Mercantile Law – Corporation and Securities Law

Case Digest

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

LIST OF CASES
Corporation and Securities Law

THE CORPORATION CODE

A. Corporation

1. Definition

2. Attributes of the Corporation

- Benny Hung vs. BPI Finance Corporation, G.R. No. 182398, July 20, 2010
- Rebecca Boyer-Roxas and Guillermo Roxas vs. Hon. Court of Appeals and Heirs of Eugenia V. Roxas, Inc., G.R. No. 100866, July 14, 1992
- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino, G.R. No. 150283, April 16, 2008

B. Classes of Corporations

- Pioneer Surety & Insurance Corporation vs. Court of Appeal, 175 SCRA 668 (1989)
- Bases Conversion and Development Authority v. Commissioner of Internal Revenue, G.R. No. 205925, [June 20, 2018]

1. Corporation by estoppel

- Reynaldo M. Lozano vs. Hon. Eliezer R. De los Santos, Presiding Judge, RTC, Br. 58, Angeles City; and Antonio Anda, G.R. No. 125221, June 19, 1997
- Lim Tong Lim vs. Philippine Fishing Gear Industries, Inc., G.R. No. 136448, November 3, 1999
- People of the Philippines vs. Engr. Carlos Garcia y Pineda, Patricio Botero y Vales, Luisa Miraples (at large) & Patricio Botero y Vales, G.R. No. 117010, April 18, 1997
- Macasaet vs. Francisco, G.R. No. 156759, June 5, 2013

a. De facto corporation

- Sappari K. Sawadjaanvs. the Honorable Court of Appeals, the Civil Service Commission and Al-amanah Investment Bank of the Philippines, G.R. No. 141735, June 8, 2005
- Missionary Sisters of Our Lady of Fatima v. Alzona, G.R. No. 224307, [August 6, 2018]

b. Government corporation

- Baluyot vs. Holganza, 325 SCRA 248 (2000)

- Feliciano vs. Commission on Audit, 464 Philippine 439 (2004)
- Boy Scouts of the Philippines vs. Commission on Audit, G.R. No. 177131, June 7, 2011
- Liban vs. Gordon, GR No. 175352, January 10, 2011
- Carandang vs. Desierto, G.R. No. 148076, January 12, 2011
- Funa vs. Manila Economic and Cultural Office, GR. No. 193462, February 4, 2014

C. Nationality of Corporations

1. Place of Incorporation Test

2. Control Test

- Roy III vs. Herbosa, G.R. No. 207246, Novmber 22, 2016, En Banc, Caguioa, J.
- Marissa R. Unchuan vs. Antonio J.P. Lozada, Anita Lozada and the Register of Deeds of Cebu City, G.R. No. 172671, April 16, 2009
- Wilson P. Gamboa vs. Finance Secretary Margarito B. Teves, et al., G.R. No. 176579, June 28, 2011
- Heirs of Wilson P. Gamboa vs. Finance Secretary Margarito B. Teves, et al., G.R. No. 176579, October 9, 2012

3. Grandfather Rule

- Narra Nickel Mining and Development Corporation, et al., vs. Redmont Consolidated Mines Corporation, G.R. No. 199580, April 21, 2014
- Narra Nickel Mining and Development Corporation, et al. vs. Redmont Consolidated Mines Corporation, G.R. No. 199580, January 28, 2015

D. Corporate Juridical Personality

1. Doctrine of Separate Juridical Personality

- Lim vs. CA, 323 SCRA 102 (2000)
- PNB vs. Ritratto Group, Inc., 362 SCRA 216 (2001)
- Ricardo S. Silverio, Jr., Esses Development Corporation, and Tri-Star Farms, Inc. vs. Filipino Business Consultants, Inc., G.R. No. 143312, August 12, 2005)
- Jardine Davis, Inc. vs. JRB Realty, Inc., 463 SCRA 555 (2005)
- China Banking Corporation vs. Dyne-Sem Electronics Corporation 494 SCRA 493 (2006)
- Spouses Ramon Nisce vs. Equitable PCI Bank 516 SCRA 231 (2007)
- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino 551 SCRA 447 (2008)
- Virgilio S. Delima vs. Susan Mercaida Gois 554 SCRA 731 (2008)
- PEA-PTGWO vs. NLRC 581 SCRA 598 (2009)
- Philippine National Bank vs. Merelo B. Aznar, G.R. No. 171805, May 30, 2011

- Stronghold Insurance Company, Inc. vs. Tomas Cuenca, et. al., G.R. No. 173297, March 6, 2013
- Development Bank of the Philippines vs. Hydro Resources Contractors Corporation, GR. No. 167603, March 13, 2013
- Abbot Laboratories vs. Alacaraz, G.R. No. 192571, July 23, 2013
- Nuccio Saverios vs. Puyat, G.R. No. 186433, November 27, 2013
- Girly G. Ico vs. Systems Technology Institute Inc, et al., G.R. 185100, July 9, 2014
- Palm Avenue Holding Co., Inc and Palm Avenue Realty and Development Corporation vs. Sandiganbayan, G.R. No. 173082, August 6, 2014
- Olongapo City vs. Subic Water and Sewerage Co., Inc., G.R. No. 171626, August 6, 2014
- Gerardo Lanuza Jr. and Antonio O. Olbes vs. BF Corporation, et al., G.R. No. 17438, October 1, 2014
- FVR Skills and Services Exponents, Inc., et al. vs. Jovert Seva et al., G.R. No. 200857, October 22, 2014
- Stradcom Corp. v. Orpilla, G.R. No. 206800, [July 2, 2018]

a. Liability for Torts and Crimes

- Philippine National Bank vs. Court of Appeals, et al., G.R. No. L-27155, May 18, 1978
- Sergio F. Naguiat, doing business under the name and style Sergio F. Naguiat Ent., Inc., & Clark Field Taxi, Inc. vs. National Labor Relations Commission (Third Division), National Organization Of Workingmen and its members, Leonardo T. Galang, *et al.*, G.R. No. 116123, March 13, 1997
- Gregorio Singian, Jr. vs. the Honorable Sandiganbayan and the Presidential Commission on Good Government, G.R. Nos. 160577-94, December 16, 2005
- The Executive Secretary, et al. vs. Court of Appeals, et al., G.R. No. 131719, May 25, 2004
- Edward C. Ong vs. the Court of Appeals and the People of the Philippines, G.R. No. 119858, April 29, 2003
- Alfredo Ching vs. the Secretary of Justice, et al., G. R. No. 164317, February 6, 2006
- Metroheights Subdivision Homeowners Association, Inc. v. CMS Construction and Development Corp., G.R. No. 209359, [October 17, 2018]

b. Recovery of Moral Damages

- Filipinas Broadcasting Network, Inc.,vs. AGO Medical And Educational Center-Bicol Christian College of Medicine, (AMEC-BCCM) and Angelita F. Ago, G.R. No. 141994, January 17, 2005
- Manila Electric Company vs. T.E.A.M. Electronics Corporation, Technology Electronics Assembly and Management Pacific Corporation; and Ultra Electronics Instruments, Inc., G.R. No. 131723, December 13, 2007
- Herman C. Crystal, et al. vs. Bank of the Philippine Islands, G.R. No. 172428, November 28, 2008

2. Doctrine of Piercing the Corporate Veil

- Kukan International Corporation vs. Hon. Judge Amor Reyes, G.R. No. 182729, September 29, 2010
- Gold Line Tours vs. Heirs of Maria Concepcion Lacsa, GR No. 159108, June 18, 2012
- Pacific Rehouse Corporation vs. Court of Appeals, G.R. No. 199687, March 24, 2014
- Eric Godfrey Stanley Livesey V .Binswanger Philippines, Inc. And Keith Elliot, G.R. No. 177493, March 19, 2014
- Prince Transport, Inc. vs. Garcia, G.R. No. 167291, January 12, 2011
- Republic Of The Philippines, Petitioner, - Versus - Mega Pacific Esolutions, Inc., Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong, And Lauriano A. Barrios, Respondents. (G.R. No. 184666, June 27, 2016, First Division, Sereno, Cj)
- Erson Ang Lee Doing Business As "Super Lamination Services," Petitioner, - Versus - Samahang Manggaga Wa Ng Super Lamination (SMSLSNAFLU-KMU), Respondent. (G.R. No. 193816, First Division, November 21, 2016, SERENO, CJ)
- Manuela Azucena Mayor, Petitioner, - versus - Edwin Tiu And Damiana Charito Marty, Respondents. (G.R. No. 203770, SECOND DIVISION, November 23, 2016, MENDOZA, J.)
- Reyno C. Dimson, Petitioner, - Versus - Gerry T. Chua, Respondent. (G.R. No. 192318, THIRD DIVISION, December 5, 2016, REYES, J.)

a. Grounds for Application of Doctrine

- Villa Rey Transit, Inc. vs. Eusebio E. Ferrer, Pangasinan Transportation Co., Inc.,and Public Service Commission, G.R. No. L-23893, October 29, 1968
- A.C. Ransom Labor Union-CCLU vs. National Labor Relations Commission, et al., G.R. No. L-69494, May 29, 1987
- Times Transportation Company, Inc. vs. Santos Sotelo, et al., G.R. No. 163786, February 16, 2005
- Pamplona Plantation Company, Inc. vs. Tinghil, 450 SCRA 421 (2005)
- Sps. Pedro and Florencia Violago vs. BA Finance Corporation and Avelino Violago, 559 SCRA 69 (2008)
- Claude P. Bautista vs. Auto Plus Traders Inc., 561 SCRA 223 (2008)
- Siain Enterprises, Inc., vs. Cupertino Realty Corporation, Inc.,et. al. 590 SCRA 435 (2009)
- Arco Pulp and Paper Co., Inc., and Candida Santos vs. Dan T. Lim, doing business under the name and style of Quality Papers & Plastics Products Enterprises, G.R. No. 206806, June 25, 2014
- WPM International Trading Inc., and Warlito Manlapaz vs. Fe Corazon Labayen, G.R. No. 182770, September 17, 2014
- Hacienda Cataywa/Manuel Villanueva vs. Rosario Lorenzo, G.R. No. 179640, March 18, 2015
- Dutch Movers, Inc., Cesar Lee And Yolanda Lee V. Edilberto Lequin, Christopher R. Salvador, Reynaldo L. Singsing, And Raffy B. Mascardo, G.R. No. 210032, April 25, 2017, First Division, DEL CASTILLO, J.

- Rommel M. Zambrano, Et. Al V. Philippine Carpet Manufacturing Corporation/ Pacific Carpet Manufacturing Corporation, Et Al. (G.R. No. 224099, June 21, 2017, Mendoza, J.)
- Maricalum Mining Corporation, V. Ely G. Florentino, Glenn Buenviaje, Rudy J. Gomez, G.R. No. 221813, Third Division, July 23, 2018, Gesmundo, J.

b. Test in Determining Applicability

- Heirs of Fe Tan Uy, represented by her heir, Mauling Uy Lim vs. International Exchange Bank, G.R. No. 166282 & 83, February 13, 2013
- Development Bank of the Philippines vs. Hydro Resources Contractors Corporation, GR. No. 167603, March 13, 2013
- California Manufacturing Company, Inc. V. Advanced Technology System, Inc., G.R. No. 202454, April 25, 2017, First Division, Sereno, C.J
- Luis Juan Virata V. Alejandro Ng Wee, G.R. Nos. 220926, 221058, 221109, 221135 & 221218, July 5, 2017, Third Division, Velasco, Jr. J.
- Veterans Federation Of The Philippines V. Eduardo L. Montenejo, Et Al., G.R. No. 184819, November 29, 2017, Third Division, Velasco, Jr., J.
- International Academy Of Management And Economics (I/Ame) Litton And Company, Inc. V. Litton And Company, Inc., G.R. No. 191525, December 13, 2017, First Division, Sereno, C.J.

E. Incorporation and Organization

- Mariano A. Albert vs. University Publishing Co., Inc., G.R. No. L-19118, January 30, 1965
- MISCI-NACUSIP Local Chapter vs. National Wages and Productivity Commission, 269 SCRA 173 (1997)
- Islamic Directorate of the Philippines vs. Court of Appeals, 272 SCRA 454 (1997)
- International Express Travel & Tour Services, Inc. vs. Hon. Court of Appeals, Henri Kahn, Philippine Football Federation, G.R. No. 119002, October 19, 2000
- Samahanng Optometrists saPilipinas, Ilocos Sur-Abra Chapter, et al. vs. Acebedo International Corporation and the Hon. Court of Appeals, G.R. No. 117097, March 21, 1997

1. Promoter

a. Liability of Corporation for Promoter's Contracts

- Rizal Light & Ice Co., Inc. vs. the Municipality of Morong, Rizal and the Public Service Commission,G.R. No. L-20993, September 28, 1968

2. Number and Qualifications of Incorporators

- Nautica Canning Corporation, et al. vs. Roberto C. Yumul, G.R. No. 164588, October 19, 2005

3. Corporate Name — Limitations on Use of Corporate Name

- Republic Planters Bank vs. Court of Appeals, G.R. No. 93073, December 21, 1992
- GSIS Family Bank-Thrift Bank vs. BPI Family Bank, G.R. No. 175278, September 23, 2015
- P.C. Javier & Sons, Inc., et al. vs. Paic Savings & Mortgage Bank, Inc., et al., G.R. No. 129552, June 29, 2005
- Zuellig Freight and Cargo Systems vs. National Labor Relations Commission, et al., G.R. No. 157900, July 22, 2013
- Indian Chamber Of Commerce Phils., Inc. Vs. Filipino Indian Chamber Of Commerce In The Philippines, Inc. (G .R. No. 184008, August 3, 2016, Jardeleza, J.)
- De La Salle Montessori International of Malolos, Inc. v. De La Salle Brothers, Inc., G.R. No. 205548, [February 7, 2018]

4. Corporate Term

- Philippine National Bank vs. Court of First Instance of Rizal, Pasig, et al., G.R. No. 63201, May 27, 1992

5. Minimum Capital Stock and Subscription Requirements

- MSCI-NACUSIP Local Chapter vs. National Wages and Productivity Commission and Monomer Sugar Central, Inc., G.R. No. 125198, March 3, 1997

6**. Articles of Incorporation**

a. Nature and Function of Articles

b. Contents

- Clavecillia Radio System vs. Hon. Agustin Antillon, as City Judge of the Municipal Court of Cagayan de Oro City and New Cagayan Grocery, G.R. No. L-22238, February 18, 1967
- Hyatt Elevators and Escalators Corporation vs. Goldstar Elevators Phils. Inc., G.R. No. 161026, October 24, 2005

c. Amendment

7. Registration and Issuance of Certificate of Incorporation

8. Adoption of By-Laws

a. Nature and Functions of By-Laws

- John Gokongwei, Jr. vs. Securities and Exchange Commission, et al., G.R. No. L-45911, April 11, 1979

- Citibank, N.A. vs. Hon. Segundino G. Chua, et al., G.R. No. 102300, March 17, 1993
- Loyola Grand Villas Homeowners (South) Association, Inc. vs. Hon. Court of Appeals, Home Insurance And Guaranty Corporation, Emden Encarnacion and Horatio Aycardo, G.R. No. 117188, August 7, 1997
- Forest Hills Golf and Country Club Inc. vs. Gardpro Inc., G.R. No. 164686, October 22, 2014

b. Requisites of Valid By-Laws

- Grace Christian High School vs. Court Of Appeals, Grace Village Association, Inc., Alejandro G. Beltran, and Ernesto L. Go, G.R. No. 108905, October 23, 1997

c. Binding Effects

- China Banking Corporation vs. Court of Appeals, and Valley Golf and Country Club, Inc., G.R. No. 117604, March 26, 1997
- PMI Colleges vs. the National Labor Relations Commission and Alejandro Galvan, G.R. No. 121466, August 15, 1997
- Catherine Ching, Lorenzo Ching, Laurence Ching, And Christine Ching, Petitioners, - Versus - Quezon City Sports Club, Inc.; Members Of The Board Of Directors, Namely: Antonio T. Chua, Margaret Mary A. Rodas, Alejandro G. Yabut, Jr., Robert C. Gaw, Edgardo A. Ho, Romulo D. Sales, Bienvenido Alano, Augusto E. Orosa, And The Finance Manager, Lourdes Ruth M. Lopez, Respondents. (G.R. No. 200150, November 7, 2016, First Division, Leonardo-De Castro, J.)

d. Amendment or Revision

- Cebu Country Club, Inc., et al. vs. Ricardo F. Elizagaque, G.R. No. 160273, January 18, 2008

F. Corporate Powers

1. General Powers, Theory of General Capacity

- National Power Corporation vs. Honorable Abraham P. Vera, Presiding Judge, Regional Trial Court, National Capital Judicial Region, Branch 90, Quezon City and Sea Lion International Port Terminal Services, Inc., G.R. No. 83558, February 27, 1989
- Aurbach vs. Sanitary Wares Manufacturing Corporation, 180 SCRA 130 (1989)
- Benjie B. Georg Represented By Benjamin C. Belarmino, Jr. Vs. Holy Trinity College, Inc. (G .R. No. 190408, July 20, 2016, Perez, J.)
- Lylith B. Fausto, Jonathan Fausto, Rico Alvia, Arsenia Tocloy, Lourdes Adolfo And Anecita Mancita, Petitioners, - Versus - Multi Agri-Forest And Community Development Cooperative (Formerly Maf Camarines Sur Employees Cooperative, Inc.), Respondent. (G.R. No. 213939, Third Division, October 12, 2016, Reyes, J.)

- Gabriel Yap, Sr. Duly Represented By Gilbert Yap And Also In His Personal Capacity, Gabriel Yap, Jr., And Hyman Yap, Vs. Letecia Siao, L Ynel Siao, Janelyn Siao, Eleanor Faye Siao, Shelett Siao And Honeylet Siao (G.R. No. 212493)
- Cebu South Memorial Garden, Inc. Vs. Letecia Siao, L Ynel Siao, Janelyn Siao, Eleanor Faye Siao, Shelett Siao And Honeylet Siao (G.R. No. 212504, June 1, 2016, Perez, J.)
- Ligaya Esguerra, et al. vs. Holcim Philippines, Inc., G.R. No. 182571, September 2, 2013
- Mid Pasig Land and Development Corporation vs. Tablante, G.R. No. 162924, February 4, 2010; PNCC Skyway Traffic Management and Security Division Workers Organization vs. PNCC Skyway Corporation, GR No. 171231, February 17, 201
- Esguerra vs. Holcim Philippines G.R. No. 182571, September 2, 2013
- Spouses Afulugencia vs. Metropolitan Bank and Trust Co. G.R. No. 185145, February 05, 2014

2. Specific Powers, Theory of Specific Capacity

a. Power to Extend or Shorten Corporate Term

- Philippine National Bank vs. the Court of First Instance of Rizal, Pasig, et al., G.R. No. 63201, May 27, 1992

b. Power to Increase or Decrease Capital Stock or Incur, Create, Increase Bonded Indebtedness

- Datu Tagoranao Benito vs. Securities & Exchange Commission, 123 SCRA 722 (1983)
- Central Textile Mills, Inc. vs. National Wages and Productivity Commission, et al., G.R. No. 104102, August 7, 1996
- Majority Stockholders of Ruby Industrial Corporation v. Miguel Lim, in his Personal Capacity as Stockholder of Ruby Industrial Corporation and Representing The Minority Stockholders of Ruby Industrial Corporation and The Management Committee of Ruby Industrial Corporation, G.R. No. 165887, June 6, 2011, J. Villarama, Jr.

c. Power to Deny Pre-Emptive Rights

d. Power to Sell or Dispose of Corporate Assets

- Rosita Peña vs. the Court of Appeals, Spouses Rising T. Yap and Catalina Yap, Pampanga Bus Co., Inc., Jesus Domingo, Joaquin Briones, Salvador Bernardez, Marcelino Enriquez and Edgardo A. Zabat, G.R. No. 91478, February 7, 1991
- Islamic Directorate of the Philippines, Manuel F. Perea and Securities & Exchange Commission,vs. Court of Appeals And Iglesia Ni Cristo, G.R. No. 117897, May 14, 1997
- Y-1 Leisure Philippines, Inc. vs. Yu, G.R. No. 207161, September 8, 2015

e. Power to Acquire Own Shares

- Boman Environmental Development Corporation vs. Hon. Court of Appeals and Nilcar Y. Fajilan, G.R. No. 77860, November 22, 1988

f. Power to Invest Corporate Funds in another Corporation or Business

- Heirs of Antonio Pael and Andrea Alcantara and CrisantoPael vs. Court of Appeals, Jorge H. Chin and Renato B. Mallari, G.R. No. 133547, February 10, 2000

g. Power to Declare Dividends

- Madrigal & Company, Inc. vs. Hon. Ronaldo B. Zamora, et al., G.R. No. L-48237, June 30, 1987

h. Power to Enter Into Management Contract

i. Ultra Vires Acts

i. Consequences of Ultra Vires Acts

- Republic of the Philippines vs. Acoje Mining Company, Inc., G.R. No. L-18062, February 28, 1963
- Visayan vs. National Labor Relations Commission, 196 SCRA 410 (1991)
- Yao Ka Sin Trading vs. Court of Appeals, 209 SCRA 763 (1992)
- Metropolitan Bank & Trust Co. vs. Quilts & All, Inc., 222 SCRA 480 (1993); See also Lee vs. Court of Appeals, 345 SCRA 579 (2000)
- Atrium Management Corporation vs. Court of Appeals, et al., G.R. No. 109491, February 28, 2001
- Maria Clara Pirovana, et al. vs. the De La Rama Steamship Co., G.R. No. L-5377, December 29, 1954
- University Of Mindanao, Inc., Petitioner, V. Bangko Sentral Pilipinas, Et Al.,Respondents. (G.R. No. 194964-65, January 11, 2016, Leonen,J.)
- Office Of The Ombudsman V. Antonio Z. De Guzman, G.R. No. 197886, October 4, 2017, Third Division, Leonen, J.
- Development Bank of the Philippines v. Commission on Audit, G.R. No. 210838, [July 3, 2018]

3. How Exercised

a. By the Shareholders

- Citibank, N.A. vs. Chua, G.R. No. 102300, March 17, 1993

b. By the Board of Directors

- Lopez Realty, Inc., and Asuncion Lopez Gonzales vs. Florentina Fontecha, et al., and the National Labor Relations Commission, G.R. No. 76801 August 11, 1995
- Premium Marble Resources, Inc. vs. Court of Appeals, G.R. No. 96551, November 4, 1996
- Tam Wing Tak vs. Hon. Ramon P. Makasiar, G.R. No. 122452, January 29, 2001

c. By the Officers

- The Board of Liquidators, representing the Government of the Republic of the Philippines vs. Heirs of Maximo M. Kalaw, Juan Bocar, Estate of the deceased Casimiro Garcia, and Leonor Moll, G.R. No. L-18805, August 14, 1967
- Rural Bank Of Milaor (Camarines Sur) vs. Francisca Ocfemia, Rowena Barrogo, Marife O. Niño, Felicisimo Ocfemia, Renato Ocfemia Jr., and Winston Ocfemia, G.R. No. 137686, February 8, 2000
- Westmont Bank (formerly Associated Citizens Bank and now United Overseas Bank, Phils.) And The Provincial Sheriff of Rizal vs. Inland Construction and Development Corp., G.R. No. 123650, March 23, 2009
- Associated Bank vs. Spouses Rafael and Monaliza Pronstroller, G.R. No. 148444, July 14, 2008
- Banate vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc., G.R. No. 163825, July 13, 2010
- Megan Sugar Corporation vs. RTC of Ilo-ilo Br. 68, G.R. no. 170352, June 1, 2011
- Advance Paper Corporation vs. Arma Traders Corporation, G.R. No 176897, December 11, 2013.

4. Trust Fund Doctrine

- Ong Yong, et al. vs. David S. Tiu, et al., G.R. No. 144476 & G.R. No. 144629, April 8, 2003
- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino, G.R. No. 150283, April 16, 2008
- Donnina C. Halley V. Printwell, Inc., G.R. No. 157549, May 30, 2011, J. Bersamin
- Securities And Exchange Commission (Sec) And Insurance Commission (Ic) V. College Assurance Plan Philippines, Inc., G.R. No. 202052, Third Divison, March 07, 2018, Bersamin, J.

G. Board of Directors and Trustees

1. Doctrine of Centralized Management

- Bitong vs. Court of Appeals, 292 SCRA 503 (1998)
- Citibank, N.A. vs. Chua, 220 SCRA 75 (1993)
- Colegio Medico-Farmaceutico De Filipinas, Inc. v. Lim, G.R. No. 212034, [July 2, 2018]

2. Business Judgment Rule

- Sales vs. Securities and Exchange Commission, 169 SCRA 109 (1989)
- Filipinas Port Services, Inc., represented by stockholders, Eliodoro C. Cruz and Mindanao Terminal and Brokerage Services, Inc. vs. Victoriano S. Go, et al., G.R. No. 161886, March 16, 2007
- Matling Industrial and Commercial Corporation, et al. vs. Ricardo R. Coros, G.R. No. 157802, October 13, 2010

3. Tenure, Qualifications and Disqualifications of Directors or Trustees

- Grace Christian High School vs. Court of Appeals, Grace Village Association, Inc., Alejandro G. Beltran, and Ernesto L. Go, G.R. No. 108905, October 23, 1997
- Ramon C. Lee and Antonio DM. Lacdao vs. the Hon. Court of Appeals, Sacoba Manufacturing Corp., Pablo Gonzales, Jr. and Thomas Gonzales, G.R. No. 93695, February 4, 1992

4. Elections

- Paul Lee Tan vs. Paul Sycip and Merritto Lim, G.R. No. 153468, August 17, 2006
- Estate Of Dr. Juvencio P. Ortañez, Represented By Divina Ortañez-Enderes, Ligaya Novicio, And Cesar Ortañez, Petitioners, V. Jose C. Lee, Benjamin C. Lee, Carmencita Tan, Angel Ong, Ma. Paz Casal-Lee, John Oliver Pascual, Conrado Cruz, Jr., Brenda Ortañez, And Julie Ann Parado And John Does, Respondents. (G.R. No. 184251, March 09, 2016, Perez, J.)

a. Cumulative Voting/Straight Voting

- SEC-OGC Opinion No. 14-10, Re: Cumulative Voting in Condominium Corporation, June 2, 2014

b. Quorum

- Lanuza vs. Court of Appeals, G.R. No. 131394, March 28, 2005

5. Removal

- Raniel vs. Jochico, G.R. No. 153413, March 1, 2007

6. Filling of Vacancies

- Valle Verde Country Club, Inc., *et al.* vs. Victor Africa, G.R. No. 151969, September 4, 2009
- Bernas vs. Cinco, G.R. No. 163356, July 21, 2015

7. Compensation

- Western Institute of Technology, Inc., et al. vs. Ricardo T. Salas, et al., G.R. No. 113032, August 21, 1997

8. Fiduciary Duties and Liability Rules

- Benguet Electric Cooperative, Inc. vs. National Relations Commission, 209 SCRA 55 (1992)
- Cebu Country Club Inc., et al. vs. Elizagaque 542 SCRA 65 (2008)
- Heirs of Fe Tan Uy, represented by her heir, Mauling Uy Lim vs. International Exchange Bank, G.R. No. 166282 & 83, February 13, 2013
- Antonio C. Carag vs. National Labor Relations Commission, et al., G.R. No. 147590, April 2, 2007
- United Coconut Planters Bank vs. Planters Products, Inc., Janet Layson and Gregory Grey, G.R. No. 179015, June 13, 2012
- Mercy Vda. de Roxas vs. Our Lady's Foundation, Inc., G.R. No. 182378, March 6, 2013
- Rolando DS. Torres vs. Rural Bank of San Juan, Inc.,et al., G.R. No. 184520, March 13, 2013
- Polymer Rubber Corporation vs. Ang, G.R. No. 185160, July 24, 2013
- Elizabeth M. Gagui vs. Simeon Dejeroand TeodoroPermejo, G.R. No. 196036, October 23, 2013
- Presidential Commission on Good Government v. Gutierrez, G.R. No. 189800, [July 9, 2018]

9. Responsibility for Crimes and Damages

- Edward C. Ong vs. the Court of Appeals and the People of the Philippines, G.R. No. 119858, April 29, 2003
- Alfredo Ching vs. the Secretary of Justice, et al., G. R. No. 164317, February 6, 2006
- Federated Lpg Dealers Association, Petitioner, -Versus- Ma. Cristina L. Del Rosario, Celso E. Escobido U, Shiela M. Escobido, And Resty P. Capili, Respondents. (G.R. No. 202639, November 9, 2016, Second Division, Del Castillo, J.)

10. Inside Information

11. Contracts

a. By Self-Dealing Directors with the Corporation

b. Between Corporations with Interlocking Directors

- Development Bank of the Philippines *vs.* Honorable Court of Appeals and Remington Industrial Sales Corporation , G.R. No. 126200, August 16, 2001

12. Executive Committee

- Filipinas Port Services Inc. vs. Go, G.R. No. 161886, March 16, 2007

13. Meetings

- People of the Philippines vs. Hermenegildo Dumlao y Castiliano and Emilio La'o y Gonzales, G.R. No. 168918, March 2, 2009
- Lopez Realty Inc,m and Asuncion Lopez-Gonzales vs. Spouses Reynaldo Tanjangco and Maria Luisa Arguelles-Tanjangco, G.R. No. 154291, November 12, 2014

a. Quorum

- Rosita Peña vs. the Court of Appeals, Spouses Rising T. Yap and Catalina Yap, Pampanga Bus Co., Inc., Jesus Domingo, Joaquin Briones, Salvador Bernardez, Marcelino Enriquez and Edgardo A. Zabat, G.R. No. 91478, February 7, 1991
- Villongco v. Yabut, G.R. Nos. 225022 & 225024, [February 5, 2018]

H. Stockholders and Members

1. Rights of a Stockholder and Members

a. Doctrine of Equality of Shares

- Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 108576, January 20, 1999.

2. Participation in Management

a. Proxy

- Government Service Insurance System vs. the Hon. Court of Appeals, G.R. No. 183905, April 16, 2009

b. Voting Trust

- Lee vs. Court of Appeals, G.R. No. 93695, February 4, 1992

3. Proprietary Rights

a. Right of Appraisal

- Turner vs. Lorenzo Shipping Corporation, G.R. No. 157479, November 24, 2010

b. Right to Inspect

- John Gokongwei, Jr. vs. Securities and Exchange Commission, et al., G.R. No. L-45911, April 11, 1979
- Gonzales vs. Philippine National Bank, 122 SCRA 489 (1983)
- Republic vs. Sandiganbayan, 199 SCRA 39 (1991)
- Victor Africa vs. Presidential Commission on Good Government, et al., G.R. No. 83831, January 9, 1992
- Terelay Investment and Development Corporation vs. Yulo, G.R. No. 160924, August 5, 2015
- Aderito Z. Yujuico and Bonifacio C. Sumbilla vs. Cezar T. Quiambao and Eric C. Pilapil, G.R. No. 180416, June 02, 2014
- Alfredo L. Chua, Tomas L. Chua And Mercedes P. Diaz, Petitioners, - Versus - People Of The Philippines, Respondent. (G.R. No. 216146, August 24, 2016, Third Division, Reyes, J.)
- Alejandro D.C. Roque V. People Of The Philippines (G.R. No. 211108, June 7, 2017, Tijam, J.)

c. Pre-Emptive Right

- SEC Letter-Opinion Dated March 10, 2000
- Majority of Stockholders of Ruby Industrial Corporation vs. Lim, GR No. 165887, June 6, 2011

d. Right to Vote

- Castillo vs. Balinghasay, G.R. No. 150976, October 18, 2004.

e. Right to Dividends

- Nielson & Company, Inc., vs. Lepanto Consolidated Mining Company, G.R. No. L-21601, December 17, 1966
- Nora A. Bitong vs. Court of Appeals, et al., G.R. No. 123553, July 13, 1998)

f. Right of First Refusal

- Republic vs. Sandiganbayan, 346 SCRA 760 (2000)
- J.G. Summit Holdings, Inc.,vs. Court of Appeals, et al. G.R. No. 124293, January 31, 2005

4. Remedial Rights

a. Individual Suit

- Cua Jr. vs. Tan, G.R. No. 181455-56, December 4, 2009

b. Representative Suit

c. Derivative Suit

- Reyes vs. Tan, 3 SCRA 198 (1961)
- Republic Bank vs. Cuaderno, 19 SCRA 671 (1967)
- San Miguel Corporation vs. Kahn, 176 SCRA 448 (1989)
- Bitong vs. Court of Appeals, 292 SCRA 503 (1998)
- Lim vs. Lim-Yu, 352 SCRA 216 (2001)
- Virginia O. Gochan, *et al.* vs. Richard G. Young, *et al.,* G.R. No. 131889, March 12, 2001
- Oscar C. Reyes vs. Hon. Regional Trial Court of Makati, Branch 142, Zenith Insurance Corporation, and Rodrigo C. Reyes, G.R. No. 165744, August 11, 2008
- Yu vs. Yukayguan, 588 SCRA 589 (2009)
- Hi- Yield, Inc. vs. Court of Appeals, 590 SCRA 548 (2009)
- Legaspi Towers 300, Inc. vs. Muer, G.R. No. 170783, June 18, 2012
- Ang, for and in behalf of Sunrise Marketing (Bacolod), Inc. vs. Spouses Ang, G.R. No. 201675, June 19, 2013
- Nestor Ching and Andrew Wellington vs. Subic Bay Golf and Country Club Inc., et al., G.R. No. 174353, September 10, 2014
- Alfredo Villamor Jr. vs. John S. Umale in Substitution of Hernando Balmores, G.R. No. 172843, September 24, 2014,
- Marcelino M. Florete, Jr., Maria Elena F. Muyco And Raul A. Muyco, Petitioners, V. Rogelio M. Florete, Imelda C. Florete, Diamel Corporation, Rogelio C. Florete Jr., And Margaret Ruth C. Florete, Respondents. (G.R. No. 174909, January 20, 2016, 2016, Leonen, J.)
- Rogelio M. Florete Sr., Petitioner, V. Marcelino M. Florete, Jr., Maria Elena F. Muyco And Raul A. Muyco, Respondents. (G.R. No. 177275, January 20, 2016, Leonen, J.)
- Concorde Condominium, Inc., By Itself And Comprising The Unit Owners Of Concorde Condominium Building, Petitioner, V. Augusto H. Baculio; New Ppi Corporation; Asian Security And Investigation Agency And Its Security Guards; Engr. Nelson B. Morales, In His Capacity As Building Official Of The Makati City Engineering Department; Supt. Ricardo C. Perdigon, In His Capacity As City Fire Marshal Of The Makati City Fire Station; F/C Supt. Santiago E. Laguna, In His Capacity As Regional Director Of The Bureau Of Fire Protection-Ncr, And Any And All Persons Acting With Or Under Them, Respondents. (G.R. No. 203678, February 17, 2016, Peralta, J.)
- Lu Ym v. Lu Ym, Sr., G.R. Nos. 219902 219903 & 219943-44 (Notice), [January 17, 2018]

5. Obligation of a Stockholder

- Edward A. Keller & Co., Ltd. vs. COB Group Marketing, Inc., 141 SCRA 86 (1986)
- Neugene Marketing, Inc.,vs. Court of Appeals, 303 SCRA 295 (1999)
- DONNINA C. HALLEY v. PRINTWELL, INC., G.R. No. 157549, 30 May 2011, Third Division, Bersamin, J.

6. Meetings

- Corazon H. Ricafort, Jose Manuel H. Ricafort And Marie Grace H. Ricafort,Petitioners, V. The Honorable Isaias P. Dicdican, The Honorable Ramon M. Bato, Jr., And The Honorable Eduardo B. Peralta, Jr., In Their Official Capacities As Members Of The Special Fourteenth Division Of The Court Of Appeals, Nationwide Development Corporation, Roberto R. Romulo, Conrado T. Calalang, Alfredo I. Ayala, John Engle, Leocadio Nitorreda And Luis Manuel Gatmaitan,Respondents. (G.R. Nos. 202647-50, March 09, 2016)
  Corazon H. Ricafort, Jose Manuel H. Ricafort And Marie Grace H. Ricafort,Petitioners, V. Roberto R. Romulo, Conrado T. Calalang, Alfredo I. Ayala, John Engle, Leocadio Nitorreda, Nationwide Development Corporation And Luis Manuel L. Gatmaitan, Respondents. (G.R. Nos. 205921-24, March 09, 2016, Reyes, J.)
- Simny G. Guy, As Minority Stockholder And For And In Behalf Of Goodland Company, Inc., Petitioner, V. Gilbert G. Guy, Alvin Agustin T. Ignacio And John And/Or Jane Does, Respondents. (G.R. No. 184068, April 19, 2016, Sereno, C.J.)
- Lydia Lao V. Yao Bio Lim, G.R. No. 201306, August 9, 2017, Second Division, Leonen, J.

a. Quorum

- Jesus V. Lanuza, et al. vs. Court of Appeals, et al., G.R. No. 131394, March 28, 2005

I. Capital Structure

1. Subscription Agreements

- Ong Yong, et al. vs. David S. Tiu, et al., G.R. No. 144476 & G.R. No. 144629, April 8, 2003
- INTERPORT RESOURCES CORPORATION vs. SECURITIES SPECIALIST, INC., and R.C. LEE SECURITIES INC. (G .R. No. 154069, June 6, 2016, BERSAMIN, J.)

