there was no evidence of the Lyceum of the Philippines, Inc.'s exclusive use of the word "Lyceum," as in fact another educational institution had used the word 17 years before the former registered its corporate name with the SEC. Also, at least nine other educational institutions included the word in their corporate names. There is thus no similarity between the *Lyceum of the Philippines* case and this case that would call for a similar ruling.

The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. By express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations. It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved, but more so for the protection of the public. It has authority to de-register at all times, and under all circumstances, corporate names which in its estimation are likely to generate confusion.

COLEGIO MEDICOFARMACEUTICO DE FILIPINAS, INC., *Petitioner* –versus- LILY LIM AND ALL PERSONS CLAIMING UNDER HER, *Respondent*
G.R. No. 212034, FIRST DIVISION, July 2, 2018, DEL CASTILLO, *J.*

In the absence of a charter or by-law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.

In this case, the issuance of the demand letter dated March 5, 2008 to collect the payment of unpaid rentals from respondent and to demand the latter to vacate the subject property was done in the ordinary course of business, and thus, within the scope of the powers of Del Castillo. In fact, it was his duty as President to manage the affairs of petitioner, which included the collection of receivables.

FACTS:

Petitioner filed a Complaint for Ejectment with Damages against respondent Lily Lim, the President/OIC of St. John Berchman School of Manila Foundation. Petitioner alleged, that in June 2005, it entered into a Contract of Lease for the period June 2005 to May 2006 with respondent; that after expiration of the lease period, petitioner, represented by its then President Dr. Virgilio C. Del Castillo, sent respondent another Contract of Lease for the period June 2006 to May 2007 for her approval; that despite several follow-ups, respondent failed to return the Contract of Lease; that during a board meeting in December 2007, petitioner informed respondent of the decision of the Board of Directors not to renew the Contract of Lease; that on **March 5, 2008, Del Castillo wrote a letter to respondent demanding the payment of her back rentals and utility bills in the total amount of ₱604,936.35, with a request to vacate the subject property on or before March 16, 2008; and that respondent refused to comply with the demand**.

Subsequently, the MeTC rendered a Decision dismissing the Complaint for lack of a valid demand letter. The MeTC considered the demand letter dated March 5, 2008 as **legally non-existent for failure of petitioner to show that Del Castillo was duly authorized by the Board to issue the same**. The MeTC stressed that a demand letter is a jurisdictional requirement the absence of which opens the case susceptible to dismissal.

ISSUE:

Whether or not the demand letter issued by the President can validly bind the corporation. (YES)

RULING:

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, the Court laid down an exception to the general rule that no person, not even its officers, can validly bind a corporation without an express authority from the board of directors. In that case, the Court sustained the authority of the president to bind the corporation for the reason that the president has the power to perform acts within the scope of his or her usual duties. The Court explained that:

Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:

> SEC. 23. *The Board of Directors or Trustees.* - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.

Under this provision, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, by-laws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents.

A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.

Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of a charter or by[-]law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.

Hence, it has been held in other jurisdictions that the president of a corporation possesses the power to enter into a contract for the corporation, when the 'conduct on the part of both the president and the corporation [shows] that he had been in the habit of acting in similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions.[32]

In this case, the issuance of the demand letter dated March 5, 2008 to collect the payment of unpaid rentals from respondent and to demand the latter to vacate the subject property was done in the ordinary course of business, and thus, within the scope of the powers of Del Castillo. In fact, it was his duty as President to manage the affairs of petitioner, which included the collection of receivables.

Accordingly, even without a board resolution, Del Castillo had the power and authority to issue the demand letter dated March 5, 2008.

In any case, even if, for the sake of argument, Del Castillo acted beyond the scope of his authority in issuing the demand letter dated March 5, 2008, the subsequent issuance of the Board Resolution dated May 13, 2008 cured any defect possibly arising therefrom as it was a clear indication that the Board agreed to, consented to, acquiesced in, or ratified the issuance of the said demand letter.

2. Ultra vires doctrine
3. Trust fund doctrine

SECURITIES AND EXCHANGE COMMISSION (SEC) AND INSURANCE COMMISSION (IC),*Petitioners*, -*versus*-. COLLEGE ASSURANCE PLAN PHILIPPINES, INC., *Respondent*.
G.R. No. 202052, THIRD DIVISON, March 07, 2018, BERSAMIN, J.

Section 16.4, Rule 16 of the New Rules states: "No withdrawal shall be made from the Trust Fund except for paying the ***Benefits*** *such as the* ***monetary consideration, the cost of services rendered or property delivered****, trust fees, bank charges and investment expenses in the operation of the Trust Fund, termination values payable to the Planholders, annuities, contributions of cancelled plans to the fund and taxes on Trust Funds. Furthermore, only reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets shall be allowed." Moreover, Section 30 of R.A. No. 9829 expressly stipulates that the trust fund is to be used at all times for the sole benefit of the planholders, and cannot ever be applied to satisfy the claims of the creditors of the company.*

Accordingly, the CA gravely erred in authorizing the payment out of the trust fund of the obligations due to Smart and FEMI. Even assuming that the obligations were incurred by the respondent in order to infuse sufficient money in the trust fund to correct its deficiencies, such obligations should be paid for by its assets, not by the trust fund. Moreover, the respondent intimated that the bonds were assigned to the trust fund without any reservations or conditions imposed thereon. Thus, we uphold the petitioners' following stance that the MRT III Bonds already formed part of the assets of the trust fund upon infusion.

FACTS:

The dispute concerns the use of the assets of the trust fund of the respondent as a pre-need company. We reiterate that the law clearly establishes the trust fund for the sole benefit of the planholders, and its assets cannot be used to satisfy the claims of the creditors of the company.

Petitioner College Assurance Plan Philippines, Inc. (CAP) is a duly registered domestic corporation with the primary purpose of selling pre-need educational plans. To guarantee the payment of benefits under its educational plans, CAP set up a Trust Fund contributing therein a certain percentage of the amount actually collected from each planholder. The Trust Fund, with the aid of trustee banks, is invested in assets and securities with yields higher than the projected increase in tuition fees. With the adoption of the policy of deregulation of private educational institutions by the Department of Education in 1993 and the economic crisis and peso devaluation which started in 1997, CAP and its Trust Fund were adversely affected.

In 2000, Republic Act No. 8799 (Securities Regulation Code) was passed. Pursuant thereto, the Securities and Exchange Commission (SEC) promulgated the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code. With the adoption of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of the pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust fund deficiency of 3.179 billion as of December 31, 2001. In

compliance with the directive of SEC to submit a funding scheme to correct the deficiency, CAP, among others, proposed to purchase MRT III Bonds and assign the same to the Trust Fund. Hence, CAP purchased MRT III Bonds with a present value then of $14 million from Smart and FEMI, and assigned the same to the Trust Fund. The purchase price was to be paid by CAP in sixty (60) monthly installments payable over five (5) years. This obligation was secured by a Deed of Chattel Mortgage over 9,762,982 common shares of Comprehensive Annuity Plans & Pension Corporation owned by CAP. In 2003, after having paid US$6,536,405.01 of the total purchase price, CAP was ordered by the SEC Oversight Board to stop paying SMART/FEMI due to its perceived inadequacy of CAP's funds.

CAP later filed a *Petition for Rehabilitation*. A Stay Order was issued by the court effectively staying and suspending the enforcement of all claims against CAP. Mr. Mamerto Marcelo, Jr. was appointed as Interim Rehabilitation Receiver.

The trial court gave due course to CAP's Petition for Rehabilitation. Under the Rehabilitation Plan, CAP intended to sell in 2009 the MRT Bonds at 60% of their face value of US$ 81.2 million.

While negotiations to effect the sale were ongoing, Smart demanded that CAP settle its outstanding balance of US$ 10,680,045.25 and warned that, should CAP insist on holding on to the MRT III Bonds instead of selling them, Smart would demand the immediate return of the MRT III Bonds as full and final settlement of CAP's outstanding obligation. The Receiver denied that CAP has agreed to pay its liabilities to FEMI and Smart from the proceeds of the prospective sale of the MRT III Bonds. The Receiver also filed a Manifestation seeking the public respondent's approval of the sale of MRT III Bonds, with a face value of US$ 81,2000,000.00, "at the best possible price" to the Development Bank of the Philippines (DBP) and the Land Bank of the Philippines.

The public respondent approved the sale of MRT III Bonds. The Receiver then filed a Manifestation with Motion where he sought the public respondent's approval of CAP's payment of its obligations to Smart and FEMI, partly from the proceeds of the sale of the MRT III Bonds.

The MRT III Bonds were in fact sold at US$ 21,501,760 to DBP and Land Bank. The Buyers agreed to purchase the MRT III Bonds at a premium of 3.30% made possible by: (1) Smart's desistance from enforcing its unpaid seller's lien, (2) FEMI's relinquishing its four (4) board seats with Metro Rail Transit Corporation, (3) swap arrangement of FEMI shares held by CAP to liquidate $3.5 million of the outstanding obligation; and (4) substantial discount of $1.2 million from CAP's outstanding liabilities. The contract of sale was perfected and partly consummated-FEMI gave up its four (4) board seats in MRTC, the MRT III Bonds were delivered to the buyers, and the buyers paid CAP, which amount was credited to its trust accounts with Philippine Veterans Bank (PVB). However, CAP's payment to Smart and FEMI remained to be executed.

Based on the foregoing antecedents, the receiver moved for the payment of the respondent's obligations to Smart and FEMI. The RTC issued a joint order denying the motion to approve payment to Smart as well as the motion to approve the respondent's additional equity infusion in CAP General Insurance.

On January 18, 2010, the RTC denied the respondent's motion for payment to Smart and FEMI, and holding that in keeping with the principle of "equality is equity" in rehabilitation proceedings, the respondent's assets should be held in trust for the equal benefit of all the creditors, both secured and unsecured, who stood on equal footing during the rehabilitation.

On June 14, 2011, the CA promulgated the assailed decision whereby it found and declared that the RTC had committed grave abuse of discretion in disapproving the payment of the respondent's obligation to Smart and FEMI from the proceeds of the sale of the MRT III Bonds. The CA opined that payment to Smart and FEMI constituted "benefits" that could be validly withdrawn from the trust fund pursuant to Rule 16.4 of the *New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities and Regulation Code* (New Rules) in relation to Section 30 of Republic Act No. 9829 (*Pre-Need Code of the Philippines*); that because the MRT III Bonds had not been fully paid, the unpaid portion of the purchase price thereof could not be considered as part of the trust fund.

ISSUE:

Whether the CA correctly rule that the obligation to pay to Smart and FEMI constituted "benefits" or "cost of services rendered or property delivered" or "administrative expense" that could be validly withdrawn from the trust fund pursuant to Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829? (NO)

RULING:

No. The obligation to pay Smart and FEMI did not constitute the "benefits" or "cost of services rendered" or "property delivered" under Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829.

The petitioners submit that the trust fund should be treated separately and distinctly from the corporate assets and obligations of the respondent. On the other hand, the respondent insists that the CA correctly ruled that the payment to Smart and FEMI constituted a valid withdrawal from the trust fund because it was upon a "benefit" in the nature of "cost for services rendered or property delivered."

We uphold the submission of the petitioners.

In respect of pre-need companies, the trust fund is set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to the planholders and other costs necessary to ensure the delivery of benefits or services to the planholders as provided for in the contracts. The trust fund is to be treated as separate and distinct from the paid-up capital of the company, and is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-need plans.

Section 16.4, Rule 16 of the New Rules, which governs the utilization of the trust fund, states as follows:

> 16.4. No withdrawal shall be made from the Trust Fund except for paying the **Benefits** such as the **monetary consideration, the cost of services rendered or property delivered**, trust fees, bank charges and investment expenses in the operation of the Trust Fund, termination values payable to the Planholders, annuities, contributions of cancelled plans to the fund and taxes on Trust Funds. Furthermore, only reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets shall be allowed. (Bold scoring supplied for emphasis)

The term "benefits" used in Section 16.4 is defined as "the money or services which the Pre-Need Company undertakes to deliver in the future to the planholder or his beneficiary." Accordingly, benefits refer to the payments made to the planholders as stipulated in their pre-need plans. Worthy of emphasis herein is that the trust fund is established "to ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract." Hence, benefits can only mean payments or services rendered to the planholders by virtue of the pre-need contracts.

Moreover, Section 30 of R.A. No. 9829 expressly stipulates that the trust fund is to be used *at all times* for the *sole benefit* of the planholders, and cannot ever be applied to satisfy the claims of the creditors of the company. Section 30 prohibits the utilization of the trust fund for purposes other than for the benefit of the planholders. The allowed withdrawals (specifically, the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs) refer to payments that the pre-need company had undertaken to be made based on the contracts.

Accordingly, the CA gravely erred in authorizing the payment out of the trust fund of the obligations due to Smart and FEMI. Even assuming that the obligations were incurred by the respondent in order to infuse sufficient money in the trust fund to correct its deficiencies, such obligations should be paid for by its assets, not by the trust fund. Indeed, Section 30 definitely provided that the trust fund could not be used to satisfy the claims of the respondent's creditors.

Moreover, there had been no indication by the respondent to the trustee bank that only the paid value of the MRT III Bonds should accrue to the trust fund. Even in its comment, the respondent intimated that the bonds were assigned to the trust fund without any reservations or conditions imposed thereon. Thus, we uphold the petitioners' following stance that the MRT III Bonds already formed part of the assets of the trust fund upon infusion.

Furthermore, the payment to Smart and FEMI was not an administrative expense to be withdrawn from the trust fund.

Section 16.4, Rule 6 of the New Rules made an exclusive enumeration of the administrative expenses that may be withdrawn from the trust fund, as follows: trust fees, bank charges and investment expenses in the operation of the trust fund, taxes on trust funds, as well as reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets. Evidently, the purchase price of the bonds for the capital infusion to the trust fund was not included as an administrative expense that could be validly taken from the trust fund.

Yet, assuming that the unpaid obligation to Smart and FEMI constituted an administrative expense, its payment was the liability of the respondent's assets, not of the trust fund. It is already clear and definite enough that the trust fund was separate and distinct from the corporate assets of the respondent. In other words, only the planholders as the beneficiaries of the trust fund could claim against the trust fund, to the exclusion of Smart and FEMI as the respondent's creditors.

F. Stockholders and Members

CAROLINA QUE VILLONGCO, ANA MARIA QUE TAN, ANGELICA QUE GONZALES, ELAINE VICTORIA QUE TAN AND EDISON WILLIAMS QUE TAN, Petitioners, -versus- CECILIA QUE YABUT, EUMIR CARLO QUE CAMARA AND MA. CORAZON QUE GARCIA, Respondents.
G.R. No. 225022, SECOND DIVISION, February 05, 2018, TIJAM, J.

CECILIA QUE YABUT, EUMIR CARLO QUE CAMARA AND MA. CORAZON QUE GARCIA, Petitioners, v. CAROLINA QUE VILLONGCO, ANA MARIA QUE TAN, ANGELICA QUE GONZALES, ELAINE VICTORIA QUE TAN AND EDISON WILLIAMS QUE TAN, Respondents.
G.R. No. 225024, SECOND DIVISION, February 5, 2018, TIJAM J.

The total outstanding capital stocks without distinction as to disputed or undisputed shares of stock, is the basis in determining the presence of quorum. *Applying the said rule in the case at bar, the 3,140 shares of the late Geronima and the fractional .67, .67, and .66 shares of Eumir Que Camara, Paolo Que Camara and Abimar Que Camara which are the subject of another dispute filed before the RTC must be included in determining the presence of quorum in the Annual Stockholders Meeting wherein Cecilia, Ma. Corazon and Eumir Carlo were elected as directors and later elected themselves to the following positions: Cecilia as Chairperson/Vice President/Treasurer; Ma. Corazon as Vice Chairperson/President/General Manager; and Eumir Carlo as Corporate Secretary/Secretary. Thus, the 200,000 outstanding capital stocks of Phil-Ville should be the basis for determining the presence of a quorum, without any distinction. Therefore, to constitute a quorum, the presence of 100,001 shares of stocks in Phil-Ville is necessary. In the case at bar, the Court agreed with the CA when it held that only 98,430 shares of stocks were present during the January 25, 2014 stockholders meeting at Max's Restaurant, therefore, no quorum had been established.*

The right to vote is inherent in and incidental to the ownership of corporate stocks. It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting. Only stocks actually issued and outstanding may be voted. Thus, for stock corporations, the quorum is based on the number of outstanding voting stocks. The distinction of undisputed or disputed shares of stocks is not provided for in the law or the jurisprudence. Ubi lex non distinguit nec nos distinguere debemus — when the law does not distinguish we should not distinguish.

FACTS:

Phil-Ville Development and Housing Corporation (Phil-Ville) is a family corporation founded by Geronima Gallego Que that is engaged in the real estate business. The authorized capital stock of

Phil-Ville is Twenty Million Pesos (P20, 000,000) divided into Two Hundred Thousand (200,000) shares with a par value of One Hundred Pesos (P100.00) per share. During her lifetime, Geronima owned 3,140 shares of stock while the remaining 196,860 shares were equally distributed among Geronima's six children, namely: Carolina Que Villongco, Ana Maria Que Tan, Angelica Que Gonzales, Cecilia Que Yabut, Ma. Corazon Que Garcia and Maria Luisa Que Camara.

Geronima died on August 31, 2007. By virtue of the Sale of Shares of Stocks dated June 11, 2005 purportedly executed by Cecilia as the attorney-in-fact of Geronima, Cecilia allegedly effected an inequitable distribution of the 3,140 shares that belonged to Geronima. Accordingly, the distribution of Geronima's shares in accordance with the Sale of Shares of Stocks was reflected in the General Information Sheets filed by Phil-Ville in 2010 and 2011. Cecilia, Eumir Carlo Que Camara and Ma. Corazon [**Cecilia Que, et. al.**] wrote a letter to Ana Maria, Corporate Secretary of Phil-Ville, to send out notices for the holding of the annual stockholders' meeting. However, before Ana Maria could reply thereto several letters were sent to Phil-Ville's stockholders containing a document captioned "Notice of Annual Stockholders' Meeting" signed by Cecilia and Ma. Corazon as directors. Thereafter, Carolina, Ana Maria, and Angelica, comprising the majority of the Board of Directors of Phil-Ville held an emergency meeting and made a decision, by consensus, to postpone the annual stockholders' meeting of Phil-Ville until the issue of the distribution of the 3,140 shares of stocks in the name of certain stockholders is settled. Despite the postponement, however, [**Cecilia Que, et al.**] proceeded with the scheduled annual stockholder's meeting participated only by a few stockholders and elected therein Cecilia, Ma. Corazon and Eumir, as Chairman/Vice President/Treasurer, President/General Manager, and Secretary, respectively of the Board of Directors of Phil-Ville.

Meantime, two days prior to the stockholders' meeting, Carolina, Ana Maria, and Angelica [**Carolina et. al**), together with several others, had already filed a Complaint for Annulment of Sale/Distribution or Settlement of Shares of Stock/Injunction against [**Cecilia Que, et. al.].** While this case was still pending, Eumir Carlo sent a Notice of Annual Stockholders' Meeting to all the stockholders of Phil-Ville, notifying them of the setting of the annual stockholders' meeting and during the said meeting, Cecilia, Ma. Corazon and Eumir Carlo were elected as directors and later elected themselves to the following positions: Cecilia as Chairperson/Vice President/Treasurer; Ma. Corazon as Vice Chairperson/President/General Manager; and Eumir Carlo as Corporate Secretary/Secretary.

[**Carolina, et al.**] filed the instant election case against [**Cecilia Que, et al.**] before the RTC. The Complaint prayed that the election of Cecilia, Ma. Corazon and Eumir Carlo as directors be declared void considering the invalidity of the holding of the meeting at Max's Restaurant for lack of quorum therein, the questionable manner by which it was conducted, including the invalid inclusion in the voting of the shares of the late Geronima, the questionable validation of proxies, the representation and exercise of voting rights by the alleged proxies representing those who were not personally present at the said meeting, and the invalidity of the proclamation of the winners. [**Carolina, et al.**] also questioned the election of Cecilia, Ma. Corazon and Eumir Carlo as officers of the corporation. They likewise prayed that all the actions taken by the petitioners in relation to their election as directors and officers of the corporation be declared void, including but not limited to the filing of the General Information Sheet with the Securities and Exchange Commission on January 27, 2014.

RTC rendered a Decision declaring the election of Cecilia Que, et al. as void and of no effect considering the lack of quorum during the annual stockholders' meeting conducted by the latter. The Court of Appeals affirmed this decision of the RTC holding that with **only 98,430 shares of stocks present during the January 25, 2014 stockholders meeting at Max's Restaurant, no quorum had been established.**

ISSUE:
Whether the total undisputed shares of stocks in Phil-Ville should be the basis in determining the presence of a quorum? (NO)

RULING:

The total outstanding capital stocks without distinction as to disputed or undisputed shares of stock, is the basis in determining the presence of quorum.

The argument of Carolina et. al. that the basis for determining quorum should have been the total number of undisputed shares of stocks of Phil-Ville due to the exceptional nature of the case since the 3,140 shares of the late Geronima and the fractional .67, .67, and .66 shares of Eumir Que Camara, Paolo Que Camara and Abimar Que Camara are the subject of another dispute filed before the RTC and thus, excluding the 3,142 shares from the 200,000 outstanding capital stock, the proper basis of determining the presence of quorum should be 196,858 shares of stocks is untenable.

The right to vote is inherent in and incidental to the ownership of corporate stocks. It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting. Only stocks actually issued and outstanding may be voted. Thus, for stock corporations, the quorum is based on the number of outstanding voting stocks. The distinction of undisputed or disputed shares of stocks is not provided for in the law or the jurisprudence. Ubi lex non distinguit nec nos distinguere debemus — when the law does not distinguish we should not distinguish. Thus, the 200,000 outstanding capital stocks of Phil-Ville should be the basis for determining the presence of a quorum, without any distinction. Therefore, to constitute a quorum, the presence of 100,001 shares of stocks in Phil-Ville is necessary. In the case at bar, the Court agreed with the CA when it held that only 98,430 shares of stocks were present during the January 25, 2014 stockholders meeting at Max's Restaurant, therefore, no quorum had been established.

There is no evidence that the 3,140 shares which allegedly had been transferred to 1) Carolina's children, namely: Francis Villongco, Carlo Villongco, Michael Villongco and Marcelia Villongco; 2) Ana Maria's daughter, namely: Elaine Victoria Que Tan; 3) Angelica Que; 4) Cecilia's children, namely: Geminiano, Carlos, Geronimo and John Elston; 5) Ma. Corazon's son, Anthony; and, 6) Maria Luisa's children, namely: Eumir Carlo Camara, Paolo Camara, and Abimar Camara; where transferred and recorded in the stocks and transfer book of Phil-Ville. Section 63 of the Corporation Code states that "No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing 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. ". In this case, there is no evidence that the 3,140 shares of the late Geronima were recorded in the stocks and transfer book of Phil-Ville. Thus, insofar as Phil-Ville is concerned,

the 3,140 shares of the late Geronima allegedly transferred to several persons is non-existent. Therefore, the transferees of the said shares cannot exercise the rights granted unto stockholders of a corporation, including the right to vote and to be voted upon.

TEE LING KIAT, ***Petitioner***, ***-versus-*** **AYALA CORPORATION (SUBSTITUTED HEREIN BY ITS ASSIGNEE AND SUCCESSOR-IN-INTEREST, BIENVENIDO B.M. AMORA, JR.)**, ***Respondent***.
G.R. No. 192530, SECOND DIVISION, March 07, 2018, CAGUIOA, *J.*

No transfer, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing 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.

Here, the records show that the purported transaction between Tee Ling Kiat and Dewey Dee has never been recorded in VIP's corporate books. Thus, the transfer, not having been recorded in the corporate books in accordance with law, is not valid or binding as to the corporation or as to third persons.

FACTS:

The present petition arose from a judgment for a sum of money obtained by Ayala Corporation against Continental Manufacturing Corporation (CMC) and Spouses Dewey and Lily Dee (Spouses Dee) in 1990.