2. Shares of Stock

a. Nature of Stock

- Stockholders of F. Guanson vs. Register of Deeds of Manila, 6 SCRA 373 (1962)
- Philippine National Bank vs. Bitulok Sawmill, Inc., 23 SCRA 1366 (1968)
- Rivera vs. Florendo, 144 SCRA 643 (1986)
- De Erguiga vs. Court of Appeals, 178 SCRA 1 (1989)
- Embassy Farms, Inc. vs. Court of Appeals, 188 SCRA 492 (1990)
- Tan vs. Securities and Exchange Commission, 206 SCRA 740 (1992)
- Razon vs. Intermediate Appellate Court, 207 SCRA 234 (1992)
- Rural Bank of Salinas, Inc. vs. Court of Appeals, 210 SCRA 510 (1992)
- Torres vs. Court of Appeals, 270 SCRA 493 (1997)

- China Banking Corporation vs. Court of Appeals, 270 SCRA 503 (1997)
- Bitong vs. Court of Appeals, 292 SCRA 503 (1998)
- Thomson vs. Court of Appeals, 298 SCRA 280 (1998)
- Garcia vs. Jomouad, 323 SCRA 424 (2000)
- Rural Bank of Lipa City, Inc. vs. Court of Appeals, 366 SCRA 188 (2001). See also Batangas Laguna Tayabas Bus Company, Inc., et al., vs. Benjamin Bitanga, et al., 362 SCRA 635 (2001)
- Ponce vs. Alsons Cement Corporation, 393 SCRA 602 (2002)
- Republic of the Philippines vs. Sandiganbayan and Victor Africa, 402 SCRA 84 (2003)
- Republic vs. Estate of Hans Menzi, 476 SCRA (2005)
- Nautica Canning Corporation vs. Yumul 473 SCRA 415 (2005)
- Trans Middle East (Phils.) vs. Sandiganbayan. 490 SCRA 455 (2006)
- Pacific Basin Securities vs. Oriental Petroleum 531 SCRA 667 (2007)
- Valley Golf and Country Club, Inc., vs. Vda. De Caram 585 SCRA 218 (2009)
- Calatagan Golf Club, Inc. vs. Clemente, Jr. 585 SCRA 300 (2009)
- Joselito Musni Puno vs. Puno Enterprises, Inc., represented by Jesusa Puno, G.R. No. 177066, September 11, 2009
- Marsh Thomson vs. Court of Appeals and the American Champer of Commerce of the Philippines, Inc., G.R. No. 116631, October 28, 1998
- Majority of Stockholders of Ruby Industrial Corporation vs. Lim, G.R. No. 165887, June 6, 2011
- Africa vs. Hon. Sandiganbayan, G.R. Nos. 172222/G.R. No. 174493/ G.R. No. 184636, November 11, 2013

b. Subscription Agreements

- Philippine National Bank vs. Bitulok Sawmill, Inc., et al., G.R. Nos. L-24177-85, June 29, 1968

c. Classes of Shares of Stock

- Republic Planters Bank vs. Hon. Enrique A. Agana, Sr., as Presiding Judge, Court of First Instance of Rizal, Branch XXVIII, Pasay City, Robes-Francisco Realty & Development Corporation and Adalia F. Robes, G.R. No. 51765, March 3, 1997

3. Payment of Balance of Subscription

a. Call by Board of Directors

b. Notice Requirement

c. Sale of Delinquent Shares

i. Effect of Delinquency

- Calatagan Golf Club, Inc. vs. Sixto Clemente, Jr., G.R. No. 165443, April 16, 2009

ii. Call by Resolution of the Board of Directors

- Apocada vs. National Labor Relations Commission, 172 SCRA 442 (1989)

4. Certificate of Stock

a. Nature of the Certificate

- Stockholders of F. Guanzon and Sons, Inc. vs. Register of Deeds of Manila, G.R. No. L-18216, October 30, 1962
- Alfonso S. Tan vs. Securities and Exchange Commission, G.R. No. 95696 March 3, 1992
- Nora A. Bitongvs. Court of Appeals, et al., G.R. No. 123553, July 13, 1998

b. Negotiability

i. Requirements for Valid Transfer of Stocks

- Enrique Razon vs. Intermediate Appellate Court and Vicente B. Chuidian, in his capacity as Administrator of the Estate of the Deceased Juan T. Chuidian, G.R. No. 74306, March 16, 1992

- Rural Bank of Salinas, Inc. vs. Securities and Exchange Commission, et al., G.R. No. 96674, June 26, 1992
- China Banking Corporation vs. Court of Appeals, and Valley Golf and Country Club, Inc., G.R. No. 117604, March 26, 1997
- Nemesio Garcia vs. Nicolas Jomouad, Ex-Officio Provincial Sheriff of Cebu, and Spouses Jose Atinon& Sally Atinon, G.R. No. 133969, January 26, 2000
- The Rural Bank of Lipa City, Inc., et al. vs. Honorable Court of Appeals, G.R. No. 124535, September 28, 2001
- Vicente C. Ponce vs. Alsons Cement Corporation, and Francisco M. Giron, Jr., G.R. No. 139802, December 10, 2002
- Fil-Estate Golf and Development vs. Vertex Sales and Trading Inc., G.R. No. 202079, June 10, 2013
- Forest Hills Golf & Country Club vs. Vertex Sales and Trading Inc.G.R. No. 202205, March 6, 2013
- ANNA TENG, Petitioner, v. SECURITIES AND EXCHANGE COMMISSION (SEC) AND TING PING LAY, Respondents. (G.R. No. 184332, February 17, 2016, REYES, J.)
- JOSEPH OMAR O. ANDAYA vs. RURAL BANK OF CABADBARAN, INC., DEMOSTHENES P. ORAIZ and RICARDO D. GONZALEZ (G.R. No. 188769, August 3, 2016, SERENO, CJ)
- Tee Ling Kiat v. Ayala Corp., G.R. No. 192530, [March 7, 2018]
- Florete, Sr. v. Florete, Jr., G.R. No. 223321, [April 2, 2018]
- Legaspi y Navera v. People, G.R. Nos. 225753 & 225799 , [October 15, 2018]

c. Issuance

i. Full Payment

- Irineo S. Baltazar vs. Lingayen Gulf Electric Power, Co., Inc., G.R. No. L-16236, June 30, 1965

5. Stock and Transfer Book

a. Contents

- Jesus V. Lanuza, et al. vs. Court of Appeals, et al., G.R. No. 131394, March 28, 2005

b. Who May Make Valid Entries

- Manuel A. Torres, Jr., (Deceased), et al. vs. Court of Appeals, et al., G.R. No. 120138, September 5, 1997

J. Dissolution and Liquidation

- Chase vs. Buencamino, 136 SCRA 365 (1985)
- Chung Ka Bio vs. Intermediate Appellate Court, 163 SCRA 534 (1988)
- Aguirre vs. FQB +7, Inc., G.R. No. 170770, January 9 2013
- Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio, G.R. No. 187456, June 02, 2014
- Rich v. Paloma III, G.R. No. 210538, [March 7, 2018]

1. Modes of Dissolution

a. Voluntary

i. Where No Creditors Are Affected

- Teodoro B. Vesagas and Wilfred D. Asis vs. the Honorable Court of Appeals and DelfinoRaniel and HelendaRaniel, G.R. No. 142924, December 5, 2001

ii. Where Creditors Are Affected

iii. By Shortening of Corporate Term

b. Involuntary

i. By Expiration of Corporate Term

- Philippine National Bank vs. Court of First Instance of Rizal, Pasig, et al., G.R. No. 63201, May 27, 1992

ii. Failure to Organize and Commence Business Within 2 Years from Incorporation

iii. Legislative Dissolution

iv. Dissolution by the SEC on Grounds under Existing Laws

- PDIC vs. BIR, G.R. No. 158261, December 18, 2006

2**. Methods of Liquidation**

a. By the Corporation Itself

- Yu vs. Yukayguan, G.R. No. 177549, June 18, 2009

b. Conveyance to a Trustee within a Three-Year Period

- Carlos Gelano and Guillermina Mendoza De Gelano vs. the Honorable Court of Appeals and Insular Sawmill, Inc., G.R. No. L-39050 February 24, 1981
- Rene Knecht and Knecht, Inc. vs. United Cigarette Corp., represented by Encarnacion Gonzales Wong, and Eduardo Bolima, Sheriff, Regional Trial Court, Branch 151, Pasig City, G.R. No. 139370, July 4, 2002

c. By Management Committee or Rehabilitation Receiver

- Alemar's Sibal & Sons, Inc. vs. Honorable Jesus M. Elbinias, in his capacity as the Presiding Judge of Regional Trial Court, National Capital Region, Branch CXLI (141), Makati, and G.A. Yupangco& Co., Inc., G.R. No. 75414 June 4, 1990
- Alfredo Villamor Jr. vs. John S. Umale in Substitution of Hernando Balmores, G.R. No. 172843, September 24, 2014
- Sps. Aurelio Hiteroza And Cynthia Hiteroza, Petitioners, - Versus - Charito S. Cruzada, President And Chairman, Christ's Achievers Montessori, Inc., And Christ's Achievers Montessori, Inc., Respondents. (G.R. No. 203527, June 27, 2016, Second Division, Brion J)

d. Liquidation after Three Years

- National Abaca & Other Fibers Corporation vs. Pore, 2 SCRA 989 (1961). See, however, Gelano and Reburiano cases, *infra*
- Clemente vs. Court of Appeals, 242 SCRA 717 (1995) . See also Reburiano vs. Court of Appeals, 301 SCRA 342 (1999)
- Philippine National Bank vs. Bitulok Sawmill Inc., SCRA 269.
- Paramount Insurance Corp. vs. A.C. Ordoñez Corporation and Franklin Suspine, G.R. No. 175109, August 6, 2008
- Lucia Barramedavda. de Ballesteros vs. Rural Bank of Canaman, Inc., represented by its liquidator, the Philippine Deposit Insurance Corporation, G.R. No. 176260, November 24, 2010

- Vigilla vs. Philippine College of Criminology, GR No. 200094, June 10, 2013
- ALABANG DEVELOPMENT CORPORATION vs. ALABANG HILLS VILLAGE ASSOCIATION and RAFAEL TINIO, G.R. No. 187456, June 2, 2014, J. Peralta
- Reyes v. Bancom Development Corp., G.R. No. 190286, [January 11, 2018]

K. Other Corporations

1. Close Corporations

a. Characteristics of a Close Corporation

- Manuel R. Dulay Enterprises, Inc. vs. Court of Appeals, 225 SCRA 678 (1993)
- San Juan Structural and Steel Fabricators, Inc. vs. Court of Appeals, Motorich Sales Corporation, Nenita Lee Gruenberg, ACL Development Corp. and JNM Realty and Development Corp., G.R. No. 129459, September 29, 1998

- Sergio F. Naguiat, doing business under the name and style Sergio F. NaguiatEnt., Inc., & Clark Field Taxi, Inc.,*vs.* National Labor Relations Commission (Third Division), National Organization Of Workingmen and its members, Leonardo T. Galang, *et al.*, G.R. No. 116123, March 13, 1997
- Bustos v. Millians Shoe, Inc., G.R. No. 185024, April 24, 2017, SERENO, C.J.

b. When Board Meeting is Unnecessary or Improperly Held

- Manuel R.Dulay Enterprises, Inc., VirgilioE. Dulay and Nepomuceno Redovan vs. the Honorable Court of Appeals, G.R. No. 91889 August 27, 1993

e. Pre-Emptive Right
f. Amendment of Articles of Incorporation
g. Deadlocks

2. Non-Stock Corporations

a. Treatment of Profits

b. Distribution of Assets upon Dissolution

- Ao-As vs. CA 491 SCRA 339 (2006)
- Petronilo J. Barayuga vs. Adventist University of the Philippines, through its Board of Trustees, represented by its Chairman, Nestor D. Dayson, G.R. No. 168008, August 17, 2011

3. Foreign Corporations

a. Bases of Authority over Foreign Corporations

i. Consent

- Eriks PTE. Ltd. vs. Court of Appeals, G.R. No. 118843, February 6, 1997

ii. Doctrine of "Doing Business" (related to definition under the Foreign Investments Act, R.A. No. 7042)

- Wang Laboratories, Inc., vs. Mendoza, 156 SCRA 44 (1987)
- Marubeni Nederland B.V. vs. Tensuan, 190 SCRA 105 (1990)
- Merrill Lynch Futures, Inc. vs. Court of Appeals, 211 SCRA 824 (1992)
- Philip Morris, Inc. vs. Court of Appeals, 224 SCRA 576 (1993)
- Signetics Corporation vs. Court of Appeals, 225 SCRA 737 (1993)
- George Grotjahn GBBH & Co. vs. Isnani, 235 SCRA 216 (1994)
- Litton Mill, Inc. vs. Court of Appeals, 256 SCRA 696 (1996)

- Communication Materials and Design, Inc. vs. Court of Appeals, 260 SCRA 673 (1996)
- Columbia Pictures, Inc. vs. Court of Appeals, 261 SCRA 144 (1996)
- Hahn vs. Court of Appeals, 266 SCRA 537 (1997)
- Eriks Pte., Ltd. vs. Court of Appeals, 267 SCRA 567 (1997)
- Avon Insurance PLC vs. Court of Appeals, 278 SCRA 312 (1997)
- Hutchison Ports Philippines Limited vs. Subic Bay Metropolitan Authority, 339 SCRA 34 (2000)
- Lorenzo Shipping Corp. vs. Chubb and Sons, 431 SCRA 266 (2004)
- Expertravel & Tours, Inc. vs. CA, 459 SCRA 147 (2005)
- B. Van Zuiden Bros Ltd. vs. GTVL Manufacturing Industries, 523 SCRA 233 (2007)
- Rimbunan Hijau Group of Companies vs. Oriental Wood Processing Corporation, 470 SCRA 650 (2005)
- Aboitiz Shipping Corp. vs. Insurance Co. of North America, 561 SCRA 262 (2008)
- Cargill, Inc., vs. Intra Strata Assurance Corporation, G.R. No. 168266, March 15, 2010
- Hutchison Ports Philippines Limited vs. Subic Bay Metropolitan Authority, International Container Terminal Services Inc., Royal Port Services, Inc., and the Executive Secretary, G.R. No. 131367, August 31, 2000
- The Home Insurance Company vs. Eastern Shipping Lines, G.R. No. L-34382 July 20, 1983
- Steelcase, Inc. vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

b. Necessity of a License to Do Business

- Antam Consolidated, Inc. vs. Court of Appeals, 143 SCRA 534 (1986)

c. Personality to Sue

- Bulakhidas vs. Navarro, 142 SCRA 1 (1986)
- Converse Rubber Corporation vs. Universal Rubber Products Inc., 147 SCRA 154 (1987)

- Top-Weld Manufacturing, Inc. vs. Eced, S.A., 138 SCRA 118. See also Granger Associates vs. Microwave Systems, Inc., 189 SCRA 631 (1990)
- MR Holdings, Ltd. vs. Sheriff Carlos P. Bajar, Sheriff Ferdinand M. Jandusay, Solidbank Corporation, and Marcopper Mining Corporation, G.R. No. 138104, April 11, 2002
- Global Business Holdings, Inc., vs. Surecomp Software, B.V., G.R. No. 173463, October 13, 2010

d. Instances When Unlicensed Foreign Corporations May Be Allowed to Sue Isolated Transactions

- Steelcase, Inc., vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

L. Mergers and Consolidations

1. Definition and Concept

- Edward J. Nell Company vs. Pacific Farms, Inc., 15 SCRA 415 (1965)
- Associated Bank vs. Court of Appeals and Lorenzo Sarmiento, Jr., G.R. No. 123793, June 29, 1998
- SME Bank Inc. vs. Gaspar, G.R. No. 186641, October 8, 2013
- Commission of Internal Revenue vs. Bank of Commerce, G.R. No. 180529, November 25, 2013
- Bank of Commerce vs. Radio Philippines Network Inc., et al., G.R. No. 195615, April 21, 2014
- Bank of Commerce v. Heirs of Dela Cruz, G.R. No. 211519, August 14, 2017, Justice Bersamin

2. Constituent vs. Consolidated Corporation

- John F. McLeod vs. National Labor Relations Commission (First Division), et al., G.R. No. 146667, January 23, 2007

3. Effectivity

- Philippine National Bank & National Sugar Development Corporation vs. Andrada Electric & Engineering Company, G.R. No. 142936, April 17, 2002
- Mindanao Savings and Loan Association, Inc., represented by its Liquidator, the Philippine Deposit Insurance Corporation vs. Edward Willkom; Gilda Go; Remedios Uy; Malayo Bantuas, in his capacity as the Deputy Sheriff of Regional Trial Court, Branch 3, Iligan City; and the Register of Deeds of Cagayan de Oro City, G.R. No. 178618, October 11, 2010

4. Effects

- Associated Bank vs. Court of Appeals and Lorenzo Sarmiento, Jr., G.R. No. 123793, June 29, 1998
- Babst vs. Court of Appeals, 350 SCRA 341 (2001)
- Omictin vs. Court of Appeals 512 SCRA 70 (2007)
- Spouses Ramon Nisce vs. Equitable PCI Bank 516 SCRA 231 (2007)
- Bank of the Philippine Islands vs. BPI Employees Union-Davao Chapter-Federation of Unions In Bpi Unibank, G.R. No. 164301, October 19, 2011
- Bank of Philippine Islands vs. Lee, G.R. No. 190144, August 1, 2012
- THE PHILIPPINE GEOTHERMAL, GEOTHERMAL, INC. EMPLOYEES UNION, Petitioner, -versus- UNOCAL PHILIPPINES, INC. (now known as CHEVRON GEOTHERMAL PHILIPPINES HOLDINGS, INC.), Respondent. (GR. No. 190187, September 28, 2016, SECOND DIVISION, LEONEN,J.)
- SUMIFRU (PHILIPPINES) CORPORATION (SURVIVING ENTITY IN A MERGER WITH DAVAO FRUITS CORPORATION AND OTHER COMPANIES) v. BERNABE BAYA, G.R. No. 188269, April 17, 2017, First Division, PERLAS-BERNABE, J.
- Spouses Ong v. BPI Family Savings Bank, Inc., G.R. No. 208638, [January 24, 2018]

M. Miscellaneous Topics

1. Corporate Officers

- Board of Liquidators vs. Kalaw, 20 SCRA 987 (1967)
- AC Ransom Labor Union vs. NLRC 142 SCRA 269 (1986); Villanueva vs. Adre 172 SCRA 876 (1989).
- Prime White Cement Corporation vs. Intermediate Appellate Court, 220 SCRA 103 (1993)
- Tabang vs. National Labor Relations Commission, 266 SCRA 462 (1997)
- Naguiat vs. National Labor Relations Commission, 269 SCRA 564 (1997)
- Llamdo vs. Court of Appeals, 270 SCRA 423 (1997)
- Reahs Corporation vs. National Labor Relations Commission, 271 SCRA 247 (1997)
- Uichico vs. National Labor Relations Commission, 273 SCRA 35 (1997)
- Torres, Jr. vs. Court of Appeals, 278 SCRA 793 (1997)
- San Juan Structure and Steel Fabricators, Inc. vs. Court of Appeals, 296 SCRA 631 (1998)
- People's Aircagro and Warehousing Company, Inc. vs. Court of Appeals, 297 SCRA 170 (1998)
- Restaurante Las Conchas vs. Llego, 314 SCRA 24 (1999) (Please see, however, decisions to the contrary in Carag vs. NLRC and Macleod vs. NLRC, *infra*)
- Consolidated Food Corporation vs. National Labor Relations, 315 SCRA 129 (1999)
- Rural Bank of Milaor (Camarines Sur) vs. Ocfemia, 325 SCRA 99 (2000); Soler vs. Court of Appeals, 358 SCRA 57 (2001)
- Lao vs. CA, 325 SCRA 694 (2000)
- BA Savings Bank vs. Court of Appeals, 336 SCRA 484 (2000)
- Security Bank and Trust Co. vs. Cuenca, 341 SCRA 781 (2000)
- Atrium Management Corp. vs. Court of Appeals, 353 SCRA 23 (2001)

- Safic Alcan & Cie vs. Imperial Vegetable Co., Inc., 355 SCRA 559 (2001)
- Nakpil vs. Intercontinental Broadcasting Corporation, 379 SCRA 653 (2002)
- Great Asian Sales Center Corporation vs. Court of Appeals, 381 SCRA 557 (2002)
- DBP vs. Sps. Francisco and Leticia Ong, 460 SCRA 170 (2005)
- Litonjua, Jr. vs. Eternity Corporation 490 SCRA 204 (2006)
- Easycall Communications Phils. Inc. vs. Edward King 478 SCRA 102 (2005)
- Elcee Farms, Inc. vs. NLRC 512 SCRA 602 (2007)
- Aratea vs. Suico, 518 SCRA 501 (2007)
- Carag vs. NLRC 520 SCRA 28 (2007)
- Pamplona Plantation Company vs. Ramon Acosta et al., 510 SCRA 249 (2006)
- People of the Philippines vs. Hermenegildo Dumlao and Emilio La'o, 580 SCRA 409 (2009)
- James U. Gosiaco vs. Leticia Ching and Edwin Casta 585 SCRA 471 (2009)

2. Doctrine of Corporate Negligence

- Professional Services, Inc. vs. CA 544 SCRA 170 (2008)

3. Doctrine of Apparent Authority

- Calubad v. Ricarcen Development Corp., G.R. No. 202364, August 30, 2017, Justice Leonen
- Ayala Land, Inc. v. ASB Realty Corp., G.R. No. 210043, [September 26, 2018])
- Engineering Geoscience, Inc. V. Philippine Savings Bank, G.R. No. 187262, Second Division, January 10, 2019, Carpio J.

4. Authority to sign certification against forum shopping

- Digital Microwave Corp. vs. Court of Appeals, 328 SCRA 289 (2000)
- BA Savings Bank vs. Court of Appeals, 336 SCRA 484 (2000)
- Shipside Incorporation vs. Court of Appeals, 352 SCRA 334 (2001)
- San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue 492 SCRA 192 (2006)

5. Teleconferencing

- Expertravel & Tours, Inc. vs. CA 459 SCRA 147 (2005)

6. Condominium Corporation

- Yamane vs. BA Lepanto Condominium Corporation 474 SCRA 258 (2005)

7. Interest in Investment

- The President of PDIC as Liquidator of Pacific Banking Corporation vs. Reyes 460 SCRA 473 (2005)

8. Penal Provisions

- IENT VS. TULLETT PREBON (G.R. No. 189158, January 11, 2017, J. Leonardo-De Castro)

II. FOREIGN INVESTMENTS ACT (R.A. NO. 7042)

A. Definition of Terms

1. "Doing Business" in the Philippines

- Alfred Hahn vs. Court of Appeals, G.R. No. 113074, January 22, 1997
- Eriks Pte. Ltd. vs. Court of Appeals, G.R. No. 118843, February 6, 1997
- Agilent Technologies Singapore (Pte.) Ltd. vs. Integrated Silicon Technology Philippines Corporation, G.R. No. 154618, April 14, 2004
- Steelcase, Inc. vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

B. Foreign Investment Negative List

- Heirs of Wilson Gamboa vs. Finance Secretary Margarito Teves, G.R. No. 176579, October 9, 2012

III. SECURITIES REGULATION CODE (R.A. NO. 8799)

- The Securities And Exchange Commission (Sec) Chairperson Teresita J. Herbosa, Commissioner Ma. Juanita E. Cueto, Commisioner Raul J. Palabrica, Commissioner Manuel Huberto B. Gaite, Commisioner Eladio M. Jala, And The Sec Enforcement And Prosecution Department, Petitioners, - Versus - Cjh Development Corporation And Cjh Suites Corporation, Herein Represented By Its Executive Vicepresident And Chief Operating Officer, Alfredo R. Yniguez Iii, Respondents. (G.R. No. 210316, Third Division, November 28, 2016, Peralta, J.)

A. State Policy, Purpose

- Abacus Securities Corporation vs. Ruben Ampil, G.R. No. 160016, February 27, 2006

B. Securities Required to be Registered

- Betty Gabionza and Isabelita Tan vs. Court of Appeals, G.R. No.161057, Sept. 12, 2008
- Power Homes Unlimited Corporation Vs. Securities And Exchange Commission And Noel Manero, G.R. No. 164182, February 26, 2008, C.J. Puno
- Timeshare Realty vs. Cesar Lao, G.R. No. 158941, Feb. 11, 2008
- Securities and Exchange Commission vs. Prosperity.Com, Inc., G.R. No. 164197, Jan. 25, 2012
- Securities and Exchange Commission vs. Oudine Santos, G.R. No. 195542, Mar. 19, 2014
- Abacus Capital and Investment Corp. v. Tabujara, G.R. No. 197624, [July 23, 2018]

1. **Exempt Securities**

    - Union Bank of the Philippines vs. Securities and Exchange Commission, G.R. No. 138949, June 6, 2001

2. **Exempt Transactions**

    - Nestle Philippines, Inc.,vs. Court of Appeals, G.R. No. 86738, November 13, 1991

A. Procedure for Registration of Securities

B. Prohibitions of Fraud, Manipulation and Insider Trading

- Onapal Phils. Commodities, Inc. vs. Court of Appeals, G.R. No. 90707, Feb. 1, 1993

1. Manipulation of Security Prices
2. Short Sales
3. Fraudulent Transactions

- Securities and Exchange Commission v. Price Richardson Corp., G.R. No. 197032, July 26, 2017, Justice Leonen

4. Insider Trading

- Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, Oct. 6, 2008

C. Protection of Investors

- Phil. Veterans Bank vs. Callangan and/or SEC, G.R. No. 191995, Aug. 3, 2011

1. Tender Offer Rule

- Cemco Holdings, Inc. vs. National Life Ins. Co. of the Phil., G.R. No. 171815, Aug. 7. 2007

2. Rules on Proxy Solicitation

- GSIS vs. Court of Appeals, G.R. No. 183905, Apr. 16, 2009

3. Disclosure Rule

- Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, Oct. 6, 2008

D. Civil Liability

- Citibank, N.A. vs. Tanco-Gabaldon, et al., G.R. No. 198444, Sep. 4, 2013
- Jose U. Pua vs. Citibank, N.A., G.R. No. 180064, Sep. 16, 2013

H. Miscellaneous Topics

1. Cases under the old rules where the SEC had jurisdiction over intra-corporate disputes

- Philex Mining Corporation vs. Reyes, 118 SCRA 602 (1982)
- Union Glass & Container Corporation vs. Securities & Exchange Commission, 126 SCRA 21 (1983). See also Magalad vs. Premier Financing Corporation, 209 SCRA 260 (1992)
- Philippine School of Business Administration vs. Leano, 127 SCRA 778 (1984)
- DMRC Enterprises vs. Este Del Sol Mountain Reserve, Inc., 132 SCRA 293 (1984)
- Development Bank of the Philippines vs. Ilustre, Jr., 138 SCRA 11 (1985)
- Banez vs. Dimensional Construction Trade and Development Corporation, 140 SCRA 249 (1985)
- Dy vs. The National Labor Relations Commission, 145 SCRA 211 (1986)
- Abejo vs. Dela Cruz, 149 SCRA 654 (1987)
- Malayan Intergrated Industries Corporation vs. Mendoza, 154 SCRA 548 (1987) Please see Reyes vs. RTC of Makati, *infra.*
- Boman Environmental Corp. vs. Court of Appeals, 167 SCRA 540 (1988)
- Fortune Cement Corporation vs. National Labor Relations Commission, 193 SCRA 391 (1991)
- Andaya vs. Abadia, 228 SCRA 705 (1993)
- Torio vs. Court of Appeals, 230 SCRA 626 (1994)
- Pearson & George, (S.E. Asia), Inc. vs. National Labor Relations Commission, 253 SCRA 136 (1996)
- Ongkingco vs. National Labor Relations Commission, 270 SCRA 613 (1997)
- Garcia vs. Eastern Telecommunications Philippines, Inc 585 SCRA 450 (2009)

2. Cases under the new rule that the RTC exercises jurisdiction over intra-corporate disputes

- Calleja vs. Panday 483 SCRA 680 (2006)
- Orendain vs. BF Homes, Inc., 506 SCRA 348 (2006)
- Ujuico vs. Quiambao 513 SCRA 243 (2007)
- Reyes vs. RTC of Makati, 561 SCRA 593 (2008)
- Unlad Resources Dev't., Corp., et al. vs. Renato P. Dragon, 560 SCRA 63 (2008)
- Roberto L. Abad, et al vs. Philippine Communications Satellite Corporation, G.R. No. 200620, March 18, 2015
- Dy Teban Trading, Inc. v. Dy, G.R. No. 185647, July 26, 2017, Justice Jardeleza

- BELO MEDICAL GROUP INC. v. JOSE SANTOS and VICTORIA BELO, G.R. No. 185894, August 30, 2017, Third Division, LEONEN, J.

- Cacho v. Balagtas, G.R. No. 202974, [February 7, 2018]
- Malcaba v. ProHealth Pharma Philippines, Inc., G.R. No. 209085 , [June 6, 2018]
- Ellao y Dela Vega v. Batangas I Electric Cooperative, Inc., G.R. No. 209166, [July 9, 2018]
- Ku v. RCBC Securities, Inc., G.R. No. 219491, [October 17, 2018]
- Tumagan v. Kairuz, G.R. No. 198124, [September 12, 2018]
- Eizmendi Jr. v. Fernandez, G.R. No. 215280, [September 5, 2018]

3. Regulatory Jurisdiction

- Peneyra vs. Intermediate Appellate Court, 181 SCRA 244 (1990)
- Securities and Exchange Commission vs. Court of Appeals, 246 SCRA 738 (1995)
- Philippine Stock Exchange vs. Securities & Exchange Commission, 281 SCRA 232 (1997)
- Philippine National Construction Corporation vs. Pabion, 320 SCRA 188 (1999)
- TCL Sales Corporation vs. Court of Appeals, 349 SCRA 35 (2001)
- Pilipinas Loan Company, Inc. vs. Securities and Exchange Commission, 356 SCRA 193 (2001)
- Mobilia Products, Inc., vs. Umezawa 452 SCRA736 (2005)
- Abacus Securities vs. Ampil 483 SCRA 315 (2006)
- Securities and Exchange Commission vs. Performance Foreign Exchange Corporation 495 SCRA 579 (2006)
- Philippine Association of Stock Transfer and Registry Agencies, Inc.,v. CA et al. 539 SCRA 61 (2007)
- Eustacio Atwel, et al. vs. Conception Progressive Association, Inc., 551 SCRA 272 (2008)
- Baviera vs. Standard Chartered Bank, et al. 515 SCRA 170 (2007)
- Cemco Holdings vs. National Life Insurance Company, 529 SCRA 355 (2007)
- Provident International Resources Corp., et al. vs. Joaquin T. Venus, et al. 554 SCRA 540 (2008)
- Securities and Exchange Commission vs. Interport Resources Corporation 567 SCRA 354 (2008)
- GSIS vs. Court of Appeals 585 SCRA 679 (2009)

4. Corporate Rehabilitation

- Metropolitan Bank & Trust Co. v. Fortuna Paper Mill & Packaging Corp., G.R. No. 190800, [November 7, 2018]

IV. FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA)

- Tyson's Super Concrete, Inc. vs. Court of Appeals 461 SCRA 69 (2005)
- Spouses Sobrejuanite vs. ASB Development Corporation 471 SCRA 763 (2005)

- Sy Chim vs. Sy Siy Ho & Sons, Inc., 480 SCRA 465 (2006)
- Ao-As vs. CA 491 SCRA 339 (2006)
- Danilo G. Punongbayan vs. Perfecto G. Punongbayan, Jr. 491 SCRA 581 (2006)

- New Frontier Sugar Corporation vs. RTC of Ilo-ilo and Equitable PCI Bank, 513 SCRA 601 (2007)
- Philippine Airlines vs. Zamora 514 SCRA 584 (2007)
- Union Bank of the Philippine vs. ASB Devt. Corp., 560 SCRA 578 (2008)
- China Banking Corporation vs. ASB Holdings, Inc., 575 SCRA 247 (2008)
- Garcia vs. Philippine Airlines. G.R. No. 164856 576 SCRA 479 (2009)
- Malayan Insurance Company, Inc. vs. Victorias Milling Company, Inc. 586 SCRA 45 (2009)
- Puerto Azul Land Inc. vs. Pacific Wide Realty Development Corporation, G.R. No. 184000, September 17, 2014
- Robinson's Bank Corporation vs. Hon. Samuel H. Gaerlan, G.R. No. 195289, September 24, 2014
- Philippine Bank of Communications vs. Basic Polyprinters and Packaging Corporation, G.R. No. 187581, October 20, 2014
- Marilyn Victorio-Aquino vs. Pacific Plans Inc., and Mamareto A. Marcelo Jr., G.R. No. 193108, December 10, 2014
- Mervic Realty, Inc. And Viccy Realty, Inc., Petitioners, V. China Banking Corporation, Respondent. (G.R. No. 193748, February 03, 2016, Brion, J.)
- Viva Shipping Lines, Inc., Petitioner, V. Keppel Philippines Mining, Inc., Metropolitan Bank & Trust Company, Pilipinas Shell Petroleum Corporation, City Of Batangas, City Of Lucena, Province Of Quezon, Alejandro Olit, Nida Montilla, Pio Hernandez, Eugenio Baculo, And Harlan Bacaltos, Respondents. (G.R. No. 177382, February 17, 2016, Leonen, J.)
- Philippine Asset Growth Two, Inc. (Successor-In-Interest Of Planters Development Bank) And Planters Development Bank Vs. Fastech Synergy Philippines, Inc. (Formerly First Asia System Technology, Inc.), Fastech Microassembly & Test, Inc., Fastech Electronique, Inc., And Fastech Properties, Inc. (G.R. No. 206528, June 28, 2016, Perlas-Bernabe, J.)
- Metrobank Vs. Liberty Corrugated (Gr 184317, January 25 2017, J. Leonen)
- Land Bank Of The Philippines V. West Bay Colleges, Inc., Pbr Management And Development Corp. And Bcp Trading Co., Inc., G.R. No. 211287, April 17, 2017, Third Division, Reyes, J.:
- Bureau Of Internal Revenue, Assistant Commissioner Alfredo V. Misajon, Group Supervisor Rolando M. Balbido, And Examiner Reynante Dp. Martirez V.Lepanto Ceramics, Inc., G.R. No. 224764, April 24, 2017, First Division, Perlas-Bernabe, J.
- People Of The Philippines V. Ervin Y. Mateo, Evelyn E. Mateo, Carmelita B. Galvez, Romeo L. Esteban, Galileo J. Saporsantos And Nenita S. Saporsantos, Ervin Y. Mateo, G.R. No. 210612, October 9, 2017, Second Division, Peralta, J.
- Steel Corporation Of The Philippines V. Bureau Of Customs, G.R. No. 220502, [February 12, 2018]
- Allied Banking Corp. v. Equitable PCI Bank, Inc., G.R. No. 191939, [March 14, 2018]
- Mañalac v. Gellada, A.M. No. RTJ-18-2535, [October 8, 2018]
- Dela Torre v. Primetown Property Group, Inc., G.R. No. 221932, [February 14, 2018], Second Division, PERALTA, J

A. Corporation

1. Definition

2. Attributes of the Corporation

- Benny Hung vs. BPI Finance Corporation, G.R. No. 182398, July 20, 2010

BENNY Y. HUNG, PETITIONER, VS. BPI CARD FINANCE CORP., RESPONDENT.
G.R. No. 182398, FIRST DIVISION, July 20, 2010, PEREZ, J.

Clearly, petitioner has represented in his dealings with respondent that Guess? Footwear or B & R Footwear Distributors, Inc. is also B & R Sportswear Enterprises. For this reason, the more complete correction on the name of defendant should be from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. and Benny Hung. ***Petitioner is the proper defendant because his sole proprietorship B & R Sportswear Enterprises has no juridical personality apart from him****. Again, the correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises. Correction of this formal defect is also allowed by Section 4, Rule 10 of the Rules of Court.*

FACTS:

Guess? Footwear and BPI Express Card Corporation entered into two merchant agreements whereby Guess? Footwear agreed to honor validly issued BPI Express Credit Cards presented by cardholders in the purchase of its goods and services. In the first agreement, petitioner Benny Hung signed as owner and manager of Guess? Footwear. He signed the second agreement as president of **Guess? Footwear which he also referred to as B & R Sportswear Enterprises.**

From May 1997 to January 1999, respondent BPI mistakenly credited, through 352 checks amounting to P3,480,427.23 to the account of Guess? Footwear. When informed of the overpayments, petitioner Benny Hung transferred P963,604.03 from the bank account of B & R Sportswear Enterprises to BPIs account as partial payment.

In a letter dated 27 September 1999, BPI demanded the balance payment amounting to P2,516,826.68 but Guess? Footwear failed to pay.

BPI filed a collection suit before the RTC of Makati City naming as defendant B & R Sportswear Distributor, Inc. Although the case was against B & R Sportswear Distributor, Inc., it was B & R Footwear Distributors, Inc., that filed an answer, appeared and participated in the trial. The RTC rendered a decision ordering defendant B & R Sportswear Distributor, Inc., to pay BPI P2,516,826.68 with 6% interest. The RTC ruled that the overpayment of P3,480,427.43 was proven by checks credited to the account of Guess? Footwear and the P963,604.03 partial payment proved that defendant ought to pay P2,516,826.68 more. During the execution of judgment, it was discovered that B & R Sportswear Distributor, Inc., is a non-existing entity. Thus, the trial court failed to execute the judgment.

Consequently, BPI filed a Motion to pierce the corporate veil of B & R Footwear Distributors, Inc. to hold its stockholders and officers, including petitioner Benny Hung, personally liable. The RTC ruled that Hung is liable for the satisfaction of the judgment, since he signed the merchant agreements in his personal capacity.

The Court of Appeals affirmed the order and dismissed petitioners appeal. It ruled that since B & R Sportswear Distributor, Inc. is not a corporation, it therefore has no personality separate from petitioner Benny Hung who induced BPI and the RTC to believe that it is a corporation.

ISSUE:

Whether Benny Hung can be held liable for the satisfaction of the RTCs Decision against B & R Sportswear Distributor, Inc. (YES)

RULING:

But we cannot agree with petitioner that B & R Footwear Distributors, Inc. or Guess? Footwear is the only "real contracting party." The facts show that B & R Sportswear Enterprises is also a contracting party. Petitioner conveniently ignores this fact although he himself signed the second agreement indicating that Guess? Footwear is also referred to as B & R Sportswear Enterprises. Petitioner also tries to soften the significance of his directive to the bank, under the letterhead of B & R Footwear Distributor's, Inc., to transfer the funds belonging to his sole proprietorship B & R Sportswear Enterprises as partial payment to the overpayments made by respondent to Guess? Footwear. He now claims the partial payment as his payment to respondent "in the course of their mutual transactions."

Clearly, petitioner has represented in his dealings with respondent that Guess? Footwear or B & R Footwear Distributors, Inc. is also B & R Sportswear Enterprises. For this reason, the more complete correction on the name of defendant should be from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. and Benny Hung. **Petitioner is the proper defendant because his sole proprietorship B & R Sportswear Enterprises has no juridical personality apart from him**. Again, the correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises. Correction of this formal defect is also allowed by Section 4, Rule 10 of the Rules of Court.

Relatedly, petitioner cannot complain of non-service of summons upon his person. Suffice it to say that B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises had answered the summons and the complaint and participated in the trial.

Accordingly, we find petitioner liable to respondent and we affirm, with the foregoing clarification, the finding of the RTC that he signed the second merchant agreement in his personal capacity.

The correction on the name of the defendant has rendered moot any further discussion on the doctrine of piercing the veil of corporate fiction. In any event, we have said that whether the separate personality of a corporation should be pierced hinges on facts pleaded and proved. In seeking to pierce the corporate veil of B & R Footwear Distributors, Inc., respondent complained of "deceit, bad faith and illegal scheme/maneuver." As stated earlier, respondent has abandoned such accusation. And respondent's proof - the SEC certification that B & R Sportswear Distributor, Inc. is not an existing corporation - would surely attest to no other fact but the inexistence of a corporation named B & R Sportswear Distributor, Inc. as such name only surfaced because of its own error. Hence, we cannot agree with the Court of Appeals that petitioner has represented a non-existing corporation and induced the respondent and the RTC to believe in his representation.

- Rebecca Boyer-Roxas and Guillermo Roxas vs. Hon. Court of Appeals and Heirs of Eugenia V. Roxas, Inc., G.R. No. 100866, July 14, 1992

REBECCA BOYER-ROXAS and GUILLERMO ROXAS, petitioners, vs. HON. COURT OF APPEALS and HEIRS OF EUGENIA V. ROXAS, INC., respondents.
G.R. No. 100866, THIRD DIVISION, July 14, 1992, GUTIERREZ, JR., J.

*The respondent is a bona fide corporation. As such, **it has a juridical personality of its own separate from the members composing it**. There is no dispute that title over the questioned land where the Hidden Valley Springs Resort is located is registered in the name of the corporation. The records also show that the staff house being occupied by petitioner Rebecca Boyer-Roxas and the recreation hall which was later on converted into a residential house occupied by petitioner Guillermo Roxas are owned by the respondent corporation. Regarding properties owned by a corporation, we stated in the case of Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila, (6 SCRA 373 [1962]):*

> ***Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members**. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets. The stockholder is not a co-owner or tenant in common of the corporate property.*

*The petitioners' suggestion that the veil of the corporate fiction should be pierced is untenable. **The separate personality of the corporation may be disregarded only when the corporation is used "as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or when necessary for the protection of the creditors."** The circumstances in the present cases do not fall under any of the enumerated categories.*

FACTS:

In two (2) separate complaints for recovery of possession filed with the Regional Trial Court of Laguna against petitioners Rebecca Boyer-Roxas and Guillermo Roxas respectively, respondent **corporation**, Heirs of Eugenia V. Roxas, Inc., prayed for the ejectment of the petitioners from buildings inside the Hidden Valley Springs Resort located at Limao, Calauan, Laguna allegedly owned by the respondent corporation.

In the case of petitioner Rebecca Boyer-Roxas (Civil Case No-802-84-C), the respondent corporation alleged that Rebecca is in possession of two (2) houses, one of which is still under construction, built at the expense of the respondent corporation; and that her occupancy on the two (2) houses was only upon the tolerance of the respondent corporation.

In the case of petitioner Guillermo Roxas (Civil Case No. 803-84-C), the respondent corporation alleged that Guillermo occupies a house which was built at the expense of the former during the time when Guillermo's father, Eriberto Roxas, was still living and was the general manager of the respondent corporation; that the house was originally intended as a recreation hall but was converted for the residential use of Guillermo; and that Guillermo's possession over the house and lot was only upon the tolerance of the respondent corporation.

In both cases, the respondent corporation alleged that the petitioners never paid rentals for the use of the buildings and the lots and that they ignored the demand letters for them to vacate the buildings.

In their separate answers, the petitioners traversed the allegations in the complaint by stating that they are heirs of Eugenia V. Roxas and therefore, co-owners of the Hidden Valley Springs Resort; and as co-owners of the property, they have the right to stay within its premises. The plaintiffs alleged, among others, that the veil of corporate fiction should be pierced.

ISSUE:

1. Whether the petitioners are co-owners of the contested property. (NO)
2. Whether there is basis for piercing the veil of the corporation. (NO)

RULING:

1.

The respondent is a bona fide corporation. As such, it has a juridical personality of its own separate from the members composing it. There is no dispute that title over the questioned land where the Hidden Valley Springs Resort is located is registered in the name of the corporation. The records also show that the staff house being occupied by petitioner Rebecca Boyer-Roxas and the recreation hall which was later on converted into a residential house occupied by petitioner Guillermo Roxas are owned by the respondent corporation. Regarding properties owned by a corporation, we stated in the case of Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila, (6 SCRA 373 [1962]):

> **Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members**. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets. The stockholder is not a co-owner or tenant in common of the corporate property.

The petitioners point out that their occupancy of the staff house which was later used as the residence of Eriberto Roxas, husband of petitioner Rebecca Boyer--Roxas and the recreation hall which was converted into a residential house were with the blessings of Eufrocino Roxas, the deceased husband of Eugenia V. Roxas, who was the majority and controlling stockholder of the corporation. In his lifetime, Eufrocino Roxas together with Eriberto Roxas, the husband of petitioner Rebecca Boyer-Roxas, and the father of petitioner Guillermo Roxas managed the corporation. The Board of Directors did not object to such an arrangement. The petitioners argue that "x x x the authority thus given by

Eufrocino Roxas for the conversion of the recreation hall into a residential house can no longer be questioned by the stockholders of the private respondent and/or its board of directors for they impliedly but no less explicitly delegated such authority to said Eufrocino Roxas."

Again, we must emphasize that the **respondent corporation has a distinct personality separate from its members. The corporation transacts its business only through its officers or agents**. Whatever authority these officers or agents may have is derived from the board of directors or other governing body unless conferred by the charter of the corporation. An officer's power as an agent of the corporation must be sought from the statute, charter, the by-laws or in a delegation of authority to such officer, from the acts of the board of directors, formally expressed or implied from a habit or custom of doing business.

In the present case, the record shows that Eufrocino V. Roxas who then controlled the management of the corporation, being the majority stockholder, consented to the petitioners' stay within the questioned properties. Specifically, Eufrocino Roxas gave his consent to the conversion of the recreation hall to a residential house, now occupied by petitioner Guillermo Roxas. The Board of Directors did not object to the actions of Eufrocino Roxas. The petitioners were allowed to stay within the questioned properties until August 27, 1983, when the Board of Directors approved a Resolution ejecting the petitioners, to wit:

> "R E S O L U T I O N No. 83-12
>
> RESOLVED, That Rebecca B. Roxas and Guillermo Roxas, and all persons claiming under them, be ejected from their occupancy of the Hidden Valley Springs compound on which their houses have been constructed and/or are being constructed only on tolerance of the Corporation and without any contract therefor, in order to give way to the Corporation's expansion and improvement program and obviate prejudice to the operation of the Hidden Valley Springs Resort by their continued interference.
>
> RESOLVED, Further that the services of Atty. Benito P. Fabie be engaged and that he be authorized as he is hereby authorized to effect the ejectment, including the filing of the corresponding suits, if necessary to do so." (Original Records, p. 327)

We find nothing irregular in the adoption of the Resolution by the Board of Directors. The petitioners' stay within the questioned properties was merely by tolerance of the respondent corporation in deference to the wishes of Eufrocino Roxas, who during his lifetime, controlled and managed the corporation. Eufrocino Roxas' actions could not have bound the corporation forever. The petitioners have not cited any provision of the corporation by-laws or any resolution or act of the Board of Directors which authorized Eufrocino Roxas to allow them to stay within the company premises forever. We rule that in the absence of any existing contract between the petitioners and the respondent corporation, the corporation may elect to eject the petitioners at any time it wishes for the benefit and interest of the respondent corporation.

2.

The petitioners' suggestion that the veil of the corporate fiction should be pierced is untenable. **The separate personality of the corporation may be disregarded only when the corporation is used "as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve**

equity or when necessary for the protection of the creditors." The circumstances in the present cases do not fall under any of the enumerated categories.

- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino, G.R. No. 150283, April 16, 2008

RYUICHI YAMAMOTO, Petitioner, v. NISHINO LEATHER INDUSTRIES, INC. and IKUO NISHINO, Respondents.

G.R. NO. 150283, SECOND DIVISION, April 16, 2008, CARPIO MORALES, J.

*While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, **the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality**.*

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

"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 the plaintiff's legal rights;

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents "piercing the corporate veil." In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

FACTS:

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents. In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO. Eventually, Nishino and his brother Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%, less than 10% according to Nishino. The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII. Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishinos counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

"Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29th, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you. Machinery and Equipment:

The following machinery/equipment have been contributed by you to the company:

Splitting machine - 1 unit
Samming machine - 1 unit
Forklift - 1 unit
Drums - 4 units
Toggling machine - 2 units

Regarding the above machines, you may take them out with you (for your own use and sale) if you want, provided, the value of such machines is deducted from your and Wakos capital contributions, which will be paid to you.

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation, but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint against them for replevin.

ISSUE: Whether Yamamoto may pierce the veil of corporate fiction and retrieve the machineries. (NO)

RULING:

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter. **Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors**.

Urging this Court to pierce the veil of corporate fiction, Yamamoto argues, viz:

> During the negotiations, the issue as to the ownership of the Machineries never came up. Neither did the issue on the proper procedure to be taken to execute the complete take-over of the Company come up since Ikuo, Yoshinobu, and Yamamoto were the owners thereof, the

presence of other stockholders being only for the purpose of complying with the minimum requirements of the law.

What course of action the Company decides to do or not to do depends not on the "other members of the Board of Directors". It depends on what Ikuo and Yoshinobu decide. The Company is but a mere instrumentality of Ikuo [and] Yoshinobu.

x x x

x x x The Company hardly holds board meetings. It has an inactive board, the directors are directors in name only and are there to do the bidding of the Nish[i]nos, nothing more. Its minutes are paper minutes. x x x

x x x

The fact that the parties started at a 70-30 ratio and Yamamoto's percentage declined to 10% does not mean the 20% went to others. x x x The 20% went to no one else but Ikuo himself. x x x Yoshinobu is the younger brother of Ikuo and has no say at all in the business. Only Ikuo makes the decisions. There were, therefore, no other members of the Board who have not given their approval.