On January 28, 1981, Ayala Corporation instituted a *Complaint for Sum of Money with an application for a writ of attachment* against the Spouses Dee. The complaint was initially raffled to Branch 15 of the Court of First Instance of Rizal. It appears that on May 21, 1980, Ayala Investment and Development Corporation (AIDC) granted in favor of CMC a money market line in the maximum amount of P2,000,000.00. With Dewey Dee as the President of CMC then, the Spouses Dee executed a Surety Agreement on the same date, as guarantee for the money market line. One of CMC's availments under the money market line was evinced by a Promissory Note dated November 20, 1980 for P800,000.00 due on January 16, 1981. AIDC subsequently endorsed the Promissory Note to Ayala Corporation. CMC defaulted on its obligation under the promissory note, leading Ayala Corporation to institute a claim for sum of money against CMC and the Spouses Dee.

Ruling on the *Complaint for Sum of Money*, the RTC - Makati City, Branch 149 ruled in favor of Ayala Corporation.

With the decision having attained finality, the RTC Branch 149 forthwith issued a Writ of Execution against the Spouses Dee, commanding the sheriff to "*cause the execution of the aforesaid judgment against Sps. Dewey and Lily Dee, including payment in full of your lawful fees for the service of this writ*."

Thereafter, on November 21, 2006, a *Notice of Levy on Execution* was issued and addressed to the Register of Deeds of Antipolo City, to levy upon "the rights, claims, shares, interest, title and participation" that the Spouses Dee may have in parcels of land covered by Transfer Certificates of

Title (TCT) Nos. R-24038, R-24039, and R-24040 and any improvements thereon. The parcels of land were registered in the name of Vonnel Industrial Park, Inc. (VIP). According to the Sheriffs Return filed on January 04, 2007, the titles over the subject properties are registered in the name of VIP, in which Dewey Dee was an incorporator.

On March 26, 2007, before the scheduled sale on execution, Tee Ling Kiat filed a *Third-Party Claim*, alleging that:

x x x the aforesaid levy was made based on the information that Mr. Dewey Dee was one of the incorporators of VIP. Apparently, the Sheriff who caused the levy made the assumption that since Mr. Dewey is one of the incorporators of VIP, then it follows that he is a stockholder thereof. Consequently, as such stockholder, he would have rights, claims, shares, interest, title and participation in the real properties belonging to VIP.

However, while Mr. Dewey Dee was indeed one of the incorporators of VIP, he is no longer a stockholder thereof. He no longer has any rights, claims, shares, interest, title and participation in VIP or any of its properties. As early as December 1980, Mr. Dewey Dee has already sold to Mr. Tee Ling Kiat all his stocks in VIP, as evidenced by a cancelled check which he issued in Mr. Tee Ling Kiat's favor. x x x

Moreover, we would like to point out that even assuming that Mr. Dewey Dee is still a stockholder of VIP, at most he merely has rights, claims, shares, interest, title and participation to its shares of stocks, but not as to the real properties registered under its name, x x x It is well to note that this property is the sole and exclusive property of VIP and that there is no showing that Mr. Dewey Dee has any right, claim, share, interest, title and participation therein. It must be likewise be emphasized that VIP is a corporate entity which has a legal personality separate and distinct from Mr. Dewey Dee and/or Ms. Lily L. Dee.

Attached to the *Third-Party Claim* was a copy of an *Affidavit* executed by Tee Ling Kiat, attesting to the fact that he is a stockholder of VIP and that he acquired knowledge of the levy on the subject properties only through newspaper, as well as a photocopy of cancelled checks issued by Tee Ling Kiat in Dewey Dee's favor, allegedly as payment for the purchase of the latter's shares in VIP.

The RTC, in an *Order* dated February 20, 2008, denied VIP and Tee Ling Kiat's *Omnibus Motion* and disallowed the *third-party claim* because the alleged sale of shares of stock from Dewey Dee to Tee Ling Kiat was not proven. Specifically, the RTC ruled that:

First, Tee Ling Kiat failed to adduce evidence to prove that the sale of shares of stock from Dewey Dee to Tee Ling Kiat had taken place in accordance with the law. The purported Deed of Sale of Shares of Stock was not recorded in the stock and transfer books of VIP, as required by Section 63 of the Corporation Code. Thus, there was no valid transfer of shares as against third persons. The RTC observed that in support of the purported sale of shares of stock, Tee Ling Kiat merely submitted a cancelled check issued by Tee Ling Kiat in favor of Dewey Dee and a photocopy of the Deed of Sale of Shares of Stock dated December 29, 1980.

Second, the SEC had revoked VIP's Certificate of Registration as early as August 11, 2003 for failure to comply with reportorial requirements. Consequently, in accordance with Section 122 of the Corporation Code which provides for the three-year period for the winding down of corporate affairs, VIP no longer had any capacity to sue when the third-party claim was instituted on March 26, 2007.

The CA, in the assailed *Decision* dated September 24, 2009, denied Tee Ling Kiat's petition for *certiorari*, on the ground that Tee Ling Kiat is not a real party-in-interest, especially considering that the alleged sale of Dewey Dee's shares of stock to Tee Ling Kiat has not been proven.

In particular, the CA observed that Tee Ling Kiat failed to prove to the Court the existence or veracity of the claimed Deed of Sale of Shares of Stock. The CA held that "[i]t is not sufficient to attach photocopies of the deed or payment of checks to the motion, [Tee Ling Kiat] needed to submit evidence to prove that the transaction took place." Before the CA, Tee Ling Kiat also raised, for the first time, that he can be properly considered a trustee of VIP, entitled to hold properties on the latter's behalf. The CA observed, however, that there was no evidence produced to show that Tee Ling Kiat is a trustee of the corporation.

Thus, the CA held that Tee Ling Kiat utterly failed: (i) to prove that he is a stockholder of VIP; and assuming he is, (ii) to show that he was authorized by the corporation for the purpose of prosecuting the claim on behalf of the corporation.

ISSUE:

Whether the assailed decision of the CA is proper. (YES)

RULING:

At the crux of determining whether the CA committed any reversible error in issuing the assailed *Decision* and *Resolution* is the question of whether it has been sufficiently proven by Tee Ling Kiat that Dewey Dee had in fact sold his shares of stock to Tee Ling Kiat in 1980, such that, as a result, Tee Ling Kiat can be considered a real party-in-interest in the *Third-Party Claim*, and consequently, in the petition for *certiorari* before the CA.

This argument is off tangent. Meaning, even if it could be assumed that the sale of shares of stock contained in the photocopies had indeed transpired, such transfer is only valid as to the parties thereto, but is not binding on the corporation if the same is not recorded in the books of the corporation. Section 63 of the Corporation Code of the Philippines provides that: "**No transfer, x x x shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing 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.**" Here, the records show that the purported transaction between Tee Ling Kiat and Dewey Dee has never been recorded in VIP's corporate books. Thus, the transfer, not having been recorded in the corporate books in accordance with law, is not valid or binding as to the corporation or as to third persons.

In as much as the validity of the third-party claim would only be relevant if the person instituting the same has established that he has a real interest in the levied property, the Court will not belabor the merits of the third-party claim in view of the conclusive determination that Tee Ling Kiat has not adduced evidence to prove that the shares of stock of Dewey Dee were indeed sold to him.
For the reasons foregoing, the Court **DENIES** the *petition*.

1. **Doctrine of equality of shares**
2. **Proprietary rights**
    a. **Right to dividends**
    b. **Right to inspect**
    c. **Pre-emptive right**

ROGELIO M. FLORETE, SR., THE ESTATE OF THE LATE TERESITA F. MENCHAVEZ, represented by MARY ANN THERESE F. MENCHAVEZ, ROSIE JILL F. MENCHAVEZ, MA. ROSARIO F. MENCHAVEZ, CRISTINE JOY F. MENCHAVEZ, and EPHRAIM MENCHAVEZ, and DIANE GRACE F. MENCHAVEZ, *Petitioners* -versus- MARCELINO M. FLORETE, JR. and MA. ELENA F. MUYCO, *Respondents*
G.R. No. 223321, SECOND DIVISION, April 2, 2018, PERALTA, J.

Section 99 of the Corporation Code provides that even if the transfer of stocks is made in violation of the enumerated restrictions, such transfer is still valid if it has been consented to by all the stockholders of the close corporation and the corporation cannot refuse to register the transfer of stock in the name of the transferee.

The sale of Teresita's 3,464 Marsal shares had already been consented to by respondents, and may be registered in the name of petitioner Rogelio. There was already substantial compliance with paragraph 7 of the AOI when respondents obtained actual knowledge of the sale. In fact, respondents inaction for 17 years despite knowledge of the sale is in effect a consent and conformity to such sale. They had already waived the procedure of the stockholder's sale of stocks as provided under Paragraph 7 of the AOL

FACTS:

Marsal & Co., Inc. *(Marsal)* was organized as a close corporation by the Floretes namely Marcelito Sr., Marcelito Jr., Rogelio, Ma.Elena, and Teresita. Paragraph 7 of the Articles of Incorporation *(AOI)* provides for the procedure in the sale of the shares of stocks of a stockholder. Particularly, it provides that the stockholder seller must notify in writing the Board of Directors of his intention to sell, who, in turn, must notify all the stockholders of records within 5 days upon receipt of such letter, and the stockholder must exercise the preemptive right to buy any share offered for sale within ten days from notice of the Board, otherwise, the sale shall be null and void

When Teresita died, her husband Ephraim filed a Petition for Issuance of Letters of Administration over her estate which includes among others 3464 shareholdings in Marsal. An Opposition was filed by petitioner Rogelio and Marsal, represented by petitioner as President thereof, with Atty. Raul A. Muyco, the husband of respondent Ma. Elena, as counsel, on the ground of Ephraim's incompetency. Ephraim, however, was later granted letters of administration.

Thereafter, Ephraim, as special administrator, entered into a Compromise Agreement and Deed of Assignment with petitioner Rogelio ceding all the shareholdings of Teresita which included the 3,464 shares in Marsal corporation to petitioner Rogelio. Such was subsequently approved by the Probate Court upon motion by Ephraims's counsel with the conformity of Atty. Muyco.

When Marcelino Sr.then died, an intestate proceeding to settle his estate was filed by petitioner Rogelio, who was later appointed as administrator of the estate. The court approved the project of partition which Rogelio filed and in the same Order noted the sale of all the shares of the late Teresita to petitioner Rogelio.

Respondents Marcelino Jr. and Ma. Elena filed a case-for annulment/rescission of sale of shares of stocks and the exercise of their preemptive rights in Marsal corporation and damages against petitioners Rogelio Florete, Sr. and the estate of the late Teresita F. Menchavez. Respondents claimed that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate to petitioner Rogelio was *void ab initio* as it violated paragraph 7 of Marsal's AOI, since the sale was made *sans* written notice to the Board of Directors who was not able to notify respondents in writing of the petitioner estate and heirs' intention to sell and convey the Marsal shares and depriving respondents of their preemptive rights.

The RTC dismissed the complaint.It found that the sale of Teresita's Marsal shares of stocks to petitioner Rogelio is valid. Being one of the incorporators and stockholders of Marsal at the time of sale, it was not a sale to a third party or outsider as would justify the restriction on transfer of shares in the AOL. The RTC also found that *laches* and estoppel had already set in as respondents' inaction for 17 years constituted a neglect for an unreasonable time to question the same; and that respondents could not feign ignorance of the transactions as they knew of the same and yet they did not do anything at that time.

The CA reversed the decision. It ruled that the conveyance is NULL and VOID for being violative of Paragraph 7 of Marsal's Articles of Incorporation. The Shares were conveyed without first offering them to the existing stockholders as provided under paragraph 7 of the AOI; that since the AOI is considered a contract between the corporation and its stockholders, the sale of Teresita's shares in favor of petitioner Rogelio constituted a breach of contract on the part of petitioner estate, hence, null and void; A void contract has no effect from the beginning, thus, the action for its nullity even if filed 17 years later after its execution, cannot be barred by prescription for it is imprescriptible; and that it is inconsequential whether the transfer was made to one of the existing stockholders of the closed corporation. Anent Atty. Muyco's acting as counsel of petitioner Rogelio and Marsal in Teresita's intestate proceedings and who was presumed to have transmitted to respondents his knowledge regarding the sale of Teresita's Marsal shares to petitioner Rogelio, the CA ruled that the notice acquired from a third person even if true Was not the notice meant under paragraph 7 of the AOI.

ISSUE:

Whether the sale of Teresita's 3 ,464 Marsal shares of stocks made by petitioner estate of Teresita to petitioner Rogelio was in violation of paragraph 7 of Marsal's Article of Incorporation and hence null and void and must be annulled or rescinded. (NO)

RULING:

There was already substantial compliance with paragraph 7 of the AOI when respondents obtained actual knowledge of the sale of Teresita's 3,464 Marsal shares to petitioner Rogelio. In fact, respondents had already given their consent and conformity to such sale by their inaction for 17 years despite knowledge of the sale. They had already waived the procedure of the stockholder's sale of stocks as provided under Paragraph 7 of the AOL

While it would appear that petitioner estate of Teresita, through its administrator Ephraim and petitioner Rogelio, did not comply with the procedure on the sale of Teresita's Marsal shares as stated under paragraph 7 of the AOI, however, it appeared in the records that respondents had nonetheless been informed of such sale to which they had already given their consent thereto as shown by the following circumstances:

First. Atty. Muyco was not only acting as counsel of petitioner Rogelio but also of Marsal. Thus, it would be impossible for Atty. Muyco, who had the duty to protect Marsal's interest in the intestate proceedings of Teresita's estate, not to have informed respondents of such compromise agreement since they are the stockholders and Board of Directors of Marsal who would be deprived of their preemptive right to the Marsal shares.

Second. The sale Teresita's shares had also been made known to respondents in the intestate proceedings to settle the estate of Marcelino Florete, Sr.

Moreover, Section 99 of the Corporation Code provides that even if the transfer of stocks is made in violation of the enumerated restrictions, such transfer is still valid if it has been consented to by all the stockholders of the close corporation and the corporation cannot refuse to register the transfer of stock in the name of the transferee. In this case, We find that the sale of Teresita's 3,464 Marsal shares had already been consented to by respondents, and may be registered in the name of petitioner Rogelio. We find that there is indeed no violation of paragraph 7 of Marsal's Articles of Incorporation.

d. Right of first refusal

3. Intra-corporate disputes

a. Concept

b. Individual vs. representative vs. derivative suits

NORMA D. CACHO and NORTH STAR INTERNATIONAL TRAVEL, INC. *vs.* VIRGINIA D. BALAGTAS,
G.R. No. 202974. February 7, 2018, First Division (LEONARDO-DE CASTRO, J.)

A dispute is considered an intra-corporate controversy under the relationship test when the relationship between or among the disagreeing parties is any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation,

partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.

Section 25 of the Corporation Code explicitly provides for the election of the corporation's president, treasurer, secretary, and such other officers as may be provided for in the by-laws. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it must be expressly mentioned in the by-laws in order to be considered as a corporate office.

Clearly, there may be one or more vice president positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices. xxx

The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The incidents of their relationship must also be considered. Thus, under the nature of the controversy test, the disagreement must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

From these, it is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's Executive Vice President: first, the alleged misappropriations were committed by respondent Balagtas in her capacity as vice president, one of the officers responsible for approving the disbursements and signing the checks. And, second, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as vice president.

That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

FACTS:

This case stemmed from a Complaint for constructive dismissal filed by respondent Virginia D. Balagtas (Balagtas) against petitioners North Star International Travel, Inc. (North Star) and its President Norma D. Cacho (Cacho) before the Labor Arbiter.

In her *Position Paper* submitted before the Labor Arbiter, petitioner [Balagtas] alleged that she was a former employee of respondent TQ3 Travel Solutions/North Star International Travel, Inc. She also alleged that she was one of the original incorporators-directors of the said corporation and, when it started its operations, she was the General Manager and later became the Executive Vice President/Chief Executive Officer.

After 14 years of service in the said corporation, petitioner was placed under 30 days preventive suspension pursuant to a Board Resolution passed by the Board of Directors of the respondent Corporation due to her alleged questionable transactions. She was notified by private respondent Norma Cacho of her suspension and ordered to explain in writing to the Board of Directors her

alleged fraudulent transactions within 5 days from said notice. Petitioner promptly heeded the order.

While under preventive suspension, petitioner wrote a letter to Cacho informing the latter that she was assuming her position as Executive Vice-President/Chief Executive Officer effective on that date; however, she was prevented from re-assuming her position. Petitioner also wrote a letter dated to the Audit Manager inquiring about the status of the examination of the financial statement of respondent corporation for the year 2003, which request was, however, ignored. Consequently, petitioner filed a complaint claiming that she was constructively and illegally dismissed effective on April 12, 2004.

In their defense, respondents averred that, on March 19, 2004, the majority of the Board of Directors of respondent corporation decided to suspend petitioner for 30 days due to the questionable documents and transactions she entered into without authority.

In his Decision, the Labor Arbiter found that respondent Balagtas was illegally dismissed from North Star. Subsequently, petitioners appealed the case to the National Labor Relations Commission (NLRC). In their Notice of Appeal, they prayed that Balagtas's Complaint be dismissed for lack of jurisdiction. While they maintained that Balagtas was never dismissed, they also alleged that she was a corporate officer, incorporator, and member of the North Star's Board of Directors (The Board). Thus, the NLRC cannot take cognizance of her illegal dismissal case, the same being an intra-corporate controversy, which properly falls within the original and exclusive jurisdiction of the ordinary courts.

In its Resolution, the NLRC ruled in favor of petitioners. As such, the decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.

On appeal with the Court of Appeals, it found merit in Balagtas's petition. Hence, this petition.

ISSUE:

Whether or not the present case is an intra-corporate controversy within the jurisdiction of the regular courts or an ordinary labor dispute that the Labor Arbiter may properly take cognizance of.

RULING: Yes.

Respondent Balagtas's dismissal is an intra-corporate controversy

At the onset, the Court agrees with the appellate court's ruling that a **two-tier test** must be employed to determine whether an intra-corporate controversy exists in the present case, *viz.*: (a) the **relationship test**, and (b) the **nature of the controversy test**.

A. Relationship Test

A dispute is considered an intra-corporate controversy under the **relationship test** when the relationship between or among the disagreeing parties is any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the **corporation**, partnership, or association and its **stockholders**, partners, members, or **officers**; (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.

In the present case, petitioners Cacho and North Star allege that respondent Balagtas, as petitioner North Star's *Executive Vice President*, was its **corporate officer**. On the other hand, while respondent Balagtas admits to have occupied said position, she argues she was *Executive Vice President* merely by name and she did not discharge any of the responsibilities lodged in a corporate officer.

Given the parties' conflicting views, We must now determine **whether or not the *Executive Vice President* position is a corporate office** so as to establish the intra-corporate relationship between the parties.

In one case, the Supreme Court ruled that a corporate office is **created** by the charter of the corporation ***and*** the officer is **elected** thereto by the directors or stockholders. In other words, one shall be considered a corporate officer only if two conditions are met, *viz.*:

(1) the position occupied was **created by charter/by-laws**, and
(2) the officer was **elected (or appointed) by the corporation's board of directors** to occupy said position.

1. The Executive Vice President position is one of the corporate offices provided in petitioner North Star's By-laws

The rule is that corporate officers are those officers of a corporation who are given that character either by the Corporation Code or by the **corporation's by-laws**.

Section 25 of the Corporation Code explicitly provides for the election of the corporation's president, treasurer, secretary, and such oth**er officers as may be provided for in the by-laws**. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it **must be expressly mentioned in the by-laws** in order to be considered as a corporate office.

In this regard, petitioner North Star's by-laws provides the following:

> ARTICLE IV
> OFFICERS
> Section 1. Election/Appointment. — Immediately after their election, the Board of Directors shall formally organize by electing the

> Chairman, the President, **one or more Vice-President** *(sic)*, the Treasurer, and the Secretary, at said meeting.
>
> The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper.
>
> Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

Clearly, there may be **one or more vice president** positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices.

Consequently, the next question that begs to be asked is **whether or not the phrase "one or more vice president" in the above-cited provision of the by-laws includes the *Executive Vice President* position** held by respondent Balagtas.

The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions available as it may deem fit and in consonance with sound business practice.

To require that particular designation/variation of each vice-president (*i.e.*, executive vice president) be specified and enumerated is to invalidate the by-laws' true intention and to encroach upon petitioner North Star's inherent right and authority to adopt its own set of rules and regulations to govern its internal affairs. Whether the creation of several vice-president positions in a company is reasonable is a question of policy that courts of law should not interfere with. Where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws and who have exercised their authority.

Thus, by name, the *Executive Vice President* position is embraced by the phrase "one or more vice president" in North Star's by-laws.

2. Respondent Balagtas was appointed by the Board as petitioner North Star's Executive Vice President

While a corporate office is **created** by an express provision either in the Corporation Code the By-laws, what makes one a corporate officer is his **election** or **appointment** thereto by the board of directors. Thus, there must be documentary evidence to prove that the person alleged to be a corporate officer was appointed by action or with approval of the board.

In the present case, petitioners Cacho and North Star assert that respondent Balagtas was elected as *Executive Vice President* by the Board as evidenced by a secretary's certificate.

Thus, said secretary's certificate overcomes respondent Balagtas's contention that she was merely the *Executive Vice President* by name and was never empowered to exercise the functions of a corporate officer. Notably, she did not offer any proof to show that her duties, functions, and compensation were all determined by petitioner Cacho as petitioner North Star's President.

At this point, it is best to emphasize that the manner of creation (*i.e.*, under the express provisions of the Corporation Code or by-laws and the manner by which it is filled (*i.e.*, by election or appointment of the board of directors) are sufficient in vesting a position the character of a corporate office.

Respondent Balagtas also denies her status as one of petitioner North Star's corporate officers because she was not listed as such in petitioner North Star's 2003 General Information Sheet (GIS).

This is of no moment.

The GIS neither governs nor establishes whether or not a position is an ordinary or corporate office. At best, if one is listed in the GIS as an officer of a corporation, his/her position as indicated therein could only be deemed a regular office, and not a corporate office as it is defined under the Corporation Code.

Based on the above discussion, as *Executive Vice President*, respondent Balagtas was one of petitioner North Star's corporate officers. Thus, there is an intra-corporate *relationship* existing between the parties.

B. Nature of the Controversy Test

The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The *incidents* of their relationship must also be considered. Thus, under the *nature of the controversy test*, the disagreement must not only be rooted in the existence of an intra-corporate *relationship*, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

Verily, in a long line of cases, the Court consistently ruled that a corporate officer's dismissal is *always* a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation. However, a closer look at these cases will reveal that the intra-corporate nature of the disputes therein did not hinge solely on the fact that the subject of the dismissal was a corporate officer.

The dismissal must relate to any of the circumstances and incidents surrounding the parties' intra-corporate relationship. To be considered an intra-corporate controversy, the dismissal of a

corporate officer must have something to do with the duties and responsibilities attached to his/her corporate office or performed in his/her official capacity.

In respondent Balagtas's Position Paper filed before the Labor Arbiter she alleged as follows: (a) petitioner Cacho informed her, through a letter, that she had been preventively suspended by the Board; (b) she opposed the suspension, was unduly prevented from re-assuming her position as *Executive Vice President*, and thereafter constructively dismissed; (c)**the Board did not authorize either her suspension and removal from office**; and (d) as a result of her illegal dismissal, **she is entitled to separation pay in lieu of her reinstatement to her previous positions**, plus back wages, allowances, and other benefits.

The foregoing allegations mainly relate to incidents involving her capacity as *Executive Vice President*, a position above-declared as a corporate office.