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, **the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality**.

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

"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 the plaintiff's legal rights;

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents "piercing the corporate veil." In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

Yamamoto argues, in another vein, that promissory estoppel lies against respondents, thus:

> Under the doctrine of promissory estoppel, x x x estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.
>
> x x x Ikuo and Yoshinobu wanted Yamamoto out of the Company. For this purpose negotiations were had between the parties. Having expressly given Yamamoto, through the Letter and through a subsequent meeting at the Manila Peninsula where Ikuo himself confirmed that Yamamoto may take out the Machinery from the Company anytime, respondents should not be allowed to turn around and do the exact opposite of what they have represented they will do.
>
> In paragraph twelve (12) of the Letter, Yamamoto was expressly advised that he could take out the Machinery if he wanted to so, provided that the value of said machines would be deducted from his capital contribution x x x.
>
> x x x
>
> Respondents cannot now argue that they did not intend for Yamamoto to rely upon the Letter. That was the purpose of the Letter to begin with. Petitioner[s] in fact, relied upon said Letter and such reliance was further strengthened during their meeting at the Manila Peninsula.
>
> To sanction respondents' attempt to evade their obligation would be to sanction the perpetration of fraud and injustice against petitioner.

It bears noting, however, that the aforementioned paragraph 12 of the letter is followed by a request for Yamamoto to give his "comments on all the above, soonest."

What was thus proffered to Yamamoto was not a promise, but a mere offer, subject to his acceptance. Without acceptance, a mere offer produces no obligation.

Thus, under Article 1181 of the Civil Code, "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." In the case at bar, there is no showing of compliance with the condition for allowing Yamamoto to take the machineries and equipment, namely, his agreement to the deduction of their value from his capital contribution due him in the buy-out of his interests in NLII. Yamamoto's allegation that he agreed to the condition remained just that, no proof thereof having been presented.

The machineries and equipment, which comprised Yamamoto's investment in NLII, thus remained part of the capital property of the corporation.

It is settled that the property of a corporation is not the property of its stockholders or members. Under the trust fund doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

B. Classes of Corporations

- Pioneer Surety & Insurance Corporation vs. Court of Appeal, 175 SCRA 668 (1989)

PIONEER INSURANCE & SURETY CORPORATION, Petitioner, vs. THE HON. COURT OF APPEALS, BORDER MACHINERY & HEAVY EQUIPMENT, INC., (BORMAHECO), CONSTANCIO M. MAGLANA and JACOB S. LIM, Respondents.
G.R. No. 84197, THIRD DIVISION, July 28, 1989, GUTIERREZ, JR., J.

JACOB S. LIM, Petitioner, vs. COURT OF APPEALS, PIONEER INSURANCE AND SURETY CORPORATION, BORDER MACHINERY and HEAVY EQUIPMENT CO., INC,, FRANCISCO and MODESTO CERVANTES and CONSTANCIO MAGLANA, Respondents.
G.R. No. 84197, THIRD DIVISION, July 28, 1989, GUTIERREZ, JR., J.

While it has been held that as between themselves the rights of the stockholders in a defectively incorporated association should be governed by the supposed charter and the laws of the state relating thereto and not by the rules governing partners, it is ordinarily held that persons who attempt, but fail, to form a corporation and who carry on business under the corporate name occupy the position of partners inter se. *Thus, where persons associate themselves together under articles to purchase property to carry on a business, and their organization is so defective as to come short of creating a corporation within the statute, they become in legal effect partners inter se, and their rights as members of the company to the property acquired by the company will be recognized. So, where certain persons associated themselves as a corporation for the development of land for irrigation purposes, and each conveyed land to the corporation, and two of them contracted to pay a third the difference in the proportionate value of the land conveyed by him, and no stock was ever issued in the corporation, it was treated as a trustee for the associates in an action between them for an accounting, and its capital stock was treated as partnership assets, sold, and the proceeds distributed among them in proportion to the value of the property contributed by each.* ***However, such a relation does not necessarily exist, for ordinarily persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist, and it should be implied only when necessary to do justice between the parties***; *thus, one who takes no part except to subscribe for stock in a proposed corporation which is never legally formed does not become a partner with other subscribers who engage in business under the name of the pretended corporation, so as to be liable as such in an action for settlement of the alleged partnership and contribution. A partnership relation between certain stockholders and other stockholders, who were also directors, will not be implied in the absence of an agreement, so as to make the former liable to contribute for payment of debts illegally contracted by the latter.*

In the instant case, it is to be noted that the petitioner was declared non-suited for his failure to appear during the pretrial despite notification. In his answer, the petitioner denied having received any amount from respondents Bormaheco, the Cervanteses and Maglana. The trial court and the appellate court, however, found through Exhibit 58, that the petitioner received the amount of P151,000.00 representing the participation of Bormaheco and Atty. Constancio B. Maglana in the ownership of the subject airplanes and spare parts. The record shows that defendant Maglana gave P75,000.00 to petitioner Jacob Lim thru the Cervanteses.

It is therefore clear that the petitioner never had the intention to form a corporation with the respondents despite his representations to them. This gives credence to the cross-claims of the respondents to the effect that they were induced and lured by the petitioner to make contributions. Applying therefore the principles of law earlier cited to the facts of the case, necessarily, no de facto partnership was created among the parties which would entitle the petitioner to a reimbursement of the supposed losses of the proposed corporation. The record shows that the petitioner was acting on his own and not in behalf of his other would-be incorporators in transacting the sale of the airplanes and spare parts.

FACTS:

In 1965, Jacob S. Lim was engaged in the airline business as owner-operator of Southern Air Lines (SAL) a single proprietorship.

Then, Japan Domestic Airlines (JDA) and Lim in Tokyo, Japan entered into and executed a sales contract for the sale and purchase of 2 aircrafts and 1 set of necessary spare parts for the total agreed price of US $109,000.00 to be paid in installments. The 2 aircrafts arrived in Manila. Pioneer Insurance and Surety Corporation as surety executed and issued its surety bond in favor of JDA, in behalf of its principal, Lim, for the balance price of the aircrafts and spare parts.

It appears that Border Machinery and Heavy Equipment Company, Inc. (Bormaheco), Francisco and Modesto Cervantes (Cervanteses) and Constancio Maglana contributed some funds used in the purchase of the above aircrafts and spare parts. The funds were supposed to be their contributions to a new corporation proposed by Lim to expand his airline business. They executed 2 separate indemnity agreements in favor of Pioneer, one signed by Maglana and the other jointly signed by Lim for SAL, Bormaheco and the Cervanteses. The indemnity agreements stipulated that the indemnitors principally agree and bind themselves jointly and severally in favor of Pioneer.

Thereafter, Lim doing business under the name and style of SAL executed in favor of Pioneer as deed of chattel mortgage as security for the latter's suretyship in favor of the former. It was stipulated therein that Lim transfer and convey to the surety the two aircrafts. Lim defaulted on his subsequent installment payments prompting JDA to request payments from the surety. Pioneer paid a total sum of P298,626.12.

Pioneer filed a petition for the extrajudicial foreclosure of the chattel mortgage before the Sheriff of Davao City. The Cervanteses and Maglana, however, filed a third party claim alleging that they are co-owners of the aircrafts, Then, Pioneer filed an action for judicial foreclosure with an application for a writ of preliminary attachment against Lim and respondents, the Cervanteses, Bormaheco and Maglana.

In their Answers, Maglana, Bormaheco and the Cervanteses filed cross-claims against Lim alleging that they were not privies to the contracts signed by Lim and, by way of counterclaim, sought for damages for being exposed to litigation and for recovery of the sums of money they advanced to Lim for the purchase of the aircrafts in question.

After trial on the merits, a decision was rendered holding Lim liable to pay Pioneer but dismissed Pioneer's complaint against all other defendants.

The appellate court modified the trial court's decision in that the plaintiffs complaint against all the defendants was dismissed. In all other respects the trial court's decision was affirmed. Hence the petition which was consolidated by the Court.

ISSUE:

Whether a *de facto* Corporation exists. (NO)

RULING:

Petitioner Jacob S. Lim poses the following issues:

> l. What legal rules govern the relationship among co-investors whose agreement was to do business through the corporate vehicle but who failed to incorporate the entity in which they had chosen to invest? How are the losses to be treated in situations where their contributions to the intended 'corporation' were invested not through the corporate form? This Petition presents these fundamental questions which we believe were resolved erroneously by the Court of Appeals.

These questions are premised on the petitioner's theory that as a result of the failure of respondents Bormaheco, Spouses Cervantes, Constancio Maglana and petitioner Lim to incorporate, a de facto partnership among them was created, and that as a consequence of such relationship all must share in the losses and/or gains of the venture in proportion to their contribution. The petitioner, therefore, questions the appellate court's findings ordering him to reimburse certain amounts given by the respondents to the petitioner as their contributions to the intended corporation, to wit:

> However, defendant Lim should be held liable to pay his co-defendants' cross-claims in the total amount of P184,878.74 as correctly found by the trial court, with interest from the filing of the cross-complaints until the amount is fully paid. Defendant Lim should pay one-half of the said amount to Bormaheco and the Cervanteses and the other one-half to defendant Maglana. It is established in the records that defendant Lim had duly received the amount of Pl51,000.00 from defendants Bormaheco and Maglana representing the latter's participation in the ownership of the subject airplanes and spare parts. In addition, the cross-party plaintiffs incurred additional expenses, hence, the total sum of P 184,878.74.

We first state the principles.

> While it has been held that as between themselves the rights of the stockholders in a defectively incorporated association should be governed by the supposed charter and the

> laws of the state relating thereto and not by the rules governing partners, it is ordinarily held that persons who attempt, but fail, to form a corporation and who carry on business under the corporate name occupy the position of partners inter se. Thus, where persons associate themselves together under articles to purchase property to carry on a business, and their organization is so defective as to come short of creating a corporation within the statute, they become in legal effect partners inter se, and their rights as members of the company to the property acquired by the company will be recognized. So, where certain persons associated themselves as a corporation for the development of land for irrigation purposes, and each conveyed land to the corporation, and two of them contracted to pay a third the difference in the proportionate value of the land conveyed by him, and no stock was ever issued in the corporation, it was treated as a trustee for the associates in an action between them for an accounting, and its capital stock was treated as partnership assets, sold, and the proceeds distributed among them in proportion to the value of the property contributed by each. However, such a relation does not necessarily exist, for ordinarily persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist, and it should be implied only when necessary to do justice between the parties; thus, one who takes no part except to subscribe for stock in a proposed corporation which is never legally formed does not become a partner with other subscribers who engage in business under the name of the pretended corporation, so as to be liable as such in an action for settlement of the alleged partnership and contribution. A partnership relation between certain stockholders and other stockholders, who were also directors, will not be implied in the absence of an agreement, so as to make the former liable to contribute for payment of debts illegally contracted by the latter.

In the instant case, it is to be noted that the petitioner was declared non-suited for his failure to appear during the pretrial despite notification. In his answer, the petitioner denied having received any amount from respondents Bormaheco, the Cervanteses and Maglana. The trial court and the appellate court, however, found through Exhibit 58, that the petitioner received the amount of P151,000.00 representing the participation of Bormaheco and Atty. Constancio B. Maglana in the ownership of the subject airplanes and spare parts. The record shows that defendant Maglana gave P75,000.00 to petitioner Jacob Lim thru the Cervanteses.

It is therefore clear that the petitioner never had the intention to form a corporation with the respondents despite his representations to them. This gives credence to the cross-claims of the respondents to the effect that they were induced and lured by the petitioner to make contributions to a proposed corporation which was never formed because the petitioner reneged on their agreement. Maglana alleged in his cross-claim:

> ... that sometime in early 1965, Jacob Lim proposed to Francisco Cervantes and Maglana to expand his airline business. Lim was to procure two DC-3's from Japan and secure the necessary certificates of public convenience and necessity as well as the required permits for the operation thereof. Maglana sometime in May 1965, gave Cervantes his share of P75,000.00 for delivery to Lim which Cervantes did and Lim acknowledged receipt thereof. Cervantes, likewise, delivered his share of the undertaking. Lim in an undertaking sometime on or about August 9,1965, promised to incorporate his airline in accordance with their agreement and proceeded to acquire the planes on his own account. Since then up to the filing of this answer, Lim has refused, failed and still refuses to set up the corporation or return the money of Maglana. (Record on Appeal, pp. 337-338).

while respondents Bormaheco and the Cervanteses alleged in their answer, counterclaim, cross-claim and third-party complaint:

> Sometime in April 1965, defendant Lim lured and induced the answering defendants to purchase two airplanes and spare parts from Japan which the latter considered as their lawful contribution and participation in the proposed corporation to be known as SAL. Arrangements and negotiations were undertaken by defendant Lim. Down payments were advanced by defendants Bormaheco and the Cervanteses and Constancio Maglana (Exh. E- 1). Contrary to the agreement among the defendants, defendant Lim in connivance with the plaintiff, signed and executed the alleged chattel mortgage and surety bond agreement in his personal capacity as the alleged proprietor of the SAL. The answering defendants learned for the first time of this trickery and misrepresentation of the other, Jacob Lim, when the herein plaintiff chattel mortgage (sic) allegedly executed by defendant Lim, thereby forcing them to file an adverse claim in the form of third-party claim. Notwithstanding repeated oral demands made by defendants Bormaheco and Cervanteses, to defendant Lim, to surrender the possession of the two planes and their accessories and or return the amount advanced by the former amounting to an aggregate sum of P 178,997.14 as evidenced by a statement of accounts, the latter ignored, omitted and refused to comply with them. (Record on Appeal, pp. 341-342).

Applying therefore the principles of law earlier cited to the facts of the case, necessarily, no de facto partnership was created among the parties which would entitle the petitioner to a reimbursement of the supposed losses of the proposed corporation. The record shows that the petitioner was acting on his own and not in behalf of his other would-be incorporators in transacting the sale of the airplanes and spare parts.

- Bases Conversion and Development Authority v. Commissioner of Internal Revenue, G.R. No. 205925, [June 20, 2018]

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 205925, SECOND DIVISION, June 20, 2018, REYES, JR., J.

Section 2(10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government "instrumentality" and a "GOCC", to wit:

> *SEC. 2. General Terms Defined. x x x x*
>
> *(10) Instrumentality refers to any agency of the National Government. not integrated within the department framework, vested with special functions or jurisdiction by law,* ***endowed with some if not all corporate powers****, administering special funds, and enjoying operational autonomy, usually through a charter. x x x.*
>
> *x x x x*

> *(13) Government-owned or controlled corporation refers to any agency* ***organized as a stock or non-stock corporation****, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.*

Many government instrumentalities are vested with corporate powers ***but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]****. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.*

As previously mentioned, **in order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation**. Section 321 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.''

FACTS:

On October 8, 2010, BCDA filed a petition for review with the CTA in order to preserve its right to pursue its claim for refund of the Creditable Withholding Tax (CWT) in the amount of Php122,079,442.53, which was paid under protest from March 19, 2008 to October 8, 2008. The CWT which BCDA paid under protest was in connection with its sale of the BCDA-allocated units as its share in the Serendra Project pursuant to the Joint Development Agreement with Ayala Land, Inc.

The petition for review was filed with a **Request for Exemption from the Payment of Filing Fees** in the amount of Php1,209,457.90.

On October 20, 2010, the CTA First Division denied BCDA's Request for Exemption and ordered it to pay the filing fees within five days from notice.

BCDA moved for reconsideration which was denied by the CTA First Division on February 8, 2011. BCDA was once again ordered to pay the filing fees within five days from notice, otherwise, the petition for review will be dismissed.

BCDA filed a petition for review with the CTA En Banc on February 25, 2011, which petition was returned and not deemed filed without the payment of the correct legal fees. BCDA once again emphasized its position that it is exempt from the payment of such fees.

It must be emphasized that payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. To repeat, in both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

In this case, due to BCDA's non-payment of the prescribed legal fees within the prescribed period, this Court has not acquired jurisdiction over the case. Consequently, it is as if no appeal was ever filed with this Court.

ISSUE:

Whether BCDA is a government instrumentality vested with corporate powers, and as such, exempted from the payment of docket fees . (YES)

RULING:

At the crux of the present petition is the issue of whether or not BCDA is a government instrumentality or a government-owned and – controlled corporation (GOCC). If it is an instrumentality, it is exempt from the payment of docket fees. If it is a GOCC, it is not exempt and as such non-payment thereof would mean that the tax court did not acquire jurisdiction over the case and properly dismissed it for BCDA's failure to settle the fees on time.

Section 2(10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government "instrumentality" and a "GOCC", to wit:

> SEC. 2. General Terms Defined. x x x x
>
> (10) Instrumentality refers to any agency of the National Government. not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x.
>
> x x x x
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis Ours)

The grant of these corporate powers is likewise stated in Section 3 of Republic Act (R.A.) No. 7227; also known as The Bases Conversion and Development Act of 1992 which provides for BCDA's manner of creation, to wit:

> Sec. 3. Creation of the Bases Conversion and Development Authority. - There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, which shall have the attribute of perpetual succession **and shall be vested with the powers of a corporation**. (Emphasis Ours)

From the foregoing, it is clear that a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes.

In the 2006 case of Manila International Airport Authority v. CA, the Court, speaking through Associate Justice Antonio T. Carpio, explained in this wise:

> Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.

Moreover, in the 2007 case of Philippine Fisheries Development Authority v. CA, the Court reiterated that a government instrumentality retains its classification as such albeit having been endowed with some if not all corporate powers. The relevant portion of said decision reads as follows:

> Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither is it a non-stock corporation because it has no members.
>
> The Authority is actually a national government instrumentality which is define as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds and enjoying operational autonomy, usually through a charter. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

As previously mentioned, in order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 321 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and authorized to distribute to the holders of such shares dividends.''

Section 6 of R.A. No. 7227 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, to wit:

Sec. 8. Funding Scheme.—The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base x x x.

x x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: provided, that no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Sec. 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

(1) Thirty-two and five-tenths percent (35.5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;

(2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and subic military reservations and their extentions;

(3) Five Percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein: and

> (4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people. (Emphasis Ours)

The remaining balance, if any, from the proceeds of BCDA's activities shall be remitted to the National Treasury. The National Treasury is not a stockholder of BCDA Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders.

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, to wit:

> Sec. 88. Purposes. – Non-stock corporations may be formed or organized tor 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: subject to the special provisions of this Title governing particular classes of non-stock corporations.

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, to wit:

> Sec. 4. Purposes of the Conversion Authority. — The Conversion Authority shall have the following purposes:
>
> (a) To own, hold and/or administer the military reservations of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station. Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President:
>
> (b) To adopt, prepare and implement a comprehensive and detailed development plan embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;
>
> (c) To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses;
>
> (d) To serve as the holding company of subsidiary companies created pursuant to Section 16 of this Act and to invest in Special Economic Zones declared under Sections 12 and 15 of this Act;
>
> (e) To manage and operate through private sector companies developmental projects outside the jurisdiction of subsidiary companies and Special Economic Zones declared by presidential proclamations and established under this Act;

(f) To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions where such plans, programs and/or project development are part of the conversion of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

(g) To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units. (Emphases Ours)

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.

1. Corporation by estoppel

- Reynaldo M. Lozano vs. Hon. Eliezer R. De los Santos, Presiding Judge, RTC, Br. 58, Angeles City; and Antonio Anda, G.R. No. 125221, June 19, 1997

REYNALDO M. LOZANO, Petitioner, v. HON. ELIEZER R. DE LOS SANTOS, Presiding Judge, RTC, Br. 58, Angeles City; and ANTONIO ANDA, Respondents.
G.R. No. 125221, SECOND DIVISION, June 19, 1997, PUNO, J

The KAMAJDA and SAMAJODA to which petitioner and private respondent belong are duly registered with the SEC, but these associations are two separate entities. The dispute between petitioner and private respondent is not within the KAMAJDA nor the SAMAJODA. It is between members of separate and distinct associations. Petitioner and private respondent have no intracorporate relation much less do they have an intracorporate dispute. The SEC therefore has no jurisdiction over the complaint.

The doctrine of corporation by estoppel advanced by private respondent cannot override jurisdictional requirements. Jurisdiction is fixed by law and is not subject to the agreement of the parties. It cannot be acquired through or waived, enlarged or diminished by, any act or omission of the parties, neither can it be conferred by the acquiescence of the court.

Corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. ***It applies when persons assume to form a corporation and exercise corporate functions and enter into business relations with third persons. Where there is no third person involved and the conflict arises only among those assuming the form of a corporation, who therefore know that it has not been registered there is no corporation by estoppel****.*

FACTS:

The facts are undisputed. On December 19, 1995, petitioner Reynaldo M. Lozano filed Civil Case No. 1214 for damages against respondent Antonio Anda before the Municipal Circuit Trial Court (MCTC), Mabalacat and Magalang, Pampanga. Petitioner alleged that he was the president of the Kapatirang Mabalacat-Angeles Jeepney Drivers' Association, Inc. (KAMAJDA) while respondent Anda was the president of the Samahang Angeles-Mabalacat Jeepney Operators' and Drivers' Association, Inc. (SAMAJODA); in August 1995, upon the request of the Sangguniang Bayan of Mabalacat, Pampanga, petitioner and private respondent agreed to consolidate their respective associations and form the Unified Mabalacat-Angeles Jeepney Operators' and Drivers' Association, Inc. (UMAJODA); petitioner and private respondent also agreed to elect one set of officers who shall be given the sole authority to collect the daily dues from the members of the consolidated association; elections were held on October 29, 1995 and both petitioner and private respondent ran for president; petitioner won; private respondent protested and, alleging fraud, refused to recognize the results of the election; private respondent also refused to abide by their agreement and continued collecting the dues from the members of his association despite several demands to desist. Petitioner was thus constrained to file the complaint to restrain private respondent from collecting the dues and to order him to pay damages in the amount of P25,000.00 and attorney's fees of P500.00.

Private respondent moved to dismiss the complaint for lack of jurisdiction, claiming that jurisdiction was lodged with the Securities and Exchange Commission (SEC). The MCTC denied the motion on February 9, 1996. It denied reconsideration on March 8, 1996.

ISSUE:

Whether the doctrine of corporation by estoppel is applicable. (NO)

RULING:

The grant of jurisdiction to the SEC must be viewed in the light of its nature and function under the law. This jurisdiction is determined by a concurrence of two elements: (1) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.

The first element requires that the controversy must arise out of intracorporate or partnership relations between and among stockholders, members, or associates; 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 in so far as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation, partnership or association or deal with the internal affairs of the corporation, partnership or association. After all, the principal function of the SEC is the supervision and control of corporations, partnerships and associations with the end in view that investments in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.

There is no intracorporate nor partnership relation between petitioner and private Respondent. The controversy between them arose out of their plan to consolidate their respective jeepney drivers' and operators' associations into a single common association. This unified association was, however, still a proposal. It had not been approved by the SEC, neither had its officers and members submitted their articles of consolidation in accordance with Sections 78 and 79 of the Corporation Code. **Consolidation becomes effective not upon mere agreement of the members but only upon issuance of the certificate of consolidation by the SEC**. When the SEC, upon processing and examining the articles of consolidation, is satisfied that the consolidation of the corporations is not inconsistent with the provisions of the Corporation Code and existing laws, it issues a certificate of consolidation which makes the reorganization official. The new consolidated corporation comes into existence and the constituent corporations dissolve and cease to exist.

The KAMAJDA and SAMAJODA to which petitioner and private respondent belong are duly registered with the SEC, but these associations are two separate entities. The dispute between petitioner and private respondent is not within the KAMAJDA nor the SAMAJODA. It is between members of separate and distinct associations. Petitioner and private respondent have no intracorporate relation much less do they have an intracorporate dispute. The SEC therefore has no jurisdiction over the complaint.

The doctrine of corporation by estoppel advanced by private respondent cannot override jurisdictional requirements. Jurisdiction is fixed by law and is not subject to the agreement of the parties. It cannot be acquired through or waived, enlarged or diminished by, any act or omission of the parties, neither can it be conferred by the acquiescence of the court.

Corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when persons assume to form a corporation and exercise corporate functions and enter into business relations with third persons. Where there is no third person involved and the conflict arises only among those assuming the form of a corporation, who therefore know that it has not been registered there is no corporation by estoppel.

- Lim Tong Lim vs. Philippine Fishing Gear Industries, Inc., G.R. No. 136448, November 3, 1999

LIM TONG LIM, Petitioner, v. PHILIPPINE FISHING GEAR INDUSTRIES, INC, Respondent.
G.R. No. 136448, THIRD DIVISION, November 3, 1999, PANGANIBAN, J.

The doctrine of corporation by estoppel may apply to the alleged corporation and to a third party*. In the first instance, an unincorporated association, which represented itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relied in good faith on such representation. It cannot allege lack of personality to be sued to evade its responsibility for a contract it entered into and by virtue of which it received advantages and benefits.*

*On the other hand****, a third party who, knowing an association to be unincorporated, nonetheless treated it as a corporation and received benefits from it, may be barred from denying its corporate existence in a suit brought against the alleged corporation****. In such case, all those who benefited from the transaction made by the ostensible corporation, despite knowledge of its legal defects, may be held liable for contracts they impliedly assented to or took advantage of.*

Technically, it is true that petitioner did not directly act on behalf of the corporation. ***However, having reaped the benefits of the contract entered into by persons with whom he previously had an existing relationship, he is deemed to be part of said association and is covered by the scope of the doctrine of corporation by estoppel****.*

FACTS:

Lim Tong Lim requested Peter Yao to engage in commercial fishing with him and one Antonio Chua. The three agreed to purchase two fishing boats but since they do not have the money they borrowed from one Jesus Lim (brother of Lim Tong Lim). Antonio Chua and Peter Yao, on behalf of "Ocean Quest Fishing Corporation," entered into a Contract with Philippine Fishing Gear Industries, Inc. for the purchase of fishing nets of various sizes. Chua and Yao claimed that they were engaged in a business venture with Lim Tong Lim, who was not a signatory to the contract.

The buyers failed to pay for items; and the private respondent filed a collection suit against them, including Lim Tong Lim, with a prayer for a writ of preliminary attachment. The suit was filed against them in their capacities as general partners, on the allegation that Ocean Quest Fishing Corporation was a nonexistent. The lower court issued a Writ of Preliminary Attachment, by attaching the fishing nets on board F/B Lourdes which was then docked at the Fisheries Port, Navotas, Metro Manila. Chua, instead of answering the Complaint, filed a Manifestation admitting his liability and requesting a reasonable time to pay and turned over to some of the nets in his possession. Yao filed an Answer. Lim Tong Lim, filed an Answer with Counterclaim and Crossclaim and moved for the lifting of the Writ of Attachment. The trial court maintained the Writ and ordered the sale of the fishing nets. Philippine Fishing Gear Industries won the bidding and deposited with the said court the sales proceeds of P900,000.

On November 18, 1992, the trial court rules that Philippine Fishing was entitled to the Writ of Attachment and that Chua, Yao and Lim, as general partners, were jointly liable to pay respondent. The trial court ruled that a partnership among Lim, Chua and Yao existed based: (1) on the testimonies of the witnesses presented; (2) on a Compromise Agreement executed by the three in Civil Case No. 1492-MN which Chua and Yao had brought against Lim in the RTC of Malabon, Branch 72; and 3) That the parties plaintiffs & Lim Tong Lim agree to have the four (4) vessels sold in the amount of P5,750,000.00 including the fishing net. This P5,750,000.00 shall be applied as full payment for P3,250,000.00 in favor of JL Holdings Corporation and/or Lim Tong Lim.

The trial court noted that the Compromise Agreement was silent as to the nature of theirobligations, but that joint liability could be presumed from the equal distribution of the profit and loss.

Lim appealed to the Court of Appeals (CA) which, as already stated, affirmed the RTC. The ruling of the Court of Appeals, in affirming the trial court, the CA held that a partnerhip existed among may be held liable as a such for the fishing nets and floats purchased by and for the use of the partnership. The appellate court ruled: The evidence establishes that the defendants including Lim Tong Lim undertook a partnership for commercial fishing x x x. Obviously, the ultimate undertaking of the defendants was to divide the profits among themselves which is what a partnership essentially is x x x. By a contract of partnership, two or more persons bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves.

ISSUE:

Whether petitioner should be held liable along with Chua and Yao. (YES)

RULING:
Section 21 of the Corporation Code of the Philippines provides:

> "SECTION 21. Corporation by estoppel. — All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: Provided however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.

"One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation."

Thus, even if the ostensible corporate entity is proven to be legally nonexistent, a party may be estopped from denying its corporate existence. "The reason behind this doctrine is obvious — an unincorporated association has no personality and would be incompetent to act and appropriate for itself the power and attributes of a corporation as provided by law; it cannot create agents or confer authority on another to act in its behalf; thus, those who act or purport to act as its representatives or agents do so without authority and at their own risk. And as it is an elementary principle of law that a person who acts as an agent without authority or without a principal is himself regarded as the principal, possessed of all the right and subject to all the liabilities of a principal, a person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent."

The doctrine of corporation by estoppel may apply to the alleged corporation and to a third party. In the first instance, an unincorporated association, which represented itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relied in good faith on such representation. It cannot allege lack of personality to be sued to evade its responsibility for a contract it entered into and by virtue of which it received advantages and benefits.

On the other hand, a third party who, knowing an association to be unincorporated, nonetheless treated it as a corporation and received benefits from it, may be barred from denying its corporate existence in a suit brought against the alleged corporation. In such case, all those who benefited from the transaction made by the ostensible corporation, despite knowledge of its legal defects, may be held liable for contracts they impliedly assented to or took advantage of.

There is no dispute that the respondent, Philippine Fishing Gear Industries, is entitled to be paid for the nets it sold. The only question here is whether petitioner should be held jointly liable with Chua and Yao. Petitioner contests such liability, insisting that only those who dealt in the name of the ostensible corporation should be held liable. Since his name does not appear on any of the contracts and since he never directly transacted with the respondent corporation, ergo, he cannot be held liable.

Unquestionably, petitioner benefited from the use of the nets found inside F/B Lourdes, the boat which has earlier been proven to be an asset of the partnership. He in fact questions the attachment of the nets, because the Writ has effectively stopped his use of the fishing vessel.

It is difficult to disagree with the RTC and the CA that Lim, Chua and Yao decided to form a corporation. Although it was never legally formed for unknown reasons, this fact alone does not preclude the liabilities of the three as contracting parties in representation of it. Clearly, under the law on estoppel, those acting on behalf of a corporation and those benefited by it, knowing it to be without valid existence, are held liable as general partners.

Technically, it is true that petitioner did not directly act on behalf of the corporation. However, having reaped the benefits of the contract entered into by persons with whom he previously had an existing relationship, he is deemed to be part of said association and is covered by the scope of the doctrine of corporation by estoppel. We reiterate the ruling of the Court in Alonso v. Villamor:

> "A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."

- People of the Philippines vs. Engr. Carlos Garcia y Pineda, Patricio Botero y Vales, Luisa Miraples (at large) & Patricio Botero y Vales, G.R. No. 117010, April 18, 1997

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ENGR. CARLOS GARCIA y PINEDA, PATRICIO BOTERO y VALES, LUISA MIRAPLES (at large), Accused, PATRICIO BOTERO y VALES, Accused-Appellant.
G.R. No. 117010, SECOND DIVISION, April 18, 1997, PUNO, J.

The evidence shows that appellant Botero was one of the incorporators of Ricorn. For reasons that cannot be discerned from the records, Ricorn's incorporation was not consummated. Even then, appellant cannot avoid his liabilities to the public as an incorporator of Ricorn. He and his co-accused Garcia held themselves out to the public as officers of Ricorn. They received money from applicants who availed of their services. They are thus estopped from claiming that they are not liable as corporate officials of Ricorn. ***Section 25 of the Corporation Code provides that" (a)ll persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all the debts, liabilities and damages incurred or arising as a result thereof : Provided, however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality."***

FACTS:

Six (6) out of the sixteen (16) complainants testified that on various dates in March 1992, they went to Ricorn Philippine International Shipping Lines, Inc. (hereinafter Ricorn), an entity which recruits workers for overseas employment, with office at Rm. 410, Jovan Building, 600 Shaw Blvd., Mandaluyong, Metro Manila. They applied as seamen, cook, waiter, chambermaid or laundrywoman overseas and were required to submit their NBI and police clearance, birth certificate, passport, seaman's book and Survival of Life at Sea (SOLAS). As they did not have the last three (3) documents, they were asked to pay five thousand pesos

(P5,000.00) as processing fee. They paid to Ricorn's treasurer, Luisa Miraples who issued receipts signed by her under Ricorn's heading.

Garcia was represented as Ricorn's president and Botero as vice-president of Ricorn. Both assured complainants of employment after the May 1992 election. However, after election, when complainants went back to check on their applications, Ricorn has abandoned its office, Garcia and Botero were nowhere to be found. They also checked with the Securities and Exchange Commission (SEC) and discovered that Ricorn was not yet incorporated. They also found that Ricorn was not licensed by the Department of Labor and Employment (DOLE) to engage in recruitment activities.

According to Garcia, the group of Botero and Miraples approached him at a baptismal party to join Ricorn and was asked to contribute P100,000. He met them once more at Ricorn's office at Jovan Bldg. where there were many applicants for overseas jobs. This time, they asked him to become Ricorn's president and to contribute only twenty thousand pesos (P20,000.00). He declined the offer. Allegedly, he already knew that Ricorn was not licensed. On the other hand, Botero testified that he dealt with accused Garcia who claimed to be the President of Ricorn when he applied for overseas employment as a machinist. Eventually, he gained the trust of Garcia and became an employee of Ricorn. As a former seaman, he was familiar with the processing of passport, seaman's book and SOLAS. His job consisted in following-up these documents. He left Ricorn when he discovered it was not licensed by the POEA nor was it registered with the SEC.

However, on cross-examination, he admitted that in February 1992, he met Garcia in TADE recruitment agency. Garcia convinced him to become one of the incorporators of Ricorn. He gave money to Garcia for Ricorn's registration with the SEC.

ISSUE:

Whether Botero is guilty of illegal recruitment on large scale. (YES)

RULING:

All the essential elements of the crime of illegal recruitment in large scale are present in this case, to wit:

> "(1) the accused engages in the recruitment and placement of workers, as defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code;chanroblesvirtualawlibrary
>
> "(2) accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and
>
> "(3) accused commits the same against three (3) or more persons, individually or as a group."

It is a fact that Ricorn had no license to recruit from DOLE. In the office of Ricorn, a notice was posted informing job applicants that its recruitment license is still being processed. Yet, Ricorn already entertained applicants and collected fees for processing their travel documents.

For engaging in recruitment of workers without obtaining the necessary license from the POEA, Botero should suffer the consequences of Ricorn's illegal act for" (i)f the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; . . ." The evidence shows that appellant Botero was one of the incorporators of Ricorn. For reasons that cannot be discerned from the records, Ricorn's incorporation was not consummated. Even then, appellant cannot avoid his liabilities to the public as an incorporator of Ricorn. He and his co-accused Garcia held themselves out to the public as officers of Ricorn. They received money from applicants who availed of their services. They are thus estopped from claiming that they are not liable as corporate officials of Ricorn. Section 25 of the Corporation Code provides that" (a)ll persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all the debts, liabilities and damages incurred or arising as a result thereof : Provided, however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality."

- Macasaet vs. Francisco, G.R. No. 156759, June 5, 2013

ALLEN A. MACASAET, NICOLAS V. QUIJANO, JR., ISAIAS ALBANO, LILY REYES, JANET BAY, JESUS R. GALANG, AND RANDY HAGOS, Petitioners, vs. FRANCISCO R. CO, JR., Respondent.
G.R. No. 156759, FIRST DIVISION, June 5, 2013, BERSAMIN, J.

Nor can we sustain petitioners' contention that Abante Tonite could not be sued as a defendant due to its not being either a natural or a juridical person. ***In rejecting their contention, the CA categorized Abante Tonite as a corporation by estoppel as the result of its having represented itself to the reading public as a corporation despite its not being incorporated****. Thereby, the CA concluded that the RTC did not gravely abuse its discretion in holding that the non-incorporation of Abante Tonite with the Securities and Exchange Commission was of no consequence, for, otherwise, whoever of the public who would suffer any damage from the publication of articles in the pages of its tabloids would be left without recourse. We cannot disagree with the CA, considering that the editorial box of the daily tabloid disclosed that basis, nothing in the box indicated that Monica Publishing Corporation had owned Abante Tonite.*

FACTS:

Respondent sued pertitioners, including Abante Tonite, claiming damages because of an allegedly libelous article petitioner published said tabloid. RTC issued summons to be served on each petitioners, including Abante Tonite, at their business address. RTC Sheriff Medina proceeded to the address to effect the personal service of the summons. But his efforts to personally serve each were futile because the petitioners were out of the office and unavailable. He returned in the afternoon on the same day to make a second attempt at serving the summons, but he was informed that petitioners were still out of the office. He decided to resort to substituted service of the summons.

Petitioners moved for dismissal of the complaint alleging lack of jurisdiction over their persons because of the invalid and ineffectual substituted service of summons asserting that sheriff made no prior attempt to serve the summons personally, and that Abante Tonite, being neither a natural nor a juridical person, could not be made a party in the action. RTC denied the motion to dismiss. Considering that summonses cannot be served within a reasonable time to the persons of all the defendants, hence substituted service of summonses was validly applied. More importantly, "Abante Tonite" is a daily tabloid of general circulation. The information written on the said newspaper will affect the person, natural as well as juridical, who was stated or implicated in the news. All of these facts imply that "Abante Tonite" falls within the provision of the New Civil Code on juridical persons. Assuming arguendo that "Abante Tonite" is not registered with the SEC, it is deemed a corporation by estoppel considering that it possesses attributes of a juridical person, otherwise it cannot be held liable for damages and injuries it may inflict to other persons. CA affirmed RTC's decision.

ISSUE:

Whether Abante Tonite can be considered as a corporation by estoppel. (YES)

RULING:

Nor can we sustain petitioners' contention that Abante Tonite could not be sued as a defendant due to its not being either a natural or a juridical person. In rejecting their contention, the CA categorized Abante Tonite as a corporation by estoppel as the result of its having represented itself to the reading public as a corporation despite its not being incorporated. Thereby, the CA concluded that the RTC did not gravely abuse its discretion in holding that the non-incorporation of Abante Tonite with the Securities and Exchange Commission was of no consequence, for, otherwise, whoever of the public who would suffer any damage from the publication of articles in the pages of its tabloids would be left without recourse. We cannot disagree with the CA, considering that the editorial box of the daily tabloid disclosed that basis, nothing in the box indicated that Monica Publishing Corporation had owned Abante Tonite.

c. De facto corporation

- Sappari K. Sawadjaanvs. the Honorable Court of Appeals, the Civil Service Commission and Al-amanah Investment Bank of the Philippines, G.R. No. 141735, June 8, 2005

SAPPARI K. SAWADJAAN, petitioner, vs. THE HONORABLE COURT OF APPEALS, THE CIVIL SERVICE COMMISSION and AL-AMANAH INVESTMENT BANK OF THE PHILIPPINES, respondents.

G.R. No. 141735, EN BANC, June 8, 2005, CHICO-NAZARIO, J.

The AIIBP was created by Rep. Act No. 6848. It has a main office where it conducts business, has shareholders, corporate officers, a board of directors, assets, and personnel. It is, in fact, here represented by the Office of the Government Corporate Counsel, "the principal law office of government-owned corporations, one of which is respondent bank." ***At the very least, by its failure to submit its by-laws on time, the AIIBP may be considered a de facto corporation whose right to exercise***

corporate powers may not be inquired into collaterally in any private suit to which such corporations may be a party.

Moreover, a corporation which has failed to file its by-laws within the prescribed period does not ipso facto lose its powers as such*. The SEC Rules on Suspension/Revocation of the Certificate of Registration of Corporations, details the procedures and remedies that may be availed of before an order of revocation can be issued. There is no showing that such a procedure has been initiated in this case.*

FACTS:

Petitioner Sappari K. Sawadjaan was among the first employees of the Philippine Amanah Bank (PAB) when it was created by virtue of Presidential Decree No. 264 on 02 August 1973. He rose through the ranks, working his way up from his initial designation as security guard, to settling clerk, bookkeeper, credit investigator, project analyst, appraiser/ inspector, and eventually, loans analyst.

In February 1988, while still designated as appraiser/investigator, Sawadjaan was assigned to inspect the properties offered as collaterals by Compressed Air Machineries and Equipment Corporation (CAMEC) for a credit line of Five Million Pesos (P5,000,000.00). The properties consisted of two parcels of land covered by Transfer Certificates of Title (TCTs) No. N-130671 and No. C-52576. On the basis of his Inspection and Appraisal Report, the PAB granted the loan application. When the loan matured on 17 May 1989, CAMEC requested an extension of 180 days, but was granted only 120 days to repay the loan. In the meantime, Sawadjaan was promoted to Loans Analyst I on 01 July 1989. In January 1990, Congress passed Republic Act 6848 creating the AIIBP and repealing P.D. No. 264 (which created the PAB). All assets, liabilities and capital accounts of the PAB were transferred to the AIIBP, and the existing personnel of the PAB were to continue to discharge their functions unless discharged.

In the ensuing reorganization, Sawadjaan was among the personnel retained by the AIIBP. When CAMEC failed to pay despite the given extension, the bank, now referred to as the AIIBP, discovered that TCT No. N-130671 was spurious, the property described therein non-existent, and that the property covered by TCT No. C-52576 had a prior existing mortgage in favor of one Divina Pablico. On 08 June 1993, the Board of Directors of the AIIBP created an Investigating Committee to look into the CAMEC transaction, which had cost the bank Six Million Pesos (P6,000,000.00) in losses.

The subsequent events, as found and decided upon by the Court of Appeals, are as follows: On 18 June 1993, petitioner received a memorandum from Islamic Bank [AIIBP] Chairman Roberto F. De Ocampo charging him with Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and preventively suspending him. In his memorandum dated 8 September 1993, petitioner informed the Investigating Committee that he could not submit himself to the jurisdiction of the Committee because of its alleged partiality. For his failure to appear before the hearing set on 17 September 1993, after the hearing of 13 September 1993 was postponed due to the Manifestation of even date filed by petitioner, the Investigating Committee declared petitioner in default and the prosecution was allowed to present its evidence ex parte.

ISSUE:

Whether AIIBP is a de facto corporation. (NO)

RULING:

Even if we were to overlook this fact in the broader interests of justice and treat this as a special civil action for certiorari under Rule 65, the petition would nevertheless be dismissed for failure of the petitioner to show grave abuse of discretion. Petitioner's recurrent argument, tenuous at its very best, is premised on the fact that since respondent AIIBP failed to file its by-laws within the designated 60 days from the effectivity of Rep. Act No. 6848, all proceedings initiated by AIIBP and all actions resulting therefrom are a patent nullity. Or, in his words, the AIIBP and its officers and Board of Directors,

> . . . [H]ave no legal authority nor jurisdiction to manage much less operate the Islamic Bank, file administrative charges and investigate petitioner in the manner they did and allegedly passed Board Resolution No. 2309 on December 13, 1993 which is null and void for lack of an (sic) authorized and valid by-laws. The CIVIL SERVICE COMMISSION was therefore affirming, erroneously, a null and void "Resolution No. 2309 dated December 13, 1993 of the Board of Directors of Al-Amanah Islamic Investment Bank of the Philippines" in CSC Resolution No. 94-4483 dated August 11, 1994. A motion for reconsideration thereof was denied by the CSC in its Resolution No. 95-2754 dated April 11, 1995. Both acts/resolutions of the CSC are erroneous, resulting from fraud, falsifications and misrepresentations of the alleged Chairman and CEO Roberto F. de Ocampo and the alleged Director Farouk A. Carpizo and his group at the alleged Islamic Bank.