On the other hand, petitioners Cacho and North Star terminated respondent Balagtas for the following reasons: (a) for allegedly appropriating company funds for her personal gain; (b) for abandonment of work; (c) violation of a lawful order of the corporation; and (d) loss of trust and confidence. In their Position Paper, petitioners Cacho and North Star described in detail the latter's fund disbursement process, emphasizing respondent Balagtas's role as the one who **approves** payment vouchers and the **signatory** on issued checks **—responsibilities specifically devolved upon her as the *vice president*. And as the *vice president*, respondent Balagtas actively participated in the whole process, if not controlled it altogether**. As a result, petitioners Cacho and North Star accused respondent Balagtas of **gravely abusing the confidence the Board has reposed in her** as *vice president* and misappropriating company funds for her own personal gain.

From these, it is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's *Executive Vice President: first*, the alleged misappropriations were committed by respondent Balagtas in her capacity as *vice president*, one of the officers responsible for approving the disbursements and signing the checks. And, *second*, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as *vice president*.

That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

Malcaba v. ProHealth Pharma Philippines, Inc.,
G.R. No. 209085, June 6, 2018, Leonen, J.

The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute; hence, the jurisdiction belongs to regular courts. In this case, petitioner was the president of the corporation; thus, a corporate officer. Therefore, he erred when he filed his complaint for illegal dismissal before the labor arbiter.

At the time of his alleged dismissal, petitioner Malcaba was the President of respondent corporation. As a consequence, petitioner questioned his dismissal and filed a Complaint for Illegal Dismissal before the Labor Arbiter.

When the case was elevated before the Court of Appeals, it dismissed Malcaba's complaint for lack of jurisdiction since Malcaba, being a corporate officer, should have filed his complaint with the regular court and not with the labor arbiter.

Issue:

Whether or not the labor arbiter has jurisdiction over petitioner Malcaba's complaint.

Ruling:

Under Section 25 of the Corporation Code, the President of a corporation is considered a corporate officer. The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute. Thus, a corporate officer's dismissal is always a corporate act, or an intracorporate controversy, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action. Also, an intracorporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.

The clear weight of jurisprudence clarifies that to be considered a corporate officer, the office must be created by the charter of the corporation, and second, the officer must be elected by the board of directors or by the stockholders. Petitioner Malcaba was an incorporator of the corporation and a member of the Board of Directors. Respondent corporation's By-Laws creates the office of the President. That foundational document also states that the President is elected by the Board of Directors.

Finding that petitioner Malcaba is the President of respondent corporation and a corporate officer, any issue on his alleged dismissal is beyond the jurisdiction of the Labor Arbiter or the National Labor Relations Commission. Their adjudication on his money claims is void for lack of jurisdiction. As a matter of equity, petitioner Malcaba must, therefore, return all amounts received as judgment award pending final adjudication of his claims. The Court's dismissal of petitioner Malcaba's claims, however, is without prejudice to his filing of the appropriate case in the proper forum.

Demetrio Ellao v. Batangas I Electric Cooperative, Inc.
G.R. No. 209166, July 9, 2018, Tijam, J.

Complaints for illegal dismissal led by a cooperative officer constitute an intra-cooperative controversy, jurisdiction over which belongs to the regional trial courts. In this case, it is beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy.

BATELEC I is an electric cooperative organized and existing under PD269 engaged in the business of distributing electric power or energy in the province of Batangas. At the time material to the petition, respondent Raquel Rowena Rodriguez is the President of BATELEC I's Board of Directors. Ellao was employed by BATELEC I initially as Office Supplies and Equipment Control Officer on January 4, 1982 until he was appointed as General Manager on June 1, 2006. On February 12, 2009, a complaint was led by Nestor de Sagun and Conrado Cornejo against Ellao, charging him of committing irregularities in the discharge of his functions as General Manager. A fact-finding body was created to investigate these charges and, in the meantime, Ellao was placed under preventive suspension. No hearing took place, only that the fact-finding body issued a report recommending Ellao's termination which report was subsequently approved.

Consequently, Ellao filed a complaint for illegal dismissal against BATELEC I and/or its President Rowena A. Rodriguez before the Labor Arbiter. BATELEC I, on the other hand, moved to dismiss Ellao's complaint on the ground that it is the NEA and not the NLRC which has jurisdiction over the complaint since Ellao is a corporate officer. Assuming the NLRC enjoys jurisdiction, BATELEC I nevertheless asserts that Ellao was validly dismissed.

Issue:

Whether or not labor arbiter has jurisdiction over complaints for illegal dismissal filed by a cooperative officer.

Ruling:

None. Complaints for illegal dismissal led by a cooperative officer constitute an intra-cooperative controversy, jurisdiction over which belongs to the regional trial courts. Ellao's main resistance to the regional trial court's exercise of jurisdiction over his complaint for illegal dismissal rests on his theory that BATELEC I, as a cooperative, is not a corporation registered with the SEC. Registration with the SEC, however, is not the operative factor in determining whether or not the latter enjoys jurisdiction over a certain dispute or controversy.

By express provision of P.D. 269, an electric cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purpose. Consistently, an electric cooperative is defined under R.A. No. 9136 as a "distribution utility organized pursuant to [P.D. 269], as amended, x x x." Thus, organization under P.D. 269 sufficiently vests upon electric cooperatives' juridical personality enjoying corporate powers. Registration with the SEC becomes relevant only when a non-stock, non-profit electric cooperative decides to convert into and register as a stock corporation. As such, and even without choosing to convert and register as a stock corporation, electric cooperatives already enjoy powers and corporate existence akin to a corporation.

By jurisprudence, termination disputes involving corporate officers are treated differently from illegal dismissal cases lodged by ordinary employees. Oft-cited is the case of *Tabang v. NLRC* distinguishing between "officers" and "employees" as follows: x x x an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the

directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the labor arbiter pursuant to Article 217(a)2 of the Labor Code, as amended. By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. With the advent of Republic Act No. 8799 40 40 (R.A. 8799) or The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the regional trial courts.

Since Ellao led his Complaint for illegal dismissal on February 23, 2011, after the passage and approval of R.A. 8799, his complaint may either fall under the jurisdiction of the labor arbiter or the regional trial courts, depending on his position. If Ellao is determined to be a corporate officer then jurisdiction over his complaint for illegal dismissal is to be treated as an intra-corporate dispute, hence jurisdiction belongs to the regional trial courts. In *Matling Industrial and Commercial Corporation, et al. v. Ricardo Coros*, the Court held that in conformity with Section 25 of the Corporation Code, "a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office."

Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws, enumerating the cooperative offices. Evidently, the functions of the office of the General Manager, i.e., management of the Cooperative and to keep the Board fully informed of all aspects of the operations and activities of the Cooperative are specifically laid down under BATELEC I's By-laws itself. It is therefore beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy; it involves a dispute between a cooperative officer on one hand, and the Board of Directors, on the other. Accordingly, the case *a quo* is not a labor dispute requiring the expertise of the Labor Arbiter or of the National Labor Relations Commission. It is an intra-cooperative dispute that is within the jurisdiction of the Regional Trial Court.

Ku v. RCBC Securities, Inc.

G.R. No. 219491, October 17, 2018, Third Division, J. Peralta

The Court finds, and so holds, that the case is not an intra-corporate dispute and, instead, is an ordinary civil action. There are no intra-corporate relations between the parties. Petitioner is neither a stockholder, partner, member or officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation.

On the basis of the foregoing, since the Complaint filed by petitioner partakes of the nature of an ordinary civil action, it is clear that it was correctly raffled-off to Branch 63. Hence, it is improper for it (Branch 63) to have ordered the re-raffle of the case to another branch of the Makati RTC. Nonetheless, the September 12, 2013 Order of Branch 63, although erroneous, was issued in the valid exercise of the RTC's jurisdiction. Such mistaken Order can, thus, be considered as a mere procedural lapse which does not affect the jurisdiction which the RTC of Makati had already acquired. Moreover, while designated as a Special Commercial Court, Branch 149, to which it was subsequently re-raffled, retains its general jurisdiction to try ordinary civil cases such as petitioner's Complaint. In addition, after its re-raffle to Branch 149, the case remained docketed as an ordinary civil case. Thus, the Order dated October 12, 2013 was, likewise issued by Branch 149 in the valid exercise of the RTC's jurisdiction. In sum, it is error to conclude that the questioned Orders of Branches 63 and 149 are null and void on the ground of lack of jurisdiction, because, in fact, both branches of the Makati RTC have jurisdiction over the subject matter of petitioner's Complaint.

Facts:

Respondent RCBC Securities, Inc. is a corporation engaged in the brokerage business. Petitioner Stephen Y. Ku, on the other hand, opened an account with respondent on June 5, 2007, for the purchase and sale of securities. Petitioner filed with the RTC of Makati a Complaint for Sum of Money and Specific Performance with Damages against respondent alleging that there is mismanagement of petitioner's account with the respondent. The Complaint was raffled-off to Branch 63, RTC of Makati.

Thereafter, respondent filed a Motion to Dismiss contending that the RTC of Makati did not acquire jurisdiction over the subject matter of the case. After conducting several hearings on the Motion to Dismiss, the RTC of Makati, Branch 63, issued its questioned Order dated September 12, 2013, to wit:

> "After going over plaintiff's [herein petitioner's] Complaint and defendant's [herein respondent's] Motion to Dismiss and the Reply that followed, the Court is of the considered view that this case involves trading of securities. Consequently, the case should be heard and tried before a Special Commercial Court. Accordingly, the Court's Branch Clerk of Court is forthwith directed to forward the entire record of the case to the Office of the Clerk of Court for re-raffle."

The case was, subsequently, re-raffled to Branch 149 of the RTC of Makati. Thereafter, in its Order dated October 25, 2013, the RTC of Makati, Branch 149, denied the Motion to Dismiss for lack of merit.

On appeal, the CA reversed the RTC. The CA held that, based on the language of the Order of September 12, 2013, the RTC of Makati, Branch 63, has acknowledged that it has no jurisdiction over the subject matter of the case; and having acknowledged its lack of jurisdiction, Branch 63 should have dismissed the Complaint, instead of having it re-raffled to another Branch. Thus, there was grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the re-raffle of the case. The CA further ruled that, as a consequence, "all the proceedings undertaken

by Branch 149 of the same RTC, who received the case after the questionable re-raffle, are utterly null and void, including, but not limited to, the issuance of the Order dated October 25, 2013.

Issue:

Whether the CA erred in reversing and setting aside the September 12, 2013 and October 25, 2013 Orders of the RTC of Makati City, Branches 63 and 149, respectively.

Ruling:

The petition is meritorious.

Jurisdiction over intra-corporate controversies is transferred by law (RA 8799) from the SEC to the RTCs in general, but the authority to exercise such jurisdiction is given by the Supreme Court, in the exercise of its rule-making power under the Constitution, to RTCs which are specifically designated as Special Commercial Courts.

Petitioner contends that the allegations in his Complaint indicate that it is an action for collection of a sum of money and specific performance with damages and, as such, it falls under the general jurisdiction of the RTC.

The CA, on the other hand, did not directly resolve the issue as to the nature of the complaint and, instead, proceeded to decide the case by working on the premise that Branch 63 has acknowledged its lack of jurisdiction over the subject matter of petitioner's complaint and, as such, should have dismissed the same and not order its re-raffle to another branch.

The Court agrees with petitioner.

The Court finds, and so holds, that the case is not an intra-corporate dispute and, instead, is an ordinary civil action. There are no intra-corporate relations between the parties. Petitioner is neither a stockholder, partner, member or officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation

On the basis of the foregoing, since the Complaint filed by petitioner partakes of the nature of an ordinary civil action, it is clear that it was correctly raffled-off to Branch 63. Hence, it is improper for it (Branch 63) to have ordered the re-raffle of the case to another branch of the Makati RTC. Nonetheless, the September 12, 2013 Order of Branch 63, although erroneous, was issued in the valid exercise of the RTC's jurisdiction. Such mistaken Order can, thus, be considered as a mere procedural lapse which does not affect the jurisdiction which the RTC of Makati had already acquired. Moreover, while designated as a Special Commercial Court, Branch 149, to which it was subsequently re-raffled, retains its general jurisdiction to try ordinary civil cases such as petitioner's Complaint. In addition, after its re-raffle to Branch 149, the case remained docketed as an ordinary civil case. Thus, the Order dated October 12, 2013 was, likewise issued by Branch 149 in the valid exercise of the RTC's jurisdiction. In sum, it is error to conclude that the

questioned Orders of Branches 63 and 149 are null and void on the ground of lack of jurisdiction, because, in fact, both branches of the Makati RTC have jurisdiction over the subject matter of petitioner's Complaint.

Hence, considering that the RTC of Makati has jurisdiction over the subject matter of petitioner's complaint, and that Branch 149 continued and continues to exercise jurisdiction over the case during the pendency of the proceedings leading to this petition and, thus, has presumably conducted hearings towards the resolution of petitioner's complaint, this Court, in the interest of expediency and, in promoting the parties' respective rights to a speedy disposition of their case, finds it proper that Civil Case No. 13-171 should remain with Branch 149, instead of being remanded to Branch 63 or re-raffled anew among all courts of the same RTC.

G. Foreign Corporations

1. **What constitutes "doing business"**
2. **Personality to sue and suability**

H. Mergers and Consolidations

1. **Concept**
2. **Effects and limitations**

Spouses Ong v. BPI Family Savings Bank, Inc.
G.R. No. 208638 January 24, 2018 SECOND DIVISION (Reyes Jr., *J.*)

The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action, or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it.

FACTS:

Petitioners Spouses Francisco Ong and Betty Lim Ong and Spouses Joseph Ong Chuan and Esperanza Ong Chuan (Spouses Ong) are engaged in the business of printing under the name and style "MELBROS PRINTING CENTER".

Respondents Bank of Southeast Asia's (BSA) managers, Ronnie Denila and Rommel Nayve, visited Spouses Ong's office and discussed the various loan and credit facilities offered by their bank. In view of Spouses Ong's business expansion plans and the assurances made by BSA's managers, they applied for the credit facilities offered by the latter. Thereafter, they executed a real estate mortgage

(REM) over their property situated in Paco, Manila in favor of BSA as security for the credit line they applied.

With regard to the term loan, only part of the credit was released by BSA. Spouses Ong then refused to pay the amortizations due on their term loan. Later on, BPI Family Savings Bank (BPI) merged with BSA, thus, acquired all the latter's rights and assumed its obligations. BPI filed a petition for extrajudicial foreclosure of the REM for petitioners' default in the payment of their term loan.

In order to enjoin the foreclosure, Spouses Ong instituted an action for damages with Temporary Restraining Order and Preliminary Injunction against BPI. RTC rendered a decision in favor of Spouses Ong and against BPI, the latter directing Spouses Ong to pay a certain sum of money.

BPI thereafter appealed to the CA averring that the court a quo erred when it ruled that Spouses Ong were entitled to damages. BPI posited that petitioners are liable to them on the principal balance of the mortgage loan agreement. The CA reversed the decision of the lower court and ruled in favor of BPI.

ISSUE:

Whether or not BPI is liable for damages for the damages caused by BSA pursuant to a previous merger or consolidation ensued between them.

RULING:

YES. BPI insists that it acted in good faith when it sought extrajudicial foreclosure of the mortgage and that it was not responsible for acts committed by its predecessor, BSA. Good faith, however, is not an excuse to exempt BPI from the effects of a merger or consolidation, viz

Section 80. *Effects of merger or consolidation*. - The merger or consolidation shall have the following effects:

> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merge; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
>
> Xxxx
>
> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the right, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivable due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

> 5. **The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations**; and any pending claim, action, or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it. Moreover, Section 1(e) of the Articles of Merger dated November 21, 2001 provides that all liabilities and obligations of BSA shall be transferred to and become the liabilities and become the liabilities and obligations of BPI in the same manner as if it had itself incurred such liabilities or obligations. Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without Spouses Ong's consent, its successor BPI cannot be permitted to foreclose the loan for the reason that its successor BSA violated the terms of the contract even prior to Spouses Ong's justified refusal to continue paying the amortizations. As such, BPI is liable for BSA, its predecessor.

VI. SECURITIES REGULATION CODE (RA 8799)

ABACUS CAPITAL, *Petitioner*, -versus- DR. ERNESTO G. TABUJARA., *Respondent*.
GR No. 197624, EN BANC, July 23, 2018, TIJAM, *J.*

*Applying the pronouncement in the Perez case, the fundamental function of the money market device in its operation is to **match and bring together in a most impersonal manner both the "fund users" and the "fund suppliers."** The money market is an "impersonal market", free from personal considerations. "The market mechanism is intended to provide quick mobility of money and securities."*

The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor.

In this case, Tabujara as the investor is the lender or the "funder" who loaned his P3M to IFSC through Abacus. Thus, when the loaned amount was not paid together with the contracted interest, Tabajura may recover from Abacus the amount so invested together with damages.

FACTS:

Abacus is an investment house engaged in activities related to dealing in securities and other commercial papers. On July 6, 2000, Tabujara engaged Abacus as his lending agent for purposes of investing his money in the principal amount of P3M. Abacus, in turn, lent the P3M to IFSC with a term of 32 days. To confirm the money placement, Abacus issued to Tabujara a "Confirmation of Investment" slip. However, shortly after Tabujara placed his investment, IFSC filed with the SEC a Petition for Declaration of Suspension of Payments. This petition was granted by the SEC and consequently, all actions for claims against IFSC were immediately suspended. Learning of this development, Tabujara gave notice to Abacus and IFSC that he is opting to pre-terminate his money placement. Upon maturity of the loan on August 7, 2000, Tabujara did not receive either the interest amount or the principal.

Meantime, IFSC's Petition for Declaration of Suspension of Payments was subsequently treated as a petition for rehabilitation. Pursuant to IFSC's rehabilitation plan, Tabujara received interest payments from Abacus for the period January 1, 2001 to December 31, 2001. The interest due, however, ceased to be paid come January 2002, prompting Tabujara to file his complaint *a quo* against Abacus and IFSC for collection of sum of money with damages. In its Complaint, Tabujara alleged, among others, that his investment was co-mingled with the monies of other investors to support the credit line facility in the amount of P700,000,000.00 which Abacus issued in favor of IFSC. The complaint as against IFSC was dismissed on the ground of lack of jurisdiction while the same proceeded against Abacus. By way of defense, Abacus insisted that Tabujara directly transacted with IFSC and that its involvement therein was limited only to acting as collecting and paying agent for Tabujara.

The RTC found that Abacus never guaranteed nor secured the obligations of IFSC which is the actual and real borrower of Tabujara's money and against which the latter has a cause of action. Nevertheless, since IFSC is under rehabilitation, the RTC held that the latter's assets are held in trust for the equal benefit of the creditors and Tabujara should not be paid ahead of the others.

In reversing the RTC's decision, the CA reasoned that the transaction in this case was a money market transaction dealing with short-term credit instruments where lenders and borrowers do not deal directly with each other but through a middle man. The CA found that Abacus did not only act as a middle man pursuant to is function as an investment house, but as the "fund supplier" for the credit line facility it extended to IFSC. Further, the CA held that Abacus is guilty of fraud in handling Tabujara's money placement, having loaned the same to IFSC despite the latter's financial woes.

ISSUE:

Whether or not Tabujara has cause of action against Abacus even if the actual and real borrower is IFSC (YES)

RULING:

An investment house is defined under PD 129 as an entity engaged in underwriting of securities of other corporations. In turn, "underwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation; while "securities" is

therein defined as written evidences of ownership, interest, or participation, in an enterprise, or written evidences of indebtedness of a person or enterprise. RA 8799 or the Securities Regulation Code defines securities as shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character.

Purportedly in keeping with its nature as an investment house, Abacus claims to have facilitated Tabujara's purchase of debt instruments issued by IFSC. According to Abacus, it merely purchased a unit of participation in Loan Agreement No. 0003 issued by IFSC for Tabujara's account, using the latter's money in the amount of P3M. As it turns out, Abacus had an existing Loan Agreement with IFSC whereby it agreed to grant the latter a credit line facility in the amount of P700M. By testimonial evidence, it was established that the moneys used to fund the P700M credit line facility were gathered from various sources.

That Tabujara's investment in the amount of P3M was used as part of the pool of funds made available to IFSC is confirmed by the facts that it is Abacus, and not Tabujara, which was actually regarded as IFSC's creditor in the rehabilitation plan and that Abacus even proposed to assign all its rights and privileges in accordance with the rehabilitation plan to its "funders" in proportion to their participation. As such, Abacus proposed passing on and assigning to Tabujara all the proceeds and rights which it has under the rehabilitation plan in proportion to Tabujara's principal participation in the amount of P3M. In other words, it was really Abacus who was the creditor entitled to the proceeds of IFSC's rehabilitation plan - thus necessitating the assignment by Abacus of said proceeds to the actual source of funds, Tabujara included.

The transaction herein involved is *akin* to money market placements. *Perez v. CA, et al.* explains the nature of a money market transaction as follows: "the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market." It involves "commercial papers" which are instruments "evidencing indebtedness of any person or entity ... which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse." The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the "fund users" and the "fund suppliers." The money market is an "impersonal market", free from personal considerations. "The market mechanism is intended to provide quick mobility of money and securities."

The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor.

Stating that a money market placement partakes of the nature of loan, *Sesbreno v. CA* elucidates: In money market placement, the investor is a lender who loans his money to a borrower through a middleman or dealer. Petitioner here loaned his money to a borrower through Philfinance. When the latter failed to deliver back petitioner's placement with the corresponding interest earned at

the maturity date, the liability incurred by Philfinance was a civil one. As such, petitioner could have instituted against Philfinance before the ordinary courts a simple action for recovery of the amount he had invested and he could have prayed therein for damages.

In this case, Tabujara as the investor is the lender or the "funder" who loaned his P3M to IFSC through Abacus. Thus, when the loaned amount was not paid together with the contracted interest, Tabajura may recover from Abacus the amount so invested together with damages.

A. Registration requirement; exemptions
B. Prohibitions on fraud, manipulation, and insider trading
C. Protection of investors
1. Tender offer rule
2. Rules on proxy solicitation
3. Disclosure rule

VII. BANKING

A. The New Central Bank Act (RA 7653, as amended by RA 11211)

Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank
G.R. Nos. 178696 & 192607, July 30, 2018, Leonardo-De Castro, J.

Nothing changed with the enactment of Republic Act No. 7653. BSP, the independent central monetary authority established by the law, is still given sufficient independence and latitude to carry out its mandate.

Facts:

Pursuant to Resolution No. 223 dated February 14, 1963 of the Monetary Board (MB) of the Central Bank of the Philippines (CB), Banco Filipino commenced its operations as savings and mortgage bank on July 9, 1964. However, pursuant to MB Resolution No. 75, MB ordered the closure of Banco Filipino n the ground that the latter was found to be *"insolvent and that its continuance in business would involve probable loss to its depositors and creditors x x x ".*

Banco FIlipino sought to annul MB Resolution No. 75, which was subsequently granted. Central Bank and the Monetary Board are ordered to reorganize Banco Filipino and allow the latter to resume business in the Philippines under the comptrollership of both the Central Bank and the Monetary Board.

Consequently, Republic Act No. 7653 abolished the CB and a new central monetary authority was established known as Bangko Sentral ng Pilipinas (BSP). Under the said law, the CB will continue to exist under the name Central Bank-Board of Liquidators (CB-BOL) for the sole purpose of administering and liquidating the assets and liabilities of the CB that were not transferred to the BSP.

During a meeting, BSP-MB resolved to allow Banco Filipino to reopen and resume business under the comptrollership of BSP. Five years after, BSP and Banco Filipino entered into a Memorandum of Agreement where the latter was to repay to BSP the amount of P3,673,031,589.36 by way of *dacion en pago* of some of its real properties. The amount owed by BFSMB represented the so-called advances extended to it by the defunct CB. Further, pursuant to the aforementioned agreement, BSP has to lift its comptrollership over BFSMB on January 20, 2000, and deliver to the latter all collaterals in its custody, including government securities held by designated comptrollers.

Later on, Banco Filipino experienced massive withdrawals. Thus, it applied for emergency financial assistance from BSP to maintain liquidity. BSP however refused to assist, reasoning that there are strict requirements imposed by Republic Act No. 7653. Banco Filipino asserted BSP, *"having stepped into the shoes of the old CB"* was obligated to "reorganize" it.