Nowhere in petitioner's voluminous pleadings is there a showing that the court a quo committed grave abuse of discretion amounting to lack or excess of jurisdiction reversible by a petition for certiorari. Petitioner already raised the question of AIIBP's corporate existence and lack of jurisdiction in his Motion for New Trial/Motion for Reconsideration of 27 May 1997 and was denied by the Court of Appeals. Despite the volume of pleadings he has submitted thus far, he has added nothing substantial to his arguments.

The AIIBP was created by Rep. Act No. 6848. It has a main office where it conducts business, has shareholders, corporate officers, a board of directors, assets, and personnel. It is, in fact, here represented by the Office of the Government Corporate Counsel, "the principal law office of government-owned corporations, one of which is respondent bank." **At the very least, by its failure to submit its by-laws on time, the AIIBP may be considered a de facto corporation whose right to exercise corporate powers may not be inquired into collaterally in any private suit to which such corporations may be a party.**

Moreover, a corporation which has failed to file its by-laws within the prescribed period does not ipso facto lose its powers as such. The SEC Rules on Suspension/Revocation of the Certificate of Registration of Corporations, details the procedures and remedies that may be availed of before an order of revocation can be issued. There is no showing that such a procedure has been initiated in this case.

- Missionary Sisters of Our Lady of Fatima v. Alzona, G.R. No. 224307, [August 6, 2018]

THE MISSIONARY SISTERS OF OUR LADY OF FATIMA (PEACH SISTERS OF LAGUNA), REPRESENTED BY REV. MOTHER MA. CONCEPCION R. REALON, ET AL., Petitioners, v. AMANDO V. ALZONA, ET AL., Respondents.
G.R. No. 224307, SECOND DIVISION, August 06, 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. Government corporation

- Baluyot vs. Holganza, 325 SCRA 248 (2000)

FRANCISCA S. BALUYOT, Petitioner, v. PAUL E. HOLGANZA and the OFFICE OF THE OMBUDSMAN (VISAYAS) represented by its Deputy Ombudsman for the Visayas ARTURO C.

MOJICA, Director VIRGINIA PALANCA-SANTIAGO, and Graft Investigation Officer I ANNA MARIE P. MILITANTE, Respondents.
G. R. No. 136374, SECOND DIVISION, February 9, 2000, DE LEON, JR., J.

Following the ruling in Camporedondo v. National Labor Relations Commission, et. al., Philippine National Red Cross (PNRC) is a government owned and controlled corporation, with an original charter under Republic Act No. 95, as amended. **The test to determine whether a corporation is government owned or controlled, or private in nature is simple. Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System**. The PNRC was not "impliedly converted to a private corporation" simply because its charter was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other services and in its benefits and fund raising drives, and be allotted one lottery draw a year by the Philippine Charity Sweepstakes Office for the support of its disaster relief operation in addition to its existing lottery draws for blood program.

FACTS:

During a spot audit conducted on March 21, 1977 by a team of auditors from the Philippine National Red Cross (PNRC) headquarters, a cash shortage of P154,350.13 was discovered in the funds of its Bohol chapter. The chapter administrator, petitioner Francisca S. Baluyot, was held accountable for the shortage. Thereafter, private respondent Paul E. Holganza, in his capacity as a member of the board of directors of the Bohol chapter, filed an affidavit-complaint before the Office of the Ombudsman charging petitioner of malversation under Article 217 of the Revised Penal Code.
However, upon recommendation by respondent Anna Marie P. Militante, Graft Investigation.

Officer I, an administrative docket for dishonesty was also opened against petitioner. On March 14, 1998, petitioner filed her counter-affidavit, raising principally the defense that public respondent had no jurisdiction over the controversy. She argued that the Ombudsman had authority only over government-owned or controlled corporations, which the PNRC was not, or so she claimed. Petitioner contends that the Ombudsman has no jurisdiction over the subject matter of the controversy since the PNRC is allegedly a private voluntary organization. The following circumstances, she insists, are indicative of the private character of the organization: (1) the PNRC does not receive any budgetary support from the government, and that all money given to it by the latter and its instrumentalities become private funds of the organization; (2) funds for the payment of personnel's salaries and other emoluments come from yearly fund campaigns, private contributions and rentals from its properties; and (3) it is not audited by the Commission on Audit. Petitioner states that the PNRC falls under the International Federation of Red Cross, a Switzerland based organization, and that the power to discipline employees accused of misconduct, malfeasance, or immorality belongs to the PNRC Secretary General by virtue of its by-laws. She threatens that "to classify the PNRC as a government-owned or controlled corporation would create a dangerous precedent as it would lose its neutrality, independence and impartiality.

ISSUE:

Whether the Philippine National Red Cross is a Government-owned and controlled Corporation. (YES)

RULING:

Following the ruling in Camporedondo v. National Labor Relations Commission, et. al., Philippine National Red Cross (PNRC) is a government owned and controlled corporation, with an original charter under Republic Act No. 95, as amended. The test to determine whether a corporation is government owned or controlled, or private in nature is simple. Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System. The PNRC was not "impliedly converted to a private corporation" simply because its charter was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other services and in its benefits and fund raising drives, and be allotted one lottery draw a year by the Philippine Charity Sweepstakes Office for the support of its disaster relief operation in addition to its existing lottery draws for blood program.

- Feliciano vs. Commission on Audit, 464 Philippine 439 (2004)

ENGR. RANULFO C. FELICIANO, in his capacity as General Manager of the Leyte Metropolitan Water District (LMWD), Tacloban City, Petitioner, v. COMMISSION ON AUDIT, Chairman CELSO D. GANGAN, Commissioners RAUL C. FLORES and EMMANUEL M. DALMAN, and Regional Director of COA Region VIII, Respondents.
G.R. NO. 147402, EN BANC, January 14, 2004, CARPIO, J.

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that ***Congress can create corporations with special charters only if such corporations are government-owned or controlled****.*

Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. Significantly, petitioners are not created under the said code, but on the contrary, they were created pursuant to a special law and are governed primarily by its provision.

FACTS:

A Special Audit Team from COA Regional Office No. VIII audited the accounts of Leyte Metropolitan Water District (LMWD). Subsequently, LMWD received a letter from COA requesting payment of auditing fees. As General Manager of LMWD, Feliciano sent a reply informing COA's Regional Director that the water district could not pay the auditing fees. Petitioner cited as basis for his action Sections 6 and 20 of PD 198 as well as Section 18 of RA 6785. Petitioner wrote COA through the Regional Director asking for refund of all auditing fees LMWD previously paid to COA. On 16 March 2000, petitioner received COA Chairman Celso D. Gangan's Resolution dated 3 January 2000 denying his requests. Petitioner filed a motion for reconsideration on 31 March 2000, which COA denied on 30 January 2001. The COA ruled that the Court has already settled COA's audit jurisdiction over local water districts in Davao City Water District v. Civil Service Commission and Commission on Audit, where it was held that Section 3(b) of PD 198 gives the local executives of the local subdivision unit where such water districts are located the power to appoint the members who will comprise the Board of Directors. In contrast, the members of the Board of Directors or the trustees of a private corporation are elected from among members or stockholders thereof. It would not be amiss at this point to emphasize that a private corporation is created for the private purpose, benefit, aim and end of its members or stockholders. Necessarily, said members or stockholders should be given a free hand to choose who will compose the governing body of their corporation. But this is not the case here and this clearly indicates that local water districts are not private corporations. Hence, Feliciano filed the petition and to the petition were resolutions of the Visayas Association of Water Districts (VAWD) and the Philippine Association of Water Districts (PAWD) supporting the petition.

ISSUE:

Whether a Local Water District ("LWD") created under PD 198, as amended, is a government-owned or controlled corporation. (YES)

RULING:

Petitioner seeks to revive a well-settled issue. Petitioner asks for a re-examination of a doctrine backed by a long line of cases culminating in Davao City Water District v. Civil Service Commission and just recently reiterated in De Jesus v. Commission on Audit. Petitioner maintains that LWDs are not government-owned and controlled corporations with original charters. Petitioner even argues that LWDs are private corporations. Petitioner asks the Court to consider certain interpretations of the applicable laws, which would give a "new perspective to the issue of the true character of water districts."

Petitioner theorizes that what PD 198 created was the Local Waters Utilities Administration ("LWUA") and not the LWDs. Petitioner claims that LWDs are created "pursuant to" and not created directly by PD 198. Thus, petitioner concludes that PD 198 is not an "original charter" that would place LWDs within the audit jurisdiction of COA as defined in Section 2(1), Article IX-D of the Constitution. Petitioner elaborates that PD 198 does not create LWDs since it does not expressly direct the creation of such entities, but only provides for their formation on an optional or voluntary basis. Petitioner adds that the operative act that creates an LWD is the approval of the Sanggunian Resolution as specified in PD 198.

Petitioners contention deserves scant consideration.

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:

> Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

> From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. Significantly, petitioners are not created under the said code, but on the contrary, **they were created pursuant to a special law and are governed primarily by its provision**.

LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm.

- Boy Scouts of the Philippines vs. Commission on Audit, G.R. No. 177131, June 7, 2011

BOY SCOUTS OF THE PHILIPPINES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.
G.R. No. 177131, EN BANC, June 07, 2011, LEONARDO-DE CASTRO, J.

*After looking at the legislative history of its amended charter and carefully studying the applicable laws and the arguments of both parties, we find that **the BSP is a public corporation** and its funds are subject to the COA's audit jurisdiction.*

The BSP Charter (Commonwealth Act No. 111, approved on October 31, 1936), entitled "An Act to Create a Public Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes" created the BSP as a "public corporation" to serve the following public interest or purpose:

> *Sec. 3.The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts.*

*As presently constituted, t**he BSP still remains an instrumentality of the national government. It is a public corporation created by law for a public purpose**, attached to the DECS pursuant to its Charter and the Administrative Code of 1987. It is not a private corporation which is required to be owned or controlled by the government and be economically viable to justify its existence under a special law.*

Therefore, even though the amended BSP charter did away with most of the governmental presence in the BSP Board, this was done to more strongly promote the BSP's objectives, which were not supported under Presidential Decree No. 460. The BSP objectives, as pointed out earlier, are consistent with the public purpose of the promotion of the well-being of the youth, the future leaders of the country. The amendments were not done with the view of changing the character of the BSP into a privatized corporation. The BSP remains an agency attached to a department of the government, the DECS, and it was not at all stripped of its public character.

FACTS:

COA issued Resolution No. 99-0115 ("the COA Resolution"), with the subject "Defining the Commission's policy with respect to the audit of the Boy Scouts of the Philippines." In its whereas clauses, the COA Resolution stated that the BSP was created as a public corporation under Commonwealth Act No. 111, as amended by Presidential Decree No. 460 and Republic Act No. 7278; that in Boy Scouts of the Philippines v. National Labor Relations Commission, the Supreme Court ruled that the BSP, as constituted under its charter, was a "government-controlled corporation within the meaning of Article IX(B)(2)(1) of the Constitution"; and that "the BSP is appropriately regarded as a government instrumentality under the 1987 Administrative Code."

The BSP sought reconsideration of the COA Resolution in a letter stating that Republic Act No. 7278 which amended the BSP's charter after the cited case was decided. The most salient of all amendments in RA No. 7278 is the alteration of the composition of the National Executive Board of the BSP. The said RA virtually eliminated the "substantial government participation" in the National Executive Board by removing: (i) the President of the Philippines and executive secretaries, with the exception of the Secretary of Education, as members thereof; and (ii) the appointment and confirmation power of the President of the Philippines, as Chief Scout, over the members of the said Board. The BSP believes that the cited case has been superseded by RA 7278. Thereby weakening the case's conclusion that the BSP is a government-controlled corporation. The 1987 Administrative Code itself, of which the BSP vs. NLRC relied on for some terms, defines government-owned and controlled corporations as agencies organized as stock or non-stock corporations which the BSP, under its present charter, is not. Also, the Government, like in other GOCCs, does not have funds invested in the BSP. What RA 7278 only provides is that the Government or any of its subdivisions, branches, offices, agencies and instrumentalities can from time to time donate and contribute funds to the BSP. The BSP is not an entity administering special funds. It is not even included in the DECS National Budget

BSP's CONTENTIONS:
The BSP contends that Boy Scouts of the Philippines v. National Labor Relations Commission is inapplicable for purposes of determining the audit jurisdiction of the COA as the issue therein was the jurisdiction of the National Labor Relations Commission over a case for illegal dismissal and unfair labor practice filed by certain BSP employees.

While the BSP concedes that its functions do relate to those that the government might otherwise completely assume on its own, it avers that this alone was not determinative of the COA's audit jurisdiction over it. The BSP further avers that the Court in Boy Scouts of the Philippines v. National Labor Relations Commission "simply stated x x x that in respect of functions, the BSP is akin to a public corporation" but this was not synonymous to holding that the BSP is a government corporation or entity subject to audit by the COA.

The BSP contends that Republic Act No. 7278 introduced crucial amendments to its charter; hence, the findings of the Court in Boy Scouts of the Philippines v. National Labor Relations Commission are no longer valid as the government has ceased to play a controlling influence in it. The BSP claims that the pronouncements of the Court therein must be taken only within the context of that case; that the Court had categorically found that its assets were acquired from the Boy Scouts of America and not from the Philippine government, and that its operations are financed chiefly from membership dues of the Boy Scouts themselves as well as from property rentals; and that "the BSP may correctly be characterized as non-governmental, and hence, beyond the audit jurisdiction of the COA." It further claims that the designation by the Court.

In its comment, the COA argues as follows:

1. The BSP is a public corporation created under Commonwealth Act No. 111 dated October 31, 1936, and whose functions relate to the fostering of public virtues of citizenship and patriotism and

the general improvement of the moral spirit and fiber of the youth. The manner of creation and the purpose for which the BSP was created indubitably prove that it is a government agency.

2. Being a government agency, the funds and property owned or held in trust by the BSP are subject to the audit authority of respondent Commission on Audit pursuant to Section 2 (1), Article IX-D of the 1987 Constitution.

3. Republic Act No. 7278 did not change the character of the BSP as a government-owned or controlled corporation and government instrumentality

ISSUE:

Whether BSP is a public corporation. (YES)

RULING:

After looking at the legislative history of its amended charter and carefully studying the applicable laws and the arguments of both parties, we find that the BSP is a public corporation and its funds are subject to the COA's audit jurisdiction.

The BSP Charter (Commonwealth Act No. 111, approved on October 31, 1936), entitled "An Act to Create a Public Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes" created the BSP as a "public corporation" to serve the following public interest or purpose:

> Sec. 3.The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts.

Presidential Decree No. 460, approved on May 17, 1974, amended Commonwealth Act No. 111 and provided substantial changes in the BSP organizational structure.

There are three classes of juridical persons under Article 44 of the Civil Code and the BSP, as presently constituted under Republic Act No. 7278, falls under the second classification. Article 44 reads:

> Art. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> **(2) Other corporations, institutions and entities for public interest or purpose created by law; their personality begins as soon as they have been constituted according to law;**
>
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (Emphases supplied.)

The BSP, which is a corporation created for a public interest or purpose, is subject to the law creating it under Article 45 of the Civil Code, which provides:

> **Art. 45. Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or recognizing them.**
>
> Private corporations are regulated by laws of general application on the subject. Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships. (Emphasis and underscoring supplied.)

The purpose of the BSP as stated in its amended charter shows that it was created in order to implement a State policy declared in Article II, Section 13 of the Constitution, which reads:

ARTICLE II - DECLARATION OF PRINCIPLES AND STATE POLICIES

> Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Evidently, the BSP, which was created by a special law to serve a public purpose in pursuit of a constitutional mandate, comes within the class of "public corporations" defined by paragraph 2, Article 44 of the Civil Code and governed by the law which creates it, pursuant to Article 45 of the same Code.

The BSP's Classification Under the Administrative Code of 1987

The public, rather than private, character of the BSP is recognized by the fact that, along with the Girl Scouts of the Philippines, it is classified as an attached agency of the DECS under Executive Order No. 292, or the Administrative Code of 1987, which states:

TITLE VI – EDUCATION, CULTURE AND SPORTS

Chapter 8 – Attached Agencies

SEC. 20. **Attached Agencies**. – The following agencies are hereby attached to the Department:

x x x x

(12) **Boy Scouts of the Philippines**;

(13) Girl Scouts of the Philippines.

The administrative relationship of an attached agency to the department is defined in the Administrative Code of 1987 as follows:

BOOK IV

THE EXECUTIVE BRANCH

Chapter 7 – ADMINISTRATIVE RELATIONSHIP

> SEC. 38. Definition of Administrative Relationship. – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:
>
> x x x x
>
> (3) **Attachment**. – (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation **for purposes of policy and program coordination. The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter**; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency.

As an attached agency, the BSP enjoys operational autonomy, as long as policy and program coordination is achieved by having at least one representative of government in its governing board, which in the case of the BSP is the DECS Secretary. In this sense, the BSP is not under government control or "supervision and control." Still this characteristic does not make the attached chartered agency a private corporation covered by the constitutional proscription in question.

Assuming for the sake of argument that the BSP ceases to be owned or controlled by the government because of reduction of the number of representatives of the government in the BSP Board, it does not follow that it also ceases to be a government instrumentality as it still retains all the characteristics of the latter as an attached agency of the DECS under the Administrative Code. Vesting corporate powers to an attached agency or instrumentality of the government is not constitutionally prohibited and is allowed by the above-mentioned provisions of the Civil Code and the 1987 Administrative Code.

As presently constituted, the BSP still remains an instrumentality of the national government. It is a public corporation created by law for a public purpose, attached to the DECS pursuant to its Charter and the Administrative Code of 1987. It is not a private corporation which is required to be owned or controlled by the government and be economically viable to justify its existence under a special law.

Therefore, even though the amended BSP charter did away with most of the governmental presence in the BSP Board, this was done to more strongly promote the BSP's objectives, which were not supported under Presidential Decree No. 460. The BSP objectives, as pointed out earlier, are consistent with the public purpose of the promotion of the well-being of the youth, the future leaders of the country. The amendments were not done with the view of changing the character of the BSP into a privatized corporation. The BSP remains an agency attached to a department of the government, the DECS, and it was not at all stripped of its public character.

The ownership and control test is likewise irrelevant for a public corporation like the BSP. To reiterate, the relationship of the BSP, an attached agency, to the government, through the DECS, is defined in the Revised Administrative Code of 1987. The BSP meets the minimum statutory requirement of an attached government agency as the DECS Secretary sits at the BSP Board ex officio, thus facilitating the policy and program coordination between the BSP and the DECS.

- Liban vs. Gordon, GR No. 175352, January 10, 2011

DANTE V. LIBAN, REYNALDO M. BERNARDO, and SALVADOR M. VIARI, Petitioners, v. RICHARD J. GORDON, Respondent.
G.R. NO. 175352, EN BANC, July 15, 2009, CARPIO, J.

Petitioners anchor their petition on the 1999 case of Camporedondo v. NLRC, which ruled that the PNRC is a government-owned or controlled corporation. In ruling that the PNRC is a government owned or controlled corporation, the simple test used was whether the corporation was created by its own special charter for the exercise of a public function or by incorporation under the general corporation law. Since the PNRC was created under a special charter, the Court then ruled that it is a government corporation. ***However, the Camporedondo ruling failed to consider the definition of a government-owned or controlled corporation as provided under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987:***

> *" Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature,* ***and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock****:"*

A government-owned or controlled corporation must be owned by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government*. In the case of a non-stock corporation, by analogy at least a majority of the members must be government officials holding such membership by appointment or designation by the government. Under this criterion, and as discussed earlier, the government does not own or control PNRC. The PNRC Charter is Violative of the Constitutional Proscription against the Creation of Private Corporations by Special Law.*

In Feliciano v. Commission on Audit, the Court held that the Local Water Districts are government owned or controlled corporations since they exist by virtue of Presidential Decree No. 198, which constitutes their special charter. Just like the Local Water Districts, the PNRC was created through a special charter. However, unlike the Local Water Districts, the elements of government ownership and control are clearly lacking in the PNRC.

Thus, although the PNRC is created by a special charter, it cannot be considered a government-owned or controlled corporation in the absence of the essential elements of ownership and control by the government*. In creating the PNRC as a corporate entity, Congress was in fact creating a private corporation. However, the constitutional prohibition against the creation of private corporations by special charters provides no exception even for non-profit or charitable corporations.*

Consequently, ***the PNRC Charter, insofar as it creates the PNRC as a private corporation and grants it corporate powers, is void for being unconstitutional****.*

FACTS:

Petitioners Dante V. Liban, Reynaldo M. Bernardo, and Salvador M. Viari (petitioners) are officers of the Board of Directors of the Quezon City Red Cross Chapter while respondent is Chairman of the Philippine National Red Cross (PNRC) Board of Governors. During respondent's incumbency as a member of the Senate of the Philippines, he was elected Chairman of the PNRC during the 23 February 2006 meeting of the PNRC Board of Governors. Petitioners allege that by accepting the chairmanship of the PNRC Board of Governors, respondent has ceased to be a member of the Senate as provided in Section 13, Article VI of the Constitution, which reads:

> "SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat"

Petitioners cite Camporedondo v. NLRC,which held that the PNRC is a government-owned or controlled corporation. Petitioners claim that in accepting and holding the position of Chairman of the PNRC Board of Governors, respondent has automatically forfeited his seat in the Senate, pursuant to Flores v. Drilon, which held that incumbent national legislators lose their elective posts upon their appointment to another government office. In his Comment, respondent asserts that petitioners have no standing to file this petition which appears to be an action for quo warranto, since the petition alleges that respondent committed an act which, by provision of law, constitutes a ground for forfeiture of his public office. Petitioners do not claim to be entitled to the Senate office of respondent. If the petition is one for quo warranto, it is already barred by prescription since the respondent has been working as a Red Cross volunteer for the past 40 years. Respondent was already Chairman of the PNRC Board of Governors when he was elected Senator in May 2004, having been elected Chairman in 2003 and reelected in 2005. Respondent contends that even if the present petition is treated as a taxpayer's suit, petitioners cannot be allowed to raise a constitutional question in the absence of any claim that they suffered some actual damage or threatened injury as a result of the allegedly illegal act of respondent. Furthermore, taxpayers are allowed to sue only when there is a claim of illegal disbursement of public funds, or that public money is being diverted to any improper purpose, or where petitioners seek to restrain respondent from enforcing an invalid law that results in wastage of public funds. Respondent also maintains that if the petition is treated as one for declaratory relief, this Court would have no jurisdiction since original jurisdiction for declaratory relief lies with the Regional Trial Court. Respondent further insists that the PNRC is not a government-owned or controlled corporation and that the prohibition under Section 13, Article VI of the Constitution does not apply in the present case since volunteer service to the PNRC is neither an office nor an employment. In their Reply, petitioners claim that their petition is neither an action for quo warranto nor an action for declaratory relief. Petitioners maintain that the present petition is a taxpayer's suit questioning the unlawful disbursement of funds, considering that respondent has been drawing his salaries and other compensation as a Senator even if he is no longer entitled to his office. Petitioners point out that this Court has jurisdiction over this petition since it involves a legal or constitutional issue which is of transcendental importance.

ISSUE:

Wether the office of the PNRC Chairman is a government office or an office in a GOCC for purposes of the prohibition in Section 13, Article VI of the Constitution. (NO)

RULING:

PNRC is a Private Organization Performing Public Functions. The PNRC is a non-profit, donorfunded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation. The PNRC is a member National Society of the International Red Cross and Red Crescent Movement (Movement), The PNRC, as a member National Society of the Movement, has the duty to uphold the Fundamental Principles and ideals of the Movement. In order to be recognized as a National Society, the PNRC has to be autonomous and must operate in conformity with the Fundamental Principles of the Movement.

The reason for this autonomy is fundamental. To be accepted by warring belligerents as neutral workers during international or internal armed conflicts, the PNRC volunteers must not be seen as belonging to any side of the armed conflict. In the Philippines where there is a communist insurgency and a Muslim separatist rebellion, the PNRC cannot be seen as government-owned or controlled, and neither can the PNRC volunteers be identified as government personnel or as instruments of government policy. Otherwise, the insurgents or separatists will treat PNRC volunteers as enemies when the volunteers tend to the wounded in the battlefield or the displaced civilians in conflict areas. To ensure and maintain its autonomy, neutrality, and independence, the PNRC cannot be owned or controlled by the government. Indeed, the Philippine government does not own the PNRC. The PNRC does not have government assets and does not receive any appropriation from the Philippine Congress. The PNRC is financed primarily by contributions from private individuals and private entities obtained through solicitation campaigns organized by its Board of Governors, as provided under Section 11 of the PNRC Charter.

The government does not control the PNRC. Under the PNRC Charter, as amended, only six of the thirty members of the PNRC Board of Governors are appointed by the President of the Philippines. Thus, twenty-four members, or four-fifths (4/5), of the PNRC Board of Governors are not appointed by the President.

The PNRC Board of Governors, which exercises all corporate powers of the PNRC, elects the PNRC Chairman and all other officers of the PNRC. The incumbent Chairman of PNRC, respondent Senator Gordon, was elected, as all PNRC Chairmen are elected, by a private sector-controlled PNRC Board four-fifths of whom are private sector members of the PNRC. The PNRC Chairman is not appointed by the President or by any subordinate government official.

The President does not appoint the Chairman of the PNRC. Neither does the head of any department, agency, commission or board appoint the PNRC Chairman. Thus, the PNRC Chairman is not an official or employee of the Executive branch since his appointment does not fall under Section 16, Article VII of the Constitution. Certainly, the PNRC Chairman is not an official or employee of the Judiciary or Legislature.

This leads us to the obvious conclusion that the PNRC Chairman is not an official or employee of the Philippine Government. Not being a government official or employee, the PNRC Chairman, as such, does not hold a government office or employment and the proscription does not apply.
Under Section 17, Article VII of the Constitution, the President exercises control over all government offices in the Executive branch. If an office is legally not under the control of the President, then such office is not part of the Executive branch.

The PNRC Board exercises all corporate powers of the PNRC. The PNRC is controlled by private sector individuals. Decisions or actions of the PNRC Board are not reviewable by the President. The President cannot reverse or modify the decisions or actions of the PNRC Board. Neither can the President reverse or modify the decisions or actions of the PNRC Chairman. It is the PNRC Board that can review, reverse or modify the decisions or actions of the PNRC Chairman. This proves again that the office of the PNRC Chairman is a private office, not a government office.
The PNRC is not government-owned but privately owned. The vast majority of the thousands of PNRC members are private individuals, including students. Under the PNRC Charter, those who contribute to the annual fund campaign of the PNRC are entitled to membership in the PNRC for one year.
Thus, the PNRC is a privately owned, privately funded, and privately run charitable organization. The PNRC is not a government-owned or controlled corporation.

Petitioners anchor their petition on the 1999 case of Camporedondo v. NLRC, which ruled that the PNRC is a government-owned or controlled corporation. In ruling that the PNRC is a government owned or controlled corporation, the simple test used was whether the corporation was created by its own special charter for the exercise of a public function or by incorporation under the general corporation law. Since the PNRC was created under a special charter, the Court then ruled that it is a government corporation. However, the Camporedondo ruling failed to consider the definition of a government-owned or controlled corporation as provided under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987:

> " Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock:"

A government-owned or controlled corporation must be owned by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government. In the case of a non-stock corporation, by analogy at least a majority of the members must be government officials holding such membership by appointment or designation by the government. Under this criterion, and as discussed earlier, the government does not own or control PNRC. The PNRC Charter is Violative of the Constitutional Proscription against the Creation of Private Corporations by Special Law

In Feliciano v. Commission on Audit, the Court held that the Local Water Districts are government owned or controlled corporations since they exist by virtue of Presidential Decree No. 198, which constitutes their special charter. Just like the Local Water Districts, the PNRC was created through a special charter. However, unlike the Local Water Districts, the elements of government ownership and control are clearly lacking in the PNRC.

Thus, although the PNRC is created by a special charter, it cannot be considered a government-owned or controlled corporation in the absence of the essential elements of ownership and control by the government. In creating the PNRC as a corporate entity, Congress was in fact creating a private corporation. However, the constitutional prohibition against the creation of private corporations by special charters provides no exception even for non-profit or charitable corporations. Consequently, the PNRC Charter, insofar as it creates the PNRC as a private corporation and grants it corporate powers, is void for being unconstitutional.

In sum, we hold that the office of the PNRC Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. However, since the PNRC Charter is void insofar as it creates the PNRC as a private corporation, the PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

- Carandang vs. Desierto, G.R. No. 148076, January 12, 2011

ANTONIO M. CARANDANG, Petitioner, v. HONORABLE ANIANO A. DESIERTO, OFFICE OF THE OMBUDSMAN, Respondent.
G.R. No. 148076, THIRD DIVISION, January 12, 2011, BERSAMIN, J.

ANTONIO M. CARANDANG, Petitioner, v. SANDIGANBAYAN (FIFTH DIVISION), Respondent.
G.R. No. 153161, THIRD DIVISION, January 12, 2011, BERSAMIN, J.

It is clear, therefore, that a corporation is considered a government-owned or -controlled corporation only when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock*. Applying this statutory criterion, the Court ruled in Leyson, Jr. v. Office of the Ombudsman:*

> *But these jurisprudential rules invoked by petitioner in support of his claim that the CIIF companies are government owned and/or controlled corporations are incomplete without resorting to the definition of "government owned or controlled corporation" contained in par. (13), Sec.2, Introductory Provisions of the Administrative Code of 1987, i.e., any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or where applicable as in the case of stock corporations to the extent of at least fifty-one (51) percent of its capital stock. The definition mentions three (3) requisites, namely,* ***first, any agency organized as a stock or non-stock corporation; second, vested with functions relating to public needs whether governmental or proprietary in nature; and, third, owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) of its capital stock****.*

Consequently, RPN was neither a government-owned nor a controlled corporation because of the Government's total share in RPN's capital stock being only 32.4%.

FACTS:

Roberto S. Benedicto (Benedicto) was a stockholder of Radio Philippines Network Inc., (RPN), a private corporation duly registered with the Securities and Exchange Commission (SEC). In March 1986, the Government ordered the sequestration of RPN's properties, assets, and business. On November 3, 1990, the Presidential Commission on Good Government (PCGG) entered into a compromise agreement with Benedicto, whereby he ceded to the Government, through the PCGG, all his shares of stock in RPN. Consequently, upon motion of the PCGG, the Sandiganbayan (Second Division) directed the president and corporate secretary of RPN to transfer to the PCGG Benedicto's shares representing 72.4% of the total issued and outstanding capital stock of RPN.

However, Benedicto moved for a reconsideration, contending that his RPN shares ceded to the Government, through the PCGG, represented only 32.4% of RPN's outstanding capital stock, not 72.4%. Benedicto's motion for reconsideration has remained unresolved to this date

On July 28, 1998, Carandang assumed office as general manager and chief operating officer of RPN.

On April 19, 1999, Carandang and other RPN officials were charged with grave misconduct before the Ombudsman. The charge alleged that Carandang, in his capacity as the general manager of RPN, had entered into a contract with AF Broadcasting Incorporated despite his being an incorporator, director, and stockholder of that corporation; that he had thus held financial and material interest in a contract that had required the approval of his office; and that the transaction was prohibited under Section 7 (a) and Section 9 of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), thereby rendering him administratively liable for grave misconduct.

Carandang sought the dismissal of the administrative charge on the ground that the Ombudsman had no jurisdiction over him because RPN was not a government-owned or -controlled corporation.

On May 7, 1999, the Ombudsman suspended Carandang from his positions in RPN.

On September 8, 1999, Carandang manifested that he was no longer interested and had no further claim to his positions in RPN. He was subsequently replaced by Edgar San Luis.

ISSUE:

Whether RPN is a GOCC. (NO)

RULING:

Similarly, the law defines what are government-owned or -controlled corporations. For one, Section 2 of Presidential Decree No. 2029 (Defining Government Owned or Controlled Corporations and Identifying Their Role in National Development) states: chanrob1esvirtwallawlibrary

> Section 2. A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, **to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock**.

Section 2 (13) of Executive Order No. 292 (Administrative Code of 1987) renders a similar definition of government-owned or -controlled corporations: chanrob1esvirtwallawlibrary

> Section 2. General Terms Defined. - Unless the specific words of the text or the context as a whole or a particular statute, shall require a different meaning: chanrob1esvirtwallawlibrary
>
> x x x
>
> (13) government-owned or controlled corporations refer to any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, **or where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock**.

It is clear, therefore, that a corporation is considered a government-owned or -controlled corporation only when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock. Applying this statutory criterion, the Court ruled in Leyson, Jr. v. Office of the Ombudsman:

> But these jurisprudential rules invoked by petitioner in support of his claim that the CIIF companies are government owned and/or controlled corporations are incomplete without resorting to the definition of "government owned or controlled corporation" contained in par. (13), Sec.2, Introductory Provisions of the Administrative Code of 1987, i.e., any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or where applicable as in the case of stock corporations to the extent of at least fifty-one (51) percent of its capital stock. The definition mentions three (3) requisites, namely, first, any agency organized as a stock or non-stock corporation; second, vested with functions relating to public needs whether governmental or proprietary in nature; and, third, owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) of its capital stock.

In the present case, all three (3) corporations comprising the CIIF companies were organized as stock corporations.The UCPB-CIIF owns 44.10% of the shares of LEGASPI OIL, xxx. Obviously, the below 51% shares of stock in LEGASPI OIL removes this firm from the definition of a government owned or controlled corporation. x x x The Court thus concludes that the CIIF are, as found by public respondent, private corporations not within the scope of its jurisdiction.

Consequently, RPN was neither a government-owned nor a controlled corporation because of the Government's total share in RPN's capital stock being only 32.4%.

- Funa vs. Manila Economic and Cultural Office, GR. No. 193462, February 4, 2014

DENNIS A.B. FUNA, Petitioner, v. MANILA ECONOMIC AND CULTURAL OFFICE AND THE COMMISSION ON AUDIT, Respondents.
G.R. No. 193462, EN BANC, February 04, 2014, PEREZ, J.

GOCCs, therefore, are "stock or non–stock" corporations "vested with functions relating to public needs" that are "owned by the Government directly or through its instrumentalities." By definition, three attributes thus make an entity a GOCC: ***first, its organization as stock or non–stock corporation;second, the public character of its function; and third, government ownership over the same.***

Possession of all three attributes is necessary to deem an entity a GOCC.

In this case, there is not much dispute that the MECO possesses the first and second attributes. It is the third attribute, which the MECO lacks.

FACTS:

On 23 August 2010, petitioner Funa sent a letter to the COA requesting for a "copy of the latest financial and audit report" of the MECO invoking, for that purpose, his "constitutional right to information on matters of public concern." The petitioner made the request on the belief that the MECO, being under the "operational supervision" of the Department of Trade and Industry (DTI), is a government owned and controlled corporation (GOCC) and thus subject to the audit jurisdiction of the COA. On 25 August 2010, Assistant Commissioner Naranjo issued a memorandum20 referring the petitioner's request to COA Assistant Commissioner Emma M. Espina for "further disposition." In this memorandum, however, Assistant Commissioner Naranjo revealed that the MECO was "not among the agencies audited by any of the three Clusters of the Corporate Government Sector."

Taking the 25 August 2010 memorandum as an admission that the COA had never audited and examined the accounts of the MECO, the petitioner filed the instant petition for mandamus on 8 September 2010. Petitioner filed the suit in his capacities as "taxpayer, concerned citizen, a member of the Philippine Bar and law book author." He impleaded both the COA and the MECO.

Petitioner posits that by failing to audit the accounts of the MECO, the COA is neglecting its duty under Section 2(1), Article IX-D of the Constitution to audit the accounts of an otherwise bona fide GOCC or government instrumentality. It is the adamant claim of the petitioner that the MECO is a GOCC without an original charter or, at least, a government instrumentality, the funds of which partake the nature of public funds.

MECO's CONTENTIONS:
1. It is not owned or controlled by the government. Contrary to the allegations of the petitioner, the President of the Philippines does not appoint its board of directors.39 "desire letter" that the President transmits is merely recommendatory and not binding on the corporation. As a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws. Thus, it is the directors who elect the corporation's officers; the members who elect the directors; and the directors who admit the members by way of a unanimous

resolution. All of its officers, directors, and members are private individuals and are not government officials.

2. The government merely has policy supervision over it. Policy supervision is a lesser form of supervision wherein the government's oversight is limited only to ensuring that the corporation's activities are in tune with the country's commitments under the One China policy of the PROC. The day-to-day operations of the corporation, however, remain to be controlled by its duly elected board of directors.

ISSUE:

Whether MECO is a GOCC. (NO)

RULING:

The Administrative Code defines a GOCC:

> (13) Government–owned or controlled corporation refers to any agency organized as a stock or non–stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty–one (51) per cent of its capital stock: x x x.

The above definition is, in turn, replicated in the more recent Republic Act No. 10149 or the GOCC Governance Act of 2011, to wit:

> (o) Government–Owned or –Controlled Corporation (GOCC) refers to any agency organized as a stock or non–stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: x x x.

GOCCs, therefore, are "stock or non–stock" corporations "vested with functions relating to public needs" that are "owned by the Government directly or through its instrumentalities." By definition, three attributes thus make an entity a GOCC: first, its organization as stock or non–stock corporation; second, the public character of its function; and third, government ownership over the same.

Possession of all three attributes is necessary to deem an entity a GOCC.

In this case, there is not much dispute that the MECO possesses the first and second attributes. It is the third attribute, which the MECO lacks.

<u>The MECO Is Organized as a Non–Stock Corporation</u>

The organization of the MECO as a non–stock corporation cannot at all be denied. Records disclose that the MECO was incorporated as a non–stock corporation under the Corporation Code on 16 December 1977. The incorporators of the MECO were Simeon R. Roxas, Florencio C. Guzon, Manuel K. Dayrit, Pio K. Luz and Eduardo B. Ledesma, who also served as the corporation's original members and directors.

The purposes for which the MECO was organized are somewhat analogous to those of a trade, business or industry chamber, but only on a much larger scale i.e., instead of furthering the interests of a particular line of business or industry within a local sphere, the MECO seeks to promote the general interests of the Filipino people in a foreign land.

Finally, it is not disputed that none of the income derived by the MECO is distributable as dividends to any of its members, directors or officers.

Verily, the MECO is organized as a non–stock corporation.

<u>The MECO Performs Functions with a Public Aspect.</u>

The public character of the functions vested in the MECO cannot be doubted either. Indeed, to a certain degree, the functions of the MECO can even be said to partake of the nature of governmental functions. As earlier intimated, it is the MECO that, on behalf of the people of the Philippines, currently facilitates unofficial relations with the people in Taiwan.

Consistent with its corporate purposes, the MECO was "authorized" by the Philippine government to perform certain "consular and other functions" relating to the promotion, protection and facilitation of Philippine interests in Taiwan. The full extent of such authorized functions are presently detailed in Sections 1 and 2 of EO No. 15, s. 2001.

A perusal of the functions of the MECO reveals its uncanny similarity to some of the functions typically performed by the DFA itself, through the latter's diplomatic and consular missions. The functions of the MECO, in other words, are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO.

Evidently, the functions vested in the MECO are impressed with a public aspect.

<u>The MECO Is Not Owned or Controlled by the Government</u>

Organization as a non–stock corporation and the mere performance of functions with a public aspect, however, are not by themselves sufficient to consider the MECO as a GOCC. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government.

The government owns a stock or non–stock corporation if it has controlling interest in the corporation. In a stock corporation, the controlling interest of the government is assured by its ownership of at least fifty–one percent (51%) of the corporate capital stock. In a non–stock corporation, like the MECO, jurisprudence teaches that the controlling interest of the government is affirmed when "at least majority of the members are government officials holding such membership by appointment or designation" or there is otherwise "substantial participation of the government in the selection" of the corporation's governing board.

The fact of the incorporation of the MECO under the Corporation Code is key. The MECO was correct in postulating that, as a corporation organized under the Corporation Code, it is governed by the appropriate provisions of the said code, its articles of incorporation and its by–laws. In this case, it is the by–laws of the MECO that stipulates that its directors are elected by its members; its officers are elected by its directors; and its members, other than the original incorporators, are admitted by way of a unanimous board resolution.

C. Nationality of Corporations

1. Place of Incorporation Test

2. Control Test

- ROY III vs. HERBOSA, G.R. No. 207246, Novmber 22, 2016, EN BANC, CAGUIOA, J.

JOSE M. ROY III, Petitioner,- versus **- CHAIRPERSON TERESITA HERBOSA,THESECURITIESAND EXCHANGE COMMISSION, and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** Respondents.

WILSON C. GAMBOA, JR., DANIEL V. CARTAGENA, JOHN WARREN P. GABINETE, ANTONIO V. PESINA, JR., MODESTO MARTINY. MAMON i l l , and GERARDO C. EREBAREN, Petitioners-in Intervention,
PHILIPPINE STOCK EXCHANGE, INC., Respondent-in-Intervention,
SHAREHOLDERS' ASSOCIATION OF THE PHILIPPINES, INC., Respondent-in-Intervention.
G.R. No. 207246, November 22, 2016, EN BANC, CAGUIOA, *J.*

*The pronouncement of the Court in the Gamboa Resolution -the constitutional requirement to **"apply uniformly and across the board to all classes of shares**, regardless of nomenclature and category, comprising the capital of a corporation - is clearly an **obiter dictum** that cannot override the Court's unequivocal definition of the term "capital" in both the Gamboa Decision and Resolution.*

Nowhere in the discussion of the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in the Gamboa Decision did the Court mention the 60% Filipino equity requirement to be applied to each class of shares. The definition of "Philippine national" in the FIA and expounded in its IRR, which the Court adopted in its interpretation of the term "capital", does not support such application. In fact, even the Final Word of the Gamboa Resolution does not even intimate or suggest the need for a clarification or re-interpretation.

*To revisit or even clarify the unequivocal definition of the term "capital" as referring "only to shares of stock entitled to vote in the election of directors" and apply the 60% Filipino ownership requirement to each class of share is effectively and unwarrantedly amending or changing the Gamboa Decision and Resolution. **The Gamboa Decision and Resolution Doctrine did NOT make any definitive ruling that the 60% Filipino ownership requirement was intended to apply to each class of share.***

The fallo or decretal/dispositive portions of both the Gamboa Decision and Resolution are definite, clear and unequivocal. While there is a passage in the body of the Gamboa Resolution that might have appeared contrary to the fallo of the Gamboa Decision – capitalized upon by petitioners to espouse a restrictive re-interpretation of "capital" - the definiteness and clarity of the fallo of the Gamboa Decision must control over the obiter dictum in the Gamboa Resolution regarding the application of the 60-40 Filipino-foreign ownership requirement to "each class of shares, regardless of differences in voting rights, privileges and restrictions."

FACTS:

The petitions before the Court are special civil actions for *certiorari* under Rule 65 of the Rules of Court seeking to annul Memorandum Circular No. 8, Series of 2013 ("**SEC-MC No. 8**") issued by the Securities and Exchange Commission ("SEC") for allegedly being in violation of the Court's Decision *("**Gamboa*** **Decision**") and Resolution *("**Gamboa*** **Resolution**") in *Gamboa v. Finance Secretary Teves,* G.R. No. 176579 which jurisprudentially established the proper interpretation of Section 11, Article XII of the Constitution.

On May 20, 2013, the SEC, through respondent Chairperson Teresita J. Herbosa, issued SEC-MC No. 8 entitled *"Guidelines on Compliance with the Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities."* Section 2 of SEC-MC No. 8 provides:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the **required percentage of Filipino ownership shall be applied to <u>BOTH</u>** (a) **the total number of outstanding shares of stock entitled to vote in the election of directors**; **<u>AND</u>** (b) **the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.**
>
> Corporations covered by special laws which provide specific citizenship requirements shall comply with the provisions of said law.

On June 10, 2013, petitioner Roy, as a lawyer and taxpayer, filed the Petition, 15 assailing the validity of SEC-MC No. 8 for not conforming to the letter and spirit of the *Gamboa* Decision and Resolution and for having been issued by the SEC with grave abuse of discretion. **Petitioner Roy seeks to apply the 60-40 Filipino ownership requirement <u>separately to each class of shares</u> of a public utility corporation, whether common, preferred nonvoting, preferred voting or any other class of shares.** He prays that the Court declare SEC-MC No. 8 unconstitutional and direct the SEC to issue new guidelines regarding the determination of compliance with Section 11, Article XII of the Constitution in accordance with *Gamboa.*

ISSUE:

Whether the SEC-MC No. 8 is in conformity with the *Gamboa* Decision and *Gamboa* Resolution.

RULING:

The Court finds SEC-MC No. 8 to have been issued in conformity to the *Gamboa* Decision and Resolution.

<u>The ratio in the Gamboa Decision and Gamboa Resolution.</u>

The Court, in the Gamboa Decision and Gamboa Resolution, defined the term "capital" in Section 11, Article XII of the 1987 Constitution in furtherance of "the intent and letter of the Constitution that the State shall develop a self-reliant and independent national economy ***effectively controlled* by Filipinos.**

To recall, the sole issue in the *Gamboa* case was: "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility." The Court directly answered the issue and consistently defined the term "capital" as follows:

> x x x The term "capital" in Section 11, Article XII of the Constitution refers only to **shares of stock entitled to vote in the election of directors**, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and nonvoting preferred shares.
>
> Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, *if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors.* **In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

The decretal portion of the *Gamboa* Decision follows the definition of the term "capital" in the body of the decision, to wit: "x x x we x x x rule that the term "capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and nonvoting preferred shares)."

The Court observed further in the *Gamboa* Decision that reinforcing this interpretation of the term "capital", as referring to interests or shares entitled to vote, is the definition of a Philippine national in the Foreign Investments Act of 1991 ("FIA"), which is explained in the Implementing Rules and Regulations of the FIA ("FIA-IRR"). The FIA-IRR provides:

> Compliance with the required **Filipino ownership** of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only **such stocks which are generally entitled to vote are considered.**
>
> **For stocks to be deemed owned and held by Philippine citizens or Philippine nationals**, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential**. Thus, stocks, the voting

rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to *shares with voting rights, as well as with full beneficial ownership.* This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.

The assailed SEC-MC No. 8.

Section 2 of SEC-MC No. 8 clearly incorporates the Voting Control Test or the controlling interest requirement. In fact, Section 2 goes beyond requiring a 60-40 ratio in favor of Filipino nationals in the voting stocks; it moreover requires the 60-40 percentage ownership in the total number of outstanding shares of stock, whether voting or not. *The SEC formulated SEC-MC No. 8 to adhere to the Court's unambiguous pronouncement that "full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights is required."*

A simple illustration involving Company X with three kinds of shares of stock, easily shows how compliance with the requirements of SEC-MC No. 8 will necessarily result to full and faithful compliance with the *Gamboa* Decision as well as the *Gamboa* Resolution.

The following is the composition of the outstanding capital stock of Company X:

- 100 common shares
- 100 Class A preferred shares (with right to elect directors)
- 100 Class B preferred shares (without right to elect directors)

SEC-MC No. 8	GAMBOA DECISION	APPLICATION
(1) 60% (required percentage of Filipino) applied to the total number of outstanding shares of stock entitled to vote in the election of directors	"shares of stock entitled to vote in the election of directors"(60% of the voting rights)	If at least a total of 120 of common shares and Class A preferred shares **(in any combination)** are owned and controlled by Filipinos, Company X is compliant with the 60% of the voting rights in favor of Filipinos requirement of both SEC-MC No. 8 and the *Gamboa* Decision.

(2) 60% (required percentage of Filipino) applied to BOTH (a) the total number of outstanding shares of stock, entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.	"Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights" or "Full beneficial ownership of the stocks, coupled with appropriate voting rights x x x shares with voting rights, as well as with full beneficial ownership"	If at least a total of 180 shares of all the outstanding capital stock of Company X are owned and controlled by Filipinos, provided that among those 180 shares a total of 120 of the common shares and Class A preferred shares (in any combination) are owned and controlled by Filipinos, then Company X is compliant with both requirements of voting rights and beneficial ownership under SEC-MC No. 8 and the *Gamboa* Decision and Resolution.

While SEC-MC No. 8 does not expressly mention the Beneficial Ownership Test or full beneficial ownership of stocks requirement in the FIA, this will not render it invalid - meaning, it does not follow that the SEC will not apply this test in determining whether the shares claimed to be owned by Philippine nationals are Filipino, *i.e.,* are held by them by mere title or in full beneficial ownership.

The restrictive re-interpretation of "capital" as insisted by the petitioners is unwarranted.

Petitioners' insistence that the 60% Filipino equity requirement must be applied to each class of shares is simply beyond the literal text and contemplation of Section 11, Article XII of the 1987 Constitution. As worded, *effective control* by Filipino citizens of a public utility is already assured in the provision. With respect to a stock corporation engaged in the business of a public utility, the constitutional provision mandates three safeguards: (1) 60% of its capital must be owned by Filipino citizens; (2) participation of foreign investors in its board of directors is limited to their proportionate share in its capital; and (3) all its executive and managing officers must be citizens of the Philippines.

In the exhaustive review made by the Court in the *Gamboa* Resolution of the deliberations of the Constitutional Commission, the opinions of the framers of the 1987 Constitution, the opinions of the SEC and the DOJ as well as the provisions of the FIA, its implementing rules and its predecessor statutes, **the intention to apply the voting control test and the beneficial ownership test was not mentioned in reference to "each class of shares."** Even the *Gamboa* Decision was silent on this point.

The application of the 60-40 Filipino-foreign ownership requirement separately to each class of shares *fails to understand and appreciate the nature and features of stocks as financial instruments.* There are basically only two types of shares or stocks, i.e., common stock and preferred stock. However, the classes and variety of shares that a corporation may issue are dictated by the confluence of the corporation's financial position and needs, business opportunities, short-term and longterm targets, risks involved, to name a few; and they can be classified and re-classified from time to time. As an example, a **mandatory redeemable preference shares** may be issued by a corporation to augment its financing. In form, the mandatory redeemable preference shares are equity instruments but in substance, they are debt instruments and a liabilities of the issuing corporation because the fixed dividend payment and the mandatory redemption feature constitute a contractual obligation to deliver cash. Thus, to require Filipino shareholders to acquire preferred shares that are substantially debts, in order to meet the "restrictive" Filipino ownership requirement that petitioners espouse, may not bode well for the Philippine corporation and its Filipino shareholders. That stock corporations are allowed to create shares of different classes with varying features is a flexibility that is granted, among others, for the corporation to attract and generate capital (funds) from both local and foreign capital markets. This **access to capital** - which a stock corporation may need for expansion, debt relief/repayment, working capital requirement and other corporate pursuits **- will be greatly eroded** with further unwarranted limitations that are not articulated in the Constitution.

Going back to the illustration above, the restrictive meaning of the term "capital" espoused by petitioners will definitely be complied with if 60% of each of the three classes of shares of Company X, consisting of 100 common shares, 100 Class A preferred shares (with right to elect directors) and 100 Class B preferred shares (without right to elect directors), is owned by Filipinos. **However, what if the 60% Filipino ownership in each class of preferred shares, i.e., 60 Class A preferred shares and 60 Class B preferred shares, is not fully subscribed or achieved because there are not enough Filipino takers? Company X will be deprived of capital that would otherwise be accessible to it were it not for this unwarranted "restrictive" meaning of "capital".**

Moreover, the restrictive interpretation of the term "capital" would have a tremendous impact on the country as a whole - and to all Filipinos. The PSE's Comment-in-Intervention warns that:

> If the "Effective Control Test" were applied, the total value of shares that would be deemed in excess of the foreign-ownership limits based on stock prices as of 30 April 2014 is One Hundred Fifty Nine Billion Six Hundred Thirty Eight Million Eight Hundred Forty Five Thousand Two Hundred Six Pesos and Eighty Nine Cents (Php159,638,845,206.89). The aforementioned value of investments would have to be discharged by foreign holders, and consequently must be absorbed by Filipino investors. Needless to state, the lack of investments may lead to shutdown of the affected enterprises and to immeasurable consequences to the Philippine economy.

In view of the foregoing, the pronouncement of the Court in the *Gamboa* Resolution -the constitutional requirement to "apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation - is clearly an *obiter dictum* that cannot override the Court's unequivocal definition of the term "capital" in both the *Gamboa* Decision and Resolution.

Nowhere in the discussion of the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in the *Gamboa* Decision did the Court mention the 60% Filipino equity requirement to be applied to each class of shares. The definition of "Philippine national" in the FIA and expounded in its IRR, which the Court adopted in its interpretation of the term "capital", does not support such application. In fact, even the *Final Word* of the *Gamboa* Resolution does not even intimate or suggest the need for a clarification or re-interpretation.

To revisit or even clarify the unequivocal definition of the term "capital" as referring "only to shares of stock entitled to vote in the election of directors" and apply the 60% Filipino ownership requirement to each class of share is effectively and unwarrantedly amending or changing the *Gamboa* Decision and Resolution. The *Gamboa* Decision and Resolution Doctrine did NOT make any definitive ruling that the 60% Filipino ownership requirement was intended to apply to each class of share.

- Marissa R. Unchuan vs. Antonio J.P. Lozada, Anita Lozada and the Register of Deeds of Cebu City, G.R. No. 172671, April 16, 2009

MARISSA R. UNCHUAN, Petitioner, v. ANTONIO J.P. LOZADA, ANITA LOZADA and THE REGISTER OF DEEDS OF CEBU CITY, Respondents.
G.R. NO. 172671, SECOND DIVISION, April 16, 2009, QUISUMBING, J.

In this case, we find nothing to show that the sale between the sisters Lozada and their nephew Antonio violated the public policy prohibiting aliens from owning lands in the Philippines. Even as Dr. Lozada advanced the money for the payment of Antonio's share, at no point were the lots registered in Dr. Lozada's name. Nor was it contemplated that the lots be under his control for they are actually to be included as capital of Damasa Corporation. According to their agreement, Antonio and Dr. Lozada are to hold 60% and 40% of the shares in said corporation, respectively. ***Under Republic Act No. 7042, particularly Section 3, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National****. As such, the corporation may acquire disposable lands in the Philippines. Neither did petitioner present proof to belie Antonio's capacity to pay for the lots subjects of this case.*

FACTS:

Sisters Anita Lozada Slaughter and Peregrina Lozada Saribay were the registered co-owners of Lot Nos. 898-A-3 and 898-A-4 covered by Transfer Certificates of Title (TCT) Nos. 532585 and 532576 in Cebu City.

The sisters, who were based in the United States, sold the lots to their nephew Antonio J.P. Lozada (Antonio) under a Deed of Sale7 dated March 11, 1994. Armed with a Special Power of Attorney from Anita, Peregrina went to the house of their brother, Dr. Antonio Lozada (Dr. Lozada). Dr. Lozada agreed to advance the purchase price of US$367,000 or P10,000,000 for Antonio, his nephew. The Deed of Sale was later notarized and authenticated at the Philippine Consul's Office. Dr. Lozada then forwarded the deed, special power of attorney, and owners' copies of the titles to Antonio in the Philippines. Upon receipt of said documents, the latter recorded the sale with the Register of Deeds of Cebu. Accordingly, TCT Nos. 12832210 and 12832311 were issued in the name of Antonio Lozada.

Pending registration of the deed, petitioner Marissa R. Unchuan caused the annotation of an adverse claim on the lots. Marissa claimed that Anita donated an undivided share in the lots to her under an unregistered Deed of Donation dated February 4, 1987.

Antonio and Anita brought a case against Marissa for quieting of title with application for preliminary injunction and restraining order. Marissa for her part, filed an action to declare the Deed of Sale void and to cancel TCT Nos. 128322 and 128323. On motion, the cases were consolidated and tried jointly.

At the trial, respondents presented a notarized and duly authenticated sworn statement, and a videotape where Anita denied having donated land in favor of Marissa. Dr. Lozada testified that he agreed to advance payment for Antonio in preparation for their plan to form a corporation. The lots are to be eventually infused in the capitalization of Damasa Corporation, where he and Antonio are to have 40% and 60% stake, respectively.

Petitioner contends that the appellate court violated her right to due process when it did not rule on the validity of the sale between the sisters Lozada and their nephew, Antonio. Marissa finds it anomalous that Dr. Lozada, an American citizen, had paid the lots for Antonio. Thus, she accuses the latter of being a mere dummy of the former. Petitioner begs the Court to review the conflicting factual findings of the trial and appellate courts on Peregrina's medical condition on March 11, 1994 and Dr. Lozada's financial capacity to advance payment for Antonio. Likewise, petitioner assails the ruling of the Court of Appeals which nullified the donation in her favor and declared her case barred by laches. Petitioner finally challenges the admissibility of the videotaped statement of Anita who was not presented as a witness.

On their part, respondents pray for the dismissal of the petition for petitioner's failure to furnish the Register of Deeds of Cebu City with a copy thereof in violation of Sections 316 and 4,17 Rule 45 of the Rules. In addition, they aver that Peregrina's unauthenticated medical records were merely falsified to make it appear that she was confined in the hospital on the day of the sale. Further, respondents question the credibility of Dr. Fuentes who was neither presented in court as an expert witness18 nor professionally involved in Peregrina's medical care.

ISSUE:

Whether Damasa Corporation may acquire lands in the Philippines. (YES)

RULING:

In this case, we find nothing to show that the sale between the sisters Lozada and their nephew Antonio violated the public policy prohibiting aliens from owning lands in the Philippines. Even as Dr. Lozada advanced the money for the payment of Antonio's share, at no point were the lots registered in Dr. Lozada's name. Nor was it contemplated that the lots be under his control for they are actually to be included as capital of Damasa Corporation. According to their agreement, Antonio and Dr. Lozada are to hold 60% and 40% of the shares in said corporation, respectively. Under Republic Act No. 7042, particularly Section 3, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National. As such, the corporation may acquire disposable lands in the Philippines. Neither did petitioner present proof to belie Antonio's capacity to pay for the lots subjects of this case.

- Wilson P. Gamboa vs. Finance Secretary Margarito B. Teves, et al., G.R. No. 176579, June 28, 2011

WILSON P. GAMBOA, Petitioner, vs. FINANCE SECRETARY MARGARITO B. TEVES, FINANCE UNDERSECRETARY JOHN P. SEVILLA, AND COMMISSIONER RICARDO ABCEDE OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) IN THEIR CAPACITIES AS CHAIR AND MEMBERS, RESPECTIVELY, OF THE PRIVATIZATION COUNCIL, CHAIRMAN ANTHONI SALIM OF FIRST PACIFIC CO., LTD. IN HIS CAPACITY AS DIRECTOR OF METRO PACIFIC ASSET HOLDINGS INC., CHAIRMAN MANUEL V. PANGILINAN OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT) IN HIS CAPACITY AS MANAGING DIRECTOR OF FIRST PACIFIC CO., LTD., PRESIDENT NAPOLEON L. NAZARENO OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, CHAIR FE BARIN OF THE SECURITIES EXCHANGE

COMMISSION, and PRESIDENT FRANCIS LIM OF THE PHILIPPINE STOCK EXCHANGE, Respondents. PABLITO V. SANIDAD and ARNO V. SANIDAD, Petitioners-in-Intervention.
G.R. No. 176579, EN BANC, June 28, 2011, CARPIO, J.

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors*. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.*

FACTS:

The petitioner, Wilson P. Gamboa, was a stockholder of Philippine Long Distance Telephone Company (PLDT). According to him, Act. No. 3436 was enacted by the Philippine Legislature on November 28, 1928, granting PLDT a franchise and the right to engage in telecommunications business. In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26% of the outstanding common shares of PLDT to Philippine Trade and Investment Center (PTIC). In 1977, Prime Holdings, Inc. (PHI), became the owner of 111,415 shares which represent about 46.125% of the outstanding capital stock of PTIC by virtue of three Deeds of Assignment executed by PTIC stockholders, Ramon Cojuangco and Luis Tirso Rivilla. In 1986, the said shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG), and were later declared by this Court to be owned by the Republic of the Philippines.

In 1999, First Pacific, a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54% of the outstanding capital stock of PTIC. On November 20, 2006, the Inter-Agency Privatization Council (IPC) of the Philippine Government sold the 111,415 PTIC shares in a public bidding where Parallax was the winning bidder. Thereafter, First Pacific announced that it would exercise its right of first refusal as a PTIC stockholder but it failed to do so. Instead, it yielded its right to PTIC itself. On February 14, 2007, First Pacific, through its subsidiary, MPAH, entered into a Conditional Sale and Purchase Agreement of the 111,415 PTIC shares with the Philippine Government. The said sale was completed on February 28 of the same year.

Since PTIC was a stockholder of PLDT, the sale by the Philippine Government of the 46.125% of PTIC shares was actually an indirect sale of 12 million shares or about 6.3% of the outstanding common shares of PLDT. With the sale, First Pacific's common shareholdings in PLDT increased from 30.7% to 37%, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47%. This violated Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40%.

On the other hand, public respondents, Finance Secretary Margarito B. Teves, Undersecretary John P. Sevilla, and PCGG Commissioner Ricardo Abcede alleged the same facts but argued that when the House of Representatives Committee on Good Government conducted a public hearing on the particulars of the then impending sale of the 111,415 PTIC shares, respondents, Teves and Sevilla, were among the attendees. The HR Committee Report No. 2270 concluded that: (a) the auction of the government's 111,415 PTIC shares bore due diligence, transparency and conformity with existing legal procedures; and (b) First Pacific's intended acquisition of the government's 111,415 PTIC shares resulting in First Pacific's 100% ownership of PTIC will not violate the 40% constitutional limit on foreign ownership of a public utility since PTIC holds only 13.847% of the total outstanding common shares of PLDT. On 28 February 2007, First Pacific completed the acquisition of the 111,415 shares of stock of PTIC. Likewise, respondent, Manuel V. Pangilinan admitted that indeed, the IPC conducted a public bidding for the sale of the said 111,415 PTIC shares, Parallax was the highest bidder, and MPAH, a First Pacific affiliate, exercised its right of first refusal by matching the highest bid by Parallax, and on February 28, 2007, the sale was consummated.

On February 28, 2007, the petitioner filed the instant petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale of the 111,415 PTIC shares, claiming, among others, that the said sale would result in an increase in First Pacific's common shareholdings in PLDT, and this, combined with Japanese NTT DoCoMo's, would result to a total foreign common shareholdings in PLDT of 51.56 percent which is over the 40 percent constitutional limit. Petitioners-in-intervention, Pablito V. Sanidad and Arno V. Sanidad, joined the petitioner in seeking the nullification of the said

ISSUE:

Whether the term capital in Section 11, Article XII of the Constitution refers to the total common shares only of PLDT, a public utility. (YES)

RULING:

We agree with petitioner and petitioners-in-intervention. The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

The Corporation Code of the Philippines classifies shares as common or preferred, thus:

> Sec. 6. Classification of shares. - The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: Provided,

further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code: Provided, That preferred shares of stock may be issued only with a stated par value. The Board of Directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof: Provided, That such terms and conditions shall be effective upon the filing of a certificate thereof with the Securities and Exchange Commission.

Shares of capital stock issued without par value shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided; That shares without par value may not be issued for a consideration less than the value of five (₱5.00) pesos per share: Provided, further, That the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided in the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;

2. Adoption and amendment of by-laws;

3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;

4. Incurring, creating or increasing bonded indebtedness;

5. Increase or decrease of capital stock;

6. Merger or consolidation of the corporation with another corporation or other corporations;

7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or controlling interest of a corporation.

- Heirs of Wilson P. Gamboa vs. Finance Secretary Margarito B. Teves, et al., G.R. No. 176579, October 9, 2012

HEIRS OF WILSON P. GAMBOA, Petitioners, vs. FINANCE SECRETARYMARGARITO B. TEVES, FINANCE UNDERSECRETARYJOHN P. SEVILLA, AND COMMISSIONER RICARDO ABCEDE OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT(PCGG) IN THEIR CAPACITIES AS CHAIR AND MEMBERS, RESPECTIVELY, OF THE PRIVATIZATION COUNCIL, CHAIRMAN ANTHONI SALIM OF FIRST PACIFIC CO., LTD. IN HIS CAPACITY AS DIRECTOR OF METRO PACIFIC ASSET HOLDINGS INC., CHAIRMAN MANUEL V. PANGILINAN OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT) IN HIS CAPACITY AS MANAGING DIRECTOR OF FIRST PACIFIC CO., LTD., PRESIDENT NAPOLEON L. NAZARENO OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, CHAIR FE BARIN OF THE SECURITIES AND EXCHANGE COMMISSION, and PRESIDENT FRANCIS LIM OF THE PHILIPPINE STOCK EXCHANGE, Respondents. PABLITO V. SANIDAD and ARNO V. SANIDAD, Petitioner-in-Intervention.
G.R. No. 176579, EN BANC, October 9, 2012, CARPIO, J.

Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. ***Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos****. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos.* ***In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares****. This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.*

FACTS:

In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26 percent of the outstanding common shares of PLDT to PTIC. In 1977, Prime Holdings, Inc. (PHI) was incorporated and subsequently became the owner of 111,415 shares of stock of PTIC. In 1986, the 111,415 shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG). The 111,415 PTIC shares, which represent about 46.125 percent of the outstanding capital stock of PTIC, were later declared by this Court to be owned by the Republic of the Philippines.

In 1999, First Pacific, a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54 percent of the outstanding capital stock of PTIC. In 2006, the Inter-Agency Privatization Council (IPC) of the Philippine Government announced that it would sell the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, through a public bidding. Only two bidders, Parallax Venture Fund XXVII (Parallax) and Pan-Asia Presidio Capital, submitted their bids and Parallax won with a bid of P25.6 billion or US$510 million.

Thereafter, First Pacific announced that it would exercise its right of first refusal as a PTIC stockholder and buy the 111,415 PTIC shares by matching the bid price of Parallax. However, First Pacific failed to do so on the deadline set by IPC and instead, yielded its right to PTIC itself which was then given by IPC until 2 March 2007 to buy the PTIC shares. In 2007, First Pacific, through its subsidiary, MPAH, entered into a Conditional Sale and Purchase Agreement of the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, with the Philippine Government for the price of P25,217,556,000 or US$510,580,189. Since PTIC is a stockholder of PLDT, the sale by the Philippine Government of 46.125 percent of PTIC shares is actually an indirect sale of 12 million shares or about 6.3 percent of the outstanding common shares of PLDT. With the sale, First Pacifics common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47 percent. This violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40 percent.

ISSUE:

Whether the term capital in Section 11, Article XII of the Constitution refers to the total common shares only of PLDT, a public utility. (NO)

RULING:

The 28 June 2011 Decision declares that the 60 percent Filipino ownership required by the Constitution to engage in certain economic activities applies not only to voting control of the corporation, **but also to the beneficial ownership of the corporation**. To repeat, we held:

> Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.** The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]." (Emphasis supplied)

This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential**."

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

The Corporation Code allows denial of the right to vote to preferred and redeemable shares, but disallows denial of the right to vote in specific corporate matters. Thus, common shares have the right to vote in the election of directors, while preferred shares may be denied such right. Nonetheless, preferred shares, even if denied the right to vote in the election of directors, are entitled to vote on the following corporate matters: (1) amendment of articles of incorporation; (2) increase and decrease of capital stock; (3) incurring, creating or increasing bonded indebtedness; (4) sale, lease, mortgage or other disposition of substantially all corporate assets; (5) investment of funds in another business or corporation or for a purpose other than the primary purpose for which the corporation was organized; (6) adoption, amendment and repeal of by-laws; (7) merger and consolidation; and (8) dissolution of corporation.

Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. **Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos**. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares**. This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.

Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens. This addresses and extinguishes Pangilinan's worry that foreigners, owning most of the non-voting shares, will exercise greater control over fundamental corporate matters requiring two-thirds or majority vote of all shareholders.

3. Grandfather Rule

- Narra Nickel Mining and Development Corporation, et al., vs. Redmont Consolidated Mines Corporation, G.R. No. 199580, April 21, 2014

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and MCARTHUR MINING, INC., Petitioners, vs. REDMONT CONSOLIDATED MINES CORP., Respondent.

G.R. No. 195580, THIRD DIVISION, April 21, 2014, VELASCO, JR., J.

*The second case is the Strict Rule or the Grandfather Rule Proper and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, "but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality." Under the Strict Rule or Grandfather Rule Proper, **the combined totals in the Investing Corporation and the Investee Corporation must be traced (i.e., "grandfathered") to determine the total percentage of Filipino ownership**.*

Moreover, the ultimate Filipino ownership of the shares must first be traced to the level of the Investing Corporation and added to the shares directly owned in the Investee Corporation x.

*In other words, based on the said SEC Rule and DOJ Opinion, the Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt **(i.e., in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in other joint venture corporation which is either 60-***

***40% Filipino-alien or the 59% less Filipino**). **Stated differently, where the 60-40 Filipino- foreign equity ownership is not in doubt, the Grandfather Rule will not apply**.*

After a scrutiny of the evidence extant on record, the Court finds that this case calls for the application of the grandfather rule since, as ruled by the POA and affirmed by the OP, doubt prevails and persists in the corporate ownership of petitioners. Also, as found by the CA, doubt is present in the 60-40 Filipino equity ownership of petitioners Narra, McArthur and Tesoro, since their common investor, the 100% Canadian corporation––MBMI, funded them.

Obviously, the instant case presents a situation which exhibits a scheme employed by stockholders to circumvent the law, creating a cloud of doubt in the Court's mind. To determine, therefore, the actual participation, direct or indirect, of MBMI, the grandfather rule must be used.

FACTS:

Sometime in December 2006, respondent Redmont Consolidated Mines Corp. (Redmont), a domestic corporation organized and existing under Philippine laws, took interest in mining and exploring certain areas of the province of Palawan. After inquiring with the DENR, it learned that the areas where it wanted to undertake exploration and mining activities where already covered by Mineral Production Sharing Agreement (MPSA) applications of petitioners Narra, Tesoro and McArthur.

Petitioner McArthur, through its predecessor-in-interest Sara Marie Mining, Inc. (SMMI), filed an application for an MPSA and Exploration Permit (EP) with the Mines and Geo-Sciences Bureau (MGB), Region IV-B, Office of the DENR.

Subsequently, SMMI was issued an MPSA. The MPSA and EP were then transferred to Madridejos Mining Corporation (MMC) and, on November 6, 2006, assigned to petitioner McArthur.

Petitioner Narra acquired its MPSA from Alpha Resources and Development Corporation and Patricia Louise Mining & Development Corporation (PLMDC) which previously filed an application for an MPSA with the MGB, Region IV-B, DENR on January 6, 1992. Subsequently, PLMDC conveyed, transferred and/or assigned its rights and interests over the MPSA application in favor of Narra.

Another MPSA application of SMMI was filed with the DENR Region IV-B, labeled as MPSA-AMA-IVB-154 (formerly EPA-IVB-47) over 3,402 hectares in Barangays Malinao and Princesa Urduja, Municipality of Narra, Province of Palawan. SMMI subsequently conveyed, transferred and assigned its rights and interest over the said MPSA application to Tesoro.

On January 2, 2007, Redmont filed before the Panel of Arbitrators (POA) of the DENR three (3) separate petitions for the denial of petitioners' applications for MPSA.

In the petitions, Redmont alleged that at least 60% of the capital stock of McArthur, Tesoro and Narra are owned and controlled by **MBMI Resources, Inc. (MBMI), a 100% Canadian corporation**. Redmont reasoned that since MBMI is a considerable stockholder of petitioners, it was the driving force behind petitioners' filing of the MPSAs over the areas covered by applications since it knows that it can only participate in mining activities through corporations which are deemed Filipino citizens. Redmont argued that given that petitioners' capital stocks were mostly owned by MBMI, they were likewise disqualified from engaging in mining activities through MPSAs, which are reserved only for Filipino citizens.

ISSUE:

Whether the grandfather rule should be applied. (YES)

RULING:

Basically, **there are two acknowledged tests in determining the nationality of a corporation: the control test and the grandfather rule**. Paragraph 7 of DOJ Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the controlling interests in enterprises engaged in the exploitation of natural resources owned by Filipino citizens, provides:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital, respectively, of which belong to Filipino citizens, all of the shares shall be recorded as owned by Filipinos. But if less than 60%, or say, 50% of the capital stock or capital of the corporation or partnership, respectively, belongs to Filipino citizens, only 50,000 shares shall be counted as owned by Filipinos and the other 50,000 shall be recorded as belonging to aliens.

The first part of paragraph 7, DOJ Opinion No. 020, stating "shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality," pertains to the control test or the liberal rule. **On the other hand, the second part of the DOJ Opinion which provides, "if the percentage of the Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as Philippine nationality," pertains to the stricter, more stringent grandfather rule**.

Prior to this recent change of events, petitioners were constant in advocating the application of the "control test" under RA 7042, as amended by RA 8179, otherwise known as the Foreign Investments Act (FIA), rather than using the stricter grandfather rule. The pertinent provision under Sec. 3 of the FIA provides:

> SECTION 3. Definitions. - As used in this Act:
>
> a.) The term Philippine national shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by the citizens of the Philippines; a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That were a corporation and its non-Filipino stockholders

own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors, in order that the corporation shall be considered a Philippine national.

The grandfather rule, petitioners reasoned, has no leg to stand on in the instant case since the definition of a "Philippine National" under Sec. 3 of the FIA does not provide for it. They further claim that the grandfather rule "has been abandoned and is no longer the applicable rule." They also opined that the last portion of Sec. 3 of the FIA admits the application of a "corporate layering" scheme of corporations. Petitioners claim that the clear and unambiguous wordings of the statute preclude the court from construing it and prevent the court's use of discretion in applying the law. They said that the plain, literal meaning of the statute meant the application of the control test is obligatory.

We disagree. "Corporate layering" is admittedly allowed by the FIA; but if it is used to circumvent the Constitution and pertinent laws, then it becomes illegal. Further, the pronouncement of petitioners that the grandfather rule has already been abandoned must be discredited for lack of basis.

Under the SEC Rules, there are two cases in determining the nationality of the Investee Corporation. The first case is the 'liberal rule', later coined by the SEC as the Control Test in its 30 May 1990 Opinion, and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, '(s)hares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality.' Under the liberal Control Test, there is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of the Investing Corporation since a corporation which is at least 60% Filipino-owned is considered as Filipino.

The second case is the Strict Rule or the Grandfather Rule Proper and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, "but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality." Under the Strict Rule or Grandfather Rule Proper, **the combined totals in the Investing Corporation and the Investee Corporation must be traced (i.e., "grandfathered") to determine the total percentage of Filipino ownership.**

Moreover, the ultimate Filipino ownership of the shares must first be traced to the level of the Investing Corporation and added to the shares directly owned in the Investee Corporation x x x.

In other words, based on the said SEC Rule and DOJ Opinion, the Grandfather Rule or the second part of the SEC Rule applies only when the **60-40 Filipino-foreign equity ownership is in doubt** (**i.e., in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in other joint venture corporation which is either 60-40% Filipino-alien or the 59% less Filipino**). **Stated differently, where the 60-40 Filipino- foreign equity ownership is not in doubt, the Grandfather Rule will not apply**.

After a scrutiny of the evidence extant on record, the Court finds that this case calls for the application of the grandfather rule since, as ruled by the POA and affirmed by the OP, doubt prevails and persists in the corporate ownership of petitioners. Also, as found by the CA, **doubt is present in the 60-40 Filipino equity ownership of petitioners Narra, McArthur and Tesoro, since their common**

investor, the 100% Canadian corporation––MBMI, funded them. However, petitioners also claim that there is "doubt" only when the stockholdings of Filipinos are less than 60%.

The assertion of petitioners that "doubt" only exists when the stockholdings are less than 60% fails to convince this Court. DOJ Opinion No. 20, which petitioners quoted in their petition, only made an example of an instance where "doubt" as to the ownership of the corporation exists. It would be ludicrous to limit the application of the said word only to the instances where the stockholdings of non-Filipino stockholders are more than 40% of the total stockholdings in a corporation. The corporations interested in circumventing our laws would clearly strive to have "60% Filipino Ownership" at face value. It would be senseless for these applying corporations to state in their respective articles of incorporation that they have less than 60% Filipino stockholders since the applications will be denied instantly. Thus, various corporate schemes and layerings are utilized to circumvent the application of the Constitution.

Obviously, the instant case presents a situation which exhibits a scheme employed by stockholders to circumvent the law, creating a cloud of doubt in the Court's mind. To determine, therefore, the actual participation, direct or indirect, of MBMI, the grandfather rule must be used.

After applying the grandfather rule, it is quite safe to say that petitioners McArthur, Tesoro and Narra are not Filipino since MBMI, a 100% Canadian corporation, owns 60% or more of their equity interests. Such conclusion is derived from grandfathering petitioners' corporate owners, namely: MMI, SMMI and PLMDC. Going further and adding to the picture, MBMI's Summary of Significant Accounting Policies statement– –regarding the "joint venture" agreements that it entered into with the "Olympic" and "Alpha" groups––involves SMMI, Tesoro, PLMDC and Narra. Noticeably, the ownership of the "layered" corporations boils down to MBMI, Olympic or corporations under the "Alpha" group wherein MBMI has joint venture agreements with, practically exercising majority control over the corporations mentioned. In effect, whether looking at the capital structure or the underlying relationships between and among the corporations, petitioners are NOT Filipino nationals and must be considered foreign since 60% or more of their capital stocks or equity interests are owned by MBMI.

- Narra Nickel Mining and Development Corporation, et al. vs. Redmont Consolidated Mines Corporation, G.R. No. 199580, January 28, 2015

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., AND MCARTHUR MINING, INC., Petitioners, v. REDMONT CONSOLIDATED MINES CORP., Respondent.

G.R. No. 195580, SPECIAL THIRD DIVISION January 28, 2015, VELASCO JR., J.

*The Control Test can be, as it has been, applied jointly with the Grandfather Rule to determine the observance of foreign ownership restriction in nationalized economic activities. **The Control Test and the Grandfather Rule** are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, these methods **can, if appropriate, be used cumulatively in the determination of the ownership and control of corporations engaged in fully or partly nationalized activities**, as the mining operation involved in this case or the operation of public utilities.*

The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to *perform nationalized or partly nationalized activities. Hence,* ***it is only when the Control Test is first complied with that the Grandfather Rule may be applied****. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.*

*On the other hand****, a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for*** *a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation* ***or the application of the Grandfather Rule****. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation,* ***a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the "beneficial ownership" and "control****." In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary.*

*As explained in the April 21, 2012 Decision, the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, "****doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders.***

FACTS:

Respondent Redmont Consolidated Mines Corp. (Redmont), a domestic corporation organized and existing under Philippine laws, took interest in mining and exploring certain areas of the province of Palawan. After inquiring with the DENR, it learned that the areas where it wanted to undertake exploration and mining activities where already covered by Mineral Production Sharing Agreement (MPSA) applications of petitioners Narra, Tesoro and McArthur. Petitioners Narra, Tesoro and McArthur applied for an MPSA and Exploration Permit which was subsequently issued.
Redmont filed before the Panel of Arbitrators (POA) of the DENR three (3) separate petitions for the denial of petitioners' applications for MPSA. Redmont alleged that at least 60% of the capital stock of McArthur,Tesoro and Narra are owned and controlled by MBMI Resources, Inc. (MBMI), a 100% Canadian corporation. Redmont reasoned that since MBMI is a considerable stockholder of petitioners, it was the driving force behind petitioners' filing of the MPSAs over the areas covered by applications since it knows that it can only participate in mining activities through corporations which are deemed Filipino citizens. Redmont argued that given that petitioners' capital stocks were mostly owned by MBMI, they were likewise disqualified from engaging in mining activities through MPSAs, which are reserved only for Filipino citizens.

Petitioners averred that they were qualified persons under Section 39 (aq) of Republic Act No. (RA) 7942 or the Philippine Mining Act of 1995. They stated that their nationality as applicants is immaterial because they also applied for Financial or Technical Assistance Agreements (FTAA) which are granted to foreign-owned corporations. Nevertheless, they claimed that the issue on nationality should not be raised since McArthur, Tesoro and Narra are in fact Philippine Nationals as 60% of their capital is owned by citizens of the Philippines.

POA issued a Resolution disqualifying petitioners from gaining MPSAs considering petitioners as foreign corporations being "effectively controlled" by MBMI, a 100% Canadian company and declared their MPSAs null and void.
Pending the resolution of the appeal filed by petitioners with the MAB, Redmont filed a Complaint with the Securities and Exchange Commission (SEC), seeking the revocation of the certificates for registration of petitioners on the ground that they are foreign-owned or controlled corporations engaged in mining in violation of Philippine laws.

CA found that there was doubt as to the nationality of petitioners when it realized that petitioners had a common major investor, MBMI, a corporation composed of 100% Canadians. Pursuant to the first sentence of paragraph 7 of Department of Justice (DOJ) Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the exploitation of natural resources, the CA used the "grandfather rule" to determine the nationality of petitioners.

ISSUE:

Whether the Petitioners are foreign corporations. (YES)

RULING:

Admittedly, an ongoing quandary obtains as to the role of the Grandfather Rule in determining compliance with the minimum Filipino equity requirement vis-à-vis the Control Test. This confusion springs from the erroneous assumption that the use of one method forecloses the use of the other.

As exemplified by the above rulings, opinions, decisions and this Court's April 21, 2014 Decision, the Control Test can be, as it has been, applied jointly with the Grandfather Rule to determine the observance of foreign ownership restriction in nationalized economic activities**. The Control Test and the Grandfather Rule** are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, these methods **can, if appropriate, be used cumulatively in the determination of the ownership and control of corporations engaged in fully or partly nationalized activities**, as the mining operation involved in this case or the operation of public utilities.

The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it is only when the Control Test is first complied with that the Grandfather Rule may be applied**. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.

On the other hand**, a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule**. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the "beneficial**

ownership" and "control." In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary.

As explained in the April 21, 2012 Decision, the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, "**doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders**. As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the Constitution, "significant indicators of the dummy status" have been recognized in view of reports "that some Filipino investors or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors" specifically in joint ventures for national resource exploitation. These indicators are:

> 1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner;
>
> 2. That the foreign investors undertake to provide practically all the technological support for the joint venture;
>
> 3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.

Thus, In the Matter of the Petition for Revocation of the Certificate of Registration of Linear Works Realty Development Corporation, the SEC held that when foreigners contribute more capital to an enterprise, doubt exists as to the actual control and ownership of the subject corporation even if the 60% Filipino equity threshold is met. Hence, the SEC in that one ordered a further investigation, viz:

> x x x The [SEC Enforcement and Prosecution Department (EPD)] maintained that the basis for determining the level of foreign participation is the number of shares subscribed, regardless of the par value. Applying such an interpretation, the EPD rules that the foreign equity participation in Linear works Realty Development Corporation amounts to 26.41% of the corporation's capital stock since the amount of shares subscribed by foreign nationals is 1,795 only out of the 6,795 shares. Thus, the subject corporation is compliant with the 40% limit on foreign equity participation. Accordingly, the EPD dismissed the complaint, and did not pursue any investigation against the subject corporation.
>
> x x x x
>
> x x x [I]n this respect we find no error in the assailed order made by the EPD. The EPD did not err when it did not take into account the par value of shares in determining compliance with the constitutional and statutory restrictions on foreign equity. However, we are aware that some unscrupulous individuals employ schemes to circumvent the constitutional and statutory restrictions on foreign equity. In the present case, the fact that the shares of the Japanese nationals have a greater par value but only have similar rights to those held by Philippine citizens having much lower par value, is highly suspicious. This is because a

> reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him. Thus, it is reasonable to suspect that there may be secret arrangements between the corporation and the stockholders wherein the Japanese nationals who subscribed to the shares with greater par value actually have greater control and economic rights contrary to the equality of shares based on the articles of incorporation.
>
> With this in mind, we find it proper for the EPD to investigate the subject corporation. The EPD is advised to avail of the Commission's subpoena powers in order to gather sufficient evidence, and file the necessary complaint.

As will be discussed, even if at first glance the petitioners comply with the 60-40 Filipino to foreign equity ratio, doubt exists in the present case that gives rise to a reasonable suspicion that the Filipino shareholders do not actually have the requisite number of control and beneficial ownership in petitioners Narra, Tesoro, and McArthur. Hence, a further investigation and dissection of the extent of the ownership of the corporate shareholders through the Grandfather Rule is justified.

Parenthetically, it is advanced that the application of the Grandfather Rule is impractical as tracing the shareholdings to the point when natural persons hold rights to the stocks may very well lead to an investigation ad infinitum. Suffice it to say in this regard that, while the Grandfather Rule was originally intended to trace the shareholdings to the point where natural persons hold the shares, the SEC had already set up a limit as to the number of corporate layers the attribution of the nationality of the corporate shareholders may be applied.

In a 1977 internal memorandum, the SEC suggested applying the Grandfather Rule on two (2) levels of corporate relations for publicly-held corporations or where the shares are traded in the stock exchanges, and to three (3) levels for closely held corporations or the shares of which are not traded in the stock exchanges. These limits comply with the requirement in Palting v. San Jose Petroleum, Inc. that the application of the Grandfather Rule cannot go beyond the level of what is reasonable.

In the Decision subject of this recourse, the Court applied the Grandfather Rule to determine the matter of true ownership and control over the petitioners as doubt exists as to the actual extent of the participation of MBMI in the equity of the petitioners and their investing corporations.

We considered the following membership and control structures and like nuances:

<u>Tesoro</u>

Supposedly Filipino corporation Sara Marie Mining, Inc. (Sara Marie) holds 59.97% of the 10,000 common shares of petitioner Tesoro while the Canadian-owned company, MBMI, holds 39.98% of its shares.

In turn, the Filipino corporation Olympic Mines & Development Corp. (Olympic) holds 66.63% of Sara Marie's shares while the same Canadian company MBMI holds 33.31% of Sara Marie's shares. Nonetheless, it is admitted that Olympic did not pay a single peso for its shares. On the contrary, MBMI paid for 99% of the paid-up capital of Sara Marie.