Issue:

Whether or not relief prayed for by Banco Filipino can be mandated by judicial compulsion through a mere revival of judgment considering that they lie within the discretion of the BSP-MB taking into account sound banking principles.

Ruling:

No. That the Court purposely left the finer details of the reorganization and the conditions thereof to the sound discretion of then CB-MB was an acknowledgment of the fact that the CB alone was vested by statute with the power and/or authority to determine or prescribe the conditions under which such resumption of business shall take place.

Verily, nothing changed with the enactment of Republic Act No. 7653. BSP, the independent central monetary authority established by the law, is still given sufficient independence and latitude to carry out its mandate. Sections to of Republic Act No. 7653 bear this out, viz.:

> SECTION 1. Declaration of Policy. - The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being government-owned corporation, shall enjoy fiscal and administrative autonomy.

Accordingly, given that the reliefs prayed for by Banco Filipino are outside the ambit of the judgment sought to be revived, coupled with its (Banco Filipino) admission in its petition, it is evident that the judgment obligation imposed by the Decision in G.R. No. 70054 had already been extinguished through its performance – Banco Filipino had been reopened and reorganized under the comptrollership of the BSP-MB, which comptrollership lasted until January 20, 2000, upon the agreement of BSP-MB and Banco Filipino to implement the Memorandum of Agreement.

1. Handling of banks in distress

a. Conservatorship

b. Closure
c. Receivership
d. Liquidation

Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas
G.R. No. 200678, June 4, 2018, Leonen, J.

A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation (PDIC). Hence, the petition filed by the petitioner bank which has been placed under receivership is dismissible as it did not join PDIC as a party to the case.

Petitioner bank has been placed under receivership when it filed a Petition for Certiorari with the Supreme Court. Said Petition was assailed by the respondent that contended that the same should be dismissed outright for being led without Philippine Deposit Insurance Corporation's authority. It asserts that petitioner was placed under receivership on March 17, 2011, and thus, petitioner's Executive Committee would have had no authority to sign for or on behalf of petitioner absent the authority of its receiver, Philippine Deposit Insurance Corporation. They also point out that both the Philippine Deposit Insurance Corporation Charter and Republic Act No. 7653 categorically state that the authority to file suits or retain counsels for closed banks is vested in the receiver. Thus, the verification and certification of non-forum shopping signed by petitioner's Executive Committee has no legal effect.

Issue:

Whether or not petitioner Banco Filipino, as a closed bank under receivership, could file this Petition for Review without joining its statutory receiver, the Philippine Deposit Insurance Corporation, as a party to the case.

Ruling:

A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation. Under Republic Act No. 7653, when the Monetary Board finds a bank insolvent, it may "summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution."

The relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature. Section 30 of Republic Act No. 7653 directs the receiver of a closed bank to "immediately gather and take charge of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors." The law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court." Under Rule 59, Section 6 of the Rules of Court, "a receiver shall have the power to bring and defend, in such capacity, actions in his [or her] own name." Thus, Republic Act No. 7653 provides that the receiver shall also "in the name of the institution, and with the assistance of counsel as [it] may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution." Considering that the receiver has the power to take charge of all the assets of the closed

bank and to institute for or defend any action against it, only the receiver, in its fiduciary capacity, may sue and be sued on behalf of the closed bank.

When petitioner was placed under receivership, the powers of its Board of Directors and its officers were suspended. Thus, its Board of Directors could not have validly authorized its Executive Vice Presidents to file the suit on its behalf. The Petition, not having been properly verified, is considered an unsigned pleading. A defect in the certification of non-forum shopping is likewise fatal to petitioner's cause. Considering that the Petition was led by signatories who were not validly authorized to do so, the Petition does not produce any legal effect. Being an unauthorized pleading, this Court never validly acquired jurisdiction over the case. The Petition, therefore, must be dismissed.

B. Secrecy of bank deposits (RA 1405, as amended, and RA 6426, as amended)

1. **Prohibited acts**
2. **Exceptions from coverage**
3. **Garnishment of deposits, including foreign deposits**

Sibayan v. Alda
G.R. No. 233395 January 17, 2018 THIRD DIVISION (Velasco, Jr., *J.*)

The denial of the motion for production of bank documents is justified as the bank accounts sought to be examined are privileged. Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit, provides that all deposits of whatever nature with banks or banking institutions in the Philippines may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, among others.

In fine, the OGCLS-BSP's issuance of the assailed orders did not violate Norlina' s right to due process and was in accord with the summary nature of administrative proceedings before the BSP. The opportunity accorded to Norlina was enough to comply with the requirements of due process in an administrative case. The formalities usually attendant in court hearings need not be present in an administrative investigation, as long as the parties are heard and given the opportunity to adduce their respective sets of evidence.

FACTS:

Respondent Elizabeth, through her daughter Ruby O. Aida (Ruby) charged Norlina of unauthorized deduction of her BDO Savings Account as well as for failure to post certain check deposits to the said accountwith the Office of Special Investigation of the Bangko Sentral ng Pilipinas (OSI-BSP). Norlina argued that the charges were only meant to harass her and BDO as Norlina previously filed a criminal case against Elizabeth, Ruby, and their cohorts, for theft, estafa, and violation of the Access Devise Regulation Act of 1998.

Meanwhile, during the investigation, parties submitted their respective pleadings. The OSI-BSP issued a Resolution finding a *prima facie* case against Norlina for Conducting Business in an Unsafe or Unsound Manner under The General Banking Law of 2000. OGCLS-BSP then directed Norlina to submit her sworn answer to the formal charge filed by the OSI-BSP.

Norlina then filed a Request to Answer Written Interrogatories addressed to Elizabeth. She likewise filed a Motion for Production of Documents praying that the bank to allow her inspect and copy the Statement of Account of Ruby. She alleged that Ruby is the legal and beneficial owner of said account in connection to the earlier case of theft Norlina filed against the her.

Unfortunately, the Motion for Production of Bank Documents filed by the Norlina is denied. Norlina counter-argued that the examination is exempted from the rule on secrecy of bank deposit because the money deposited in the subject bank accounts is the subject matter of litigation.

OGCLS-BSP rules otherwise. It said that the present action is an administrative proceeding aimed at determining respondent's liability, if any, for violation of banking laws and that a deposit account may only be examined or looked into if it is the subject matter of a pending litigation.

ISSUE:

Whether or not the bank account sought to be examined is privileged under Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit

RULING:

YES. The denial of the motion for production of bank documents pertaining to the statement of account of Ruby is justified as the bank accounts sought to be examined are privileged. Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit, provides:

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

Norlina bemoans that by suppressing her right to avail of discovery measures, the OGCLS-BSP violated her right to due process. She maintains that the administrative character of the proceedings involved is not sufficient to defeat such right.

Administrative due process cannot be fully equated with due process in its strict judicial sense. It is enough that the party is given the chance to be heard before the case against him is decided. As established by the facts, Norlina was afforded the opportunity to be heard and to explain her side before the OGCLS-BSP. She was allowed to submit her answer and all documents in support of her defense. In fact, her defense of fraud committed by Ruby is sufficiently contained in the pleadings and attachments submitted by the parties to aid the OGCLSBSP in resolving the case before it.

Clearly then, the Requests to Answer Written Interrogatories and Motion for Production of Documents were both unnecessary and improper.

C. General Banking Law of 2000 (RA 8791)

1. Nature of bank funds and bank deposits

2. Diligence required of banks

JOSE T. ONG BUN, *Petitioner,* -versus - BANK OF THE PHILIPPINE ISLANDS., *Respondent*
G.R. No. 212362, SECOND DIVISION, March 14, 2018, PERALTA, *J.*

The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not ipso facto mean that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise.

Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings. The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest

FACTS:

Ma. Lourdes Ong, the wife of petitioner, purchased the following three (3) silver custodian certificates (CC) in the Spouses' name from the Far East Bank & Trust Company (FEBTC).

The three CCs have the following common provisions:

> This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.
>
> The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.
>
> This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.

Thereafter, FEBTC merged with BPI after about eleven years since the said CCs were purchased.

After the death of Ma. Lourdes Ong in December 2002, petitioner discovered that the three CCs bought from FEBTC were still in the safety vault of his deceased wife and were not surrendered to FEBTC. As such, petitioner sent a letter dated August 12, 2003 to BPI, through the manager of its Trust Department Asset Management, to advise him on the procedure for the claim of the said

certificates. BPI replied to petitioner and informed the latter that upon its merger with FEBTC in 2000, there were no Silver Certificates of Deposit outstanding, which meant that the certificates were fully paid on their respective participation's maturity dates which did not go beyond 1991. There were further exchanges of written communications between petitioner and BPI, but the latter still refused to pay petitioner's claim because his certificates were no longer outstanding in its records. Thus, petitioner, with the assistance of counsel, made a final demand in writing for the payment of the certificates, to no avail.

After about. three years from his discovery of the certificates, petitioner filed a complaint for collection of sum of money and damages against BPI on March 7, 2006 with the Regional Trial Court (RTC), Branch 33, Iloilo City (Civil Case No. 06-28822) praying that BPI be ordered to pay him P750,000.00 for the three CCs, legal interest, 1!75,000.00 for attorney's fees, P100,000.00 for moral damages, and an unspecified amount for exemplary damages as well as cost of suit.

After trial on the merits, the RTC found in favor of petitioner. CA reversed.

ISSUE:

Whether the custodian certificates, standing alone, do not prove an outstanding deposit with the bank, but merely certify that FEBTC had in its custody for and in behalf of either petitioner or his late wife the corresponding Silver Certificates of Deposit and nothing more (NO)

RULING:

The said CCs are proof that Silver Certificates of Deposits are in the custody of a custodian, which is, in this case, FEBTC. The CA therefore, erred in suggesting that the possession of petitioner of the same CCs does not prove an outstanding deposit because the latter are not the certificates of deposit themselves. What proves the deposits of the petitioner are the Silver Certificates of Deposits that have been admitted by the Trust Investments Group of the FEBTC to be in its custody as clearly shown by the wordings used in the subject CCs.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor. Even where it is the plaintiff ([petitioner] herein) who alleges non-payment, the general rule is that the burden rests on the defendant ([respondent] herein) to prove payment, rather than on the plaintiff to prove non-payment. Verily, an obligation may be extinguished by payment. However, two requisites must concur: (1) identity of the prestation, and (2) its integrjty. The first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely. In this case, no acknowledgment nor proof of full payment was presented by respondent but merely a pronouncement that there are no longer any outstanding Silver Certificates of Deposits in its books of accounts.

The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not ipso facto mean

that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise.

Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings. The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest

Citystate Savings Bank v. Tobias
G.R. No. 227990 March 7, 2018 SECOND DIVISION (**Reyes, Jr.**, *J.*)

A banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.

In this light, respondents cannot be blamed for believing that Robles has the authority to transact for and on behalf of the petitioner and for relying upon the representations made by him. After all, Robles as branch manager is recognized "within his field and as to third persons as the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof."

FACTS:

Rolando Robles (Robles)has been employed with petitioner Citystate Savings Bank (Citystate) as a branch manager. Sometime in 2002, respondent Teresita Tobias (Tobias), a meat vendor at the Baliuag Public Market, was introduced by her youngest son to Robles. Robles persuaded Tobias to open an account with Citystate, and thereafter to place her money in some high interest rate mechanism, to which the latter yielded. Thereafter, Robles would frequent Tobias' stall at the public market to deliver the interest earned by her deposit accounts. In turn, Tobias would hand over her passbook to Robles for updating.

Tobias was later offered by Robles to sign-up in petitioner's back-to-back scheme which is supposedly offered only to Citystate's most valued clients. Under the scheme, the depositors authorize the bank to use their bank deposits and invest the same in different business ventures that yield high interest. Robles allegedly promised that the interest previously earned by Tobias would be doubled and assured her that he will do all the paper work. Lured by the attractive offer, Tobias signed the pertinent documents without reading its contents and invested a total of Php 1,800,000.00 to Citystate through Robles. Unfortunately, Robles later failed to remit to respondents the interest as scheduled. Tobias tried to reach Robles but he can no longer be found; their calls were also left unanswered. In a meeting with Robles' siblings, it was disclosed to the respondents that Robles withdrew the money and appropriated it for personal use. Citystate also refused to make arrangements for the return of respondents' money despite several demands.

Tobias filed a Complaint for sum of money and damages against Robles and Citystate. In the Complaint, Tobias alleged that Robles committed fraud in the performance of his duties as branch manager when he lured Tobias in signing several pieces of blank documents, under the assurance as bank manager of petitioner, everything was in order.

Regional Trial Court (RTC) rendered its Decision finding Citystate absolved of any liability. The matter was elevated to the Court of Appeals (CA). The CA in its Decision found the appeal meritorious and accordingly, reversed and set aside the RTC's decision. Citystate sought a reconsideration of the decision, but it was denied by the CA in its Resolution. Hence, this petition.

ISSUE:

Whether or not the Citystate is jointly and solidarily liable with Robles to pay for the damage supposedly suffered by respondents Tobias.

RULING:

YES. The business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions. It is without question that when the action against the bank is premised on breach of contractual obligations, a bank's liability as debtor is not merely vicarious but primary, in that the defense of exercise of due diligence in the selection and supervision of its employees is not available.

The bank, in its capacity as principal, may also be adjudged liable under the doctrine of apparent authority. The doctrine of apparent authority or what is sometimes referred to as the "holding out" theory, or the doctrine of ostensible agency, imposes liability, because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists."

Robles as branch manager, has been vested with the apparent or implied authority to act for the petitioner in offering and facilitating banking transactions. Citystate does not deny the validity of respondents' accounts, in fact it suggests that transactions with it have all been accounted for as it is based on official documents containing authentic signatures of Tobias. Furthermore, there is nothing irregular or striking that transpired which should have impelled Citybank into further inquiry as to the authenticity of the attendant transactions. Robles has acted as the authorized representative of the Citystate who is also not merely an employee but Citystate's branch manager.

D. Philippine Deposit Insurance Corporation Act (RA 3591, as amended)

1. Maximum deposit insurance coverage

2. Meaning of insured deposit

SPOUSES KISHORE LADHO CHUGANI AND PRISHA KISHORE CHUGANI, ET AL., ***Petitioners,***
-vs – PHILIPPINE DEPOSIT INSURANCE CORPORATION, ***Respondents.***
G.R. No. 230037, FIRST DIVISION, March 19, 2018, TIJAM, *J.*

Section 4(f) of R.A. No. 3591, as amended by R.A. No. 9576 states that deposit means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, or issued in accordance with Bangko Sentral rules and regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices.

Section 2(d) of PDIC Regulatory Issuance No. 2011-02 states that for deposit to be considered as legitimate, it should be 1) received by a bank as a deposit in the usual course of business; 2) recorded in the books of the bank as such; 3) opened in accordance with established forms and requirements of the BSP and/or the PDIC.

Further, in Phil. Deposit Insurance Corp. v. CA, this Court held that in order for the claim for deposit insurance with the PDIC may prosper, it is necessary that the corresponding deposit must be placed in the insured bank.

FACTS:

Petitioners, upon the invitation of Raymundo Garan (Garan), the President of Rural Bank of Mawab (Davao), Inc., (RBMI), signified their intention to open Time Deposits with RBMI. Petitioners then opened Time Deposit Accounts with RBMI through inter-branch deposits to the accounts of RBMI maintained in Metrobank and China Bank- Tagum, Davao Branches. Thereafter, Certificates of Time Deposits (CTDs) and Official Receipts were issued to petitioners.

However, sometime in September 2011, petitioners came to know that the Monetary Board of the Bangko Sentral ng Pilipinas placed RBMI under receivership and thereafter closed the latter. Petitioners, then filed claims for insurance of their time deposits.

Respondent Philippine Deposit Insurance Corporation (PDIC) denied the claims on the following grounds: 1.) based on bank records submitted by RBMI, petitioners' deposit accounts are not part of RBMI's outstanding deposit liabilities; 2.) the time deposits of petitioners are fraudulent and their CTDs were not duly issued by RBMI, but were mere replicas of unissued CTD's in the inventory submitted by RBMI to PDIC; and 3.) the amounts purportedly deposited by the petitioners were credited to the personal account of Garan, hence, they could not be construed as valid liabilities of RBMI.

Petitioners filed a request for reconsideration however PDIC rejected the same. Hence, petitioners filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the Regional Trial Court (RTC), to which the RTC dismissed due to lack of jurisdiction. This was also affirmed by the CA upon appeal.

ISSUE:

1. Whether the CA is correct in ruling that the RTC has no jurisdiction over the Petitions for *Certiorari* filed by the petitioners. (YES)
2. Whether the PDIC committed grave abuse of discretion in denying petitioners claim for deposit insurance. (NO)

RULING:
1.The PDIC was created by Republic Act (R.A.) No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits.

In the case of *Monetary Board, et. al., v. Philippine Veterans Bank*, the Supreme Court defined a quasi-judicial agency, to wit:

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. **A "quasi-judicial function" is a term which applies to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.**

In the instant case, the PDIC has the power to prepare and issue rules and regulations to effectively discharge its responsibilities. The power of the PDIC as to whether it will deny or grant the claim for deposit insurance based on its rules and regulations partakes of a quasi-judicial function. Also, the fact that decisions of the PDIC as to deposit insurance shall be final and executory, such that it can only be set aside by a petition for *certiorari* evinces the intention of the Congress to make PDIC as a quasi-judicial agency.

Consistent with Section 4, Rule 65, the CA has the jurisdiction to rule on the alleged grave abuse of discretion of the PDIC. Therefore, the CA is correct when it held that the RTC has no jurisdiction over the Petitions for *Certiorari* filed by the petitioners questioning the PDIC's denial of their claim for deposit insurance. Nevertheless, any question as to where the petition for *certiorari* should be filed to question PDIC's decision on claims for deposit insurance has been put to rest by R.A. No. 10846.Section 7 therein provides:

x x x x
"The actions of the Corporation taken under Section 5(g) shall be final and executory, and **may only be restrained or set aside by the Court of Appeals, upon appropriate petition for *certiorari*** on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance.

2. Grave abuse of discretion is the capricious and whimsical exercise of the judgment of a court, tribunal or quasi-judicial agency that is equivalent to lack of jurisdiction. It must be so grave such that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility.

In this case, it cannot be said that PDIC committed grave abuse of discretion in denying petitioners claim for deposit insurance.

Section 4(f) of R.A. No. 3591, as amended by R.A. No. 9576 states that deposit means *the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, or issued in accordance with Bangko Sentral rules and regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices*.

Section 2(d) of PDIC Regulatory Issuance No. 2011-02 states that for deposit to be considered as legitimate, it should be 1) received by a bank as a deposit in the usual course of business; 2) recorded in the books of the bank as such; 3) opened in accordance with established forms and requirements of the BSP and/or the PDIC.

Further, in *Phil. Deposit Insurance Corp. v. CA*, this Court held that in order for the claim for deposit insurance with the PDIC may prosper, it is necessary that the corresponding deposit must be placed in the insured bank.

Here, upon investigation by the PDIC, it was discovered that 1) the money allegedly placed by the petitioners in RBMI was in fact credited to the personal account of Garan, hence, they could not be construed as valid liabilities of RBMI to petitioners; 2) based on bank records and the certified list of the bank's outstanding deposit liabilities, the alleged deposits of petitioners are not part of RBMI's outstanding liabilities; and 3) the CTDs are not validly issued by RBMI, but were mere replicas of the unissued and unused CTDs still included in the inventory of RBMI. Further, the act of petitioners in opening Time Deposits and thereafter depositing several amounts of money through inter-branch deposits with Metrobank and China Bank for the account of RBMI can hardly be considered as in the ordinary course of business.

Considering the above disquisitions, it is sufficiently established that the PDIC, did not commit any grave abuse of discretion in denying petitioners' claim for deposit insurance as the same were validly grounded on the facts, law and regulations issued by the PDIC.

3. Splitting of deposits

PETER L. SO, *Petitioners,* -versus – PHILIPPINE DEPOSIT INSURANCE CORPORATION, *Respondents.*
G.R. No. 230020, FIRST DIVISION, March 19, 2018, TIJAM, *J.*

In the case of Lintang Bedol v. Commission on Elections, cited in Carlito C. Encinas v. PO1 Alfredo P. Agustin, Jr. and PO1 Joel S. Caubang, the Supreme Court explained the nature of a quasi-judicial agency, viz.:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The

administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. ***In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.***

The actions of the PDIC taken under RA 10846 Section 5(g) shall be ***final and executory, and may only be restrained or set aside by the Court of Appeals****, upon appropriate petition for certiorari on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for certiorari may only be filed within thirty (30) days from notice of denial of claim for deposit insurance.*

FACTS:

Peter L. So opened an account with the Cooperative Rural Bank Bulacan (CRBB) amounting to P300,000, for which he was assigned the Special Incentive Savings Account (SISA) No. 05-15712-1. On the same year, So learned that CRBB closed its operations and was placed under Philippine Deposit Insurance Corporation's (PDIC's) receivership. This prompted petitioner, together with other depositors, to file an insurance claim with the PDIC.

However, upon investigation, the PDIC found that petitioner's account originated from and was funded by the proceeds of a terminated SISA (mother account), jointly owned by a certain Reyes family. Thus, based on the determination that petitioner's account was among the product of the splitting of the said mother account which is prohibited by law.

PDIC then denied petitioner's claim for payment of deposit insurance. Petitioner filed a Request for Reconsideration, which was likewise denied by the PDIC on January 6, 2016.

Aggrieved, petitioner filed a Petition for *Certiorari* before the RTC.

However, the RTC upheld the factual findings and conclusions of the PDIC and also denied petitioner's motion for reconsideration. It also declared that, pursuant to its Charter (RA 3591), PDIC is empowered to determine and pass upon the validity of the insurance deposits claims, it being the deposit insurer. As such, when it rules on such claims, it is exercising a quasi-judicial function. Thus, it was held that petitioner's remedy to the dismissal of his claim is to file a petition for certiorari with the Court of Appeals under Section 4, Rule 65, stating that if the petition involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or the rules, it shall be filed in and cognizable only by the Court of Appeals (CA).

In addition, the RTC also cited Section 2215 of Republic Act (RA) No. 3591, as amended, which essentially states that only the CA shall issue temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against the PDIC for any action under the said Act.
Hence, So filed petition directly to the Surpreme Court on pure question of law.

ISSUE:

Whether the RTC have jurisdiction over a petition for *certiorari* filed under Rule 65, assailing the PDIC's denial of a deposit insurance claim. (NO)

RULING:

In the case of *Lintang Bedol v. Commission on Elections*, cited in *Carlito C. Encinas v. PO1 Alfredo P. Agustin, Jr. and PO1 Joel S. Caubang*, the Supreme Court explained the nature of a quasi-judicial agency, *viz*.:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. **In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.**

The Supreme Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: **adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties.** Hence, if the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of **judicial discretion and judgment**.

Thus, the legislative intent in creating PDIC as a quasi-judicial agency is clearly manifest. Indeed, PDIC exercises judicial discretion and judgment in determining whether a claimant is entitled to a deposit insurance claim, which determination results from its investigation of facts and weighing of evidence presented before it. Noteworthy also was the fact that the law considers PDIC's action as final and executory and may be reviewed only on the ground of grave abuse of discretion.

Finally, in the new amendment in PDIC's Charter under RA 10846, specifically Section 5(g) thereof, confirmed such conclusion, *viz*.:

The actions of the PDIC taken under Section 5(g) shall be **final and executory, and may only be restrained or set aside by the Court of Appeals**, upon appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance.

VIII. INTELLECTUAL PROPERTY CODE (RA 8293)

A. Patents

1. Patentable vs. non-patentable inventions

2. Ownership of a patent

3. Grounds for cancellation of a patent

4. Remedy of the true and actual inventor

5. Rights conferred by a patent

6. Limitations on patent rights

7. Patent infringement

B. Trademarks

1. Marks vs. collective marks vs. trade names

2. Acquisition of ownership

a. Concept of actual use

b. Effect of registration

3. Non-registrable marks

ABS-CBN PUBLISHING, INC., *Petitioner*, -versus - DIRECTOR OF THE BUREAU OF TRADEMARKS, *Respondent*.
G.R. No. 217916, SECOND DIVISION, June 20, 2018, REYES, JR., *J*.