The fact that MBMI had practically provided all the funds in Sara Marie and Tesoro creates serious doubt as to the true extent of its (MBMI) control and ownership over both Sara Marie

and Tesoro since, as observed by the SEC, "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." The application of the Grandfather Rule is clearly called for, and as shown below, the Filipinos' control and economic benefits in petitioner Tesoro (through Sara Marie) fall below the threshold 60%, viz:

Filipino participation in petitioner Tesoro: 40.01%
66.67 (Filipino equity in Sara Marie) x59.97 (Sara Marie's share in Tesoro) = 39.98%
100

39.98% + .03% (shares of individual Filipino shareholders [SHs] in Tesoro)
=40.01%
=====
Foreign participation in petitioner Tesoro: 59.99%
33.33 (Foreign equity in Sara Marie) x 59.97 (Sara Marie's share in Tesoro) = 19.99%
100

19.99% + 39.98% (MBMI's direct participation in Tesoro) + .02% (shares of foreign individual SHs in Tesoro)
= 59.99%
=====
With only 40.01% Filipino ownership in petitioner Tesoro, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner Tesoro does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Hence, the appellate court's observation that Tesoro is a foreign corporation not entitled to an MPSA is apt.

McArthur

Petitioner McArthur follows the corporate layering structure of Tesoro, as 59.97% of its 10, 000 common shares is owned by supposedly Filipino Madridejos Mining Corporation (Madridejos), while 39.98% belonged to the Canadian MBMI.

In turn, 66.63% of Madridejos' shares were held by Olympic while 33.31% of its shares belonged to MBMI. Yet again, Olympic did not contribute to the paid-up capital of Madridejos and it was MBMI that provided 99.79% of the paid-up capital of Madridejos.

Again, the fact that MBMI had practically provided all the funds in Madridejos and McArthur creates serious doubt as to the true extent of its control and ownership of MBMI over both Madridejos and McArthur. The application of the Grandfather Rule is clearly called for, and as will be shown below, MBMI,along with the other foreign shareholders, breached the maximum limit of 40% ownership in petitioner McArthur, rendering the petitioner disqualified to an MPSA:

Filipino participation in petitioner McArthur: 40.01%

66.67 (Filipino equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = 39.98%
100

39.98% + .03% (shares of individual Filipino SHs in McArthur)
=40.01%
=====

Foreign participation in petitioner McArthur: 59.99%

33.33 (Foreign equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = 19.99%
100

19.99% + 39.98% (MBMI's direct participation in McArthur) + .02% (shares of foreign individual SHs in McArthur)
= 59.99%
=====

As with petitioner Tesoro, with only 40.01% Filipino ownership in petitioner McArthur, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner McArthur does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Thus, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

<u>Narra</u>

As for petitioner Narra, 59.97% of its shares belonged to Patricia Louise Mining & Development Corporation (PLMDC), while Canadian MBMI held 39.98% of its shares.

PLMDC's shares, in turn, were held by Palawan Alpha South Resources Development Corporation (PASRDC), which subscribed to 65.96% of PLMDC's shares, and the Canadian MBMI, which subscribed to 33.96% of PLMDC's shares.

Yet again, PASRDC did not pay for any of its subscribed shares, while MBMI contributed 99.75% of PLMDC's paid-up capital. **This fact creates serious doubt as to the true extent of MBMI's control and ownership over both PLMDC and Narra** since "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." Thus, the application of the Grandfather Rule is justified. And as will be shown, it is clear that the Filipino ownership in petitioner Narrafalls below the limit prescribed in both the Constitution and the Philippine Mining Act of 1995.

Filipino participation in petitioner Narra: 39.64%

66.02 (Filipino equity in PLMDC) x 59.97 (PLMDC's share in Narra) = 39.59%
100

39.59% + .05% (shares of individual Filipino SHs in McArthur)
=39.64%
====
Foreign participation in petitioner Narra: 60.36%

33.98 (Foreign equity in PLMDC) x 59.97 (PLMDC's share in Narra) = 20.38%
100

20.38% + 39.96% (MBMI's direct participation in Narra) + .02% (shares of foreign individual SHs in McArthur)
= 60.36%
=====

With 60.36% foreign ownership in petitioner Narra, as compared to only 39.64% Filipino ownership of its shares, it is clear that petitioner Narra does not comply with the minimum Filipino equity requirement imposed in Section 2, Article XII of the Constitution. Hence, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

D. Corporate Juridical Personality

1. Doctrine of Separate Juridical Personality

- Lim vs. CA, 323 SCRA 102 (2000)

RUFINA LUY LIM, Petitioner, v. COURT OF APPEALS, AUTO TRUCK TBA CORPORATION, SPEED DISTRIBUTING, INC., ACTIVE DISTRIBUTORS, ALLIANCE MARKETING CORPORATION, ACTION COMPANY, INC. respondents.
G. R. No. 124715, SECOND DIVISION, January 24, 2000, BUENA, J.

Rudimentary is the rule that a corporation is invested by law with a personality distinct and separate from its stockholders or members*. In the same vein, a corporation by legal fiction and convenience is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it. The corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation. Where badges of fraud exist, where public convenience is defeated; where a wrong is sought to be justified thereby, the corporate fiction or the notion of legal entity should come to naught.*

Further, the test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows: 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 proximately cause the injury or unjust loss*** *complained of. The absence of any of these elements prevents "piercing the corporate veil".*

Inasmuch as the real properties included in the inventory of the estate of the Late Pastor Y. Lim are in the possession of and are registered in the name of private respondent corporations, which under the law possess a personality separate and distinct from their stockholders, and in the absence of any cogency to shred the veil of corporate fiction, the presumption of conclusiveness of said titles in favor of private respondents should stand undisturbed.

FACTS:

On 11 June 1994, Pastor Y. Lim died intestate. Herein petitioner, as surviving spouse and duly represented by her nephew George Luy, filed a joint petition for the administration of the estate of Pastor Y. Lim before the Regional Trial Court of Quezon City. Private respondent corporations, whose properties were included in the inventory of the estate of Pastor Y. Lim, then filed a motion for the lifting of lis pendens and motion for exclusion of certain properties from the estate of the decedent. Rufina Luy Lim subsequently filed an amended petition which averred that deceased personally owned during his lifetime the private respondent corporations itself and its properties since the incorporators of such were mere dummies of the deceased for purposes of registration with the SEC. Petitioner attached affidavits executed by Teresa Lim and Lani Wencelao which contained averments that the incorporators of the Uniwide Distibuting, Inc. included in the list had no actual and participation in the organization and incorporation of said corporation. They are mere dummies since they did not actually contributed any amount to the capital stock of the corporation and have been merely asked by the deceased to affix their signatures thereon. The private respondents consistently prayed for the exclusion of such in the inventory of the estate of the deceased since these were corporations formed, organized and existing under Philippine laws and which owned real properties covered under the Torrens system.

Petitioner, duly represented by her nephew, George Luy filed a joint petition for the administration of the estate of Pastor Y. Lim before the RTC of Q.C. Private Respondents filed a motion for the lifting of lis pendens and motion for exclusion of certain properties from the estate of the decedent. The RTC granted private respondents' twin motions. Petitioner filed an amended petition and the RTC acted on it by reversing its previous order and directed the RD to reinstate the annotation of lis pendens. The probate court appointed petitioner as special administrator and denied private respondents' motion for exclusion. Private Respondent filed a special civil action for certiorari before the CA questioning such order of the probate court. The CA ruled in favor of the private respondents. Petitioner then filed a petition under Rule 45 of the Rules of Court before the SC assailing that the CA erred in reversing the orders ignoring the provisions of the law and preventing her from performing her duty as special administrator.

ISSUE:

Whether the corporation may be included in the inventory of estate of Pastor Y. Lim. (NO)

RULING:

Rudimentary is the rule that a corporation is invested by law with a personality distinct and separate from its stockholders or members. In the same vein, a corporation by legal fiction and convenience is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it. The corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation. Where badges of fraud exist, where public convenience is defeated; where a wrong is sought to be justified thereby, the corporate fiction or the notion of legal entity should come to naught.

Further, the test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows: 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 proximately cause the injury or unjust loss complained of. The absence of any of these elements prevents "piercing the corporate veil".

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 a sufficient reason for disregarding the fiction of separate corporate personalities.

Moreover, to disregard the separate juridical personality of a corporation, the wrong-doing must be clearly and convincingly established. It cannot be presumed.

Granting arguendo that the Regional Trial Court in this case was not merely acting in a limited capacity as a probate court, petitioner nonetheless failed to adduce competent evidence that would have justified the court to impale the veil of corporate fiction.

Inasmuch as the real properties included in the inventory of the estate of the Late Pastor Y. Lim are in the possession of and are registered in the name of private respondent corporations, which under the law possess a personality separate and distinct from their stockholders, and in the absence of any cogency to shred the veil of corporate fiction, the presumption of conclusiveness of said titles in favor of private respondents should stand undisturbed.

- PNB vs. Ritratto Group, Inc., 362 SCRA 216 (2001)

PHILIPPINE NATIONAL BANK, petitioner, vs. RITRATTO GROUP INC., RIATTO INTERNATIONAL, INC., and DADASAN GENERAL MERCHANDISE, respondents.
G.R. No. 142616, FIRST DIVISION, July 31, 2001, KAPUNAN, J.

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter*. The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. The courts may in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate entity. Also, the ruling in Koppel is not applicable. In said case, this Court disregarded the separate existence of the parent and the subsidiary on the ground that the latter was formed merely for the purpose of evading the payment of higher taxes. Here, respondents fail to show any cogent reason why the separate entities of the PNB and PNB-IFL should be disregarded.*

Aside from the fact that PNB-IFL is a wholly owned subsidiary of petitioner PNB, there is no showing of the indicative factors that the former corporation is a mere instrumentality of the latter are present. Neither is there a demonstration that any of the evils sought to be prevented by the doctrine of piercing the corporate veil exists. Inescapably, therefore, the doctrine of piercing the corporate veil based on the alter ego or instrumentality doctrine finds no application in the case at bar.

FACTS:

On May 29, 1996, PNB International Finance Ltd. (PNB-IFL) a subsidiary company of PNB, organized and doing business in Hong Kong, extended a letter of credit in favor of the respondents in the amount of US$300,000.00 secured by real estate mortgages constituted over four (4) parcels of land in Makati City. This credit facility was later increased. However, as of April 30, 1998, their outstanding obligations stood at US$1,497,274.70. Pursuant to the terms of the real estate mortgages, PNB-IFL, through its attorney-in-fact PNB, notified the respondents of the foreclosure of all the real estate mortgages and that the properties subject thereof were to be sold at a public auction. Respondents filed a complaint for injunction for which the petitioner opposed and filed a motion to dismiss on the grounds of failure to state a cause of action and the absence of any privity between the petitioner and respondents. Thereafter, petitioner filed a petition for certiorari and prohibition before the CA which was denied. Petitioner seeks recourse before the SC claiming that the complaint against it must be dismissed because it is not the real party in interest being a mere attorney-in-fact authorized to enforce an ancillary contract.

Respondents argue that even assuming arguendo that petitioner and PNB-IFL are two separate entities, petitioner is still the party-in-interest in the application for preliminary injunction because it is tasked to commit acts of foreclosing respondents' properties. Respondents maintain that the entire credit facility is void as it contains stipulations in violation of the principle of mutuality of contracts. In addition, respondents justified the act of the court a quo in applying the doctrine of "Piercing the Veil of Corporate Identity" by stating that petitioner is merely an alter ego or a business conduit of PNB-IFL.

ISSUE:

Whether Petitioner PNB is merely an alter ego of PNB-IFL justifying the application of the doctrine of "Piercing the Veil of Corporate Identity". (NO)

RULING:

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. The courts may in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate entity. Also, the ruling in Koppel is not applicable. In said case, this Court disregarded the separate existence of the parent and the subsidiary on the ground that the latter was formed merely for the purpose of evading the payment of higher taxes. Here, respondents fail to show any cogent reason why the separate entities of the PNB and PNB-IFL should be disregarded.

While there exists no definite test of general application in determining when a subsidiary may be treated as a mere instrumentality of the parent corporation, some factors have been identified that will justify the application of the treatment of the doctrine of the piercing of the corporate veil in the case of Garrett vs. Southern Railway Co. The Tennessee Supreme Court outlined the circumstances which may be useful in the determination of whether the subsidiary is but a mere instrumentality of the parent-corporation:

The Circumstance rendering the subsidiary an instrumentality. It is manifestly impossible to catalogue the infinite variations of fact that can arise but there are certain common circumstances which are important and which, if present in the proper combination, are controlling. These are as follows:

(a) The parent corporation owns all or most of the capital stock of the subsidiary.
(b) The parent and subsidiary corporations have common directors or officers.
(c) The parent corporation finances the subsidiary.
(d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
(e) The subsidiary has grossly inadequate capital.
(f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
(g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.
(h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
(i) The parent corporation uses the property of the subsidiary as its own.
(j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation.
(k) The formal legal requirements of the subsidiary are not observed.

Similarly, in this jurisdiction, we have held that the doctrine of piercing the corporate veil is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. The doctrine applies when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the 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.

In Concept Builders, Inc. v. NLRC, we have laid the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

1. Control, not mere majority or complete 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 rights; and,
3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents "piercing the corporate veil." In applying the "instrumentality" or "alter ego" doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to the operation.

Aside from the fact that PNB-IFL is a wholly owned subsidiary of petitioner PNB, there is no showing of the indicative factors that the former corporation is a mere instrumentality of the latter are present. Neither is there a demonstration that any of the evils sought to be prevented by the doctrine of piercing the corporate veil exists. Inescapably, therefore, the doctrine of piercing the corporate veil based on the alter ego or instrumentality doctrine finds no application in the case at bar. In any case, the parent-subsidiary relationship between PNB and PNB-IFL is not the significant legal relationship involved in this case since the petitioner was not sued because it is the parent company of PNB-IFL. Rather, the petitioner was sued because it acted as an attorney-in-fact of PNB-IFL in initiating the foreclosure proceedings. A suit against an agent cannot without compelling reasons be considered a suit against the principal.

- Ricardo S. Silverio, Jr., Esses Development Corporation, and Tri-Star Farms, Inc. vs. Filipino Business Consultants, Inc., G.R. No. 143312, August 12, 2005)

RICARDO S. SILVERIO, JR., ESSES DEVELOPMENT CORPORATION, and TRI-STAR FARMS, INC., Petitioners, v. FILIPINO BUSINESS CONSULTANTS, INC., Respondent.
G.R. NO. 143312, FIRST DIVISION, August 12, 2005, CARPIO, J.

A corporation is a juridical person distinct from the members composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members*. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets. The stockholder is not a co-owner or tenant in common of the corporate property.*

Thus, FBCI's alleged controlling shareholdings in Esses and Tri-Star merely represent a proportionate or aliquot interest in the properties of the two corporations. Such controlling shareholdings do not vest FBCI with any legal right or title to any of Esses and Tri-Star's corporate properties. As a stockholder, FBCI has an interest in Esses and Tri-Star's corporate properties that is only equitable or beneficial in nature. Even assuming that FBCI is the controlling shareholder of Esses and Tri-Star, it does not legally make it the owner of the Calatagan Property, which is legally owned by Esses and Tri-Star as distinct juridical persons. As such, FBCI is not entitled to the possession of any definite portion of the Calatagan Property or any of Esses and Tri-Star's properties or assets. FBCI is not a co-owner or tenant in common of the Calatagan Property or any of Esses and Tri-Star's corporate properties.

FACTS:

The parties are wrangling over possession of a 62 hectare-land in Calatagan, Batangas ("Calatagan Property"). Silverio, Jr. is the President of Esses and Tri-Star. Esses and Tri-Star were in possession of the Calatagan Property and registered in the names of Esses and Tri-Star. On 22 September 1995, Esses and Tri-Star executed a Deed of Sale with Assumption of Mortgage in favor of FBCI. Esses and Tri-Star failed to redeem the Calatagan Property.

FBCI filed a Petition for Consolidation of Title of the Calatagan Property with the RTC Balayan. The RTC Balayan issued a writ of possession in FBCI's favor. FBCI then entered the Calatagan Property. When Silverio, Jr., Esses and Tri-Star learned of the judgment by default and writ of possession, they filed a petition for relief from judgment and the recall of the writ of possession. The RTC Balayan nullified and set aside the judgment by default and the writ of possession. The RTC Balayan found that the summons and the complaint were not served on Silverio, Jr., Esses and TriStar. The RTC Balayan denied FBCI's motion for reconsideration of the order. FBCI then filed a petition for certiorari with the Court of Appeals questioning the RTC Balayan's 28 December 1998 Order. On 28 April 2000, the Court of Appeals denied FBCI's petition. The Court of Appeals also denied FBCI's motion for reconsideration. On 13 August 2001, the Supreme Court denied FBCI's petition. On 14 April 1999, the RTC Balayan modified its 28 December 1998 Order by upholding FBCI's possession of the Calatagan Property. The RTC Balayan ruled that FBCI could not be deprived of possession of the Calatagan Property because FBCI made substantial improvements on it. Possession could revert to Silverio, Jr., Esses and Tri-Star only if they reimburse FBCI.

Silverio, Jr., Esses and Tri-Star moved for the partial reconsideration of the 14 April 1999 Order.

On 9 November 1999, the RTC Balayan reversed its 14 April 1999 Order by holding that Silverio, Jr., Esses and Tri-Star had no duty to reimburse FBCI. The 9 November 1999 Order also restored possession of the Calatagan Property to Silverio, Jr., Esses and Tri-Star pursuant to Rule 39, Section 5 of the 1997 Rules of Civil Procedure. This provision provides for restitution in case of reversal of an executed judgment. On 7 January 2000, the RTC Balayan denied FBCI's motion for reconsideration. On 8 May 2000, the RTC Balayan issued the writ of possession to Silverio, Jr., Esses and Tri-Star.

FBCI filed with the RTC Balayan a Manifestation and Motion to Recall Writ of Possession on the ground that the decision of the Court of Appeals in CA-G.R. SP No. 56924 was not yet final and FBCI's motion for reconsideration was still pending. On 23 May 2000, FBCI filed with the RTC Balayan an Urgent Ex-Parte Motion to Suspend Enforcement of Writ of Possession. FBCI pointed out that it is now the new owner of Esses and Tri-Star having purchased the "substantial and controlling shares of stocks" of the two corporations.

On the 26 May 2000 hearing, FBCI reiterated its claim of a supervening event, its ownership of Esses and Tri-Star. FBCI informed the RTC Balayan that a new board of directors for Esses and Tri-Star had been convened following the resignation of the members of the board of directors.

The previous actions of the former board of directors have been abandoned and the services of Atty. Vicente B. Chuidian, the counsel of petitioners Silverio, Jr., Esses and Tri-Star, have been terminated. On the same day, the RTC Balayan issued the order suspending the writ of possession it had earlier issued to Silverio, Jr., Esses and Tri-Star.

ISSUE:

Whether FBCI may take possession of the Calatagan property after purchasing substantial and controlling shakes of stocks of Esses and TriStar. (NO)

RULING:

FBCI's acquisition of the "substantial and controlling shares of stocks" of Esses and Tri-Star does not create a substantial change in the rights or relations of the parties that would entitle FBCI to possession of the Calatagan Property, a corporate property of Esses and Tri-Star. Esses and TriStar, just like FBCI, are corporations. A corporation has a personality distinct from that of its stockholders. As early as the case of Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila, the Court explained the principle of separate juridical personality in this wise:

> A corporation is a juridical person distinct from the members composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets. The stockholder is not a co-owner or tenant in common of the corporate property.

Thus, FBCI's alleged controlling shareholdings in Esses and Tri-Star merely represent a proportionate or aliquot interest in the properties of the two corporations. Such controlling shareholdings do not vest FBCI with any legal right or title to any of Esses and Tri-Star's corporate properties. As a stockholder, FBCI has an interest in Esses and Tri-Star's corporate properties that is only equitable or beneficial in nature. Even assuming that FBCI is the controlling shareholder of Esses and Tri-Star, it does not legally make it the owner of the Calatagan Property, which is legally owned by Esses and Tri-Star as distinct juridical persons. As such, FBCI is not entitled to the possession of any definite portion of the Calatagan Property or any of Esses and Tri-Star's properties or assets. FBCI is not a co-owner or tenant in common of the Calatagan Property or any of Esses and Tri-Star's corporate properties.

We see no reason why the execution of the writ of possession has been long delayed. Possession of the Calatagan Property must be restored to Esses and Tri-Star through their representative, Silverio, Jr. There is no proof on record that Silverio, Jr. has ceased to be the representative of Esses and Tri-Star in this case.

- Jardine Davis, Inc. vs. JRB Realty, Inc., 463 SCRA 555 (2005)

JARDINE DAVIES, INC., Petitioners, v. JRB REALTY, INC., Respondent.
G.R. NO. 151438, SECOND DIVISION, July 15, 2005, CALLEJO, SR., J.

It is an elementary and fundamental principle of corporation law that ***a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected****. While a corporation is allowed to exist solely for a lawful purpose, the law will regard it as an association of persons or in case of two corporations, merge them into one, when this corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction which applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.*

While it is true that Aircon is a subsidiary of the petitioner, it does not necessarily follow that Aircon's corporate legal existence can just be disregarded. In Velarde v. Lopez, Inc., the Court categorically held that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company; hence, any claim or suit against the latter does not bind the former, and vice versa. In applying the doctrine, the following requisites must be established: (1) control, not merely majority or complete stock control; (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 acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

FACTS:

In 1979-1980, respondent JRB Realty, Inc. built a nine-storey building, named Blanco Center. An air conditioning system was needed for the Blanco Law Firm housed at the second floor of the building. On March 13, 1980, the respondent's Executive Vice-President, Jose R. Blanco, accepted the contract quotation of Mr. A.G. Morrison, President of Aircon and Refrigeration Industries, Inc. (Aircon), for two (2) sets of Fedders Adaptomatic 30,000 kcal air conditioning equipment with a net total selling price of P99,586.00. Thereafter, two (2) brand new packaged air conditioners of 10 tons capacity each to deliver 30,000 kcal or 120,000 were installed by Aircon. When the units with rotary compressors were installed, they could not deliver the desired cooling temperature. Despite several adjustments and corrective measures, the respondent conceded that Fedders Air Conditioning USA's technology for rotary compressors for big capacity conditioners like those installed at the Blanco Center had not yet been perfected. The parties thereby agreed to replace the units with reciprocating/semi-hermetic compressors instead. In a Letter dated March 26, 1981, Aircon stated that it would be replacing the units currently installed with new ones using rotary compressors, at the earliest possible time. Regrettably, however, it could not specify a date when delivery could be effected.

TempControl Systems, Inc. (a subsidiary of Aircon until 1987) undertook the maintenance of the units, inclusive of parts and services. In October 1987, the respondent learned, through newspaper ads, that Maxim Industrial and Merchandising Corporation (Maxim, for short) was the new and exclusive licensee of Fedders Air Conditioning USA in the Philippines for the manufacture, distribution, sale, installation and maintenance of Fedders air conditioners. The respondent requested that Maxim honor the obligation of Aircon, but the latter refused. Considering that the ten-year period of prescription was fast approaching, to expire on March 13, 1990, the respondent then instituted, on January 29, 1990, an action for specific performance with damages against Aircon & Refrigeration Industries, Inc., Fedders Air Conditioning USA, Inc., Maxim Industrial & Merchandising Corporation and petitioner Jardine Davies, Inc. The latter was impleaded as defendant, considering that Aircon was a subsidiary of the petitioner.

ISSUE:

Whether a suit can be brought against petitioner considering that Aircon was its subsidiary. (NO)

RULING:

It is an elementary and fundamental principle of corporation law that **a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected**. While a corporation is allowed to exist solely for a lawful purpose, the law will regard it as an association of persons or in case of two corporations, merge them into one, when this corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction which applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.

While it is true that Aircon is a subsidiary of the petitioner, it does not necessarily follow that Aircon's corporate legal existence can just be disregarded. In Velarde v. Lopez, Inc., the Court categorically held that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company; hence, any claim or suit against the latter does not bind the former, and vice versa. In applying the doctrine, the following requisites must be established: (1) control, not merely majority or complete stock control; (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 acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The records bear out that Aircon is a subsidiary of the petitioner only because the latter acquired Aircon's majority of capital stock. It, however, does not exercise complete control over Aircon; nowhere can it be gathered that the petitioner manages the business affairs of Aircon. Indeed, no management agreement exists between the petitioner and Aircon, and the latter is an entirely different entity from the petitioner.

Jardine Davies, Inc., incorporated as early as June 28, 1946, is primarily a financial and trading company. Its Articles of Incorporation states among many others that the purposes for which the said corporation was formed, are as follows:

> (a) To carry on the business of merchants, commission merchants, brokers, factors, manufacturers, and agents;
>
> (b) Upon complying with the requirements of law applicable thereto, to act as agents of companies and underwriters doing and engaging in any and all kinds of insurance business.

On the other hand, Aircon, incorporated on December 27, 1952, is a manufacturing firm. Its Articles of Incorporation states that its purpose is mainly -

To carry on the business of manufacturers of commercial and household appliances and accessories of any form, particularly to manufacture, purchase, sell or deal in air conditioning and refrigeration products of every class and description as well as accessories and parts thereof, or other kindred articles; and to erect, or buy, lease, manage, or otherwise acquire manufactories, warehouses, and depots for manufacturing, assemblage, repair and storing, buying, selling, and dealing in the aforesaid appliances, accessories and products.

The existence of interlocking directors, corporate officers and shareholders, which the respondent court considered, is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To warrant resort to this extraordinary remedy, there must be proof that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice. Any piercing of the corporate veil has to be done with caution. The wrongdoing must be clearly and convincingly established. It cannot just be presumed.

In the instant case, there is no evidence that Aircon was formed or utilized with the intention of defrauding its creditors or evading its contracts and obligations. There was nothing fraudulent in the acts of Aircon in this case. Aircon, as a manufacturing firm of air conditioners, complied with its obligation of providing two air conditioning units for the second floor of the Blanco Center in good faith, pursuant to its contract with the respondent. Unfortunately, the performance of the air conditioning units did not satisfy the respondent despite several adjustments and corrective measures. In a Letter dated October 22, 1980, the respondent even conceded that Fedders Air Conditioning USA has not yet perhaps perfected its technology of rotary compressors, and agreed to change the compressors with the semi-hermetic type. Thus, Aircon substituted the units with serviceable ones which delivered the cooling temperature needed for the law office. After enjoying ten (10) years of its cooling power, respondent cannot now complain about the performance of these units, nor can it demand a replacement thereof.

- China Banking Corporation vs. Dyne-Sem Electronics Corporation 494 SCRA 493 (2006)

CHINA BANKING CORPORATION, Petitioner, v. DYNE-SEM ELECTRONICS CORPORATION, Respondent.

G.R. NO. 149237, SECOND DIVISION, June 11, 2006, CORONA, J.

*The general rule is **that a corporation has a personality separate and distinct from that of its stockholders and other corporations to which it may be connected**. This is a fiction created by law for convenience and to prevent injustice.*

The veil of separate corporate personality may be lifted when such personality is used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues; or when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation 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; or when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of the creditors. In such cases, the corporation will be considered as a mere association of persons. The liability will directly attach to the stockholders or to the other corporation.

***To disregard the separate juridical personality of a corporation, the wrongdoing must be proven clearly and convincingly**.*

In this case, petitioner failed to prove that Dyne-Sem was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of Dynetics, or that it was established to defraud Dynetics' creditors, including petitioner.

FACTS:

On June 19 and 26, 1985, Dynetics, Inc. (Dynetics) and Elpidio O. Lim borrowed a total of P8,939,000 from petitioner China Banking Corporation. The loan was evidenced by six promissory notes.

The borrowers failed to pay when the obligations became due. Petitioner consequently instituted a complaint for sum of money on June 25, 1987 against them. The complaint sought payment of the unpaid promissory notes plus interest and penalties.

Summons was not served on Dynetics, however, because it had already closed down. Lim, on the other hand, filed his answer on December 15, 1987 denying that "he promised to pay [the obligations] jointly and severally to [petitioner]."

On September 23, 1988, an amended complaint was filed by petitioner impleading respondent Dyne-Sem Electronics Corporation (Dyne-Sem) and its stockholders Vicente Chuidian, Antonio Garcia and Jacob Ratinoff. According to petitioner, respondent was formed and organized to be Dynetics' alter ego as established by the following circumstances:

> Dynetics, Inc. and respondent are both engaged in the same line of business of manufacturing, producing, assembling, processing, importing, exporting, buying, distributing, marketing and testing integrated circuits and semiconductor devices;
>
> The principal office and factory site of Dynetics, Inc. located at Avocado Road, FTI Complex, Taguig, Metro Manila, were used by respondent as its principal office and factory site;
>
> Respondent acquired some of the machineries and equipment of Dynetics, Inc. from banks which acquired the same through foreclosure;
>
> Respondent retained some of the officers of Dynetics, Inc.

ISSUE:

Whether the veil of corporate fiction should be pierced. (NO)

RULING:

The **general rule is that a corporation has a personality separate and distinct from that of its stockholders and other corporations to which it may be connected.** This is a fiction created by law for convenience and to prevent injustice.

Nevertheless, being a mere fiction of law, peculiar situations or valid grounds may exist to warrant the disregard of its independent being and the piercing of the corporate veil. In Martinez v. Court of Appeals, we held:

> The veil of separate corporate personality may be lifted when such personality is used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues; or when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation 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; or when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of the creditors. In such cases, the corporation will be considered as a mere association of persons. The liability will directly attach to the stockholders or to the other corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be proven clearly and convincingly.

In this case, petitioner failed to prove that Dyne-Sem was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of Dynetics, or that it was established to defraud Dynetics' creditors, including petitioner.

The similarity of business of the two corporations did not warrant a conclusion that respondent was but a conduit of Dynetics. As we held in Umali v. Court of Appeals, "the mere fact that the businesses of two or more corporations are interrelated is not a justification for disregarding their separate personalities, absent sufficient showing that the corporate entity was purposely used as a shield to defraud creditors and third persons of their rights."

Likewise, respondent's acquisition of some of the machineries and equipment of Dynetics was not proof that respondent was formed to defraud petitioner. As the Court of Appeals found, no merger took place between Dynetics and respondent Dyne-Sem. What took place was a sale of the assets of the former to the latter. Merger is legally distinct from a sale of assets. Thus, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.

Petitioner itself admits that respondent acquired the machineries and equipment not directly from Dynetics but from the various corporations which successfully bidded for them in an auction sale. The contracts of sale executed between the winning bidders and respondent showed that the assets were sold for considerable amounts. The Court of Appeals thus correctly ruled that the assets were not "diverted" to respondent as an alter ego of Dynetics. The machineries and equipment were transferred and disposed of by the winning bidders in their capacity as owners. The sales were therefore valid and the transfers of the properties to respondent legal and not in any way in contravention of petitioner's rights as Dynetics' creditor.

Finally, it may be true that respondent later hired Dynetics' former Vice-President Luvinia Maglaya and Assistant Corporate Counsel Virgilio Gesmundo. From this, however, we cannot conclude that respondent was an alter ego of Dynetics. In fact, even the overlapping of incorporators and stockholders of two or more corporations will not necessarily lead to such inference and justify the piercing of the veil of corporate fiction. Much more has to be proven.

- Spouses Ramon Nisce vs. Equitable PCI Bank 516 SCRA 231 (2007)

SPOUSES RAMON M. NISCE and A. NATIVIDAD PARAS-NISCE, Petitioners, v. EQUITABLE PCI BANK, INC., Respondent.
G.R. NO. 167434, THIRD DIVISION, February 19, 2007, CALLEJO, SR., J

Admittedly, PCI Capital is a subsidiary of respondent Bank. Even then, PCI Capital [PCI Express Padala (HK) Ltd.] has an independent and separate juridical personality from that of the respondent Bank, its parent company; hence, any claim against the subsidiary is not a claim against the parent company and vice versa. The evidence on record shows that PCIB, which had been merged with Equitable Bank, owns almost all of the stocks of PCI Capital. However, ***the fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity****. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation, as well as the subsidiary shall be confined to those arising in their respective business.* ***A corporation has a separate personality distinct from its stockholders and from other corporations to which it may be conducted****. This separate and distinct personality of a corporation is a fiction created by law for convenience and to prevent injustice.*

Petitioners failed to adduce sufficient evidence to justify the piercing of the veil of corporate entity and render respondent Bank liable for the US$20,000.00 deposit of petitioner Natividad Nisce as debtor.

FACTS:

Spouses Ramon and Natividad Nisce contracted loans evidenced by promissory notes amounting to P34, 087,725.76 with Equitable PCI Bank, secured by a real estate mortgage of the Petitioners land. Having defaulted, respondents as creditor-mortgagee filed a petition for extrajudicial foreclosure. Petitioner alleged, among others, that the bank should have set off their debt with their dollar account which they maintain with PCI Capital Asia Ltd. (Hong Kong), a subsidiary of Equitable. The Bank, for its part, contends that although the spouses' debt was restructured, they nevertheless failed to pay. Moreover, it alleged that there cannot be legal compensation because PCI Capital had a separate and distinct personality from the PCIB, and a claim against the former cannot be made against the latter.

On November 26, 2002, Equitable PCI Bank (Bank) as creditor-mortgagee filed a petition for extrajudicial foreclosure before the Office of the Clerk of Court as Ex-Officio Sheriff of the Regional Trial Court (RTC) of Makati City.

The Nisce spouses filed before the RTC of Makati City a complaint for "nullity of the Suretyship Agreement, damages and legal compensation" with prayer for injunctive relief against the Bank and the Ex-Officio Sheriff. They had requested the bank (through their lawyer-son Atty. Rosanno P. Nisce) to set off the peso equivalent of their obligation against their US dollar account with PCI Capital Asia Limited (Hong Kong), a subsidiary of the Bank, the Bank accepted their offer and requested for an estimate of the balance of their account; they complied with the Bank's request and in a letter dated February 11, 2002, informed it that the estimated balance of their account as of December 1991 (including the 11.875% per annum interest) was US$51,000.42, and that as of December 2002, Natividad's US dollar deposit with it amounted to at least ₱9,000,000.00; they were surprised when they received a letter from the Bank demanding payment of their loan account, and later a petition for extrajudicial foreclosure.

In its Answer to the complaint, the Bank alleged that the spouses had no cause of action for legal compensation since PCI Capital was a different corporation with a separate and distinct personality;

if at all, offsetting may occur only with respect to the spouses' US$500.00 deposit account in its Paseo de Roxas branch.

On March 24, 2003, the RTC issued an Order47 granting the spouses Nisce's plea for a writ of preliminary injunction on a bond of ₱10,000,000.00. The Bank opted not to file a motion for reconsideration of the order, and instead assailed the trial court's order before the CA via petition for certiorari under Rule 65 of the Rules of Court. The CA rendered judgment granting the petition and nullifying the assailed Order of the RTC.

ISSUE:

Whether the Spouses Nisce may set off their obligation with Equitable PCI bank with their foreign deposit from PCI Capital Asia Limited being a subsidiary of Equitable. (NO)

RULING:

Article 1980 of the New Civil Code provides that fixed, savings and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans. Under Article 1953, of the same Code, a person who secures a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay the creditor an equal amount of the same kind and quality. The relationship of the depositors and the Bank or similar institution is that of creditor-debtor. Such deposit may be setoff against the obligation of the depositor with the bank or similar institution.

When petitioner Natividad Nisce deposited her US$20,500.00 with the PCIB on July 19, 1984, PCIB became the debtor of petitioner. However, when upon petitioner's request, the amount of US$20,000.00 was transferred to PCI Capital, PCI Capital, in turn, became the debtor of Natividad Nisce. Indeed, a certificate of deposit is a written acknowledgment by a bank or borrower of the receipt of a sum of money or deposit which the Bank or borrower promises to pay to the depositor, to the order of the depositor; or to some other person; or to his order whereby the relation of debtor and creditor between the bank and the depositor is created. The issuance of a certificate of deposit in exchange for currency creates a debtor-creditor relationship.

Admittedly, PCI Capital is a subsidiary of respondent Bank. Even then, PCI Capital [PCI Express Padala (HK) Ltd.] has an independent and separate juridical personality from that of the respondent Bank, its parent company; hence, any claim against the subsidiary is not a claim against the parent company and vice versa. The evidence on record shows that PCIB, which had been merged with Equitable Bank, owns almost all of the stocks of PCI Capital. However, the fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation, as well as the subsidiary shall be confined to those arising in their respective business. A corporation has a separate personality distinct from its stockholders and from other corporations to which it may be conducted. This separate and distinct personality of a corporation is a fiction created by law for convenience and to prevent injustice.

This Court, in Martinez v. Court of Appeals held that, being a mere fiction of law, peculiar situations or valid grounds can exist to warrant, albeit sparingly, the disregard of its independent being and the piercing of the corporate veil. The veil of separate corporate personality may be lifted when, inter alia, the corporation is merely an adjunct, a business conduit or an alter ego of another corporation 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; or when the corporation is used as a cloak or cover for fraud or illegality; or to work injustice; or where necessary to achieve equity or for the protection of the creditors. In those cases where valid grounds exist for piercing the veil of corporate entity, the corporation will be considered as a mere association of persons. The liability will directly attach to them.

The Court likewise declared in the same case that the test in determining the application of the instrumentality or alter ego doctrine is as follows:

> 1. Control, not mere majority or complete stock control, but complete dominion, 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 plaintiff's legal rights; and
>
> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complaint of.

The Court emphasized that the absence of any one of these elements prevents "piercing the corporate veil." In applying the "instrumentality" or "alter ego" doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation.

Petitioners failed to adduce sufficient evidence to justify the piercing of the veil of corporate entity and render respondent Bank liable for the US$20,000.00 deposit of petitioner Natividad Nisce as debtor.

On hindsight, petitioners could have spared themselves the expenses and tribulation of a litigation had they just withdrawn their deposit from the PCI Capital and remitted the same to respondent.
However, petitioner insisted on their contention of setoff

- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino 551 SCRA 447 (2008)

RYUICHI YAMAMOTO, Petitioner, v. NISHINO LEATHER INDUSTRIES, INC. and IKUO NISHINO, Respondents.

G.R. NO. 150283, SECOND DIVISION, April 16, 2008, CARPIO MORALES, J.

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, ***the mere ownership by a single stockholder of***

even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality*.*

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

"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 the plaintiff's legal rights;

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents "piercing the corporate veil." In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

FACTS:

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents. In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO. Eventually, Nishino and his brother Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%, less than 10% according to Nishino. The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII. Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishinos counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

"Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29th, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you. Machinery and Equipment:

The following machinery/equipment have been contributed by you to the company:
Splitting machine - 1 unit
Samming machine - 1 unit
Forklift - 1 unit
Drums - 4 units
Toggling machine - 2 units

Regarding the above machines, you may take them out with you (for your own use and sale) if you want, provided, the value of such machines is deducted from your and Wakos capital contributions, which will be paid to you.

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation, but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint against them for replevin.

ISSUE: Whether Yamamoto may pierce the veil of corporate fiction and retrieve the machineries. (NO)

RULING:

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter**. Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors**.

Urging this Court to pierce the veil of corporate fiction, Yamamoto argues, viz:

> During the negotiations, the issue as to the ownership of the Machineries never came up. Neither did the issue on the proper procedure to be taken to execute the complete take-over of the Company come up since Ikuo, Yoshinobu, and Yamamoto were the owners thereof, the presence of other stockholders being only for the purpose of complying with the minimum requirements of the law.
>
> What course of action the Company decides to do or not to do depends not on the "other members of the Board of Directors". It depends on what Ikuo and Yoshinobu decide. The Company is but a mere instrumentality of Ikuo [and] Yoshinobu.
>
> x x x
>
> x x x The Company hardly holds board meetings. It has an inactive board, the directors are directors in name only and are there to do the bidding of the Nish[i]nos, nothing more. Its minutes are paper minutes. x x x
>
> x x x
>
> The fact that the parties started at a 70-30 ratio and Yamamoto's percentage declined to 10% does not mean the 20% went to others. x x x The 20% went to no one else but Ikuo himself. x

> x x Yoshinobu is the younger brother of Ikuo and has no say at all in the business. Only Ikuo makes the decisions. There were, therefore, no other members of the Board who have not given their approval.

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, **the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality**.

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

> "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 the plaintiff's legal rights;
>
> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
>
> The absence of any one of these elements prevents "piercing the corporate veil." In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

Yamamoto argues, in another vein, that promissory estoppel lies against respondents, thus:

> Under the doctrine of promissory estoppel, x x x estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.
>
> x x x Ikuo and Yoshinobu wanted Yamamoto out of the Company. For this purpose negotiations were had between the parties. Having expressly given Yamamoto, through the Letter and through a subsequent meeting at the Manila Peninsula where Ikuo himself confirmed that Yamamoto may take out the Machinery from the Company anytime,

> respondents should not be allowed to turn around and do the exact opposite of what they have represented they will do.
>
> In paragraph twelve (12) of the Letter, Yamamoto was expressly advised that he could take out the Machinery if he wanted to so, provided that the value of said machines would be deducted from his capital contribution x x x.
>
> x x x
>
> Respondents cannot now argue that they did not intend for Yamamoto to rely upon the Letter. That was the purpose of the Letter to begin with. Petitioner[s] in fact, relied upon said Letter and such reliance was further strengthened during their meeting at the Manila Peninsula.
>
> To sanction respondents' attempt to evade their obligation would be to sanction the perpetration of fraud and injustice against petitioner.

It bears noting, however, that the aforementioned paragraph 12 of the letter is followed by a request for Yamamoto to give his "comments on all the above, soonest."

What was thus proffered to Yamamoto was not a promise, but a mere offer, subject to his acceptance. Without acceptance, a mere offer produces no obligation.

Thus, under Article 1181 of the Civil Code, "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." In the case at bar, there is no showing of compliance with the condition for allowing Yamamoto to take the machineries and equipment, namely, his agreement to the deduction of their value from his capital contribution due him in the buy-out of his interests in NLII. Yamamoto's allegation that he agreed to the condition remained just that, no proof thereof having been presented.

The machineries and equipment, which comprised Yamamoto's investment in NLII, thus remained part of the capital property of the corporation.

It is settled that the property of a corporation is not the property of its stockholders or members. Under the trust fund doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

- Virgilio S. Delima vs. Susan Mercaida Gois 554 SCRA 731 (2008)

VIRGILIO S. DELIMA, Petitioner, v. SUSAN MERCAIDA GOIS, Respondent.
G.R. NO. 178352, THIRD DIVISION, June 17, 2008, YNARES-SANTIAGO, J

A corporation has a personality distinct and separate from its individual stockholders or members and from that of its officers who manage and run its affairs. ***The rule is that obligations incurred by the***

***corporation, acting through its directors, officers and employees, are its sole liabilities. Thus, property belonging to a corporation cannot be attached to satisfy the debt of a stockholder and vice versa**, the latter having only an indirect interest in the assets and business of the former.*

Since the Decision of the Labor Arbiter dated April 29, 2005 directed only Golden to pay the petitioner the sum of P115,561.05 and the same was not joint and solidary obligation with Gois, then the latter could not be held personally liable since Golden has a separate and distinct personality of its own. It remains undisputed that the subject vehicle was owned by Gois, hence it should not be attached to answer for the liabilities of the corporation. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. No evidence was presented to show that the termination of the petitioner was done with malice or in bad faith for it to hold the corporate officers, such as Gois, solidarily liable with the corporation.