According to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC), a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.

*In the present case, the dominant feature of the applicant mark is the word "METRO" which is identical, both visually and aurally, to the cited marks already registered with the IPO. As held by the ODG and correctly at that - x x x **<u>there is no dispute that the subject and cited marks share the same dominant word, "Metro".</u>** (sic) Even if, as the Appellant (petitioner herein) points out, the second cited mark owned by Metro International contains an accompanying device, and the third cited mark contains the terms "Philippine Daily Inquirer", (sic) **<u>the dominant feature of the subject and cited marks is still clearly the word "Metro", (sic) spelled and pronounced in exactly the same way</u>**. The identity between the marks would indubitably result in confusion of origin as well as goods.*

FACTS:

In 2004, the petitioner filed with the Intellectual Property Office of the Philippines (IPO) its application for the registration of its trademark "METRO" with specific reference to "magazines." The case was assigned to Examiner Arlene M. Icban (Examiner Icban), who, after a judicious examination of the application, refused the applicant mark's registration.

According to Examiner Icban, the applicant mark is identical with three other cited marks, and is therefore unregistrable according to Section 123.1(d) of the Intellectual Property Code of the

Philippines (IPC).The cited marks were identified as (1) "Metro" (word) by applicant Metro International S.A.,(2) "Metro" (logo) also by applicant Metro International S.A., and (3) "Inquirer Metro" by applicant Philippine Daily Inquirer, Inc.

The petitioner appealed the assessment of Examiner Icban before the Director of the Bureau of Trademarks of the IPO, who eventually affirmed Examiner Icban's findings. The decision averred that the applicant and cited marks were indeed confusingly similar, so much so that there may not only be a confusion as to the goods but also a confusion as to the source or origin of the goods.

Upon the denial of the petitioner's motion for reconsideration, the petitioner appealed to the Office of the Director General (ODG) of the IPO. After the submission of the memoranda from the parties, the ODG, rendered a Decision which upheld Examiner Icban's assessment and the Bureau Director's decision.

According to the ODG; there is no merit in the petitioner's appeal because (1) the applicant and cited marks are identical and confusingly similar, (2) the petitioner's mark was deemed abandoned under the old Trademark Law, and thus, petitioner's prior use of the same did not create a vested right under the IPC, and (3) the applicant mark has not acquired secondary meaning.

ISSUE:

Whether or not the ODG was correct in refusing to register the applicant mark for being identical and confusingly similar with the cited marks already registered with the IPO. (YES)

RULING:

YES, ODG was correct in refusing to register the applicant mark for being identical and confusingly similar with the cited marks already registered with the IPO.

According to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC), a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.

To determine whether a mark is to be considered as "identical" or that which is confusingly similar with that of another, the Court has developed two (2) tests: the dominancy and holistic tests. While the Court has time and again ruled that the application of the tests is on a case to case basis, upon the passage of the IPC, the trend has been to veer away from the usage of the holistic test and to focus more on the usage of the dominancy test. As stated by the Court in the case of *McDonald's Corporation vs. L.C. Big Mak Burger, Inc.*, the "test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the 'colorable imitation of a registered mark x x x or a dominant feature thereof.'"This is rightly so because Sec. 155.1 provides that:

SECTION 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container **or a dominant feature thereof** in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or x x x.

In using this test, focus is to be given to the dominant features of the marks in question. In the 1954 case of *Co Tiong Sa vs. Director of Patents*, the Court, in using the dominancy test, taught that:

But differences of variations in the details of one trademark and of another are not the legal!y accepted tests of similarity in trademarks. It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. **Similarity in size, form, and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place.**

In other words, in committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement. This kind of act, which leads to confusion in the eyes of the public, is exactly the evil that the dominancy test refuses to accept. The small deviations from a registered mark are insufficient to remove the applicant mark from the ambit of infringement.

In the present case, the dominant feature of the applicant mark is the word "METRO" which is identical, *both visually and aurally*, to the cited marks already registered with the IPO. As held by the ODG and correctly at that - x x x **there is no dispute that the subject and cited marks share the same dominant word, "Metro".** (sic) Even if, as the Appellant (petitioner herein) points out, the second cited mark owned by Metro International contains an accompanying device, and the third cited mark contains the terms "Philippine Daily Inquirer", (sic) **the dominant feature of the subject and cited marks is still clearly the word "Metro", (sic) spelled and pronounced in exactly the same way**. The identity between the marks would indubitably result in confusion of origin as well as goods.

The findings of Examiner Icban, reviewed first by the Director of the Bureau of Trademarks, and again by the Director General of the IPO, are the result of a judicious study of the case by no less than the government agency duly empowered to examine applications for the registration of marks. These findings deserve great respect from the Court. Absent any strong justification for the reversal thereof-as in this case-the Court shall not reverse and set aside the same. As such, the prior findings remain: the applicant mark, "METRO," is identical to and confusingly similar with the other cited marks already registered. By authority of the Sec. 123.l(d) of the IPC, the applicant mark cannot be registered. The ODG is correct in upholding the Decision of both the Director of the Bureau of Trademarks and Examiner Icban.

The petitioner asserts that it has a vested right over the applicant mark because Metro Media Publishers, Inc. (Metro Media), the corporation from which the petitioner acquired the applicant mark, first applied for the registration of the same under the old Trademark Law, and since then, actually used the applicant mark in commerce. The petitioner belabors the point that under the old Trademark law, actual use in commerce is a prerequisite to the acquisition of ownership over a trademark and a trade name. The petitioner even went on further in asserting that its actual use of the applicant mark enabled it to automatically acquire trademark rights, which should have extended even upon the promulgation of the IPC in 1998.

First, there is no question that the petitioner's predecessor already applied for the registration of the applicant mark "METRO" on November 3, 1994. There is likewise no question that as early as 1989, Metro Media has already used the applicant mark "METRO" in its magazine publication. At that point, Metro Media exercised all the rights conferred by law to a trademark applicant. Second, however, the petitioner itself admitted in its petition that its application/registration with the IPO was already "*deemed abandoned*."

While it is quite noticeable that the petitioner failed to discuss the implications of this abandonment, it remains a fact that once a trademark is considered abandoned, the protection accorded by the IPC, or in this case the old Trademark Law, is also withdrawn. The petitioner, in allowing this abandonment, cannot now come before the Court to cry foul if another entity has, in the time that it has abandoned its trademark and in full cognizance of the IPC and the IPO rules, registered its own.

Also, as correctly pointed out by the ODG, this abandonment is the very reason why the petitioner lost its rights over its trademark, and that it is also the reason why, after twenty years (20) from the initial application and after actual use of the applicant mark, the petitioner once again came before the IPO to apply for registration.

Anent the petitioner's argument that "confusion between the marks is highly unlikely," the petitioner asserts that the applicant mark "METRO" (word) is covered by class 16 of the Nice classification under "magazines," the copies of which are sold in "numerous retail outlets in the Philippines," whereas the cited mark "METRO" (word) is used in the Philippines only in the internet through its website and does not have any printed circulation

But like the petitioner's earlier argument, this does not hold water. Section 3, Rule 18 of the Rules of Procedure for Intellectual Property Cases provides for the legal presumption that there is likelihood of confusion if an identical mark is used for identical goods. The provision states:

SEC. 3. *Presumption of likelihood of confusion.* - Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services.

In the present case, the applicant mark is classified under "magazines," which is found in class 16 of the Nice classification. A perusal of the records would reveal, however, that the cited marks "METRO" (word) and "METRO" (logo) are also both classified under magazines. In fact, Examiner Icban found that the cited marks were used on the following classification of goods:

Paper, cardboard and goods made from these materials, not included in other classes; newspapers, **magazines**, printed matter and other printed publications; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastics materials for packaging (not included in other classes); playing cards; printers types; printing blocks.Thus, the presumption arises.

Even then, it must be emphasized that absolute certainty of confusion or even actual confusion is not required to refuse registration. Indeed, it is the mere likelihood of confusion that provides the impetus to accord protection to trademarks already registered with the IPO. The Court cannot emphasize enough that the cited marks "METRO" (word) and "METRO" (logo) are identical with the registrant mark "METRO" both in spelling and in sound. In fact, it is the same exact word. Considering that both marks are used in goods which are classified as magazines, it requires no stretch of imagination that a likelihood of confusion may occur.

4. Well-known marks
5. Priority right
6. Rights conferred by registration
7. Cancellation of registration

KENSONIC, INC., ***Petitioner,*** **-versus - UNI-LINE MULTI-RESOURCES, INC., (PHIL.),** ***Respondent.***
G.R. No. 211820-21, THIRD DIVISION, June 06, 2018, BERSAMIN, *J.*
UNI-LINE MULTI-RESOURCES, INC., ***Petitioner,*** **-versus - KENSONIC, INC.,** ***Respondent.***
G.R. No. 211834-35, THIRD DIVISION, June 06, 2018, BERSAMIN, *J.*

Uni-Line mistakenly argues that the SAKURA mark was not capable of registration for being generic. A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others. As to whether words employed fall within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in them, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone.

This, however, is not the situation herein. Although SAKURA refers to the Japanese flowering cherry and is, therefore, of a generic nature, such mark did not identify Kensonic's goods. Kensonic's DVD or VCD players and other products could not be identified with cherry blossoms. Hence, the mark can be appropriated. Goods of Uni-Line were not related to the goods of Kensonic by virtue of their differences in class, the descriptive attributes, the purposes and the conditions of the goods. The Court has opined that the mere fact that goods belonged to the same class does not necessarily mean that they are related; and that the factors provided in Mighty Corporation v. E. & J. Gallo Winery should be taken into consideration. Furthermore, based on the pronouncement in Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc., there are other sub-classifications present even if the goods are classified under Class 09. For one, Kensonic's goods belonged to the information technology and

audiovisual equipment sub-class, but Uni-Line's goods pertained to the apparatus and devices for controlling the distribution of electricity sub-class. Also, the Class 09 goods of Kensonic were final products but Uni-Line's Class 09 products were spare parts

FACTS

On June 15, 1999, Uni-Line filed an application for the registration of the mark "SAKURA" for amplifier, speaker, cassette, cassette disk, video cassette disk, car stereo, television, digital video disk, mini component, tape deck, compact disk charger, VHS, and tape rewinder falling under Class 9. Kensonic opposed Uni-Line's application (IPC1). The Director of the BLA rendered decision finding that Kensonic was the first to adopt and use the mark SAKURA since 1994 and thus rejecting Uni-Line's application. On January 19, 2006, said Decision became final and executory.

While IPC Case 1 was pending, Uni-Line filed an application and was issued a certificate of registration for the mark "SAKURA & FLOWER DESIGN" for use on recordable compact disk (CD-R) computer, computer parts and accessories falling under Class 9. Kensonic filed a petition for cancellation (IPC 2) of Uni-Line's registration. The BLA Director held that Uni-Line's goods are related to Kensonic's goods and that the latter was the first user of the mark SAKURA used on products under Class 9. The BLA Director thus cancelled Uni-Line's certificate of registration. Uni-Line moved for reconsideration of the BLA Director's Decision which is pending resolution to date.

On June 6, 2002, Uni-Line filed an application for the registration of the trademark SAKURA for use on goods falling under Class 07, 09, 11. It was thereafter published, and there being no opposition thereto, Certificate of Registration for the mark SAKURA effective March 18, 2006 was issued.

On September 7, 2006, Kensonic filed with the BLA a Petition for Cancellation of Uni-Line's Certificate of Registration alleging that in October 1994, it introduced the marketing of SAKURA products in the Philippines and that it owned said SAKURA products and was the first to use, introduce and distribute said products. Kensonic also alleged that in IPC 1, it opposed Uni-Line's application to register SAKURA and was already sustained by the Director General, which Decision is now final and executory. Kensonic further alleged that it is the owner of a copyright for SAKURA and that since 1994, has maintained and established a good name and goodwill over the SAKURA products.

The BLA issued Decision on August 11, 2008, whereby it ruled in favor of Kensonic and against Uni-Line, and directed the cancellation of registration of the latter's SAKURA mark. It observed that an examination of the SAKURA mark of Kensonic and that of Uni-Line revealed that the marks were confusingly similar with each other; that the goods sought to be covered by the SAKURA registration of Uni-Line were related to the goods of Kensonic, thereby necessitating the cancellation of the registration of Uni¬-Line's mark; and that considering that Kensonic had used the SAKURA mark as early as 1994 in Class 09 goods Kensonic had acquired ownership of the SAKURA mark, and should be legally protected thereon.

On appeal, the Director General of the IPO modified the decision of the BLR by upholding Uni-Line's registration of the SAKURA mark as to goods classified as Class 07 and Class 11, thereby

effectively reversing the BLR, but affirmed the BLR as regards the treatment of the SAKURA mark that covered the goods falling under Class 09. The Director General clarified that the marks of Uni-Line and Kensonic were similar if not identical; that considering that in IPC 1 already effectively ruled that the products registered by Uni-Line were goods related to those covered by the registration of Kensonic, the registration of Uni-Line insofar as those products sought to be registered under Class 09 were concerned was correctly cancelled; that the registration of products of Uni-Line falling under Class 07 and Class 11 should not be cancelled because the products were different from the goods registered under Class 09 in the name of Kensonic; that there should be evidence showing how the continued registration of the SAKURA mark of Uni-Line would cause damage to Kensonic.

In addition, the ordinary purchaser must be thought of, as having, and credited with, at least a modicum of intelligence. It does not defy common sense to assert that a purchaser would be cognizant of the product he is buying. As a general rule, an ordinary buyer does not exercise as much pendence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation.

In this instance, the products of the Appellants under Classes 7 and 11 are home appliances which are not the ordinary everyday goods the public buys and consumes. These products are not inexpensive items and a purchaser would ordinarily examine carefully the features and characteristics of the same. It is, therefore, farfetched that the purchasing public would be misled or be deceived as to the source or origin of the products. Furthermore, there is nothing in the records that indicate any plans by the Appellee to enter into business transactions or to the manufacture and distribution of goods similar to the products of the Appellants under Classes 7 and 11.8

Both parties appealed to the CA, which dismissed the appeal of Kensonic and granting Uni-Line's appeals. The CA upheld Kensonic's ownership of the SAKURA mark based on its showing of its use of the mark since 1994, but ruled that despite the identical marks of Kensonic and Uni-Line, Kensonic's goods under Class 09 were different from or unrelated to Uni-Line's goods under Class 07 and Class 11.

ISSUES:

A. Whether or not "SAKURA" mark is capable of appropriation. (YES)
B. Whether or not Kensonic's goods and Uni-Line's goods are related. (NO)

RULING:

A. Sec. 123(h) of the IPC prohibits the registration of a trademark that consists exclusively of signs that are generic for the goods or services that they seek to identify. It is clear from the law itself that what is prohibited is not having a generic mark but having such generic mark being identifiable to the good or service. In Asia Brewery, Inc., v. Court of Appeals, the Court explained that the fact that the words pale pilsen are part of ABI's trademark does not constitute an infringement of SMC's trademark: SAN MIGUEL PALE PILSEN, for "pale pilsen" are generic words descriptive of the color

("pale"), of a type of beer ("pilsen"), which is a light bohemian beer. "Pilsen" is a "primarily geographically descriptive word. The Trademark Law provides:

> "Sec. 4.... The owner of trade-mark, trade-name or service¬-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same [on the principal register], unless it:
> xxx xxx xxx
> "(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is merely descriptive or deceptively misdescriptive of them, or when applied to or used in connection with the goods, business or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or is primarily merely a surname."

The words "pale pilsen" may not be appropriated by SMC for its exclusive use even if they are part of its registered trademark: SAN MIGUEL PALE PILSEN, any more than such descriptive words as "evaporated milk," "tomato ketchup," "cheddar cheese," "com flakes" and "cooking oil" may be appropriated by any single manufacturer of these food products, for no other reason than that he was the first to use them in his registered trademark. "A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others . . . inasmuch as all persons have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and no person can appropriate to himself exclusively any word or expression, properly descriptive of the article, its qualities, ingredients or characteristics, and thus limit other persons in the use of language appropriate to the description of their manufactures, the right to the use of such language being common to all. Others may use the same or similar descriptive word in connection with their own wares, provided they take proper steps to prevent the public being deceived. A descriptive word may be admittedly distinctive, especially if the user is the first creator of the article. It will, however, be denied protection, not because it lacks distinctiveness, but rather because others are equally entitled to its use.

This, however, is not the situation herein. Although SAKURA refers to the Japanese flowering cherry and is, therefore, of a generic nature, such mark did not identify Kensonic's goods unlike the mark in Asia Brewery, Inc., v. Court of Appeals. Kensonic's DVD or VCD players and other products could not be identified with cherry blossoms. Hence, the mark can be appropriated.

Kensonic's prior use of the mark since 1994 made it the owner of the mark, and its ownership cannot anymore be challenged at this stage of the proceedings. Seeking the review of Kensonic's ownership would entail the examination of facts already settled by the lower tribunals. Uni-Line's challenge to the ownership of the SAKURA mark should stop here because the Court cannot act on a factual matter in this appeal by petition for review on certiorari, which is limited to the consideration of questions of law.

B. Uni-Line's goods classified under Class 07 and Class 11 were not related to Kensonic's goods registered under Class 09.

The prohibition under Sec. 123 of IPC extends to goods that are related to the registered goods, not to goods that the registrant may produce in the future. To allow the expansion of coverage is to prevent future registrants of goods from securing a trademark on the basis of mere possibilities and conjectures that may or may not occur at all. Surely, the right to a trademark should not be made to depend on mere possibilities and conjectures.

In Mighty Corporation v. E. & J. Gallo Winery, the Court has identified the different factors by which to determine whether or not goods are related to each other for purposes of registration:

Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant.

In resolving whether goods are related, several factors come into play:
(a) the business (and its location) to which the goods belong
(b) the class of product to which the goods belong
(c) the product's quality, quantity, or size, including the nature of the package, wrapper or container
(d) the nature and cost of the articles
(e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality
(f) the purpose of the goods
(g) whether the article is bought for immediate consumption, that is, day-to-day household items
(h) the fields of manufacture
(i) the conditions under which the article is usually purchased and
(j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

An examination of the foregoing factors reveals that the goods of Uni-Line were not related to the goods of Kensonic by virtue of their differences in class, the descriptive attributes, the purposes and the conditions of the goods.

In Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.,the Court has opined that the mere fact that goods belonged to the same class does not necessarily mean that they are related; and that the factors listed in Mighty Corporation v. E. & J. Gallo Winery should be taken into consideration. As mentioned, the classification of the products under the NCL is merely part and parcel of the factors to be considered in ascertaining whether the goods are related. It is not sufficient to state that the goods involved herein are electronic products under Class 9 in order to establish relatedness between the goods, for this only accounts for one of many considerations enumerated in Mighty Corporation case.

Clearly then, it was erroneous for respondent to assume over the CA to condude that all electronic products are related and that the coverage of one electronic product necessarily precludes the registration of a similar; mark over another. In this digital age wherein electronic products have not only diversified by leaps and bounds, and are geared towards interoperability, it is difficult to assert readily, as respondent simplistically did, that all devices that require plugging into sockets are necessarily related goods.

It bears to stress at this point that the list of products included in Class 9 can be sub-categorized into five (5) classifications, namely: (1) apparatus and instruments for scientific or research purposes, (2) information technology and audiovisual equipment, (3) apparatus and devices for controlling the distribution and use of electricity, (4) optical apparatus and instruments, and (5) safety equipment. From this sub-classification, it becomes apparent that petitioner's products, i.e., televisions and DVD players, belong to audiovisual equipment, while that of respondent, consisting of automatic voltage regulator, converter, recharger, stereo booster, AC-DC regulated power supply, step-down transformer, and PA amplified AC-DC, generally fall under devices for controlling the distribution and use of electricity.

Based on the foregoing pronouncement in Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc., there are other sub-classifications present even if the goods are classified under Class 09. For one, Kensonic's goods belonged to the information technology and audiovisual equipment sub-class, but Uni-Line's goods pertained to the apparatus and devices for controlling the distribution of electricity sub-class. Also, the Class 09 goods of Kensonic were final products but Uni-Line's Class 09 products were spare parts. In view of these distinctions, the Court agrees with Uni-Line that its Class 09 goods were unrelated to the Class 09 goods of Kensonic.

8. Trademark infringement

Citigroup, Inc. v. Citystate Savings Bank, Inc.,
G.R. No. 205409, June 13, 2018, Leonen, J.

In determining whether or not there is infringement, the Court considered "the main, essential, and dominant features" of the marks in this case, as well as the contexts in which the marks are to be used. Applying the dominancy test, the Court sees that the prevalent feature of respondent's mark, the golden lion's head device, is not present at all in any of petitioner's marks. The only similar feature between respondent's mark and petitioner's collection of marks is the word "CITY" in the former, and the "CITI" prefix found in the latter. This similarity alone is not enough to create a likelihood of confusion.

Facts:

Petitioner offers ATM services in the Philippines since 1995. It has 29 ATMs and issues ATM cards labelled "CITICARD." The trademark CITICARD is owned by Citibank N.A. and is registered in the Intellectual Property Office (IPO) of the Philippines on September 27, 1995. In addition, petitioner or Citibank N.A., a wholly-owned subsidiary of petitioner, owns the following other trademarks currently registered with the IPO to wit: "CITI and arc design," "CITIBANK," "CITIBANK PAYLINK,"

"CITIBANK SPEEDCOLLECT," "CITIBANKING," "CITICARD," "CITICORP ," "CITIFINANCIAL," "CITIGOLD," "CITIGROUP ," "CITIPHONE BANKING," and "CITISERVICE."

On the other hand, sometime in the mid-nineties, a group of Filipinos and Singaporean companies formed a consortium to establish respondent Citystate Savings Bank, Inc. Respondent's registered mark has in its name affixed a lion's head, which is likened to the national symbol of Singapore, the Merlion. In 1997, respondent opened its initial branch in Makati City. From then on, it endeavored to expand its branch network. At present it has 19 branches in key cities and municipalities including 3 branches in the province of Bulacan and 1 in Cebu City. Respondent had also established off site ATMs in key locations in the Philippines as one of its banking products and services. In line with this, respondent led an application for registration with the IPO on June 21, 2005 of the trademark "CITY CASH WITH GOLDEN LION'S HEAD" for its ATM service. This caused the petitioner to file an opposition against the said application. Citigroup claimed that the "CITY CASH WITH GOLDEN LION'S HEAD" mark is confusingly similar to its own "CITI" marks.

Issue:

Whether or not there exists a confusing similarity between the petitioner and respondent's marks.

Ruling:

None. There is no objective test for determining whether the confusion is likely. Likelihood of confusion must be determined according to the particular circumstances of each case. To aid in determining the similarity and likelihood of confusion between marks, our jurisprudence has developed two (2) tests: the dominancy test and the holistic test.

The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.

With these guidelines in mind, the Court considered "the main, essential, and dominant features" of the marks in this case, as well as the contexts in which the marks are to be used. The Court finds that the use of the "CITY CASH WITH GOLDEN LION'S HEAD" mark will not result in the likelihood of confusion in the minds of customers. A visual comparison of the marks reveals no likelihood of confusion. The most noticeable part of respondent's mark is the golden lion's head device, and after noticing the image of the lion's head, the words "CITY" and "CASH" are equally prominent. On the other hand, petitioner's marks often include the red arc device. Petitioner's marks can best be described as consisting of the prefix "CITI" added to other words.

Applying the dominancy test, the Court sees that the prevalent feature of respondent's mark, the golden lion's head device, is not present at all in any of petitioner's marks. The only similar feature between respondent's mark and petitioner's collection of marks is the word "CITY" in the former, and the "CITI" prefix found in the latter. This similarity alone is not enough to create a likelihood of confusion.