FACTS:

A case for illegal dismissal was filed by petitioner Virgilio S. Delima against Golden Union Aquamarine Corporation (Golden), Prospero Gois and herein respondent Susan Mercaida Gois before the Regional Arbitration Branch No. VIII of the National Labor Relations Commission on October 29, 2004, docketed as NLRC RAB VIII Case No. 10-0231-04.

On April 29, 2005, Labor Arbiter Philip B. Montaces rendered a decision, ordering respondent Golden Union Aquamarine Corporation to pay complainant the sum of P115,561.05.

Golden failed to appeal the aforesaid decision; hence, it became final and executory. A writ of execution was issued and an Isuzu Jeep with plate number PGE-531 was attached.

Thereafter, respondent Gois filed an Affidavit of Third Party Claim claiming that the attachment of the vehicle was irregular because said vehicle was registered in her name and not Golden's; and that she was not a party to the illegal dismissal case filed by Delima against Golden.

In an Order dated December 29, 2005, the Labor Arbiter denied respondent's third-party claim on grounds that respondent was named in the complaint as one of the respondents; that summons were served upon her and Prospero Gois; that both verified Golden's Position Paper and alleged therein that they are the respondents; and that respondent is one of the incorporators/officers of the corporation.

ISSUE:

Whether Gois can be held liable for the decision of the Labor Arbiter against Golden. (NO)

RULING:

A corporation has a personality distinct and separate from its individual stockholders or members and from that of its officers who manage and run its affairs. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Thus, property belonging to a corporation cannot be attached to satisfy the debt of a stockholder and vice versa, the latter having only an indirect interest in the assets and business of the former.

Since the Decision of the Labor Arbiter dated April 29, 2005 directed only Golden to pay the petitioner the sum of P115,561.05 and the same was not joint and solidary obligation with Gois, then the latter could not be held personally liable since Golden has a separate and distinct personality of its own. It remains undisputed that the subject vehicle was owned by Gois, hence it should not be attached to answer for the liabilities of the corporation. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. No evidence was presented to show that the termination of the petitioner was done with malice or in bad faith for it to hold the corporate officers, such as Gois, solidarily liable with the corporation.

We note that in the dispositive portion of its Decision, the appellate court ordered petitioner to return to respondent the cash bond earlier released to him. However, petitioner admitted that the monies were spent to defray the medical expenses of his ailing mother. Considering that petitioner is legally entitled to receive said amount, Golden must reimburse respondent Gois the amount of P115,561.05. To rule otherwise would result in unjust enrichment of Golden. The corporation has benefited from the payment made by Gois because it was relieved from its obligation to pay to petitioner the judgment debt.

- PEA-PTGWO vs. NLRC 581 SCRA 598 (2009)

PANTRANCO EMPLOYEES ASSOCIATION (PEA-PTGWO) and PANTRANCO RETRENCHED EMPLOYEES ASSOCIATION (PANREA), Petitioners, v. NATIONAL LABOR RELATIONS COMMISSION (NLRC), PANTRANCO NORTH EXPRESS, INC. (PNEI), PHILIPPINE NATIONAL BANK (PNB), PHILIPPINE NATIONAL BANK-MANAGEMENT AND DEVELOPMENT CORPORATION (PNB-MADECOR), and MEGA PRIME REALTY AND HOLDINGS CORPORATION (MEGA PRIME), Respondents.
G.R. NO. 170689, THIRD DIVISION, March 17, 2009, NACHURA, J.

PHILIPPINE NATIONAL BANK, Petitioner, v. PANTRANCO EMPLOYEES ASSOCIATION, INC. (PEA-PTGWO), PANTRANCO RETRENCHED EMPLOYEES ASSOCIATION (PANREA) AND PANTRANCO ASSOCIATION OF CONCERNED EMPLOYEES (PACE), ET AL., PHILIPPINE NATIONAL BANK-MANAGEMENT DEVELOPMENT CORPORATION (PNB-MADECOR), and MEGA PRIME REALTY HOLDINGS, INC., Respondents.
G.R. NO. 170705, THIRD DIVISION, March 17, 2009, NACHURA, J.

The general rule is that ***a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected****. This is a fiction created by law for convenience and to prevent injustice. Obviously, PNB, PNB-Madecor, Mega Prime, and PNEI are corporations with their own personalities. The "separate personalities" of the first three corporations had been recognized by this Court in PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB where we stated that PNB was only a stockholder of PNB-Madecor which later sold its shares to Mega Prime; and that PNB-Madecor was the owner of the Pantranco properties. Moreover, these corporations are registered as separate entities and, absent any valid reason, we maintain their separate identities and we cannot treat them as one.*

Neither can we merge the personality of PNEI with PNB simply because the latter acquired the former. Settled is the rule that where one corporation sells or otherwise transfers all its assets to another *corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.*

FACTS:

The Gonzales family owned two corporations, namely, the PNEI and Macris Realty Corporation (Macris). PNEI provided transportation services to the public, and had its bus terminal at the corner of Quezon and Roosevelt Avenues in Quezon City. The Gonzales family later incurred huge financial losses despite attempts of rehabilitation and loan infusion. In March 1975, their creditors took over the management of PNEI and Macris. By 1978, full ownership was transferred to one of their creditors, the National Investment Development Corporation (NIDC), a subsidiary of the PNB.

Macris was later renamed as the National Realty Development Corporation (Naredeco) and eventually merged with the National Warehousing Corporation (Nawaco) to form the new PNB subsidiary, the PNB-Madecor.

In 1985, NIDC sold PNEI to North Express Transport, Inc. (NETI). In 1986, PNEI was among the several companies placed under sequestration by the Presidential Commission on Good Government (PCGG) shortly after the historic events in EDSA. In January 1988, PCGG lifted the sequestration order to pave the way for the sale of PNEI back to the private sector through the Asset Privatization Trust (APT). APT thus took over the management of PNEI.

In 1992, PNEI applied with the Securities and Exchange Commission (SEC) for suspension of payments. As a cost-saving measure, the committee likewise suggested the retrenchment of several PNEI employees. Eventually, PNEI ceased its operation. Along with the cessation of business came the various labor claims commenced by the former employees of PNEI where the latter obtained favorable decisions.

On July 5, 2002, the Labor Arbiter issued the Sixth Alias Writ of Execution commanding the NLRC Sheriffs to levy on the assets of PNEI in order to satisfy the P722,727,150.22 due its former employees, as full and final satisfaction of the judgment awards in the labor cases. The sheriffs were likewise instructed to proceed against PNB, PNB-Madecor and Mega Prime. In implementing the writ, the sheriffs levied upon the four valuable pieces of real estate located at the corner of Quezon and Roosevelt Avenues, on which the former Pantranco Bus Terminal stood. Having been notified of the auction sale, motions to quash the writ were separately filed by PNB-Madecor and Mega Prime, and PNB. They likewise filed their Third-Party Claims. PNB-Madecor anchored its motion on its right as the registered owner of the Pantranco properties, and Mega Prime as the successor-in-interest. For its part, PNB sought the nullification of the writ on the ground that it was not a party to the labor case. In its Third-Party Claim, PNB alleged that PNB-Madecor was indebted to the former and that the Pantranco properties would answer for such debt. As such, the scheduled auction sale of the aforesaid properties was not legally in order.

On September 10, 2002, the Labor Arbiter declared that the subject Pantranco properties were owned by PNB-Madecor. It being a corporation with a distinct and separate personality, its assets could not answer for the liabilities of PNEI. Considering, however, that PNB-Madecor executed a promissory note in favor of PNEI for P7,884,000.00, the writ of execution to the extent of the said amount was concerned was considered valid.

On appeal to the NLRC, the same was denied and the Labor Arbiter's disposition was affirmed.

The parties' separate motions for reconsideration were likewise denied. Thereafter, the matter was elevated to the CA by PANREA, PEA-PTGWO and the Pantranco Association of Concerned Employees.

On June 3, 2005, the CA rendered the assailed decision affirming the NLRC resolutions.

The appellate court pointed out that PNB, PNB-Madecor and Mega Prime are corporations with personalities separate and distinct from PNEI. As such, there being no cogent reason to pierce the veil of corporate fiction, the separate personalities of the above corporations should be maintained. The CA added that the Pantranco properties were never owned by PNEI; rather, their titles were registered under the name of PNB-Madecor. If PNB and PNB-Madecor could not answer for the liabilities of PNEI, with more reason should Mega Prime not be held liable being a mere successor-in-interest of PNB-Madecor.

ISSUE:

Whether PNEI employees can attach the properties (specifically the Pantranco properties) of PNB, PNB-Madecor and Mega Prime to satisfy their unpaid labor claims against PNEI. (NO)

RULING:

First, the subject property is not owned by the judgment debtor, that is, PNEI. Nowhere in the records was it shown that PNEI owned the Pantranco properties. Petitioners, in fact, never alleged in any of their pleadings the fact of such ownership. What was established, instead, in PNB MADECOR v. Uy and PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB was that the properties were owned by Macris, the predecessor of PNB-Madecor. Hence, they cannot be pursued against by the creditors of PNEI.

We would like to stress the settled rule that the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. To be sure, one man's goods shall not be sold for another man's debts. A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person.

Second, PNB, PNB-Madecor and Mega Prime are corporations with personalities separate and distinct from that of PNEI. PNB is sought to be held liable because it acquired PNEI through NIDC at the time when PNEI was suffering financial reverses. PNB-Madecor is being made to answer for petitioners' labor claims as the owner of the subject Pantranco properties and as a subsidiary of PNB. Mega Prime is also included for having acquired PNB's shares over PNB-Madecor.

The general rule is **that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected**. This is a fiction created by law for convenience and to prevent injustice. Obviously, PNB, PNB-Madecor, Mega Prime, and PNEI are corporations with their own personalities. The "separate personalities" of the first three corporations had been recognized by this Court in PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB where we stated that PNB was only a stockholder of PNB-Madecor which later sold its shares to Mega Prime; and that PNB-Madecor was the owner of the Pantranco properties. Moreover, these corporations are registered as separate entities and, absent any valid reason, we maintain their separate identities and we cannot treat them as one.

Neither can we merge the personality of PNEI with PNB simply because the latter acquired the former. Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.

Lastly, while we recognize that there are peculiar circumstances or valid grounds that may exist to warrant the piercing of the corporate veil, none applies in the present case whether between PNB and PNEI; or PNB and PNB-Madecor.

Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

As between PNB and PNEI, petitioners want us to disregard their separate personalities, and insist that because the company, PNEI, has already ceased operations and there is no other way by which the judgment in favor of the employees can be satisfied, corporate officers can be held jointly and severally liable with the company. Petitioners rely on the pronouncement of this Court in A.C. Ransom Labor Union-CCLU v. NLRC and subsequent cases.

This reliance fails to persuade. We find the aforesaid decisions inapplicable to the instant case.

Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) 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. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

In PNB v. Ritratto Group, Inc., we outlined the circumstances which are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation, to wit:

1. The parent corporation owns all or most of the capital stock of the subsidiary;

2. The parent and subsidiary corporations have common directors or officers;

3. The parent corporation finances the subsidiary;

4. The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;

5. The subsidiary has grossly inadequate capital;

6. The parent corporation pays the salaries and other expenses or losses of the subsidiary;

7. The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;

8. In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;

9. The parent corporation uses the property of the subsidiary as its own;

10. The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation;

11. The formal legal requirements of the subsidiary are not observed.

None of the foregoing circumstances is present in the instant case. Thus, piercing of PNB-Madecor's corporate veil is not warranted. Being a mere successor-in-interest of PNB-Madecor, with more reason should no liability attach to Mega Prime.

- Philippine National Bank vs. Merelo B. Aznar, G.R. No. 171805, May 30, 2011

PHILIPPINE NATIONAL BANK, PETITIONER, VS. MERELO B. AZNAR; MATIAS B. AZNAR III; JOSE L. AZNAR (DECEASED), REPRESENTED BY HIS HEIRS; RAMON A. BARCENILLA; ROSARIO T. BARCENILLA; JOSE B. ENAD (DECEASED), REPRESENTED BY HIS HEIRS; AND RICARDO GABUYA (DECEASED), REPRESENTED BY HIS HEIRS, RESPONDENTS.
G.R. No. 171805, FIRST DIVISION, May 30, 2011, LEONARDO-DE CASTRO, J.

MERELO B. AZNAR AND MATIAS B. AZNAR III, PETITIONERS, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.
G.R. NO. 172021, FIRST DIVISION, May 30, 2011, LEONARDO-DE CASTRO, J.

A corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. *Thus, we had previously ruled in Magsaysay-Labrador v. Court of Appeals that* ***the interest of the stockholders over the properties of the corporation is merely inchoate and therefore does not entitle them to intervene in litigation involving corporate property****, to wit:*

> *Here, the interest, if it exists at all, of petitioners-movants is indirect, contingent, remote, conjectural, consequential and collateral. At the very least, their interest is purely inchoate, or in sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations.*
>
> *While a share of stock represents a proportionate or aliquot interest in the property of the corporation, it does not vest the owner thereof with any legal right or title to any of the property, his interest in the corporate property being equitable or beneficial in nature. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person.*

Verily, Aznar, et al., who are stockholders of RISCO, cannot claim ownership over the properties at issue in this case on the strength of the Minutes which, at most, is merely evidence of a loan agreement between them and the company. There is no indication or even a suggestion that the ownership of said properties were transferred to them which would require no less that the said properties be registered under their names. For this reason, the complaint should be dismissed since Aznar, et al., have no cause to seek a quieting of title over the subject properties.

FACTS:

In 1958, RISCO (RURAL INSURANCE & SURETY CO. INC.) ceased operation due to business reverses. In plaintiffs' (Aznar) desire to rehabilitate RISCO, they contributed a total amount of ₱212,720.00 which was used in the purchase of the three (3) parcels of land. After the purchase of the above lots, titles were issued in the name of RISCO. The amount contributed by plaintiffs constituted as liens and encumbrances on the aforementioned properties as annotated in the titles of said lots. Such annotation was made pursuant to the Minutes of the Special Meeting of the Board of Directors of RISCO.

Thereafter, various subsequent annotations were made on the same titles, including the Notice of Attachment and Writ of Execution both dated August 3, 1962 in favor of herein defendant PNB. As a result, a Certificate of Sale was issued in favor of Philippine National Bank, being the lone and highest bidder of the three (3) parcels of land.

Plaintiffs-appellees to file the instant complaint seeking the quieting of their supposed title to the subject properties, declaratory relief, cancellation of TCT and reconveyance with temporary restraining order and preliminary injunction. Plaintiffs alleged that the subsequent annotations on the titles are subject to the prior annotation of their liens and encumbrances.

Defendant PNB on the other hand countered that plaintiffs have no right of action for quieting of title since the order of the court directing the issuance of titles to PNB had already become final and executory and their validity cannot be attacked except in a direct proceeding for their annulment. Defendant further asserted that plaintiffs, as mere stockholders of RISCO do not have any legal or equitable right over the properties of the corporation. PNB posited that even if plaintiff's monetary lien had not expired, their only recourse was to require the reimbursement or refund of their contribution.

Plaintiffs-appellees to file the instant complaint seeking the quieting of their supposed title to the subject properties, declaratory relief, cancellation of TCT and reconveyance with temporary restraining order and preliminary injunction. The trial court rendered the November 18, 1998 Decision, which ruled against PNB on the basis that there was an express trust created over the subject properties whereby RISCO was the trustee and the stockholders, Aznar, et al., were the beneficiaries or the cestui que trust.

PNB appealed the adverse ruling to the Court of Appeals which, set aside the judgment of the trial court. Although the Court of Appeals agreed with the trial court that a judgment on the pleadings was proper, the appellate court opined that the monetary contributions made by Aznar, et al., to RISCO can only be characterized as a loan secured by a lien on the subject lots, rather than an express trust.

ISSUE:

Whether Aznar, et. Al., have the right to ask for the quieting of title of the properties at issue. (NO)

RULING:

Indeed, we find that Aznar, et al., have no right to ask for the quieting of title of the properties at issue because they have no legal and/or equitable rights over the properties that are derived from the previous registered owner which is RISCO, the pertinent provision of the law is Section 2 of the Corporation Code (Batas Pambansa Blg. 68), which states that "[a] corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence."

As a consequence thereof, a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. Thus, we had previously ruled in Magsaysay-Labrador v. Court of Appeals that the interest of the stockholders over the properties of the corporation is merely inchoate and therefore does not entitle them to intervene in litigation involving corporate property, to wit:

> Here, the interest, if it exists at all, of petitioners-movants is indirect, contingent, remote, conjectural, consequential and collateral. At the very least, their interest is purely inchoate, or in sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations.
>
> While a share of stock represents a proportionate or aliquot interest in the property of the corporation, it does not vest the owner thereof with any legal right or title to any of the property, his interest in the corporate property being equitable or beneficial in nature. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person.

In the case at bar, there is no allegation, much less any proof, that the corporate existence of RISCO has ceased and the corporate property has been liquidated and distributed to the stockholders. The records only indicate that, as per Securities and Exchange Commission (SEC) Certification dated June 18, 1997, the SEC merely suspended RISCO's Certificate of Registration beginning on September 5, 1988 due to its non-submission of SEC required reports and its failure to operate for a continuous period of at least five years.

Verily, Aznar, et al., who are stockholders of RISCO, cannot claim ownership over the properties at issue in this case on the strength of the Minutes which, at most, is merely evidence of a loan agreement between them and the company. There is no indication or even a suggestion that the ownership of said properties were transferred to them which would require no less that the said properties be registered under their names. For this reason, the complaint should be dismissed since Aznar, et al., have no cause to seek a quieting of title over the subject properties.

At most, what Aznar, et al., had was merely a right to be repaid the amount loaned to RISCO. Unfortunately, the right to seek repayment or reimbursement of their contributions used to purchase the subject properties is already barred by prescription.

- Stronghold Insurance Company, Inc. vs. Tomas Cuenca, et. al., G.R. No. 173297, March 6, 2013

STRONGHOLD INSURANCE COMPANY, INC., Petitioner, v. TOMAS CUENCA, MARCELINA CUENCA, MILAGROS CUENCA, BRAMIE T. TAYACTAC, and MANUEL D. MARANON, JR., Respondent.

G.R. No. 173297, FIRST DIVISION, March 6, 2013, BERSAMIN, J.

There is no dispute that the properties subject to the levy on attachment belonged to Arc Cuisine, Inc. alone, not to the Cuencas and Tayactac in their own right. ***They were only stockholders of Arc Cuisine, Inc., which had a personality distinct and separate from that of any or all of them****. The damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced Arc Cuisine, Inc., not them. As such, only Arc Cuisine, Inc. had the right under the substantive law to claim and recover such damages. This right could not also be asserted by the Cuencas and Tayactac unless they did so in the name of the corporation itself. But that did not happen herein, because Arc Cuisine, Inc. was not even joined in the action either as an original party or as an intervenor.*

The Cuencas and Tayactac were clearly not vested with any direct interest in the personal properties coming under the levy on attachment by virtue alone of their being stockholders in Arc Cuisine, Inc. ***Their stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation****. Without doubt, Arc Cuisine, Inc. remained the owner as a distinct legal person.*

FACTS:

Marañon filed a complaint in the RTC against the Cuencas for the collection of a sum of money and damages. His complaint included an application for the issuance of a writ of preliminary attachment.

The RTC granted the application for the issuance of the writ of preliminary attachment conditioned upon the posting of a bond of P1,000,000.00 executed in favor of the Cuencas, the complaint also implead Tayactac, as a defendant. Maranion posted a bond, in the amount of one million, issued by Stronghold Insurance. Hence, RTC issued the writ of preliminary attachment. Thus, sheriff levied personal properties belonging to Arc Cuisines Inc., that were found in the leased corporate office of the corporation.

In defense, Cuencas filed a motion to dismiss and to quash writ of preliminary attachment on the grounds that action involved intra-corporate matters, which is within the jurisdiction of SEC. The RTC denied the motion, because the action was recovery of sum of money. On appeal to CA, CA reversed the RTC, and remanded it back to determine damages sustained by private respondents, from the enforcement of attachment.

Based on the sheriff report, the attached properties were missing, as the warehouse recommended by Maranon, is now tenanted by a new lessee.

Thus, the respondents filed a motion to require sheriff to deliver attached properties and to set case for hearing, regarding recovery of damages amounting to 1,721,557.20, as value of the lost attached properties.

Petitioner filed a comment arguing that attached properties belonged to Arc Cuisine, 50% of which owned by respondents, it should follow that 50% constituted liquidated dividends, being liable only for 100,000.

ISSUE:

Whether the Cuencas and Tayactac are real party in interest. (NO)

RULING:

There is no dispute that the properties subject to the levy on attachment belonged to Arc Cuisine, Inc. alone, not to the Cuencas and Tayactac in their own right. They were only stockholders of Arc Cuisine, Inc., which had a personality distinct and separate from that of any or all of them. The damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced Arc Cuisine, Inc., not them. As such, only Arc Cuisine, Inc. had the right under the substantive law to claim and recover such damages. This right could not also be asserted by the Cuencas and Tayactac unless they did so in the name of the corporation itself. But that did not happen herein, because Arc Cuisine, Inc. was not even joined in the action either as an original party or as an intervenor.

The Cuencas and Tayactac were clearly not vested with any direct interest in the personal properties coming under the levy on attachment by virtue alone of their being stockholders in Arc Cuisine, Inc. Their stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation. Without doubt, Arc Cuisine, Inc. remained the owner as a distinct legal person.

Given the separate and distinct legal personality of Arc Cuisine, Inc., the Cuencas and Tayactac lacked the legal personality to claim the damages sustained from the levy of the formers properties. According to Asset Privatization Trust v. Court of Appeals, even when the foreclosure on the assets of the corporation was wrongful and done in bad faith the stockholders had no standing to recover for themselves moral damages; otherwise, they would be appropriating and distributing part of the corporations assets prior to the dissolution of the corporation and the liquidation of its debts and liabilities. Moreover, in Evangelista v. Santos, the Court, resolving whether or not the minority stockholders had the right to bring an action for damages against the principal officers of the corporation for their own benefit, said:

> As to the second question, the complaint shows that the action is for damages resulting from mismanagement of the affairs and assets of the corporation by its principal officer, it being alleged that defendants maladministration has brought about the ruin of the corporation and the consequent loss of value of its stocks. The injury complained of is thus primarily to the corporation, so that the suit for the damages claimed should be by the corporation rather than by the stockholders (3 Fletcher, Cyclopedia of Corporation pp. 977-980). The stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of section 16 of the Corporation Law, which provides:
>
> No corporation shall make or declare any stock or bond dividend or any dividend whatsoever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution.

- Development Bank of the Philippines vs. Hydro Resources Contractors Corporation, GR. No. 167603, March 13, 2013

DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, v. HYDRO RESOURCES CONTRACTORS CORPORATION, Respondent.
G.R. NO. 167603, FIRST DIVISION, March 13, 2013, LEONARDO-DE CASTRO, J.

A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. ***It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected****. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability.*

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) 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.

There being a total absence of evidence pointing to a fraudulent, illegal or unfair act committed against HRCC by DBP and PNB under the guise of NMIC, there is no basis to hold that NMIC was a mere alter ego of DBP and PNB.

FACTS:

Sometime in 1984, petitioners DBP and PNB foreclosed on certain mortgages made on the properties of Marinduque Mining and Industrial Corporation (MMIC). As a result of the foreclosure, DBP and PNB acquired substantially all the assets of MMIC and resumed the business operations of the defunct MMIC by organizing Nonoc Mining and Industrial Corporation (NMIC). DBP and PNB owned 57% and 43% of the shares of NMIC, respectively, except for five qualifying shares. As of September 1984, the members of the Board of Directors of NMIC, namely, Jose Tengco, Jr., Rolando Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada, were either from DBP or PNB.

Subsequently, NMIC engaged the services of Hercon, Inc., for NMIC's Mine Stripping and Road Construction Program in 1985 for a total contract price of ₱35,770,120. After computing the payments already made by NMIC under the program and crediting the NMIC's receivables from Hercon, Inc., the latter found that NMIC still has an unpaid balance of ₱8,370,934.74.10 Hercon, Inc. made several demands on NMIC, including a letter of final demand dated August 12, 1986, and when these were not heeded, a complaint for sum of money was filed in the RTC of Makati, Branch 136 seeking to hold petitioners NMIC, DBP, and PNB solidarily liable for the amount owing Hercon, Inc. Subsequent to the filing of the complaint, Hercon, Inc. was acquired by HRCC in a merger.

Thereafter, on December 8, 1986, then President Corazon C. Aquino issued Proclamation No. 50 creating the APT for the expeditious disposition and privatization of certain government corporations and/or the assets thereof. Pursuant to the said Proclamation, on February 27, 1987, DBP and PNB executed their respective deeds of transfer in favor of the National Government assigning, transferring and conveying certain assets and liabilities, including their respective stakes in NMIC. In turn and on even date, the National Government transferred the said assets and liabilities to the APT as trustee under a Trust Agreement. Thus, the complaint was amended for the second time to implead and include the APT as a defendant.

In its answer, NMIC claimed that HRCC had no cause of action. It also asserted that its contract with HRCC was entered into by its then President without any authority. Moreover, the said contract allegedly failed to comply with laws, rules and regulations concerning government contracts. NMIC further claimed that the contract amount was manifestly excessive and grossly disadvantageous to the government. NMIC made counterclaims for the amounts already paid to Hercon, Inc. and attorney's fees, as well as payment for equipment rental for four trucks, replacement of parts and other services, and damage to some of NMIC's properties.

For its part, DBP's answer raised the defense that HRCC had no cause of action against it because DBP was not privy to HRCC's contract with NMIC. Moreover, NMIC's juridical personality is separate from that of DBP. DBP further interposed a counterclaim for attorney's fees.

APT set up the following defenses in its answer: lack of cause of action against it, lack of privity between Hercon, Inc. and APT, and the National Government's preferred lien over the assets of NMIC. The respective motions for reconsideration of DBP, PNB, and APT were denied.

RTC of Makati rendered decision in favor of HRCC, it pierced veil of NMIC and held DBP and PNB solidarily liable with NMIC. It dismissed the complaint against ATP however as a trustee of NMIC it directed ATP to ensure compliance with its decision. The Court of Appeals rendered the Decision dated November 30, 2004, affirmed the piercing of the veil of the corporate personality of NMIC and held DBP, PNB, and APT solidarily liable with NMIC. The respective motions for reconsideration of DBP, PNB, and APT were denied. Hence, they filed consolidated petitions to the Supreme Court.

ISSUE:

Whether HRCC has a cause of action against DBP and PNB. (NO)

RULING:

A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution.

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

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) 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 Court finds that none of the tests has been satisfactorily met in this case.

There being a total absence of evidence pointing to a fraudulent, illegal or unfair act committed against HRCC by DBP and PNB under the guise of NMIC, there is no basis to hold that NMIC was a mere alter ego of DBP and PNB.

- Abbot Laboratories vs. Alacaraz, G.R. No. 192571, July 23, 2013

ABBOTT LABORATORIES, PHILIPPINES, CECILLE A. TERRIBLE, EDWIN D. FEIST, MARIA OLIVIA T. YABUTMISA, TERESITA C. BERNARDO, AND ALLAN G. ALMAZAR, Petitioners, vs. PEARLIE ANN F. ALCARAZ, Respondent.
G.R. No. 192571, EN BANC, July 23, 2013, PERLAS-BERNABE, J.

It is hornbook principle that ***personal liability of corporate directors, trustees or officers attaches only when: (a) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (b) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (c) they agree to hold themselves personally and solidarily liable with the corporation; or (d) they are made by specific provision of law personally answerable for their corporate action****.*

A judicious perusal of the records show that other than her unfounded assertions on the matter, there is no evidence to support the fact that the individual petitioners herein, in their capacity as Abbott's officers and employees, acted in bad faith or were motivated by ill will in terminating Alcaraz's services. The fact that Alcaraz was made to resign and not allowed to enter the workplace does not necessarily indicate bad faith on Abbott's part since a sufficient ground existed for the latter to actually proceed with her termination.

FACTS:

On June 27, 2004, petitioner Abbott Laboratories, Philippines (Abbott) caused the publication in a major broadsheet newspaper of its need for a Medical and Regulatory Affairs Manager (Regulatory Affairs Manager). Alcaraz - who was then a Regulatory Affairs and Information Manager at Aventis Pasteur Philippines, Incorporated (another pharmaceutical company like Abbott) – showed interest and submitted her application on October 4, 2004.

On December 7, 2004, Abbott formally offered Alcaraz the abovementioned position. In Abbott's offer sheet. it was stated that Alcaraz was to be employed on a probationary basis. Later that day, she accepted the said offer and received an electronic mail (e-mail) from Abbott's Recruitment Officer, petitioner Teresita C. Bernardo (Bernardo), confirming the same. Attached to Bernardo's e-mail were Abbott's organizational chart and a job description of Alcaraz's work.

During the course of her employment, Alcaraz noticed that some of the staff had disciplinary problems. Thus, she would reprimand them for their unprofessional behavior such as non-observance of the dress code, moonlighting, and disrespect of Abbott officers. However, Alcaraz's method of management was considered by Walsh to be "too strict." Alcaraz approached Misa to discuss these concerns and was told to "lie low" and let Walsh handle the matter. Misa even assured her that Abbott's HRD would support her in all her management decisions.

On May 16, 2005, Alcaraz was called to a meeting with Walsh and Terrible where she was informed that she failed to meet the regularization standards for the position of Regulatory Affairs Manager. Thereafter, Walsh and Terrible requested Alcaraz to tender her resignation, else they be forced to terminate her services. She was also told that, regardless of her choice, she should no longer report for work and was asked to surrender her office identification cards. She requested to be given one week to decide on the same, but to no avail.

On May 17, 2005, Alcaraz told her administrative assistant, Claude Gonzales (Gonzales), that she would be on leave for that day. However, Gonzales told her that Walsh and Terrible already announced to the whole Hospira ALSU staff that Alcaraz already resigned due to health reasons.

On May 23, 2005, Walsh, Almazar, and Bernardo personally handed to Alcaraz a letter stating that her services had been terminated effective May 19, 2005. The letter detailed the reasons for Alcaraz's termination – particularly, that Alcaraz: (a) did not manage her time effectively; (b) failed to gain the trust of her staff and to build an effective rapport with them; (c) failed to train her staff effectively; and (d) was not able to obtain the knowledge and ability to make sound judgments on case processing and article review which were necessary for the proper performance of her duties. On May 27, 2005, Alcaraz received another copy of the said termination letter via registered mail.

Alcaraz felt that she was unjustly terminated from her employment and thus, filed a complaint for illegal dismissal and damages against Abbott and its officers, namely, Misa, Bernardo, Almazar, Walsh, Terrible, and Feist. She claimed that she should have already been considered as a regular and not a probationary employee given Abbott's failure to inform her of the reasonable standards for her regularization upon her engagement as required under Article 295 of the Labor Code. In this relation, she contended that while her employment contract stated that she was to be engaged on a probationary status, the same did not indicate the standards on which her regularization would be based. She further averred that the individual petitioners maliciously connived to illegally dismiss her when: (a) they threatened her with termination; (b) she was ordered not to enter company premises even if she was still an employee thereof; and (c) they publicly announced that she already resigned in order to humiliate her.

ISSUE:

Whether the individual petitioners can be held personally liable for dismissing Alcaraz. (NO)

RULING:

It is hornbook principle that personal liability of corporate directors, trustees or officers attaches only when: (a) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (b) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (c) they agree to hold themselves personally and solidarily liable with the corporation; or (d) they are made by specific provision of law personally answerable for their corporate action.

In this case, Alcaraz alleges that the individual petitioners acted in bad faith with regard to the supposed crude manner by which her probationary employment was terminated and thus, should be held liable together with Abbott. In the same vein, she further attributes the loss of some of her remaining belongings to them.

Alcaraz's contention fails to persuade.

A judicious perusal of the records show that other than her unfounded assertions on the matter, there is no evidence to support the fact that the individual petitioners herein, in their capacity as Abbott's officers and employees, acted in bad faith or were motivated by ill will in terminating Alcaraz's services. The fact that Alcaraz was made to resign and not allowed to enter the workplace does not necessarily indicate bad faith on Abbott's part since a sufficient ground existed for the latter to actually proceed with her termination. On the alleged loss of her personal belongings, records are bereft of any showing that the same could be attributed to Abbott or any of its officers. It is a well-settled rule that bad faith cannot be presumed and he who alleges bad faith has the onus of proving it. All told, since Alcaraz failed to prove any malicious act on the part of Abbott or any of its officers, the Court finds the award of moral or exemplary damages unwarranted.

- Nuccio Saverios vs. Puyat, G.R. No. 186433, November 27, 2013

NUCCIO SAVERIO AND NS INTERNATIONAL, INC., Petitioners, v. ALFONSO G. PUYAT, Respondent.
G.R. No. 186433, SECOND DIVISION November 27, 2013, BRION, J.

The rule is settled that a corporation is vested by law with a personality separate and distinct from the persons composing it*. Following this principle, a stockholder, generally, is not answerable for the acts or liabilities of the corporation, and vice versa.* ***The obligations incurred by the corporate officers, or other persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs****. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation and while there may be instances where solidary liabilities may arise, these circumstances are exceptional.*

Incidentally, we have ruled that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not, by itself, a sufficient ground for disregarding the separate corporate personality. Other than mere ownership of capital stocks, circumstances showing that the corporation is being used to commit fraud or proof of existence of absolute control over the corporation have to be proven. In short, before the corporate fiction can be disregarded, alter-ego elements must first be sufficiently established.

The records of the case, however, do not show that Nuccio had control or domination over NSI's finances. The mere fact that it was Nuccio who, in behalf of the corporation, signed the MOA is not sufficient to prove that he exercised control over the corporation's finances. Neither the absence of a board resolution authorizing him to contract the loan nor NSI's failure to object thereto supports this conclusion. These may be indicators that, among others, may point the proof required to justify the piercing the veil of corporate fiction, but by themselves, they do not rise to the level of proof required to support the desired conclusion.

FACTS:

On July 22, 1996, the respondent granted a loan to NSI. The loan was made pursuant to the Memorandum of Agreement and Promissory Note (MOA) between the respondent and NSI, represented by Nuccio. It was agreed that the respondent would extend a credit line with a limit of P500,000.00 to NSI, to be paid within thirty (30) days from the time of the signing of the document.

The loan carried an interest rate of 17% per annum, or at an adjusted rate of 25% per annum if payment is beyond the stipulated period. The petitioners received a total amount of P300,000.00 and certain machineries intended for their fertilizer processing plant business (business). The proposed business, however, failed to materialize.

On several occasions, Nuccio made personal payments amounting to P600,000.00. However, as of December 16, 1999, the petitioners allegedly had an outstanding balance of P460,505.86. When the petitioners defaulted in the payment of the loan, the respondent filed a collection suit with the RTC, alleging mainly that the petitioners still owe him the value of the machineries as shown by the Breakdown of Account he presented.

The petitioners refuted the respondent's allegation and insisted that they have already paid the loan, evidenced by the respondent's receipt for the amount of P600,000.00. They submitted that their remaining obligation to pay the machineries' value, if any, had long been extinguished by their business' failure to materialize. They posited that, even assuming without conceding that they are liable, the amount being claimed is inaccurate, the penalty and the interest imposed are unconscionable, and an independent accounting is needed to determine the exact amount of their liability.

RTC found that aside from the cash loan, the petitioners' obligation to the respondent also covered the payment of the machineries' value. The RTC also brushed aside the petitioners' claim of partnership. The RTC thus ruled that the payment of P600,000.00 did not completely extinguish the petitioners' obligation. The RTC also found merit in the respondent's contention that the petitioners are one and the same. Based on Nuccio's act of entering a loan with the respondent for purposes of financing NSI's proposed business and his own admission during cross-examination that the word "NS" in NSI's name stands for "Nuccio Saverio," the RTC found that the application of the doctrine of piercing the veil of corporate fiction was proper. RTC ordered the petitioners, jointly and severally, to pay the balance of P460,505.86, at 12% interest, and attorney's fees equivalent to 25% of the total amount due.

The petitioners appealed the RTC ruling to the CA. There, they argued that in view of the lack of proper accounting and the respondent's failure to substantiate his claims, the exact amount of their indebtedness had not been proven. Nuccio also argued that by virtue of NSI's separate and distinct personality, he cannot be made solidarily liable with NSI. he CA rendered a decision declaring the petitioners jointly and severally liable for the amount that the respondent sought.

The CA also affirmed the RTC ruling that petitioners are one and the same for the following reasons: (1) Nuccio owned forty percent (40%) of NSI; (2) Nuccio personally entered into the loan contract with the respondent because there was no board resolution from NSI; (3) the petitioners were represented by the same counsel; (4) the failure of NSI to object to Nuccio's acts shows the latter's control over the corporation; and (5) Nuccio's control over NSI was used to commit a wrong or fraud. It further adopted the RTC's findings of bad faith and willful breach of obligation on the petitioners' part, and affirmed its award of attorney's fees.

ISSUE:

Whether the petitioners should be held jointly and severally liable. (NO)

RULING:

After a careful study of the records and the findings of both the RTC and the CA, we hold that their conclusions, based on the given findings, are not supported by the evidence on record.

The rule is settled that a corporation is vested by law with a personality separate and distinct from the persons composing it. Following this principle, a stockholder, generally, is not answerable for the acts or liabilities of the corporation, and vice versa. The obligations incurred by the corporate officers, or other persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation and while there may be instances where solidary liabilities may arise, these circumstances are exceptional.

Incidentally, we have ruled that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not, by itself, a sufficient ground for disregarding the separate corporate personality. Other than mere ownership of capital stocks, circumstances showing that the corporation is being used to commit fraud or proof of existence of absolute control over the corporation have to be proven. In short, before the corporate fiction can be disregarded, alter-ego elements must first be sufficiently established.

In Hi-Cement Corporation v. Insular Bank of Asia and America (later PCI-Bank, now Equitable PCI-Bank), we refused to apply the piercing the veil doctrine on the ground that the corporation was a mere alter ego because mere ownership by a stockholder of all or nearly all of the capital stocks of a corporation does not, by itself, justify the disregard of the separate corporate personality. In this cited case, we ruled that in order for the ground of corporate ownership to stand, the following circumstances should also be established: (1) that the stockholders had control or complete domination of the corporation's finances and that the latter had no separate existence with respect to the act complained of; (2) that they used such control to commit a wrong or fraud; and (3) the control was the proximate cause of the loss or injury.

Applying these principles to the present case, we opine and so hold that the attendant circumstances do not warrant the piercing of the veil of NSI's corporate fiction.

Aside from the undisputed fact of Nuccio's 40% shareholdings with NSI, the RTC applied the piercing the veil doctrine based on the following reasons. First, there was no board resolution authorizing Nuccio to enter into a contract of loan. Second, the petitioners were represented by one and the same counsel. Third, NSI did not object to Nuccio's act of contracting the loan. Fourth, the control over NSI was used to commit a wrong or fraud. Fifth, Nuccio's admission that "NS" in the corporate name "NSI" means "Nuccio Saverio."

We are not convinced of the sufficiency of these cited reasons. In our view, the RTC failed to provide a clear and convincing explanation why the doctrine was applied. It merely declared that its application of the doctrine of piercing the veil of corporate fiction has a basis, specifying for this purpose the act of Nuccio's entering into a contract of loan with the respondent and the reasons stated above.

The records of the case, however, do not show that Nuccio had control or domination over NSI's finances. The mere fact that it was Nuccio who, in behalf of the corporation, signed the MOA is not sufficient to prove that he exercised control over the corporation's finances. Neither the absence of a board resolution authorizing him to contract the loan nor NSI's failure to object thereto supports this conclusion. These may be indicators that, among others, may point the proof required to justify the piercing the veil of corporate fiction, but by themselves, they do not rise to the level of proof required to support the desired conclusion. It should be noted in this regard that while Nuccio was the signatory of the loan and the money was delivered to him, the proceeds of the loan were unquestionably intended for NSI's proposed business plan. That the business did not materialize is not also sufficient proof to justify a piercing, in the absence of proof that the business plan was a fraudulent scheme geared to secure funds from the respondent for the petitioners' undisclosed goals. Considering that the basis for holding Nuccio liable for the payment of the loan has been proven to be insufficient, we find no justification for the RTC to hold him jointly and solidarily liable for NSI's unpaid loan. Similarly, we find that the CA ruling is wanting in sufficient explanation to justify the doctrine's application and affirmation of the RTC's ruling. With these points firmly in mind, we hold that NSI's liability should not attach to Nuccio.

- Girly G. Ico vs. Systems Technology Institute Inc, et al., G.R. 185100, July 9, 2014

GIRLY G. ICO, Petitioner, vs. SYSTEMS TECHNOLOGY INSTITUTE, INC., MONICO V. JACOB and PETER K. FERNANDEZ, Respondents.

G.R. No. 185100, SECOND DIVISION, July 9, 2014, DEL CASTILLO, J.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

Nonetheless, the Court fails to discern any bad faith or negligence on the part of respondent Jacob. The principal character that figures prominently in this case is Fernandez; he alone relentlessly caused petitioner's hardships and suffering. He alone is guilty of persecuting petitioner.

FACTS:

Petitioner Girly G. Ico, was hired as Faculty Member by STI College Makati (Inc.), which operates STI College-Makati (STI-Makati). STI College Makati (Inc.) is a wholly-owned subsidiary of STI. After petitioner's stint as Dean of STI-Guadalupe, she was promoted to the position of Chief Operating Officer (COO) of STI-Makati, under the same position classification and salary level of "Job Grade Manager B". She concurrently served as STI-Makati School Administrator.

During petitioner's stint as COO and School Administrator of STI-Makati, a Plan of Merger was executed between STI and STI College Makati (Inc.), whereby the latter would be absorbed by STI. The merger was approved by the Securities and Exchange Commission STI College Makati (Inc.) thus ceased to exist, and STI-Makati was placed under STI's Education Management Division (EMD).

STI – in line with the recently approved organizational structure updated petitioner's appointment as COO, "Job Grade Manager B" with a gross monthly salary of ₱37,483.58. She was re-appointed as COO of STI-Makati, under the supervision of the Academic Services Group of the EMD and reporting directly to the Head thereof, herein respondent Fernandez. However, petitioner was not given the salary commensurate to her position as COO, which by this time appeared to be pegged at ₱120,000.00. It likewise appears that she was not given benefits and privileges which holders of equivalent positions were entitled to, such as a car plan.

Another Memorandum dated was issued by STI Human Resources Division Head, Yolanda Briones (Briones), cancelling petitioner's COO assignment at STI-Makati, citing management's decision to undertake an "organizational restructuring" in line with the merger of STI and STI Makati; and appointing petitioner, STI's Compliance Manager with the same "Job Grade Manager B" rank and salary level, reporting directly to School Compliance Group Head Armand Paraiso (Paraiso).

On May 18, 2004, Fernandez summoned petitioner to his office, where a heated argument between them took place. Ico recorded the said conversation allegedly with the consent of Fernandez.

When petitioner reported to her new office at STI's School Compliance Group she find out that all members of the department had gone to Baguio City for a planning session. Petitioner, who was not apprised of the official trip, was thus left behind. That same day, an official communication was disseminated throughout STI, announcing Jacob's appointment as the new STI President and CEO, Fernandez as the new COO of STI-Makati, and Luz as the new STI-Makati School Administrator; however, petitioner's appointment as Compliance Manager was left out.