The SC also agrees with the CA that the context where respondent's mark is to be used, namely, for its ATM services, which could only be secured at respondent's premises and not in an open market of ATM services, further diminishes the possibility of confusion on the part of prospective customers.

L.C. BIG MAK BURGER, INC., *Petitioner, v.* **MCDONALD'S CORPORATION**, *Respondent.*
G.R. No. 233073, FIRST DIVISION, February 14, 2018, TIJAM, J.

Contempt of court has been defined as a willful disregard or disobedience of a public authority.

Testimonial and documentary evidence were in fact presented to show that petitioner had been using "Super Mak" and/or its corporate name "L.C. Big Mak Burger Inc." in its business operations instead of the proscribed mark "Big Mak" pursuant to the ruling of the Infringement Court. Moreover, petitioner's use of its corporate name in its stalls and products cannot, by itself, be considered to be tantamount to indirect contempt, contrary to the CA's conclusion. Lastly, at any rate, whether or not petitioner's action in complying with the court's order was proper is not an issue in this contempt case. Settled is the rule that in contempt proceedings, what should be considered is the intent of the alleged contemnor to disobey or defy the court.

FACTS:

The instant petition stemmed from Civil Case No. 90-1507, which McDonald's Corporation (respondent) filed against L.C. Big Mak Burger, Inc. (petitioner) for trademark infringement and unfair competition raffled to the Regional Trial Court (RTC) of Makati City, Branch 137 (Infringement Court).

In the said case, the Infringement Court, acting on the prayer for the issuance of a writ preliminary injunction, issued an Order dated August 16, 1990, directing petitioner to refrain from:

> a) using for its fast food restaurant business the name "Big Mak" or any other mark, word, name, or device, which by colorable imitation is likely to confuse, mislead or deceive the public into believing that the [petitioner's] goods and services originate from, or are sponsored by or affiliated with those of [respondent's], and from otherwise unfairly trading on the reputation and goodwill of the Mcdonald's Marks, in particular the mark "BIG MAC";
>
> b) selling, distributing, advertising, offering for sale or procuring to be sold, or otherwise disposing of any article described as or purporting to be manufactured by [respondent];
>
> c) directly or indirectly using any mark, or doing any set or thing, likely to induce the belief on the part of the public that [petitioner] and their products and services are in any way

connected with [respondent's] and their products and services in such places within the jurisdiction of the National Capital Judicial Region

After trial, the said court rendered a Decision dated September 5, 1994, in favor of [respondent] McDonald's Corporation and McGeorge Food Industries Inc. and against [petitioner] L.C. Big Mak Burgers, Inc. The writ of preliminary injunction was made permanent and L.C Big Mak is ordered to pay damages and attorney's fees. The CA overturned the September 5, 1994 Decision. However, We reversed the CA in Our Decision dated August 18, 2004 in G.R. No. 143993 and thus reinstated the Infringement Court's Decision.

Thusly, on November 14, 2005, Infringement Court, issued a Writ of Execution to implement its September 5, 1994 Decision.

On May 5, 2008, however, respondent filed a Petition for Contempt against petitioner and Francis Dy, in his capacity as President of L.C. Big Mak Burger, Inc. Basically, respondent averred therein that despite service upon the petitioner and its president of the Writ of Execution in the trademark infringement and unfair competition case, the latter continues to disobey and ignore their judgment obligation by continuously using, as part of their food and restaurant business, the words "Big Mak." It was also alleged that petitioner refused to fully pay the damages awarded to the respondent in the said case.

Petitioner argued that it is evident from the August 18, 2004 Decision of the Supreme Court, that the prohibition covers only the use of the mark "Big Mak" and not the name "L.C. Big Mak Burger, Inc." Petitioner then averred that at that time, its stalls were using its company name "L.C. Big Mak Burger, Inc." and not the mark "Big Mak" and that it had already stopped selling "Big Mak" burgers for several years already. Moreover, petitioner averred that it has already changed the name of some of its stalls and products to "Supermak" as evidenced by pictures of its stalls in Metro Manila. Also, petitioner pointed out that the preliminary injunction issued in Civil Case No. 90-1507 was enforceable only within the National Capital Judicial Region as can be gleaned from its express provision.

The RTC ruled in favor of [petitioner] L.C. BIG MAK BURGER, INC. and FRANCIS DY, and against [respondent]. The CA reversed the Contempt Court's ruling and instead found petitioner guilty of indirect contempt.

ISSUE:

Whether or not petitioner is guilty of indirect contempt (NO)

RULING:

In ruling that there was disobedience tantamount to an indirect contempt on the part of the petitioner, the CA found that: (1) there is an express admission on Francis Dy's judicial affidavit that the company complied with the court's order only in 2009 or after the petition for indirect contempt was filed against them; (2) that petitioner's use of its corporate name is likewise an infringement of respondent's mark, a defiance therefore to the subject injunction order.

We do not agree.

First, contrary to what respondent attempted to impress to the courts, it is not wholly true that petitioner continues to use the mark "Big Mak" in its business, in complete defiance to this Court's Decision.

Testimonial and documentary evidence were in fact presented to show that petitioner had been using "Super Mak" and/or its corporate name "L.C. Big Mak Burger Inc." in its business operations instead of the proscribed mark "Big Mak" pursuant to the ruling of the Infringement Court.

There is also nothing on record that will show that Francis Dy made an admission that petitioner began to comply with the writ of execution only in 2009. If at all, the CA misinterpreted Francis Dy's allegation in the said. judicial affidavit that "by early 2009" petitioner's stalls and vans only reflected "Super Mak" and the corporate name "L.C. Big Mak Burger, Inc." Also, the fact that the photographs presented during trial were taken in 2009 was taken by the CA as the time when the petitioner started to implement changes in their business operations pursuant to the writ of execution.

Second, petitioner's use of its corporate name in its stalls and products cannot, by itself, be considered to be tantamount to indirect contempt, contrary to the CA's conclusion.

It bears stressing that the proscription in the injunction order is against petitioner's use of the mark "Big Mak." However, as established, petitioner had already been using its corporate name instead of the proscribed mark. The use of petitioner's corporate name instead of the words "Big Mak" solely was evidently pursuant to the directive of the court in the injunction order. Clearly, as correctly found by the RTC, petitioner had indeed desisted from the use of "Big Mak" to comply with the injunction order.
Third, at any rate, whether or not petitioner's action in complying with the court's order was proper is not an issue in this contempt case. Settled is the rule that in contempt proceedings, what should be considered is the intent of the alleged contemnor to disobey or defy the court.

Indeed, as can be gleaned from the above-cited jurisprudential definition of contempt, the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.

Petitioner's good faith in complying with the court's order is manifest in this case.In any event, what is relevant and essential in this contempt case is the fact that by virtue of petitioner's reliance upon the said lawful and binding SEC Decision in the use of its corporate name in lieu of the proscribed "Big Mak" mark to comply with the subject injunction order, petitioner's good faith is clearly manifest. Petitioner's justification of its questioned action is not at all implausible. Th is Court finds no reason to reject petitioner's explanation or doubt its good faith as certainly, the use of its corporate name was warranted by the SEC Decision. It was also not unreasonable for the petitioner, through its officers, to think that the stalls and products bearing its corporate name

would send the message to the public that the products were the petitioner's and not those of respondent's, the very evil sought to be prevented and/or eradicated by the decision in the infringement/unfair competition case.

Considering that condemnation for contempt should not be made lightly, and that the power to punish contempt should be exercised on the preservative and not on the vindictive principle, the Court finds no difficulty in reaching the conclusion that there was no willful disregard or defiance of its order/decision.

We are, therefore, one with the Contempt Court in dismissing the contempt case.

9. Unfair competition

SAN MIGUEL PURE FOODS COMPANY, INC., *Petitioner*, -versus - FOODSPHERE, INC., *Respondent*.
G.R. No. 217781, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

Thus, the essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown.

First of all, there exists a substantial and confusing similarity in the packaging of Foodsphere's product with that of SMPFCI, which, as the records reveal, was changed by Foodsphere from a paper box to a paper ham bag that is significantly similar to SMPFCI's paper ham bag. Second, Foodsphere's intent to deceive the public, to defraud its competitor, and to ride on the goodwill of SMPFCI's products is evidenced by the fact that not only did Foodsphere switch from its old box packaging to the same paper ham bag packaging as that used by SMPFCI, it also used the same layout design printed on the same.

FACTS:

The parties herein are both engaged in the business of the manufacture, sale, and distribution of food products, with SMPFCI owning the trademark "PUREFOODS FIESTA HAM" while Foodsphere, Inc. products (*Foodsphere*) bear the "CDO" brand. On November 4, 2010, SMPFCI filed a Complaint for trademark infringement and unfair competition with prayer for preliminary injunction and temporary restraining order against Foodsphere before the Bureau of Legal Affairs (*BLA*) of the Intellectual Property Office (*IPO*) pursuant to Sections 155 and 168 of Republic Act (*R.A.*) No. 8293, otherwise known as the *Intellectual Property Code* (*IP Code*), for using, in commerce, a colorable imitation of its registered trademark in connection with the sale, offering for sale, and advertising of goods that are confusingly similar to that of its registered trademark.

In its complaint, SMPFCI alleged that its "FIESTA" ham, first introduced in 1980, has been sold in countless supermarkets in the country and is, therefore, a popular fixture in dining tables during

the Christmas season. Its registered "FIESTA" mark has acquired goodwill to mean sumptuous ham of great taste, superior quality, and food safety, and its trade dress "FIESTA", combined with a figure of a partly sliced ham served on a plate with fruits on the side had likewise earned goodwill. Notwithstanding such tremendous goodwill already earned by its mark, SMPFCI continues to invest considerable resources to promote the FIESTA ham.

Sometime in 2006, however, Foodsphere introduced its "PISTA" ham and aggressively promoted it in 2007, claiming the same to be the real premium ham. In 2008, SMPFCI launched its "Dapat ganito ka-espesyal" campaign, utilizing the promotional material showing a picture of a whole meat ham served on a plate with fresh fruits on the side. The ham is being sliced with a knife and the other portion, held in place by a serving fork. But in the same year, Foodsphere launched its "Christmas Ham with Taste" campaign featuring a similar picture. Moreover, in 2009, Foodsphere launched its "Make Christmas even more special" campaign, directly copying SMPFCI's "Dapat ganito ka-espesyal" campaign. Also in 2009, Foodsphere introduced its paper ham bag which looked significantly similar to SMPFCI's own paper ham bag and its trade dress and its use of the word "PISTA" in its packages were confusingly similar to SMPFCI's "FIESTA" mark.

Thus, according to SMPFCI, the striking similarities between the marks and products of Foodsphere with those of SMPFCI warrant its claim of trademark infringement on the ground of likelihood of confusion as to origin, and being the owner of "FIESTA," it has the right to prevent Foodsphere from the unauthorized use of a deceptively similar mark. The word "PISTA" in Foodsphere's mark means "fiesta," "feast," or "festival" and connotes the same meaning or commercial impression to the buying public of SMPFCI's "FIESTA" trademark. Moreover, "FIESTA" and "PISTA" are similarly pronounced, have the same number of syllables, share common consonants and vowels, and have the same general appearance in their respective product packages. In addition, the "FIESTA" and "PISTA" marks are used in the same product which are distributed and marketed in the same channels of trade under similar conditions, and even placed in the same freezer and/or displayed in the same section of supermarkets. Foodsphere's use, therefore, of the "PISTA" mark will mislead the public into believing that its goods originated from, or are licensed or sponsored by SMPFCI, or that Foodsphere is associated with SMPFCI, or its affiliate. The use of the "PISTA" trademark would not only result in likelihood of confusion, but in actual confusion.

Apart from trademark infringement, SMPFCI further alleged that Foodsphere is likewise guilty of unfair competition. This is because there is confusing similarity in the general appearance of the goods of the parties and intent on the part of Foodsphere, to deceive the public and defraud SMPFCL According to SMPFCI, there is confusing similarity because the display panel of both products have a picture of a partly sliced ham served on a plate of fruits, while the back panel features other ham varieties offered, both "FIESTA" and "PISTA" are printed in white bold stylized font, and the product packaging for both "FIESTA" and "PISTA" consists of box-typed paper bags made of cardboard materials with cut-out holes on the middle top portion for use as handles and predominantly red in color with a background design of Christmas balls, stars, snowflakes, and ornate scroll. Moreover, Foodsphere's intent to deceive the public is seen from its continued use of the word "PISTA" for its ham products and its adoption of packaging with a strong resemblance of SMPFCI's "FIESTA" ham packaging. For SMPFCI, this is deliberately carried out for the purpose of capitalizing on the valuable goodwill of its trademark and causing not only confusion of goods but also confusion as to the source of the ham product.

For its part, Foodsphere denied the charges of trademark infringement and countered that the marks "PISTA" and "PUREFOODS FIESTA HAM" are not confusingly similar and are, in fact, visually and aurally distinct from each other. This is because PISTA is always used in conjunction with its house mark "CDO" and that "PUREFOODS FIESTA HAM" bears the housemark "PUREFOODS," rendering confusion impossible. Moreover, Foodsphere maintained that SMPFCI does not have a monopoly on the mark "FIESTA" for the IPO database shows that there are two (2) other registrations for "FIESTA," namely "FIESTA TROPICALE" and "HAPPY FIESTA." Also, there are other products in supermarkets that bear the mark "FIESTA" such as "ARO FIESTA HAM," "ROYAL FIESTA," and "PUREGOLD FIESTA HAM," but SMPFCI has done nothing against those manufacturers, making it guilty of *estoppel in pais*, and is, therefore, estopped from claiming that the use of other manufacturers of the mark "FIESTA" will result in confusion and/or damage to itself.

Even assuming that the marks are confusingly similar, Foodsphere asserted that it is SMPFCI who is guilty of infringement *vis-a-vis* its registered trademark "HOLIDAY," a translation and word bearing the same meaning as "FIESTA." Foodsphere has been using its "HOLIDAY" trademark since 1970 and had registered the same in 1986, while SMPFCI registered its "FIESTA" trademark only in 2007. In fact, Foodsphere noted that it has been using "PISTA" since 2006 which is earlier than SMPFCI's filing for registration of "FIESTA" in 2007. In addition, Foodsphere asseverated that SMPFCI cannot appropriate for itself images of traditional utensils and garnishing of ham in its advertisements. Confusion between the marks, moreover, is rendered impossible because the products are sold in booths manned by different "promodisers." Also, hams are expensive products and their purchasers are well-informed not only as to their features but also as to the manufacturers thereof.

Furthermore, Foodsphere similarly denied the allegation that it is guilty of unfair competition or passing off its product as that of SMPFCI. As mentioned, the "PISTA" and "FIESTA" labels are substantially different in the manner of presentation, carrying their respective house marks. Moreover, its paper ham bags are labeled with their respective house marks and are given to consumers only after purchase, hence, they do not factor in when the choice of ham is being made. Also, Foodsphere claims to have been using the red color for its boxes and it was SMPFCI, by its own admission, that switched colors from green to red in 2009 for its own ham bags.

ISSUE:

Whether or not Foodsphere is guilty of unfair competition. (YES)

RULING:

YES, Foodsphere is guilty of unfair competition.

Section 168 of the IP Code provides that:

Section 168. Unfair Competition, Rights, Regulation and Remedies. - 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services

from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall. be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;
(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or
(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis. (Sec. 29, R.A. No. 166a)

Time and again, the Court has held that unfair competition consists of the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. In other words, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor. The "true test," therefore, of unfair competition has thus been "whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates."

Thus, the essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud

may be inferred from the similarity of the appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown.

First of all, there exists a substantial and confusing similarity in the packaging of Foodsphere's product with that of SMPFCI, which, as the records reveal, was changed by Foodsphere from a paper box to a paper ham bag that is significantly similar to SMPFCI's paper ham bag. As duly noted, both packages use paper ham bags as the container for the hams, both paper ham bags use the red color as the main colors, and both have the layout design appearing on the bags consisting of a partly sliced ham and fruits on the front and other ham varieties offered at the back. Thus, Foodsphere's packaging in its entirety, and not merely its "PISTA" mark thereon, renders the general appearance thereof confusingly similar with the packaging of SMPFCI's ham, that would likely influence purchasers to believe that these products are similar, if not the same, as those of SMPFCI.

Second of all, Foodsphere's intent to deceive the public, to defraud its competitor, and to ride on the goodwill of SMPFCI's products is evidenced by the fact that not only did Foodsphere switch from its old box packaging to the same paper ham bag packaging as that used by SMPFCI, it also used the same layout design printed on the same.

Hence, compounding all these circumstances, Foodsphere is found to be liable of committing unfair competition.

C. Copyrights

1. Copyrightable works
2. Non-copyrightable works
3. Rights conferred by copyright
4. Ownership of a copyright
5. Limitations on copyright
6. Doctrine of fair use
7. Copyright infringement

IX. ANTI-MONEY LAUNDERING ACT (RA 9160, as amended)

A. Covered institutions and their obligations
B. Covered and suspicious transactions
C. Safe harbor provision
D. When is money laundering committed (including predicate crimes)
E. Authority to inquire into bank deposits
F. Freezing and forfeiture

Philippine Deposit Insurance Corp. v. Gidwani
G.R. No. 234616, June 20, 2018, Velasco, Jr., J.

Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources.

FACTS:

Respondent was charged with estafa through falsification under Art. 315(2)(a) in relation to Arts. 172(1) and 171(4) of the Revised Penal Code and for money laundering as defined in Section 4(a) of AMLA upon discovery by PDIC that the respondent, together with 86 other individuals fraudulently declared that they are the bona fide owners of 471 deposits with the legacy banks which were ordered closed and put under receivership in order to claim insurance proceeds from PDIC. These purported depositors, in conspiracy with Manu Gidwani (Manu), falsified official documents by making the untruthful statement of ownership in their deposit insurance claims which representations were relied upon by PDIC. As a result, it released to them the deposit insurance proceeds amounting to P98,733,690.21, of which P97,733,690.21, was deposited to the RCBC account of Manu. PDIC alleges that the government suffered damage when it discovered upon investigation that Manu was the sole beneficial owner of the bank accounts.

When the case reached the Court of Appeals (CA), it dismissed the complaints due to lack of probable cause and held that the Secretary of Justice (SoJ) gravely abused his discretion in finding probable cause.

Issue:

Whether or not the CA erred in dismissing the complaint for lack of probable cause.

Ruling:

Yes. Money laundering as defined in Section 4 (a) of RA 9160 is:

> Section 4.
> Money Laundering Offense. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following: a. Any person knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

It must be recalled that the criminal case is still in the stage of preliminary investigation. The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties since the function of the investigating prosecutor is not to determine the guilt or innocence of an accused.

In this case, there exists probable cause to support the complaints since the PDIC reportedly discovered that there was only one beneficial owner of the 471 bank accounts with the Legacy Banks of the 86 individual depositors — respondent Manu. To illustrate, PDIC reportedly discovered that 142 of these 471 accounts, with the total amount of P20,966,439.09, were in the names of helpers and rank-and-file employees of the Gidwani spouses who do not have the financial capacity to deposit the amounts recorded under their names. That such individuals reported either respondent Manu's office or business address as their own further arouses serious suspicion on the true ownership of the funds deposited. It gives the impression that they had been used by respondent as dummies, and their purported ownership mere subterfuge, in order to increase the amount of his protected deposit.

X. ELECTRONIC COMMERCE ACT (RA 8792)

A. Legal recognition of electronic data messages, documents, and signatures

B. Presumption relating to electronic signatures

C. Admissibility and evidential weight of electronic data message or electronic document

D. Obligation of confidentiality

XI. DATA PRIVACY ACT (RA 10173)

A. Personal vs. sensitive personal information

B. Scope

C. Processing of personal information

D. Rights of data subject

XII. FINANCIAL REHABILITATION, INSOLVENCY, LIQUIDATION and SUSPENSION OF PAYMENTS (RA 10142, FR Rules [A.M. No. 12-12-11-SC], and FLSP Rules [A.M. No.15-04-06-SC])

A. Basic concepts

1. Rehabilitation

ALLIED BANKING CORPORATION, *Petitioner,* -versus - IN THE MATT ER OF THE PETITION TO HAVE STEEL CORPORATION OF THE PHILIPPINES PLACED UNDER CORPORATE REHABILITATION WITH PRAYER FOR THE APPROVAL OF THE PROPOSED REHABILITATION PLAN, EQUITABLE PCI BANK, INC., *Respondents*

G.R. No. 191939, THIRD DIVISION, March 14, 2018, MARTIRES, *J.*

The Rehabilitation Rules provides that the court shall issue a commencement order once it finds the petition for rehabilitation sufficient in form and substance. The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition, which is also termed the commencement date.

Under the same Rules, the effects of such commencement order shall retroact to the date that the petition was filed, and renders void any attempt to collect on or enforce a claim against the debtor or to set off any debt by the debtor's creditors, after the commencement date

The order issued by the RTC on 12 September 2006, which effectively initiated rehabilitation proceedings and included a suspension of all claims against SCP, is akin to the commencement order under the Rehabilitation Rules.

Clearly, therefore, if the Rehabilitation Rules were to be applied, the directive of the rehabilitation court restoring SCP's current account and crediting back the offset amount is valid and proper, since the offsetting was made on 15 September 2006, after the commencement date on 11 September 2006, when the petition for rehabilitation was filed.

FACTS:

On 11 September 2006, Equitable PCI Bank, Inc. (*EPCIB*), as creditor, filed a petition for the corporate rehabilitation of its debtor SCP with the RTC.

The petition for corporate rehabilitation is grounded on Section 1, Rule 4 of the Interim Rules of Corporate Rehabilitation, which provides that "any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation."

Apart from the foregoing agreements, Allied Banking Corporation (*ABC*) granted SCP with a revolving credit facility denominated as a letter of credit/trust receipt line in the amount of P100 million, which SCP availed of to finance the importation of its raw materials. Pursuant to this arrangement, SCP executed a trust receipt (*TR*), which authorizes ABC to charge SCP's account in its possession under instances specified in paragraph 9 thereof, viz:

> In the event of any bankruptcy, insolvency, suspension of payment, or failure, or assignment for the benefit of creditors, on my/our part, or of the non-fulfillment of any obligation, or of the non-payment at maturity of any acceptance specified hereon or under any credit issued by the ALLIED BANKING CORPORATION for my/our account, or of the non-payment of any indebtedness on my/our part to the said bank, all obligations, acceptances, indebtedness, and liabilities whatsoever shall thereupon (with or without notice) mature and become due and payable. The ALLIED BANKING CORPORATION is hereby constituted my/our attorney-in-fact, with authority to examine my/our books and records, to charge my/our account or to sell any other property of mine/ours in its possession, and to liquidate any or all of my/our obligations under this Trust Receipt

On 12 September 2006, the RTC issued an Order (*the subject order*) granting EPCIB's petition

On 15 September 2006, petitioner applied the remaining proceeds of SCP's Current Account (subject account) in the amount of P6,750,000.00, maintained with its Aguirre Branch, to its obligations under the TR.

On 29 October 2006, SCP filed an urgent omnibus motion alleging that petitioner violated the rehabilitation court's stay order when it applied the proceeds of its current account to the payment of obligations covered by the stay order. Consequently, it prayed for ABC to immediately restore its current account, credit back to said account the amount of P6,750,000.00, and honor any and all transactions of SCP in said account.

On 22 November 2006, the RTC issued a resolution (the subject resolution), finding merit in SCP's position

The CA affirmed the resolution of the RTC

ISSUES:

I. Whether the rehabilitation court can reverse or invalidate acts that are inconsistent with its stay order and are made after its issuance but prior to its publication. (YES)
II. Whether the Rehabilitation Rules can be applied to resolve the present petition, when the subject petition for rehabilitation was filed under the Interim Rules. (YES)

RULING:

I.

The rehabilitation petition was filed by EPCIB under A.M. No. 00-8-10-SC dated 21 November 2000, or the 2000 Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

On 27 August 2013, however, the Court enacted A.M. No. 12-12-11-SC, or the Financial Rehabilitation Rules of Procedure (Rehabilitation Rules), which amended and revised the Interim Rules and the subsequent 2008 Rules of Procedure on Corporate Rehabilitation (2008 Rules), in order to incorporate the significant changes brought about by Republic Act No. 10142 (R.A. No. 10142), otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 (FRIA).

The Rehabilitation Rules provides that the court shall issue a commencement order once it finds the petition for rehabilitation sufficient in form and substance. This commencement order primarily contains: a declaration that the debtor is under rehabilitation, the appointment of a rehabilitation receiver, a directive for all creditors to file their verified notices of claim, and an order staying claims against the debtor. The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition, which is also termed the commencement date.

Under the same Rules, the effects of such commencement order shall retroact to the date that the petition was filed, and renders void any attempt to collect on or enforce a claim against the debtor or to set off any debt by the debtor's creditors, after the commencement date

The order issued by the RTC on 12 September 2006, which effectively initiated rehabilitation proceedings and included a suspension of all claims against SCP, is akin to the commencement order under the Rehabilitation Rules.

Clearly, therefore, if the Rehabilitation Rules were to be applied, the directive of the rehabilitation court restoring SCP's current account and crediting back the offset amount is valid and proper, since the offsetting was made on 15 September 2006, after the commencement date on 11 September 2006, when the petition for rehabilitation was filed.

II.

Section 2, Rule 1 of the Rehabilitation Rules governs rehabilitation cases already pending, except when its application would not prove feasible or would work injustice, to wit:

> SEC. 2. SCOPE. - xxx
>
> **<u>These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending, except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice,</u>**

> **in which event the procedures originally applicable shall continue to govern**. (emphasis supplied)

The soundness of upholding the retroactive effect of a commencement order is easily discernible. In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*, the Court said that rehabilitation proceedings seek to give insolvent debtors the opportunity to reorganize their affairs and to efficiently and equitably distribute its remaining assets, *viz*:

> Rehabilitation proceedings in our jurisdiction have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. **The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings**. (emphasis supplied)

The filing of a petition for the rehabilitation of a debtor, when the court finds that it is sufficient in form and substance, is both (1) an acknowledgment that the debtor is presently financially distressed; and (2) an attempt to conserve and administer its assets in the hope that it will eventually return to its former state of successful financial operation and liquidity.[13] The inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period by providing the best possible framework for the corporation to gradually regain or achieve a sustainable operating form.

Certainly, when a petition for rehabilitation is filed and subsequently granted by the court, its purpose will be defeated if the debtors are still allowed to arbitrarily dispose of their property and pay their liabilities, outside of the ordinary course of business and what is allowed by the court, after the filing of the said petition. Such a scenario does not promote an environment where the debtor could regain its operational footing, contrary to the dictates of rehabilitation.

The petition itself, when granted by the court, is already a recognition of the debtor's distressed financial status not only at the time the order is issued, but also at the time the petition is filed. It is, therefore, more consistent with the objectives of rehabilitation to recognize that the effects of an order commencing rehabilitation proceedings and staying claims against the debtor should retroact to the date the petition is filed.

Accordingly, the Court finds that application of the Rehabilitation Rules to the case at bar is proper, insofar as it clarifies the effect of an order staying claims against a debtor sought to be rehabilitated. Such application promotes a just and sound resolution to the present controversy, bearing in mind the inherent purpose of rehabilitation proceedings. It is also feasible, considering the subject resolution was within the Rehabilitation Court's powers, wielded for the same purpose identified in both the Interim Rules and the Rehabilitation Rules which is to promote a timely, fair, transparent, effective, and efficient rehabilitation of debtors.[15]

Even if the retroactive effect under the Rehabilitation Rules is inapplicable to the case at bar, the Interim Rules expressly provides that the stay order is effective upon its issuance, *viz*:

Sec. 11. *Period of the Stay Order*. - The stay order shall be **effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings**. (emphasis supplied)
x x x

This Court quotes with approval the CA's disquisition on this matter:

> From the above provisions, a stay order issued by the court in a corporate rehabilitation proceeding is effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings. In fact, it is *immediately executory*.
>
> In the case at bar, there is no doubt that the rehabilitation court correctly held that the appellant is bound by the September 12, 2006 Stay Order as of the date of its issuance, the same being *immediately executory and effective* without any further act, event, or condition being necessary to compel compliance therewith as expressly provided in Sec. 11, Rule IV and Sec. 5, Rule III of the Interim Rules of Procedure on Corporate Rehabilitation.
> Xxx

Taking into consideration the laudable objectives of rehabilitation proceedings, the immediate effectivity of the stay order means that the RTC, through an order commencing rehabilitation and staying claims against the debtor, acknowledges that the debtor requires rehabilitation immediately and therefore it can not only prohibit but also nullify acts made after its effectivity, when such acts are violative of the stay order, to prevent any irreparable detriment to the debtor's successful restoration.

The foregoing is validated by the Interim Rules, where the court can declare void any transaction made in violation of the stay order.

The publication requirement only means that all affected persons must, to satisfy the requirements of due process, be notified that as of a particular date, the debtor in question requires rehabilitation and should temporarily be exempt from paying its obligations, unless allowed by the court. Once due notice is made, the rehabilitation court may nullify actions inconsistent with the stay order but which may have been taken prior to publication, precisely because prior to publication, creditors may not yet be aware that they are to desist from pursuing claims against the insolvent debtor.

Again, the immediate effectivity of the stay order can be traced to the purpose of rehabilitation: once the necessity of rehabilitating the debtor is recognized, through a petition duly granted, it is imperative that the necessary steps to preserve its assets are taken at the earliest possible time.

It is thus apparent that the RTC properly invalidated petitioner's action made on 15 September 2006, after the subject order was issued.

Metropolitan Bank & Trust Co. v. Fortuna Paper Mill & Packaging Corp.
G.R. No. 190800, November 7, 2018, Second Division, J. A.B. REYES

A corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules.

This Court need not distinguish whether the claim has already matured or not. What is essential in case of rehabilitation is the inability of the debtor corporation to pay its dues as they fall due. In the case herein, accepting MBTC's proposition that debtor companies already in default are unqualified to file a petition for corporate rehabilitation not only contradicts the purpose of the law, as stated, but also advocates a limiting bar that is not found under the pertinent provisions. A better and more sound interpretation adheres to the very purpose of corporate rehabilitation, which is to allow the debtor-corporation to be restored "to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan.

Tthe Court disagrees with the finding of the lower courts that the Rehabilitation Plan is one that is economically feasible. The Rehabilitation Plan is primarily premised on speculative investments and the lack of material financial commitments. It is clear from a perusal of the Rehabilitation Plan that the process is heavily, if not completely predicated on speculative business proposals as well as the contingent entry of the potential foreign investor, Polycity. It is emphasized that the entry of Polycity is wholly predicated on conditions imposed on Fortuna by the former. In Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al., the Court stated that nothing short of legally binding investment commitment/s from third parties is required as a material financial commitment.

Facts:

Metropolitan Bank and Trust Company (MBTC) is a domestic banking corporation organized and existing under the laws of the Republic of the Philippines, and who extended various credit accommodations and loan facilities to Fortuna. Fortuna, before the closure of its business and cessation of its operations in 2006, was organized to manufacture special and craft papers from waste and scrap materials, and which it used to sell its products principally to manufacturers of corrugated boxes, cement paper bags, and other stationary paper products.

The credit accommodations and loan facilities extended by MBTC to Fortuna principally amounted to Php259,981,915.33. In order to secure these obligations, Fortuna mortgaged to MBTC its real and movable properties as well as several pieces of realty owned by several sister companies. Fortuna eventually ended up defaulting on its obligations to MBTC, and failed to pay said indebtedness along with the interests and penalties despite repeated demands on the part of MBTC.

Instead of paying the overdue obligations to MBTC, Fortuna filed on June 21, 2007 a Petition for Corporate Rehabilitation (Rehabilitation Petition) with the RTC of Malabon, Branch 74. Attached therein was Fortuna's proposed Rehabilitation Plan, which consisted mainly of (i) the resumption and continuance of its business, to be made possible by the entry of a supposed investor and a debt moratorium on principal interest, and (ii) entry into the business condominium development.

MBTC filed its Comment/Opposition to the Rehabilitation Petition and prayed for its dismissal based on the following grounds: (1) Fortuna was not qualified for corporate rehabilitation under Section 1 of Rule 4 of the Interim Rules; (2) the petition was fatally defective for non-compliance with the minimum requirements of Section 5 of Rule 4 of the Interim Rules; and (3) the petition was filed solely for the purpose of unjustly delaying the payment of its debt obligations.

The RTC issued an Order dated December 20, 2007 approving the Rehabilitation Plan. On appeal, the CA upheld the Order of RTC.

Issue:

The overlying issue in this case is whether or not the CA erred in affirming the Rehabilitation Plan approved by the RTC. MBTC advocates that the CA is mistaken, and anchors its contentions on the belief that Fortuna is not qualified to file a petition for rehabilitation under the Interim Rules. MBTC argues that a corporation may petition that it be placed under rehabilitation only if it is in the financial condition of a debtor who foresees the majority of its debts and its failure to meet them. Thus, this element of foresight is allegedly wanting where a debtor has already failed to meet its debts that have fallen due, such as in the case of Fortuna. The unequivocal language of the provision, according to the interpretation of MBTC, shows the manifest intent on the part of the drafters to make a distinction between debtors already in default and those who are not, to the end that only the latter may petition to be placed under rehabilitation, and which means that no exception or condition should be introduced save that given expressly in the law

MBTC also contends that, notwithstanding the question of eligibility of Fortuna, the CA overlooked the many glaring and patent deficiencies of Fortuna's Rehabilitation Plan, which include the alleged absence of material financial commitments to support it.

Ruling:

Fortuna is qualified to file for corporate rehabilitation.

Section 1, Rule 4 of the Interim Rules on the Procedure on Corporate Rehabilitation provides for the qualifications of a corporation to file a petition for corporate rehabilitation, to wit:

> **Sec. 1.** *Who May Petition.* — Any debtor **who foresees the impossibility** of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.

A plain reading of the provision shows that the Interim Rules does not make any distinction between a corporation which is already in debt and a corporation which foresees the possibility of debt, or which would eventually yet surely fall into the same, but may at present be free from any financial liability. Thus, since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*, the Court underscored that despite the insolvency of a corporation, it cannot be hindered to file a petition for corporate rehabilitation. To conclude otherwise will defeat its purpose of restoring a corporation to its former position of successful operation and solvency.

In this case, Fortuna maintains a status of solvency, having more assets than its liabilities with a Php71,000,000.00 margin. However, even hypothetically granting that Fortuna is already in a state of insolvency, the Court finds that is not precluded from filing its Rehabilitation Petition to facilitate its restoration to its former business stability. Fortuna is seeking a fresh start to lift itself from its present financial predicament. Thus, the foreseen viable rehabilitation of Fortuna would be more advantageous to the business community and its creditors rather than proceed with its liquidation which may possibly lead to its eventual corporate death.

This Court need not distinguish whether the claim has already matured or not. What is essential in case of rehabilitation is the inability of the debtor corporation to pay its dues as they fall due. In the case herein, accepting MBTC's proposition that debtor companies already in default are unqualified to file a petition for corporate rehabilitation not only contradicts the purpose of the law, as stated, but also advocates a limiting bar that is not found under the pertinent provisions. A better and more sound interpretation adheres to the very purpose of corporate rehabilitation, which is to allow the debtor-corporation to be restored "to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan."

There is no compliance with the minimum requirements under Section 5 of Rule 4 of the Interim Rules.

Despite this Court's finding that Fortuna may petition for court rehabilitation, being qualified to do does not mean that such a petition will automatically be validated.

To note, the test in evaluating the feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation (Bank of the Philippine Islands)*, to wit:

> In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. **On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation**

> **would not be feasible**. In such case, the rehabilitation court may convert the proceedings into one for liquidation. (Emphasis Ours)

Here, the Court disagrees with the finding of the lower courts that the Rehabilitation Plan is one that is economically feasible. The Rehabilitation Plan is primarily premised on speculative investments and the lack of material financial commitments. It is clear from a perusal of the Rehabilitation Plan that the process is heavily, if not completely predicated on speculative business proposals as well as the contingent entry of the potential foreign investor, Polycity. It is emphasized that the entry of Polycity is wholly predicated on conditions imposed on Fortuna by the former. In *Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al.*, the Court stated that nothing short of legally binding investment commitment/s from third parties is required as a material financial commitment. To wit:

> A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the voluntary undertakings of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation. x x x Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment. x x x Here, no such binding investment was presented.

The aforecited transaction is not the viable and realistic option that complies with the minimum requirements of the Interim Rules. Critically, to this date, there is also no showing on the part of Fortuna that the company was able to comply with the conditions that would result in Polycity investing in the former. In fact, Fortuna subsequently filed a Motion to Amend Rehabilitation Plan dated March 5, 2009 almost two (2) years after the filing of the Rehabilitation Plan, stating that the investment of Polycity did not push through, necessitating the entry of Fortuna in the real estate business.

Even setting aside that the entry into real estate business is general and cannot constitute a surefire way to obtain assets to eventually pay of its creditors, Fortuna has failed to persuade, not only because on its surface the Rehabilitation Plan is riddled with potholes, but also because the facts of the case show that its initial attempts at currying investors have already failed. Fortuna was unable to show proof of feasibility turning into actuality as regards its proposal that would warrant the return of confidence that the continuation of Fortuna's corporate life and activities would achieve solvency, or a position where it would be able to pay its obligations as they fall due in the ordinary course of business. Even in its subsequent pleadings, Fortuna failed to show any positive development which would assuage any doubts.

Dela Torre v. Primetown Property Group, Inc.

G.R. No. 221932, [February 14, 2018], Second Division, **PERALTA**, J

Under Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation, all creditors and all interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition for rehabilitation and suspension of payment not later than ten (10) days before the date of the initial hearing and their failure to do so will bar them from participating in the proceedings. In this case, respondent filed a petition for rehabilitation and suspension of payments with the RTC which issued a Stay Order on August 15, 2003. The initial hearing was set on September 24, 2003; thus, any comment or opposition to the petition should have been filed 10 days before the initial hearing but petitioner did not file any and already barred from participating in the proceedings. However, petitioner filed a motion for leave to intervene on October 15, 2004, one year after, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium, subject matter of their earlier contract to sell. Hence, the intervention of the petitioner must be denied.

Petitioner's ownership of the condominium unit alleging that she had fully paid the purchase price was, however, disputed by respondent. Consequently, when the RTC issued the Stay Order which suspended all claims against respondent, without distinction, petitioner's prayer for the execution of a deed of sale is a claim covered by the Stay Order issued by the RTC. In fact, the parties' contentions already require a full-blown trial on the merits which must be decided in a separate action and not by the rehabilitation court.

Facts:

Respondent Primetown Property Group, Inc. is primarily engaged in holding, owning and developing real estate. It experienced financial difficulties due to the devaluation of the Philippine peso, the increase in interest rates and lack of access to adequate credit, during the Asian financial crisis in 1997. Thus, in 2003, respondent filed a petition for corporate rehabilitation with prayer for suspension of payments and actions with the Regional Trial Court *(RTC)* of Makati City. On August 15, 2003, the rehabilitation court issued a Stay Order.

On October 15, 2004, petitioner Patricia Cabrieto dela Torre filed a Motion for Leave to Intervene seeking judicial order for specific performance, i.e., for respondent to execute in her favor a deed of sale covering Unit 3306, Makati Prime Citadel Condominium which she bought from the former as she had allegedly fully paid the purchase price. Respondent opposed the motion arguing that it was filed out of time considering that the Stay Order was issued on August 15, 2003 and under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules), any claimants and creditors shall file their claim before the rehabilitation court not later than ten (10) days before the date of the initial hearing; and that since the Stay Order was issued on August 15, 2003 and the publication thereof was done in September 2003 with the initial hearing on the petition set on September 24, 2003, the motion for intervention should have been filed on or before September 14, 2003.

Petitioner contends that her claim against respondent was not suspended with the issuance of the Stay Order because when the order was issued on August 15, 2003, she had long already fully paid the purchase price of the condominium unit she bought from respondent, i.e., as of July 25, 1996, and invokes the case of *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al.*; and that claims refer to debts or demands of pecuniary nature or the assertion that money be paid by the

company under rehabilitation to its creditors, but her prayer for the execution of a deed of absolute sale is not a claim of this character as to be covered and suspended under the Stay Order.

Issues:

1. Whether the intervention of the petitioner is proper.
2. Whether the execution of a deed of sale in favor of the petitioner is covered by the Stay Order.

Ruling:

1. The intervention is not proper.

Under Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation, all creditors and all interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition for rehabilitation and suspension of payment not later than ten (10) days before the date of the initial hearing and their failure to do so will bar them from participating in the proceedings. In this case, respondent filed a petition for rehabilitation and suspension of payments with the RTC which issued a Stay Order on August 15, 2003. The initial hearing was set on September 24, 2003; thus, any comment or opposition to the petition should have been filed 10 days before the initial hearing but petitioner did not file any and already barred from participating in the proceedings. However, petitioner filed a motion for leave to intervene on October 15, 2004, one year after, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium, subject matter of their earlier contract to sell. Hence, the intervention of the petitioner must be denied.

2. Petitioner's prayer in intervention for respondent to execute the deed of sale in her favor for the condominium unit is a claim as defined under the Interim Rules which is covered by the Stay Order.

Petitioner's reliance in *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al*. to support that her claim against respondent is not suspended by the issuance of the Stay Order is misplaced. In that case, petitioner Town & Country Enterprises, Inc. (TCEI) obtained loans in the total amount of P12,000,000.00 from Metrobank; that TCEI executed in favor of Metrobank a Deed of Real Estate Mortgage over their twenty parcels of land; that TCEI failed to pay its loan, thus, Metrobank caused the real estate mortgage to be extrajudicially foreclosed and the subject realties to be sold at public auction on November 7, 2001; that Metrobank emerged as the highest bidder and was issued the corresponding Certificate of Sale; as TCEI failed to redeem the property within the prescribed period, the ownership was already vested with Metrobank as of February 6, 2002 notwithstanding that the affidavit of consolidation of ownership was executed only on April 25, 2003. In the meantime, TCEI filed on October 1, 2002 a petition for declaration of a state of suspension of payments, where a Stay Order was issued on October 8, 2002. TCEI moved for the suspension of the writ of possession proceedings arguing that the writ of possession issued in favor of Metrobank was invalid and unenforceable because of the issuance of the Stay Order in SEC Case No. 023-02 on October 8, 2002. We ruled that Metrobank had already acquired ownership over the mortgaged properties when TCEI commenced its petition for rehabilitation on October 1, 2002. The rule is

settled that the mortgagor loses all interests over the foreclosed property after the expiration of the redemption period and the purchaser becomes the absolute owner thereof when no redemption is made and, therefore, entitled to possession. We also ruled that while the issuance of the Stay Order suspends the enforcement of all claims against the debtor, whether for money or otherwise, and whether such enforcement is by court action or otherwise, effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings, however, the Stay Order issued by the Rehabilitation Court cannot apply to the mortgage obligations owing to Metrobank which had already been enforced before TCEI's filing of its petition.

In contrast, petitioner's ownership of the condominium unit alleging that she had fully paid the purchase price was, however, disputed by respondent. Consequently, when the RTC issued the Stay Order which suspended all claims against respondent, without distinction, petitioner's prayer for the execution of a deed of sale is a claim covered by the Stay Order issued by the RTC. In fact, the parties' contentions already require a full-blown trial on the merits which must be decided in a separate action and not by the rehabilitation court.

2. **Insolvent**
3. **Liquidation**

DR. GIL J. RICH, *Petitioner*, *v.* GUILLERMO PALOMA III, ATTY. EVARISTA TARCE AND ESTER L. SERVACIO, *Respondents*.
G.R. No. 210538, SECOND DIVISION, March 07, 2018, REYES, JR., *J.*

A corporation which has already been dissolved, be it voluntarily or involuntarily, retains no juridical personality to conduct its business save for those directed towards corporate liquidation.

It is clear that, by the time MTLC executed the real estate mortgage agreement, its juridical personality has already ceased to exist. The agreement is void as MTLC could not have been a corporate party to the same. To be sure, a real estate mortgage is not part of the liquidation powers that could have been extended to MTLC. It could not have been for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets." It is, in fact, a new business in which MTLC no longer has any business pursuing.

FACTS:

Sometime in 1997, Dr. Gil Rich (petitioner) lent P1,000,000.00 to his brother, Estanislao Rich (Estanislao). The agreement was secured by a real estate mortgage over a 1000-square-meter parcel of land with improvements.

When Estanislao failed to make good on his obligations under the loan agreement, the petitioner foreclosed on the subject property via a public auction sale conducted on March 14, 2005. The petitioner was declared the highest bidder, and subsequently, was issued a Certificate of Sale as purchaser/mortgagee.

Without the petitioner's knowledge, however, and prior to the foreclosure, it appeared from the

records that on January 24, 2005, Estanislao entered into an agreement with Maasin Traders Lending Corporation (MTLC), where loans and advances amounting to P2.6 million were secured by a real estate mortgage over the same property.

On the strength of this document, respondent Ester L. Servacio (Servacio), as president of MTLC, exercised equitable redemption after the foreclosure proceedings. She tendered the amount of P2,090,000.00 as the redemption money in the extra-judicial foreclosure sale. On March 15, 2006, respondent Paloma III, again as sheriff of the RTC, issued a Deed of Redemption in favor of MTLC.

The deed then became the subject of the complaint for "Annulment of Deed of Redemption, Damages, Attorney's Fees, Litigation Expenses, Application for Issuance of T.R.O. &/or Writ of Preliminary Prohibitory Injunction" filed before the RTC by the petitioner against respondent Servacio.

According to the petitioner, MTLC no longer has juridical personality to effect the equitable redemption as it has already been dissolved by the Securities and Exchange Commission as early as September 2003. He also asserted that there was a pending case against respondent Servacio for allegedly forging Estanislao's signature on the same real estate mortgage that respondent Servacio used as basis for her equitable redemption of the subject property.

RTC rendered a Decision in the petitioner's favor Declaring the Real Estate Mortgage between Estanislao Rich and MLTC, Annex B (sic) to the Complaint, as null and void.

Aggrieved, Servacio appealed the case to the CA. Eventually, the CA granted the appeal, finding that forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, which the petitioner was unable to fulfill. The CA likewise emphasized that the assailed real estate mortgage between Estanislao and MTLC was duly notarized and thus enjoyed the presumption of authenticity and due execution, which again, the petitioner was unable to disprove.

ISSUE:

Whether the reversal by the CA is proper. (NO)

RULING:

On the second issue, the petitioner argues that respondent Servacio failed to contest the RTC finding that MTLC has already lost its juridical personality upon the redemption of the subject property, which makes the legal action void.

To answer this averment, the Court must qualify.

According to the case of *Yu vs. Yukayguan*, once a corporation is dissolved, be it voluntarily or involuntarily, liquidation, which is the process of settling the affairs of the corporation, will ensue. This consists of (1) collection of all that is due the corporation, (2) the settlement and adjustment of claims against it, and (3) the payment of its debts. Yu more particularly described this process as that which entails the following:

"Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests. The manner of liquidation or winding up may be provided for in the cor orate by-laws and this would prevail unless it is inconsistent with law."

These pronouncements draw their basis from Section 122 of the Corporation Code, which empowers every corporation whose corporate existence has been legally terminated to continue as a body corporate for three (3) years after the time when it would have been dissolved. This continued existence would only be for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets."

The rationale for this has already been averred by the Court in the case of *Rebollido vs. Court of Appeals*, citing *Castle's Administrator v. Acrogen Coal, Co., viz*:

<u>This continuance of its legal existence for the purpose of enabling it to close up its business is necessary to enable the corporation to collect the demands due it as well as to allow its creditors to assert the demands against it.</u> If this were not so, then a corporation that became involved in liabilities might escape the payment of its just obligations by merely surrendering its charter, and thus defeat its creditors or greatly hinder and delay them in the collection of their demand. This course of conduct on the part of corporations the law in justice to persons dealing with them does not permit. The person who has a valid claim against a corporation, whether it arises in contract or tort should not be deprived of the right to prosecute an action for the enforcement of his demands by the action of the stockholders of the corporation in agreeing to its dissolution. The dissolution of a corporation does not extinguish obligations or liabilities due by or to it.
In addition, and as expressly mentioned by the Corporation Code, this extended authority necessarily excludes the purpose of continuing the business for which it was established. The reason for this is simple: the dissolution of the corporation carries with it the termination of the corporation's juridical personality. Any new business in which the dissolved corporation would engage in, other than those for the purpose of liquidation, "will be a void transaction because of the non-existence of the corporate party."

Two things must be said of the foregoing in relation to the facts of this case. First, if MTLC entered into the real estate mortgage agreement with Estanislao ***after*** its dissolution, then resultantly, such real estate mortgage agreement would be void *ab initio* because of the non-existence of MTLC's juridical personality.

Second, if, however, MTLC entered into the real estate mortgage agreement ***prior*** to its dissolution, then MTLC's redemption of the subject property, even if already after its dissolution (as long as it would not exceed three years thereafter), would still be valid because of the liquidation/winding up powers accorded by Section 122 of the Corporation Code to MTLC.

The discourse of this case then turns to one of proven facts. The Court scoured the records, and after a perusal of all the submissions herein and the rulings of the lower and appellate courts, the Court finds that: (1) MTLC has already been dissolved by the Securities and Exchange Commission as early as September 2003; (2) Estanislao and MTLC entered into the real estate mortgage agreement only on January 24, 2005; and (3) MTLC, through respondent Servacio, redeemed the property on December 15, 2005, for which a Deed of Redemption was issued by respondent Paloma III on March 15, 2006.

From the foregoing, it is clear that, by the time MTLC executed the real estate mortgage agreement, its juridical personality has already ceased to exist. The agreement is void as MTLC could not have been a corporate party to the same. To be sure, a real estate mortgage is not part of the liquidation powers that could have been extended to MTLC. It could not have been for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets." It is, in fact, a new business in which MTLC no longer has any business pursuing.

Consequently, and contrary to the CA Decision, any redemption exercised by MTLC pursuant to this void real estate mortgage is likewise void, and could not be given any effect.

4. Suspension of payments

B. Modes of rehabilitation

1. Court-supervised rehabilitation

a. Voluntary vs. involuntary

b. Commencement order (including stay order)

c. Rehabilitation receiver and management committee

d. Determination of claims

e. Rehabilitation plan

i. Concept of feasibility

ii. Material financial commitments

iii. Liquidation analysis

f. Creditor approval and confirmation

g. Failure of rehabilitation

2. Pre-negotiated rehabilitation

a. How initiated

b. Period and effect of approval

3. Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan

a. Minimum requirements

b. Standstill period

c. Cram down effect

C. Liquidation

1. Voluntary liquidation vs. involuntary liquidation vs. conversion

2. Procedure

a. **Liquidation order; effects**

3. **Determination of claims**

D. Suspension of Payments; Suspension of Payment Order

E. Remedies

1. **Motion for reconsideration**
2. **Petition for certiorari**

<u>OTHER CASE DIGESTS (NOT INCLUDED IN THE 2019 BAR SYLLABUS)</u>

A. Corporation Code

1. Capital Structure

Legaspi y Navera v. People

G.R. Nos. 225753 & 225799 , October 15, 2018, First Division, J. Tijam

Under the Corporation Code, shares of stock are personal property and thus may be transferred by delivery of the certificate. For a corporation to be bound, such transfer must be recorded in the stock and transfer book, where 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 are indicated. It is only from this time that the obligation on the part of the corporation to recognize the rights of a transferee as a stockholder arises. Consequently, "without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates." Thus, private complainant could not have demanded for the issuance of a stock certificate in his name when he acquiesced to having Balisi stand-in for him. As far as i-Gen Portal was concerned, the purchase was made by Balisi and hence, if at all, the transfer ought to be made in her name.

Facts:

Legaspi and Daganas were charged with the crime of estafa committed under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

The prosecution's evidence tends to establish the following facts:

- Private complainant, Fung Hing Kit, is a businessman in Hongkong. In May 2005, he met petitioner Daganas in Hongkong who then proposed a "joint venture" by buying 10% share of iGen-Portal International Corporation. Private complainant went to the Philippines in November 2005 where he was presented with iGen-Portal's income analysis, articles of incorporation and projected income analysis. Private complainant agreed to invest in iGen-Portal upon his return to Hongkong.

- Thus, in November 15, 2005, private complainant remitted the amount of P9,500,000.00 as payment for the 10% shares of iGen-Portal. Private complainant requested for the issuance of a stock certificate in his name but none was allegedly given.

- In January 2006, private complainant met with petitioners in Hongkong. Instead of issuing his stock certificate, petitioners allegedly made new proposals which private complainant turned down.

For their part, petitioners alleged that private complainant wanted to purchase shares of iGen-Portal. However, because there were no more shares available and because private complainant is a foreigner prohibited to engage in retail trade business, petitioners refused. Then, petitioners received a call from Marcelina Balisi (Balisi), private complainant's domestic helper in Hongkong,

who wanted to buy 2,000 shares of stock of iGen-Portal for P9,500,000.00 and that private complainant, on behalf of Balisi, will remit the said amount to iGen-Portal. After some time, private complainant demanded that the shares in the name of Balisi be transferred to his name, explaining that it was he who actually paid for the shares of stock. When the shares could not be transferred to him, private complainant demanded for the return of the P9,500,000.00. Eventually, iGen-Portal suffered loss of sales which led to its closure.

Petitioners argue that the instant case involves the purchase and sale of shares of stock and as such, there can be no estafa in the absence of a fiduciary relationship between petitioners and private complainant.

Both the RTC and CA found the petitioners guilty of estafa.

Issue:

Whether the petitioners are guilty of the crime of estafa.

Ruling:

Petitioner is not guilty of estafa for failure to prove the element of misappropriation.

To convert or to misappropriate invariably require that the accused used or disposed the property as if it were his own or devoted the same to an entirely different purpose than that agreed upon. Here, there was not the slightest demonstration that petitioners used the amount of P9,500,000.00 at any time after private complainant deposited said money to iGen-Portal. In fact, the CA had to rely on a mere presumption that petitioners converted or misappropriated said money anchored upon the latter's failure to issue the stock certificate in private complainant's name.

We find that the application of said legal presumption is utterly misplaced. Under the Corporation Code, shares of stock are personal property and thus may be transferred by delivery of the certificate. For a corporation to be bound, such transfer must be recorded in the stock and transfer book, where 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 are indicated. It is only from this time that the obligation on the part of the corporation to recognize the rights of a transferee as a stockholder arises. Consequently, "without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates." Thus, private complainant could not have demanded for the issuance of a stock certificate in his name when he acquiesced to having Balisi stand-in for him. As far as i-Gen Portal was concerned, the purchase was made by Balisi and hence, if at all, the transfer ought to be made in her name.

2. **Dissolution and Liquidation**

Reyes v. Bancom Development Corp.
G.R. No. 190286 January 1, 2018 FIRST DIVISION (Sereno, *CJ.*)

A receiver or an assignee need not even be appointed for the purpose of bringing suits or continuing those that are pending. In the absence of a receiver or an assignee, suits may be instituted or continued by a trustee specifically designated for a particular matter. The board of directors of the corporation may be considered trustees by legal implication for the purpose of winding up its affairs.

Here, it appears that the SEC revoked the Certificate of Registration issued to Bancom. Despite this revocation, however, Bancom does not seem to have conveyed its assets to trustees or to its stockholders and creditors. The fact that Bancom did not convey its assets to a receiver or assignee was of no consequence. Since, its directors are considered trustees by legal implication and mere revocation of the charter of a corporation does not result in the abatement of proceedings.

FACTS:

Petitioners herein, Ramon E. Reyes and Clara R. Pastor (Reyes Group) agreed to guarantee the full and due payment of obligations incurred by Marbella under an Underwriting Agreement with Respondent Bancom Development Corp., (Bancom.) It appears from the records that Marbella was unable to pay back the notes at the time of their maturity. Because of Marbella's continued failure to pay back the loan despite repeated demands, Bancom filed a Complaint for Sum of Money with a prayer for damages before the RTC of Makati against Marbella as principal debtor and Reyes Group as guarantors of the loan.

In their defense, Marbella and the Reyes Group argued that they had been forced to execute the Promissory Notes and the Continuing Guaranty against their will. They also alleged that the foregoing instruments should be interpreted in relation to earlier contracts pertaining to the development of a condominium project known as Marbella II. Nonetheless, RTC held Marbella and the Reyes Group solidarily liable to Bancom.

Marbella and the Reyes Group appealed the RTC ruling to the CA. However CA denied the appeal. Meanwhile, Reyes Group filed a Motion for Reconsideration of the CA Decision. They reiterated their argument that the Promissory Notes were not meant to be binding, given that the funds released to Marbella by Bancom were not loans, but merely additional financing. Reyes Group also contended that the action must be considered abated pursuant to Section 122 of the Corporation Code. They pointed out that the Certificate of Registration issued to Bancom had been revoked by the Securities and Exchange Commission (SEC), and that no trustee or receiver had been appointed to continue the suit; in fact, even Bancom's former counsel was compelled to withdraw its appearance from the case, as it could no longer contact the corporation.

ISSUE:

Whether the present suit should be deemed abated by the revocation by the SEC of the Certificate of Registration issued to Bancom.

RULING:

NO. The revocation of Bancom's Certificate of Registration does not justify the abatement of these proceedings. Section 122 of the Corporation Code provides that a corporation whose charter is

annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs.

Based on the provision, a defunct corporation loses the right to sue and be sued in its name upon the expiration of the three-year period provided by law. Jurisprudence, however, has carved out an exception to this rule. It was ruled that, an appointed receiver, an assignee, or a trustee may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period. Needless to say, when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by section 77 of Act No. 1459 known as the Corporation Law is not applicable, and the assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years.

Here, it appears that the SEC revoked the Certificate of Registration issued to Bancom. Despite this revocation, however, Bancom does not seem to have conveyed its assets to trustees or to its stockholders and creditors. The corporation has also failed to appoint a new counsel after the law firm formerly representing it was allowed to withdraw its appearance. Citing these circumstances, Reyes Group assert that these proceedings should be considered abated. The Court disagrees to such contention. It must be emphasized that the dissolution of a creditor-corporation does not extinguish any right or remedy in its favor. Section 145 of the Corporation Code is explicit on this point. Further, Bancom's directors are considered trustees by legal implication and mere revocation of the charter of a corporation does not result in the abatement of proceedings. To rule otherwise would be to sanction the unjust enrichment of the debtor at the expense of the corporation. Thus, as guarantors of the loans of Marbella, Reyes Group are held liable to Bancom.

B. Transportation Law

1. Maritime Commerce

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC. *v.* **MIS MARITIME CORPORATION**, **G.R. No. 193572, April 04, 2018, First Division (JARDELEZA, *J.*)**

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court to enforce it by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely to create a lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does.

To be clear, we repeat that when a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement.

FACTS:

Respondent (or "MIS") contracted Tsuneishi to dry dock and repair its vessel M/T MIS-1. The vessel dry docked in Tsuneishi's shipyard. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test on M/T MIS-1. The vessel's engine emitted smoke. The parties eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration. Tsuneishi insists that the damage was not its fault while MIS insists on the contrary. Nevertheless, as an act of good will, Tsuneishi paid for the vessel's new engine crankshaft, crankpin, and main bearings.

Tsuneishi billed MIS for payment of its repair and dry docking services. MIS refused to pay this amount. Instead, it demanded that Tsuneishi pay the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it the amount of US$152,891.10. Tsuneishi rejected MIS' demands. It delivered the vessel to MIS.

MIS signed an Agreement for Final Price. However, despite repeated demands, MIS refused to pay Tsuneishi the amount billed under their contract. Tsuneishi claims that MIS also caused M/T White Cattleya, a vessel owned by Cattleya Shipping, to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.

Tsuneishi filed a complaint with prayer for preliminary attachment against MIS before the RTC. This complaint stated that it is invoking the admiralty jurisdiction of the RTC to enforce a maritime lien under Section 21 of the Ship Mortgage Decree of 1978 (Ship Mortgage Decree).

In particular, Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel.

ISSUE:

Whether a maritime lien under Section 21 of the Ship Mortgage Decree may be enforced through a writ of preliminary attachment under Rule 57 of the Rules of Court.

RULING:

No.

A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation." It attaches to a property by operation of law and once attached, it follows the property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.

Section 21 of the Ship Mortgage Decree establishes a lien. It states:

> Sec. 21. *Maritime Lien for Necessaries; Persons entitled to such Lien.* – Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem* and it shall be necessary to allege or prove that credit was given to the vessel.

In practical terms, this means that the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him.

A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation.

Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel. The Rules of Court also provide for a provisional remedy which effectively operates as a lien. This is found in Rule 57 which governs the procedure for the issuance of a writ of preliminary attachment.

Tsuneishi is correct that the Ship Mortgage Decree does not provide for the specific procedure through which a maritime lien can be enforced. Its error is in insisting that a maritime lien can only be operationalized by granting a writ of preliminary attachment under Rule 57 of the Rules of Court. Tsuneishi argues that the existence of a maritime lien should be considered as another ground for the issuance of a writ of preliminary attachment under the Rules of Court.

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court **to enforce it** by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely **to create a** lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation. In *Quasha Asperilla Ancheta Valmonte Peña & Marcos v. Juan,* we held:

> An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment. x x x

When a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. The reason that the Ship Mortgage Decree does not provide for a detailed procedure for the enforcement of a maritime lien is because it is not necessary. Section 21 already provides for the simple procedure—file an action *in rem* before the court.

C. Insurance Code

1. Claims and Settlement

Industrial Personnel and Management Services, Inc. v. Country Bankers Insurance Corp.
G.R. No. 194126, October 17, 2018, Second Division, J. Caguioa

Under Section 92 of the Insurance Code all defects in the proof of loss, which the insured might remedy, are ***waived as grounds for objection*** *when the insurer omits to specify to him without unnecessary delay. It is the duty of the insurer to indicate the defects on the proofs of loss given, so that the deficiencies may be supplied by the insured. When the insurer recognizes his liability to pay the claim, there is waiver by the insurer of any defect in the proof of loss.*

In the instant case, it must be emphasized that Country Bankers readily acknowledged the obligations of Country Bankers under the surety agreement, apologized for the delay in the payment of claims, and proposed to amortize the settlement of claims by paying a semi-monthly amount of P850,000.00. In addition, Country Bankers promised to pay future claims within a 90-day period.

Facts:

Industrial Personnel and Management Services, Inc. (IPAMS) began recruiting registered nurses for work deployment in the United States of America (U.S.). It takes eighteen (18) to twenty four (24) months for the entire immigration process to complete. As the process requires huge amounts of money, such amounts are advanced [to] the nurse applicants.

By reason of the advances made to the nurse applicants, the latter were required to post surety bond. The purpose of the bond is to guarantee the following during its validity period: (a) that they will comply with the entire immigration process, (b) that they will complete the documents required, and (c) that they will pass all the qualifying examinations for the issuance of immigration visa. The Country Bankers Insurance Corporation (Country Bankers for brevity) and IPAMS agreed to provide bonds for the said nurses. Under the agreement of IPAMS and Country Bankers, the latter will provide surety bonds and the premiums therefor were paid by IPAMS on behalf of the nurse applicants.

A Memorandum of Agreement (MOA) was executed by the said parties on February 1, 2002 which stipulated the various requirements for collecting claims from Country Bankers. Among the requirements for collecting claims, the official receipts of the expenses incurred for the application of nurses are not included.

Country Bankers was not able to pay some of the claims of IPAMS. Country Bakers acknowledged its obligations, apologized for the delay in the payment of claims, and proposed to amortize the settlement of claims by paying a semi-monthly amount of P850,000.00. In addition, Country Bankers promised to pay future claims within a ninety (90)-day period.

Later on, Country Bankers started to oppose the payment of claims and insisted on the production of official receipts of IPAMS on the expenses it incurred for the application of nurses. IPAMS opposed this, saying that the Country Bankers' insistence on the production of official receipts was contrary to, and not contemplated in, the MOA and was an impossible condition considering that the U.S. authorities did not issue official receipts. In lieu of official receipts, IPAMS submitted statements of accounts, as provided in the MOA.

Issue:

Whether Country Bakers can refuse payment of the claims on the ground of non-presentation of official receipts.

Ruling:

Under Section 92 of the Insurance Code all defects in the proof of loss, which the insured might remedy, are **waived as grounds for objection** when the insurer omits to specify to him without unnecessary delay. It is the duty of the insurer to indicate the defects on the proofs of loss given, so that the deficiencies may be supplied by the insured. When the insurer recognizes his liability to pay the claim, there is waiver by the insurer of any defect in the proof of loss.

In the instant case, it must be emphasized that Country Bankers readily acknowledged the obligations of Country Bankers under the surety agreement, apologized for the delay in the payment of claims, and proposed to amortize the settlement of claims by paying a semi-monthly amount of P850,000.00. In addition, Country Bankers promised to pay future claims within a 90-day period.

D. Banking Laws

1. Stipulation Against Interest

Villa Crista Monte Realty & Development Corp. v. Equitable PCI Bank
G.R. No. 208336, November 21, 2018, First Division, J. Bersamin

An escalation clause without a concomitant de-escalation clause is void and ineffectual for violating Presidential Decree No. 1684, otherwise known as Amending Further Act No. 2655, As Amended, Otherwise Known as "The Usury Law," as well as the principle of mutuality of contracts unless the established facts and circumstances, as well as the admissions of the parties, indicate that the lender

at times lowered the interest rates, or, at least, allowed the borrower the discretion to continue with the repriced rates.

Not all contracts of adhesion are invalid. Only a contract of adhesion in which one of the parties is shown to be the weaker as to have been imposed upon may be invalidated and set aside.

Facts:

Villa Crista Monte Realty & Development Corp. ("**Villa Crista**") applied for and was granted a credit line by then Equitable Philippine Commercial International Bank ("**E-PCIB**"), now *Banco De Oro*. By way of security for the said credit line, appellant executed a *Real Estate Mortgage* over the 80,000 square meters of its properties with all the existing improvements thereon. Under its approved credit line, Villa Crista separately obtained loans on various occasions from March 20, 1997 to August 15, 1997, each of which was covered by a promissory note in the prescribed form of the E-PCIB.

Eventually, E-PCIB wrote several times to Villa Crista apprising it of the increased rates in the interest to be imposed on its loans covered by the promissory notes. The increased rates ranged from 21% to 36% and were ostensibly anchored on the uniform provision in the promissory notes on monthly repricing.

Villa Crista reneged on paying its loan obligations amounting prompting E-PCIB to initiate foreclosure proceedings on the mortgaged properties. Thus, Villa Crista filed a complaint for the nullification of the promissory notes and the mortgage agreement on the ground that E-PCIB unilaterally made and imposed the increases in interest rates on appellant's loan without them being discussed and negotiated with, much less agreed upon by, them and, thus, invalid.

RTC rendered judgment in favor of Equitable PCI Bank (E-PCIB), holding that the loan contracts. On appeal, the CA affirmed the decision of the RTC.

Issue:

Whether the promissory notes and the corresponding repricing of interest rates are valid.

Ruling:

The appeal lacks merit.

The uniform provision of the promissory notes on the issue is as follows:

> with interest thereon:
> at the rate of _____ percent (_____%) per annum payable _____
> at the rate of _____ percent (_____%) per annum for the first _____ days of this Note payable on, after which **the interest rate shall be determined by the Lender without need of prior notice to the Borrower** at the beginning of each succeeding _____ period, payable _____ of each such period, at the rate of

> _____ percent (_____%) per annum spread over _____ as announced and/or published by the Bangko Sentral ng Pilipinas ("BSP") on or immediately preceding the commencement of each _____ (_____) month period payable _____ of each such period; provided, however, that if, in either of the two above instances, where the rate is subject to periodic adjustment, **the Borrower disagrees with the new rate, he shall prepay within five (5) days from the notice of the new rate the outstanding balance of the Loan** with interest at the last applicable rate, provided, further, that the Borrower's failure to so prepay shall be deemed acceptance of the new rate. (Bold underscoring for emphasis)

To prevent or forestall any one-sidedness that the escalation clause may cause in favor of the creditor, therefore, Presidential Decree No. 1684 was promulgated. This law specifically states, among others, as follows:

> SECTION 2. The same Act is hereby amended by adding a new section after Section 7, to read as follows:
>
> Sec. 7-a. Parties to an agreement pertaining to a loan or forbearance of money, goods or credits may stipulate that the rate of interest agreed upon may be increased in the event that the applicable maximum rate of interest is increased by law or by the Monetary Board: ***Provided*, That such stipulation shall be valid only if there is also a stipulation in the agreement that the rate of interest agreed upon shall be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board:***Provided, further*, That the adjustment in the rate of interest agreed upon shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest. (Bold emphasis supplied)

Accordingly, the Court has ruled in *Banco Filipino Savings and Mortgage Bank v. Judge Navarro* that there should be a corresponding de-escalation clause that authorizes a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board. **Verily, the escalation clause, to be valid, should specifically provide: (1) that there can be an increase in interest rates if allowed by law or by the Monetary Board; and (2) that there must be a stipulation for the reduction of the stipulated interest rates in the event that the applicable maximum rates of interest are reduced by law or by the Monetary Board.** The latter stipulation ensures the mutuality of contracts, and is known as the **de-escalation clause**.

No express de-escalation clause was stipulated in the promissory notes signed by the Villa Crista. Yet, the absence of the clause did not invalidate the repricing of the interest rates. The repricing notices issued to the Villa Crista by E-PCIB indicated that on some occasions, the bank had *reduced* or adjusted the interest rates *downward*. For example, the 26% interest rate for PN No. 970019HD for P2 million on July 30, 1997 was reduced to 22.5% in August 1997; the 26% interest rate for PN No. 970044HD for P2.7 million in July 1997 was decreased to 22.5% in August 1997. Such actual reduction or downward adjustment by the lender bank eliminated any one-

sidedness of its contracts with the borrower. It becomes inescapable for the Court to uphold the validity and enforceability of the escalation clause involved herein despite the absence of the de-escalation clause. The actual grant by the E-PCIB of the decreases in the interest rates imposed on the loans extended to Villa Crista rendered inexistent the evil of inequality sought to be thwarted by the enactment and application of Presidential Decree No. 1684.

Villa Crista further contends that the provisions of the promissory notes are violative of the principle of mutuality of contracts particularly the provision that "**interest rate shall be determined by the Lender without need of prior notice to the Borrower**". To belie this claim of Villa Crista, the Court said that although the promissory notes succinctly stipulated that the loans were subject to interest without need of prior notice to the borrower, the E-PCIB sent notices to Villa Crista each and every time it increased the interest rate. Equally of significance was that the E-PCIB allowed the Villa Crista the sufficient time and opportunity *either* to reject the imposition of the increased interest rates by paying the outstanding obligations *or* by accepting the same through payment of whatever amounts were due. The sufficient time and opportunity negated the Villa Crista's insistence about the E-PCIB having unilaterally determined the interest rates in violation of the principle of mutuality of contracts embodied in Article 1308.

The Court further upheld the validity of the promissory notes despite it being a contract of adhesion. A contract of adhesion is one wherein one party imposes a ready-made form of contract on the other in which almost all of the provisions are drafted by one party, thereby reducing the participation of the other to affixing its signature or to adhering to the contract. However, the contract of adhesion is not invalid *per se* but is as binding as any other contract. **The only occasions in which the Court has struck down contracts of adhesion as void have happened only when the weaker party has been imposed upon in dealing with the dominant bargaining party as to be reduced to the alternative of taking it or leaving it, being completely deprived of the opportunity to bargain on equal footing.** Thus, the validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtaining in each case and by the situation of the parties concerned.