In a letter to Jacob, petitioner claimed that she became the victim of a series of discriminatory acts and objecting to the manner by which she was transferred, asserting that she was illegally demoted and that her name was tarnished as a result of the demotion and transfer. Jacob replied through advising petitioner that her letter was forwarded to Fernandez for comment.

In a report (Audit Report) later submitted to Fernandez, the auditors claim to have discovered irregularities. In a Memorandum to Jacob, Fernandez cited the Audit Report and recommended that an investigation committee be formed to investigate petitioner for grave abuse of authority, falsification, gross dishonesty, maligning and causing intrigues, commission of acts tending to cast negativity upon his person (Fernandez), and other charges. Fernandez recommended that petitioner be placed under preventive suspension pending investigation. Meanwhile, with respect to petitioner's letter, Fernandez did not submit a comment or answer thereto.

A Memorandum was issued placing petitioner under preventive suspension. Petitioner received another Memorandum stating that charges have already been filed against her.

In a mail message sent to petitioner, the latter was invited to a meeting with the committee formed to act on the complaint filed against (petitioner) by (Fernandez). During the supposed scheduled meeting with the committee, petitioner was furnished with several documents; however, no copy of the formal complaint or written charge was given to her. The meeting was adjourned without the committee setting another meeting for the submission of petitioner's answer; nor was a hearing set for the presentation of the parties' evidence.

Thereafter, petitioner went on sanctioned leave of absence. After the lapse of her approved leave, she reported for work several times. After August 9, 2004, however, she no longer reported for work. In a notice of termination signed by Jacob, petitioner was dismissed from STI effective January 11, 2005.

ISSUE:

Whether Jacob can be held personally liable for illegally dismissing petitioner. (NO)

RULING:

Nonetheless, the Court fails to discern any bad faith or negligence on the part of respondent Jacob. The principal character that figures prominently in this case is Fernandez; he alone relentlessly caused petitioner's hardships and suffering. He alone is guilty of persecuting petitioner. Indeed, some of his actions were without sanction of STI itself, and were committed outside of the authority given to him by the school; they bordered on the personal, rather than official. His superior, Jacob, may have been, for the most part, clueless of what Fernandez was doing to petitioner. After all, Fernandez was the Head of the Academic Services Group of the EMD, and petitioner directly reported to him at the time; his position enabled him to pursue a course of action with petitioner that Jacob was largely unaware of.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

PALM AVENUE HOLDING CO., INC AND PALM AVENUE REALTY AND DEVELOPMENT CORPORATION, *Petitioner,* -versus - SANDIGANBAYAN 5TH DIVISION, REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG)., *Respondent*

G.R. No. 173082, THIRD DIVISION, AUGUST 6, 2014, PERALTA., *J.*

Failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would be, in effect, disregarding their distinct and separate personality without a hearing. Here, the Palm Companies were merely mentioned as Item Nos. 47 and 48, Annex A of the Complaint, as among the corporations where defendant Romualdez owns shares of stocks. Furthermore, while the writ of sequestration was issued on October 27, 1986, the Palm Companies were impleaded in the case only in 1997, or already a decade from the ratification of the Constitution in 1987, way beyond the prescribed period.

FACTS:

Through a writ of sequestration dated October 27, 1986, the Presidential Commission on Good Government (PCGG) sequestered all the assets, properties, records, and documents of the Palm Companies. Said sequestered assets included 16,237,339 Benguet Corporation shares of stock, registered in the name of the Palm Companies. The PCGG had relied on a letter from the Palm Companies' Attorney-in-Fact, Jose S. Sandejas, specifically identifying Benjamin "Kokoy" Romualdez, a known crony of former President Ferdinand E. Marcos, as the beneficial owner of the Benguet Corporation shares in the Palm Companies' name.

The Republic, represented by the PCGG, filed a complaint with the Sandiganbayan docketed as Civil Case No. 0035 but did not initially implead the Palm Companies as defendants. However, the Sandiganbayan issued a Resolution dated June 16, 1989 where it ordered said companies to be impleaded. The Court subsequently affirmed this order to implead in G.R. No. 906675 on November 5, 1991. Pursuant to said order, the Republic filed an amended complaint dated January 17, 1997 and named therein the Palm Companies as defendants. The graft court admitted the amended complaint on October 15, 2001.

In the meantime, the Palm Companies filed an Urgent Motion to Lift the Writ of Sequestration, but was denied. Hence, the Palm Companies filed the petition in G.R. No. 173082.

ISSUE:

> Whether respondent court acted with grave abuse of discretion amounting to lack of jurisdiction in denying petitioners' motion to lift the writ of sequestration notwithstanding the fact that said writ should be deemed automatically lifted pursuant to Section 26, Article XVIII of the 1987 Constitution for failure to implead petitioners within the period of six (6) months prescribed in the said constitution (YES)

RULING:

Section 26, Article XVIII of the 1987 Constitution provides:

x x x x

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

The aforesaid provision mandates the Republic to file the corresponding judicial action or proceedings within a six-month period (from its ratification on February 2, 1987) in order to maintain sequestration, non-compliance with which would result in the automatic lifting of the sequestration order. The Court's ruling in Presidential Commission on Good Government v. Sandiganbayan, which remains good law, reiterates the necessity of the Republic to actually implead corporations as defendants in the complaint, out of recognition for their distinct and separate personalities, failure to do so would necessarily be denying such entities their right to due process. Here, the writ of sequestration issued against the assets of the Palm Companies is not valid because the suit in Civil Case No. 0035 against Benjamin Romualdez as shareholder in the Palm Companies is not a suit against the latter. The Court has held, contrary to the assailed Sandiganbayan Resolution in G.R. No. 173082, that failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would be, in effect, disregarding their distinct and separate personality without a hearing. Here, the Palm Companies were merely mentioned as Item Nos. 47 and 48, Annex A of the Complaint ,as among the corporations where defendant Romualdez owns shares of stocks. Furthermore, while the writ of sequestration was issued on October 27, 1986, the Palm Companies were impleaded in the case only in 1997, or already a decade from the ratification of the Constitution in 1987, way beyond the prescribed period.

The argument that the beneficial owner of these corporations was, anyway, impleaded as party-defendant can only be interpreted as a tacit admission of the failure to file the corresponding judicial action against said corporations pursuant to the constitutional mandate. Whether or not the impleaded defendant in Civil Case No. 0035 is indeed the beneficial owner of the Palm Companies is a matter which the PCGG merely assumes and still has to prove in said case. The sequestration order issued against the Palm Companies is therefore deemed automatically lifted due to the failure of the Republic to commence the proper judicial action or to implead them therein within the period under the Constitution. However, the lifting of the writ of sequestration will not necessarily be fatal to the main case since the same does not ipso facto mean that the sequestered properties are, in fact, not ill-gotten. The effect of the lifting of the sequestration will merely be the termination of the government's role as conservator. In other words, the PCGG may no longer exercise administrative or housekeeping powers, and its nominees may no longer vote the sequestered shares to enable them to sit in the corporate board of the subject company.

The Republic, through the PCGG, may argue that it has substantially complied with the Constitutional requirements to support its sequestration order when it filed an amended complaint which impleaded the Palm Companies, and which was subsequently admitted by the Sandiganbayan. Even so, a careful perusal of the records reveals the existence of legal and factual grounds to warrant the lifting of the writ of sequestration against the assets of the Palm Companies.

Since the Republic did not originally include the Palm Companies in Civil Case No. 0035, the Sandiganbayan issued a Resolution ordering said companies to be impleaded, which was affirmed by the Court in G.R. No. 90667 on November 5, 1991. The Court declared in said case that the Palm Companies are real parties-in-interest in Civil Case No. 0035, because they still appear to be the registered owners of the remaining disputed shares. That Romualdez is considered as their true or real owner is just a claim that still needs to be proved in court. Section 2, Rule 3 of the Rules of Court states:

Sec. 2. Parties in interest. – A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must beprosecuted or defended in the name of the real party-in-interest.

Pursuant to said order, the Republic filed an amended complaint which named the Palm Companies as defendants. Thereafter, the companies filed a Motion for Bill of Particulars for the Republic toclarify certain matters in its amended complaint. Upon submission of the bill of particulars, the Palm Companies filed a motion to dismiss the Republic's complaint. Later, the Sandiganbayan, sustained by the Court in G.R. No. 189771, granted said motion to dismiss. The Sandiganbayan thus pronounced:

> Clearly, as in the previously discussed paragraphs, the above answers set forth by the plaintiff in its Bill of Particulars are indefinite and deficient inasmuch as the question of what are the alleged illegally acquired funds or properties of the Palm Avenue Companies which they are liable to return, remains unanswered, a product of uncertainty.
>
> In sum, the allegations contained in plaintiff Republic's Bill of Particulars are incomplete and indefinite as they merely express conclusions of law and presumptions unsupported by factual premises.
>
> Furthermore, the details desired by defendants Palm Avenue Companies in their motion for bill of particulars, such as the acts constituting their involvement in the Marcoses' alleged scheme to pillage the nation's wealth, the alleged properties which they supposedly acquired illegally and therefore should return to the government, and other relevant facts, are not evidentiary in nature. On the contrary, those particulars are material facts that should be clearly and definitely averred in the complaint in order that the defendants may, in fairness, be informed of the claims against them to the end that they may be prepared to meet the issues at trial.

In view, therefore, of plaintiff Republic's failure to file the proper bill of particulars which would completely amplify the charges against defendant Palm Avenue Companies, and applying the abovequoted ruling of the High Court in the Virata case, this Court deems it just and proper to order the dismissal of the Third Amended Complaint in so far as the charges against the Palm Avenue Companies are concerned.

Finally, we sustain defendant-movants' argument that the failure of the plaintiff to sufficiently provide the ultimate and material facts they required in their motion for bill of particulars, makes the third amended complaint dismissible for failure to state a cause of action.

The Republic in the case at bar failed to file a proper bill of particulars which would completely clarify and amplify the charges against the Palm Companies. For said failure to comply with the graft court's order to file the required bill of particulars that would completely and fully inform the Palm Companies of the charges against them, the amended complaint impleading said companies necessarily failed to state a cause of action, warranting the dismissal of the case as to them. By the dismissal of the case as against the Palm Companies, there is ipso facto no more writ of sequestration to speak of.

OLONGAPO CITY, *Petitioner,* -versus - SUBIC WATER AND SEWERAGE CO., INC., *Respondent*
G.R. No. 171626, SECOND DIVISION, AUGUST 6, 2O14, BRION., *J.*

Subic Water clearly demonstrated that it was a separate corporate entity from OCWD. OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere shareholder, OCWD's juridical personality cannot be equated nor confused with that of Subic Water. It is basic incorporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.

FACTS:

Petitioner filed a complaint for sum of money and damages against OCWD. Among others, petitioner alleged that OCWD failed to pay its electricity bills to petitioner and remit its payment under the contract to pay, pursuant to OCWD's acquisition of petitioner's water system

In the interim, OCWD entered into a Joint Venture Agreement (JVA) with Subic Bay Metropolitan Authority (SBMA), Biwater International Limited (Biwater), and D.M. Consunji, Inc. (DMCI) on November 24, 1996. Pursuant to this agreement, Subic Water– a new corporate entity – was incorporated.

Subic Water was granted the franchise to operate and to carry on the business of providing water and sewerage services in the Subic Bay Free Port Zone, as well as in Olongapo City. Hence, Subic Water took over OCWD's water operations in Olongapo City.

To finally settle their money claims against each other, petitioner and OCWD entered into a compromise agreement on June 4, 1997.

The compromise agreement also contained a provision regarding the parties' request that Subic Water, Philippines, which took over the operations of the defendant Olongapo City Water District be made the co-maker for OCWD's obligations. Mr. Noli Aldip, then chairman of Subic Water, acted as its representative and signed the agreement on behalf of Subic Water.

Subsequently, the parties submitted the compromise agreement to RTC Olongapo and was approved.

Pursuant to the compromise agreement and in payment of OCWD's obligations to petitioner, petitioner and OCWD executed a Deed of Assignment on November 24, 1997. OCWD assigned all of its rights in the JVA in favor of the petitioner, including but not limited to the assignment of its shares, lease payments, regulatory assistance fees and other receivables arising out of or related to the Joint Venture Agreement and the Lease Agreement. On December 15, 1998, OCWD was judicially dissolved.

The petitioner filed a motion for the issuance of a writ of execution with the trial court. In its July 23, 1999 order, the trial court granted the motion, but did not issue the corresponding writ of execution. Almost four years later, on May 30, 2003, the petitioner, through its new counsel, filed a notice of appearance with urgent motion/manifestation and prayed again for the issuance of a writ of execution against OCWD. A certain Atty. Segundo Mangohig, claiming to be OCWD's former counsel, filed a manifestation alleging that OCWD had already been dissolved and that Subic Water is now the former OCWD.

Because of this assertion, Subic Water also filed a manifestation informing the trial court that as borne out by the articles of incorporation and general information sheet of Subic Water x x x defendant OCWD is not Subic Water. The manifestation also indicated that OCWD was only a ten percent (10%) shareholder of Subic Water; and that its 10% share was already in the process of being transferred to petitioner pursuant to the Deed of Assignment dated November 24, 1997.

The trial court granted the motion for execution and directed its issuance against OCWD and/or Subic Water.

The trial court denied Subic Water's special appearance, motion for reconsideration, and its motion to quash. Subic Water then filed a petition for certiorari with the CA. CA granted Subic Water's petition for certiorari and reversed the trial court's rulings.

ISSUES:

(1) Whether Subic Water could be held solidarily liable under the writ of execution since it was identified as OCWD's co-maker in the compromise agreement (NO)

(2)Whether OCWD and Subic Water are two separate and different entities (YES)

RULING:

(1)
An examination of the compromise agreement reveals that it was not accompanied by any document showing a grant of authority to Mr. Noli Aldip to sign on behalf of Subic Water.

Mr. Noli Aldip signed the compromise agreement purely in his own capacity. Moreover, the compromise agreement did not expressly provide that Subic Water consented to become OCWD's co-maker. As worded, the compromise agreement merely provided that both parties request Subic Water, Philippines, which took over the operations of Olongapo City Water District be made as co-maker [for the obligations above-cited].This request was never forwarded to Subic Water's board of directors. Even if due notification had been made (which does not appear in the records), Subic Water's board does not appear to have given any approval to such request. No document such as the minutes of Subic Water's board of directors' meeting or a secretary's certificate, purporting to be an authorization to Mr. Aldip to conform to the compromise agreement, was ever presented. In effect, Mr. Aldip's act of signing the compromise agreement was outside of his authority to undertake.

Since Mr. Aldip was never authorized and there was no showing that Subic Water's articles of incorporation or by-laws granted him such authority, then the compromise agreement he signed cannot bind Subic Water. Subic Water cannot likewise be made a surety or even a guarantor for OCWD's obligations. OCWD's debts under the compromise agreement are its own corporate obligations to petitioner.

(2)
Subic Water clearly demonstrated that it was a separate corporate entity from OCWD. OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere shareholder, OCWD's juridical personality cannot be equated nor confused with that of Subic Water. It is basic incorporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Under this corporate reality, Subic

Water cannot be held liable for OCWD's corporate obligations in the same manner that OCWD cannot be held liable for the obligations incurred by Subic Water as a separate entity. The corporate veil should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify a wrong, protect fraud, or perpetrate a deception.

In Concept Builders, Inc. v. NLRC, the Court enumerated the possible probative factors of identity which could justify the application of the doctrine of piercing the corporate veil. These are:

(1) Stock ownership by one or common ownership of both corporations;

(2) Identity of directors and officers;

(3) The manner of keeping corporate books and records; and

(4) Methods of conducting the business.

The burden of proving the presence of any of these probative factors lies with the one alleging it. Unfortunately, petitioner simply claimed that Subic Water took over OCWD's water operations in Olongapo City. Apart from this allegation, petitioner failed to demonstrate any link to justify the construction that Subic Water and OCWD are one and the same.

Under this evidentiary situation, our duty is to respect the separate and distinct personalities of these two juridical entities.

GERARDO LANUZA, JR. AND ANTONIO O. OLBES, *Petitioner,* -versus - BF CORPORATION, SHANGRI-LA PROPERTIES, INC., ALFREDO C. RAMOS, RUFO B. COLAYCO, MAXIMO G. LICAUCO III, AND BENJAMIN C. RAMOS, *Respondent*

G.R. No. 174938, SECOND DIVISION, OCTOBER 1, 2014, LEONEN., *J.*

Corporate representatives may be compelled to submit to arbitration proceedings pursuant to a contract entered into by the corporation they represent if there are allegations of bad faith or malice in their acts representing the corporation.

Thus, in cases alleging solidary liability with the corporation or praying for the piercing of the corporate veil, parties who are normally treated as distinct individuals should be made to participate in the arbitration proceedings in order to determine if such distinction should indeed be disregarded and, if so, to determine the extent of their liabilities.

In this case, the Arbitral Tribunal rendered a decision, finding that BF Corporation failed to prove the existence of circumstances that render petitioners and the other directors solidarily liable. It ruled that petitioners and Shangri-La's other directors were not liable for the contractual obligations of Shangri-La to BF Corporation. The Arbitral Tribunal's decision was made with the participation of petitioners, albeit with their continuing objection. In view of our discussion above, we rule that petitioners are bound by such decision.

FACTS:

In 1993, BF Corporation filed a collection complaint with the Regional Trial Court against Shangri-Laand the members of its board of directors: Alfredo C. Ramos, Rufo B.Colayco, Antonio O. Olbes, Gerardo Lanuza, Jr., Maximo G. Licauco III, and Benjamin C. Ramos.

BF Corporation alleged in its complaint that on December 11, 1989 and May 30, 1991, it entered into agreements with Shangri-La wherein it undertook to construct for Shangri-La a mall and a multilevel parking structure along EDSA.

BF Corporation eventually completed the construction of the buildings. Shangri-La allegedly took possession of the buildings while still owing BF Corporation an outstanding balance.

BF Corporation alleged that despite repeated demands, Shangri-La refused to pay the balance owed to it. It also alleged that the Shangri-La's directors were in bad faith in directing Shangri-La's affairs. Therefore, they should be held jointly and severally liable with Shangri-La for its obligations as well as for the damages that BF Corporation incurred as a result of Shangri-La's default.

On August 3, 1993, Shangri-La, Alfredo C. Ramos, Rufo B. Colayco, Maximo G. Licauco III, and Benjamin C. Ramos filed a motion to suspend the proceedings in view of BF Corporation's failure to submit its dispute to arbitration, in accordance with the arbitration clause provided in its contract.

BF Corporation opposed the motion to suspend proceedings which was denied by RTC.

In the November 18, 1993 order, the Regional Trial Court denied the motion to suspend proceedings.

On October 27, 1998, the trial court issued the order directing the parties to conduct the proceedings in accordance with Republic Act No. 876.

Shangri-La filed an omnibus motion and BF Corporation an urgent motion for clarification, both seeking to clarify the term, "parties," and whether Shangri-La's directors should be included in the arbitration proceedings and served with separate demands for arbitration.

Petitioners filed their comment on Shangri-La's and BF Corporation's motions, praying that they be excluded from the arbitration proceedings for being non-parties to Shangri-La's and BF Corporation's agreement.

On July 28, 2003, the trial court issued the order directing service of demands for arbitration upon all defendants in BF Corporation's complaint. According to the trial court, Shangri-La's directors were interested parties who "must also be served with a demand for arbitration to give them the opportunity to ventilate their side of the controversy, safeguard their interest and fend off their respective positions."Petitioners' motion for reconsideration of this order was denied by the trial court

Petitioners argue that they cannot be held personally liable for corporate acts or obligations. The corporation is a separate being, and nothing justifies BF Corporation's allegation that they are solidarily liable with Shangri-La. Neither did they bind themselves personally nor did they undertake to shoulder Shangri-La's obligations should it fail in its obligations. BF Corporation also failed to establish fraud or bad faith on their part.

Petitioners also argue that they are third parties to the contract between BF Corporation and Shangri-La. Provisions including arbitration stipulations should bind only the parties. Based on our arbitration laws, parties who are strangers to an agreement cannot be compelled to arbitrate.
Petitioners point out that our arbitration laws were enacted to promote the autonomy of parties in resolving their disputes. Compelling them to submit to arbitration is against this purpose and may be tantamount to stipulating for the parties.

ISSUE:

Whether petitioners should be made parties to the arbitration proceedings, pursuant to the arbitration clause provided in the contract between BF Corporation and Shangri-La (YES)

RULING:

We rule that petitioners may be compelled to submit to the arbitration proceedings in accordance with Shangri-La and BF Corporation's agreement, in order to determine if the distinction between Shangri-La's personality and their personalities should be disregarded.

This jurisdiction adopts a policy in favor of arbitration. Arbitration allows the parties to avoid litigation and settle disputes amicably and more expeditiously by themselves and through their choice of arbitrators.

The policy in favor of arbitration has been affirmed in our Civil Code, which was approved as early as 1949. It was later institutionalized by the approval of Republic Act No. 876, which expressly authorized, made valid, enforceable, and irrevocable parties' decision to submit their controversies, including incidental issues, to arbitration.

Petitioners' main argument arises from the separate personality given to juridical persons vis-à-vis their directors, officers, stockholders, and agents. Since they did not sign the arbitration agreement in any capacity, they cannot be forced to submit to the jurisdiction of the Arbitration Tribunal in accordance with the arbitration agreement. Moreover, they had already resigned as directors of Shangri-Laat the time of the alleged default.

Indeed, as petitioners point out, their personalities as directors of Shangri-La are separate and distinct from Shangri-La.

A corporation is an artificial entity created by fiction of law. This means that while it is not a person, naturally, the law gives it a distinct personality and treats it as such. A corporation, in the legal sense, is an individual with a personality that is distinct and separate from other persons including its stockholders, officers, directors, representatives, and other juridical entities. The law vests in corporations rights, powers, and attributes as if they were natural persons with physical existence and capabilities to act on their own.78 For instance, they have the power to sue and enter into transactions or contracts.

As a general rule, therefore, a corporation's representative who did not personally bind himself or herself to an arbitration agreement cannot be forced to participate in arbitration proceedings made pursuant to an agreement entered into by the corporation. He or she is generally not considered a party to that agreement.

However, there are instances when the distinction between personalities of directors, officers, and representatives, and of the corporation, are disregarded. We call this piercing the veil of corporate fiction.

When there are allegations of bad faith or malice against corporate directors or representatives, it becomes the duty of courts or tribunals to determine if these persons and the corporation should be treated as one. Without a trial, courts and tribunals have no basis for determining whether the veil of corporate fiction should be pierced. Courts or tribunals do not have such prior knowledge. Thus, the courts or tribunals must first determine whether circumstances exist to warrant the courts or tribunals to disregard the distinction between the corporation and the persons representing it. The determination of these circumstances must be made by one tribunal or court in a proceeding participated in by all parties involved, including current representatives of the corporation, and those persons whose personalities are impliedly the same as the corporation. This is because when the court or tribunal finds that circumstances exist warranting the piercing of the corporate veil, the corporate representatives are treated as the corporation itself and should be held liable for corporate acts. The corporation's distinct personality is disregarded, and the corporation is seen as a mere aggregation of persons undertaking a business under the collective name of the corporation.

Hence, when the directors, as in this case, are impleaded in a case against a corporation, alleging malice or bad faith on their part in directing the affairs of the corporation, complainants are effectively alleging that the directors and the corporation are not acting as separate entities. They are alleging that the acts or omissions by the corporation that violated their rights are also the directors' acts or omissions. They are alleging that contracts executed by the corporation are contracts executed by the directors. Complainants effectively pray that the corporate veil be pierced because the cause of action between the corporation and the directors is the same.

In that case, complainants have no choice but to institute only one proceeding against the parties. Under the Rules of Court, filing of multiple suits for a single cause of action is prohibited. Institution of more than one suit for the same cause of action constitutes splitting the cause of action, which is a ground for the dismissal of the others.

However, in ruling that petitioners may be compelled to submit to the arbitration proceedings, we are not overturning Heirs of Augusto Salas wherein this court affirmed the basic arbitration principle that only parties to an arbitration agreement may be compelled to submit to arbitration. In that case, this court recognized that persons other than the main party may be compelled to submit to arbitration, e.g., assignees and heirs. Assignees and heirs may be considered parties to an arbitration agreement entered into by their assignor because the assignor's rights and obligations are transferred to them upon assignment. In other words, the assignor's rights and obligations become their own rights and obligations. In the same way, the corporation's obligations are treated as the representative's obligations when the corporate veil is pierced. Moreover, in Heirs of Augusto Salas, this court affirmed its policy against multiplicity of suits and unnecessary delay. This court said that "to split the proceeding into arbitration for some parties and trial for other parties would "result in multiplicity of suits, duplicitous procedure and unnecessary delay." This court also intimated that the interest of justice would be best observed if it adjudicated rights in a single proceeding. While the facts of that case prompted this court to direct the trial court to proceed to determine the issues of that case, it did not prohibit courts from allowing the case to proceed to arbitration, when circumstances warrant.

Hence, the issue of whether the corporation's acts in violation of complainant's rights, and the incidental issue of whether piercing of the corporate veil is warranted, should be determined in a single proceeding. Such finding would determine if the corporation is merely an aggregation of persons whose liabilities must be treated as one with the corporation.

However, when the courts disregard the corporation's distinct and separate personality from its directors or officers, the courts do not say that the corporation, in all instances and for all purposes, is the same as its directors, stockholders, officers, and agents. It does not result in an absolute confusion of personalities of the corporation and the persons composing or representing it. Courts merely discount the distinction and treat them as one, in relation to a specific act, in order to extend the terms of the contract and the liabilities for all damages to erring corporate officials who participated in the corporation's illegal acts. This is done so that the legal fiction cannot be used to perpetrate illegalities and injustices.

Thus, in cases alleging solidary liability with the corporation or praying for the piercing of the corporate veil, parties who are normally treated as distinct individuals should be made to participate in the arbitration proceedings in order to determine if such distinction should indeed be disregarded and, if so, to determine the extent of their liabilities.

In this case, the Arbitral Tribunal rendered a decision, finding that BF Corporation failed to prove the existence of circumstances that render petitioners and the other directors solidarily liable. It ruled that petitioners and Shangri-La's other directors were not liable for the contractual obligations of Shangri-La to BF Corporation. The Arbitral Tribunal's decision was made with the participation of petitioners, albeit with their continuing objection. In view of our discussion above, we rule that petitioners are bound by such decision.

FVR SKILLS AND SERVICES EXPONENTS, INC. (SKILLEX), FULGENCIO V. RANA and MONINA R. BURGOS, *Petitioner,* -versus- JOVERT SEVA ET AL., *Respondent*
G.R. No. 200857, SECOND DIVISION, OCTOBER 22, 2O14, BRION, *J.*

A director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.

In the present case, the respondents failed to show the existence of the first requisite. They did not specifically allege in their complaint that Rana and Burgos willfully and knowingly assented to the petitioner's patently unlawful act of forcing the respondents to sign the dubious employment contracts in exchange for their salaries. The respondents also failed to prove that Rana and Burgos had been guilty of gross negligence or bad faith in directing the affairs of the corporation.

FACTS:

Petitioner entered into a Contract of Janitorial Service (service contract) with Robinsons Land Corporation (Robinsons). Both agreed that the petitioner shall supply janitorial, manpower and sanitation services to Robinsons Place Ermita Mall for a period of one year - from January 1, 2008 to December 31, 2008.9 Pursuant to this, the respondents were deployed to Robinsons.

Halfway through the service contract, the petitioner asked the respondents to execute individual contracts which stipulated that their respective employments shall end on December 31, 2008, unless earlier terminated.

The petitioner and Robinsons no longer extended their contract of janitorial services. Consequently, the petitioner dismissed the respondents as they were project employees whose duration of employment was dependent on the petitioner's service contract with Robinsons.

The respondents responded to the termination of their employment by filing a complaint for illegal dismissal with the NLRC. They argued that they were not project employees; they were regular employees who may only be dismissed for just or authorized causes.

The LA ruled in the petitioner's favor.

CA affirmed and held held that petitioners Fulgencio V. Rana (Rana) and Monina R. Burgos (Burgos), the president and general manager of FVR Skills and Services Exponents, Inc., respectively, are solidarily liable with the corporation for the payment of the respondents' monetary awards. As corporate officers, they acted in bad faith when they intimidated the respondents in the course of asking them to sign their individual employment contracts

ISSUE:

> Whether petitioners Rana and Burgo, the president and general manager of FVR Skills and Services Exponents, Inc., respectively, are solidarily liable with the corporation for the payment of the respondents' monetary awards (NO)

RULING:

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.

A director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.

In the present case, the respondents failed to show the existence of the first requisite. They did not specifically allege in their complaint that Rana and Burgos willfully and knowingly assented to the petitioner's patently unlawful act of forcing the respondents to sign the dubious employment contracts in exchange for their salaries. The respondents also failed to prove that Rana and Burgos had been guilty of gross negligence or bad faith in directing the affairs of the corporation. To hold an officer personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, it is necessary to clearly and convincingly establish the bad faith or wrongdoing of such officer, since bad faith is never presumed. Because the respondents were not able to clearly show the definite participation of Burgos and Rana in their illegal dismissal, we uphold the general rule that corporate officers are not personally liable for the money claims of the discharged employees, unless they acted with evident malice and bad faith in terminating their employment.

STRADCOM CORPORATION AND JOSE A. CHUA, *Petitioners,* -versus- JOYCE ANNABELLE L. ORPILLA., *Respondent*
G.R. No. 206800, FIRST DIVISION, JULY 2, 2O18, 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. 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 motivated by personal ill-will towards respondent to be solidarily liable with the company..

FACTS:

Joyce Anabelle L. Orpilla (respondent) was employed by Stradcom as Human Resources Administration Department (HRAD) Head, under a probationary status for six months.

Chua, the President and Chief Executive Officer (CEO) of Stradcom, issued a Memorandum addressed to the Chief Operating Officer (COO), Ramon G. Reyes (Reyes), and Chief Financial Officer (CPO), Raul C. Pagdanganan (Pagdanganan), 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 and it would be better if she resigned. Respondent protested the resignation and insisted that if there were charges against her, she was open for formal investigation. Chua, however, was not able to come up with any charges.

On January 13, 2003, per advice of Atty. Pilapil, respondent reported for work but the guards refused her entry and advised her to take a leave of absence.

Respondent filed a complaint for constructive dismissal with monetary claims of backwages, attorney's fees and damages.

LA ruled that respondent was illegally dismissed and Chua is solidarily liable with Stradcom for the payment of the monetary awards to respondent which the NLRC reversed. CA reversed NLRC.

ISSUE:

Whether Chua must be held solidarily liable (NO)

RULING:

The solidary liability of Chua as a corporate officer is not proper and must be recalled.

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 motivated by personal ill-will towards respondent to be solidarily liable with the company. We quote with affirmation the NLRC's pronouncement, viz:

> Finally, on the issue of whether or not the Labor Arbiter committed manifest error in ordering appellant Chua solidarily liable with appellant corporation, we have to rule in the affirmative. Appellant Chua cannot be made solidarily liable with appellant corporation for any award in favor of appellee. Appellant corporation is separate and distinct from Appellant Chua.
>
> x x x x
>
> 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.

A. LIABILITY FOR TORTS AND CRIMES

PHILIPPINE NATIONAL BANK, *Petitioner,* -versus- THE COURT OF APPEALS, RITA GUECO TAPNIO, CECILIO GUECO AND THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC., *Respondents*
G.R. No. L-27155, SECOND DIVISION, MAY 18, 1978, ANTONIO, *J.*

A corporation is civilly liable in the same manner as natural persons for torts, because "generally speaking, the rules governing the liability of a principal or master for a tort committed by an agent or servant are the same whether the principal or master be a natural person or a corporation, and whether the servant or agent be a natural or artificial person. All of the authorities agree that a principal or master is liable for every tort which he expressly directs or authorizes, and this is just as true of a corporation as of a natural person

In this case, while petitioner had the ultimate authority of approving or disapproving the proposed lease since the quota was mortgaged to the Bank, the latter certainly cannot escape its responsibility of observing, for the protection of the interest of private respondents, that degree of care, precaution and vigilance which the circumstances justly demand in approving or disapproving the lease of said sugar quota.

FACTS:

Mrs. Tapnio had an export sugar quota of 1,000 piculs for the agricultural year 1956-1957 which she did not need. She agreed to allow Mr. Jacobo C. Tuazon to use said quota for the consideration of P2,500.00 (Exh. "4"-Gueco). This agreement was called a contract of lease of sugar allotment.

'At the time of the agreement, Mrs. Tapnio was indebted to the Philippine National Bank at San Fernando, Pampanga. Her indebtedness was known as a crop loan and was secured by a mortgage on her standing crop including her sugar quota allocation for the agricultural year corresponding to said standing crop. This arrangement was necessary in order that when Mrs. Tapnio harvests, the P.N.B., having a lien on the crop, may effectively enforce collection against her. Her sugar cannot be exported without sugar quota allotment. Sometimes, however, a planter harvests less sugar than her quota, so her excess quota is utilized by another who pays her for its use. This is the arrangement entered into between Mrs. Tapnio and Mr. Tuazon regarding the former's excess quota for 1956-1957

'Since the quota was mortgaged to the P.N.B., the contract of lease had to be approved by said Bank. The same was submitted to the branch manager at San Fernando, Pampanga. The latter required the parties to raise the consideration of P2.80 per picul or a total of P2,800.00 informing them that "the minimum lease rental acceptable to the Bank, is P2.80 per picul." In a letter addressed to the branch manager on August 10, 1956, Mr. Tuazon informed the manager that he was agreeable to raising the consideration to P2.80 per picul. He further informed the manager that he was ready to pay said amount as the funds were in his folder which was kept in the bank.

'Explaining the meaning of Tuazon's statement as to the funds, it was stated by him that he had an approved loan from the bank but he had not yet utilized it as he was intending to use it to pay for the quota. Hence, when he said the amount needed to pay Mrs. Tapnio was in his folder which was in the bank, he meant and the manager understood and knew he had an approved loan available to be used in payment of the quota. In said Exh. "6-Gueco", Tuazon also informed the manager that he would wait for a notice from the manager as to the time when the bank needed the money so that Tuazon could sign the corresponding promissory note.'

Further consideration of the evidence discloses that when the branch manager of the Philippine National Bank at San Fernando recommended the approval of the contract of lease at the price of P2.80 per picul (Exh. 11-Bank), whose recommendation was concurred in by the Vice-President of said Bank, J. V. Buenaventura, the board of directors required that the amount be raised to P3.00 per picul. This act of the board of directors was communicated to Tuazon, who in turn asked for a reconsideration thereof. On November 19, 1956, the branch manager submitted Tuazon's request for reconsideration to the board of directors with another recommendation for the approval of the lease at P2.80 per picul, but the board returned the recommendation unacted upon, considering that the current price prevailing at the time was P3.00 per picul.

The parties were notified of the refusal on the part of the board of directors of the Bank to grant the motion for reconsideration. The matter stood as it was until February 22, 1957, when Tuazon wrote a letter informing the Bank that he was no longer interested to continue the deal, referring to the lease of sugar quota allotment in favor of defendant Rita Gueco Tapnio. The result is that the latter lost the sum of P2,800.00 which she should have received from Tuazon and which she could have paid the Bank to cancel off her indebtedness.

The court below held, and in this holding we concur, that failure of the negotiation for the lease of the sugar quota allocation of Rita Gueco Tapnio to Tuazon was due to the fault of the directors of the Philippine National Bank.

ISSUE:

Whether petitioner is liable for the damage caused (YES)

RULING:

As observed by the trial court, time is of the essence in the approval of the lease of sugar quota allotments, since the same must be utilized during the milling season, because any allotment which is not filled during such milling season may be reallocated by the Sugar Quota Administration to other holders of allotments. There was no proof that there was any other person at that time willing to lease the sugar quota allotment of private respondents for a price higher than P2.80 per picul. "The fact that there were isolated transactions wherein the consideration for the lease was P3.00 a picul", according to the trial court, "does not necessarily mean that there are always ready takers for said price." The unreasonableness of the position adopted by the petitioner's Board of Directors is shown by the fact that the difference between the amount of P2.80 per picul offered by Tuazon and the P3.00 per picul demanded by the Board amounted only to a total sum of P200.00. Considering that all the accounts of Rita Gueco Tapnio with the Bank were secured by chattel mortgage on standing crops, assignment of leasehold rights and interests on her properties, and surety bonds and that she had apparently "the means to pay her obligation to the Bank, as shown by the fact that she has been granted several sugar crop loans of the total value of almost P80,000.00 for the agricultural years from 1952 to 1956", there was no reasonable basis for the Board of Directors of petitioner to have rejected the lease agreement because of a measly sum of P200.00.

While petitioner had the ultimate authority of approving or disapproving the proposed lease since the quota was mortgaged to the Bank, the latter certainly cannot escape its responsibility of observing, for the protection of the interest of private respondents, that degree of care, precaution and vigilance which the circumstances justly demand in approving or disapproving the lease of said sugar quota. The law makes it imperative that every person "must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." This petitioner failed to do. Certainly, it knew that the agricultural year was about to expire, that by its disapproval of the lease private respondents would be unable to utilize the sugar quota in question. In failing to observe the reasonable degree of care and vigilance which the surrounding circumstances reasonably impose, petitioner is consequently liable for the damages caused on private respondents. Under Article 21 of the New Civil Code, "any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." The afore-cited provisions on human relations were intended to expand the concept of torts in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically provide in the statutes.

A corporation is civilly liable in the same manner as natural persons for torts, because "generally speaking, the rules governing the liability of a principal or master for a tort committed by an agent or servant are the same whether the principal or master be a natural person or a corporation, and whether the servant or agent be a natural or artificial person. All of the authorities agree that a principal or master is liable for every tort which he expressly directs or authorizes, and this is just as true of a corporation as of a natural person. A corporation is liable, therefore, whenever a tortious act is committed by an officer or agent under express direction or authority from the stockholders or members acting as a body, or, generally, from the directors as the governing body."

SERGIO F. NAGUIAT, DOING BUSINESS UNDER THE NAME AND STYLE SERGIO F. NAGUIAT ENT., INC., & CLARK FIELD TAXI, INC., *Petitioners,* -versus- NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), NATIONAL ORGANIZATION OF WORKINGMEN AND ITS MEMBERS, LEONARDO T. GALANG, ET AL., *Respondents*
G.R. No. 116123, THIRD DIVISION, MARCH 13, 1997, PANGANIBAN, *J.*

In this case, it appears that they were confused on the personalities of Sergio F. Naguiat as an individual who was the president of CFTI, and Sergio F. Naguiat Enterprises, Inc., as a separate corporate entity with a separate business. They presumed that Sergio F. Naguiat, who was at the same time a stockholder and director of Sergio F. Naguiat Enterprises, Inc., was managing and controlling the taxi business on behalf of the latter

FACTS:
Herein private respondents alleged that they were regular employees of Naguiat Enterprises, although their individual applications for employment were approved by CFTI. They claimed to have been assigned to Naguiat Enterprises after having been hired by CFTI, and that the former thence managed, controlled and supervised their employment. They averred further that they were entitled to separation pay based on their latest daily earnings of US$15.00 for working sixteen (16) days a month.

In their position paper submitted to the labor arbiter, herein petitioners claimed that the cessation of business of CFTI on November 26, 1991, was due to "great financial losses and lost business opportunity" resulting from the phase-out of Clark Air Base brought about by the Mt. Pinatubo eruption and the expiration of the RP-US military bases agreement. They admitted that CFTI had agreed with the drivers' union, through its President Eduardo Castillo who claimed to have had blanket authority to negotiate with CFTI in behalf of union members, to grant its taxi driver-employees separation pay equivalent to P500.00 for every year of service.

The labor arbiter, finding the individual complainants to be regular workers of CFTI, ordered the latter to pay them P1,200.00 for every year of service "for humanitarian consideration," setting aside the earlier agreement between CFTI and the drivers' union of P500.00 for every year of service.

NLRD affirmed the decision and held Sergio F. Naguiat Enterprises, which is headed by Sergio F. Naguiat and Antolin Naguiat, father and son at the same time the President and Vice-President and General Manager, respectively, should be joined as indispensable party whose liability is joint and several.

ISSUE:

(1) Naguiat enterprises is solidarily liable (NO)

(2) Whether CFTI president, Sergio Naguiat is solidarily liable (YES)
(3) Whether Antonio Naguiat is personally liable (NO)

RULING:
(1)
Private respondents failed to substantiate their claim that Naguiat Enterprises managed, supervised and controlled their employment. It appears that they were confused on the personalities of Sergio F. Naguiat as an individual who was the president of CFTI, and Sergio F. Naguiat Enterprises, Inc., as a separate corporate entity with a separate business. They presumed that Sergio F. Naguiat, who was at the same time a stockholder and director of Sergio F. Naguiat Enterprises, Inc., was managing and controlling the taxi business on behalf of the latter. A closer scrutiny and analysis of the records, however, evince the truth of the matter: that Sergio F. Naguiat, in supervising the taxi drivers and determining their employment terms, was rather carrying out his responsibilities as president of CFTI. Hence, Naguiat Enterprises as a separate corporation does not appear to be involved at all in the taxi business.

(2)
In the broader interest of justice, we, however, hold that Sergio F. Naguiat, in his capacity as president of CFTI, cannot be exonerated from joint and several liability in the payment of separation pay to individual respondents.

A.C. Ransom Labor Union-CCLU vs. NLRC 33 is the case in point. A.C. Ransom Corporation was a family corporation, the stockholders of which were members of the Hernandez family. In 1973, it filed an application for clearance to close or cease operations, which was duly granted by the Ministry of Labor and Employment, without prejudice to the right of employees to seek redress of grievance, if any. Backwages of 22 employees, who engaged in a strike prior to the closure, were subsequently computed at P164,984.00. Up to September 1976, the union filed about ten (10) motions for execution against the corporation, but none could be implemented, presumably for failure to find leviable assets of said corporation. In its last motion for execution, the union asked that officers and agents of the company be held personally liable for payment of the backwages. This was granted by the labor arbiter. In the corporation's appeal to the NLRC, one of the issues raised was: "Is the judgment against a corporation to reinstate its dismissed employees with backwages, enforceable against its officer and agents, in their individual, private and personal capacities, who were not parties in the case where the judgment was rendered!" The NLRC answered in the negative, on the ground that officers of a corporation are not liable personally for official acts unless they exceeded the scope of their authority.

On certiorari, this Court reversed the NLRC and upheld the labor arbiter. In imposing joint and several liability upon the company president, the Court, speaking through Mme. Justice Ameurfina Melencio-Herrera, ratiocinated this wise:

> (b) How can the foregoing (Articles 265 and 273 of the Labor Code) provisions be implemented when the employer is a corporation? The answer is found in Article 212(c) of the Labor Code which provides:
>
> (c) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

> The foregoing was culled from Section 2 of RA 602, the Minimum Wage Law. Since RANSOM is an artificial person, it must have an officer who can be presumed to be the employer, being the "person acting in the interest of (the) employer" RANSOM. The corporation, only in the technical sense, is the employer.
>
> The responsible officer of an employer corporation can be held personally, not to say even criminally, liable for nonpayment of back wages. That is the policy of the law. . . .
>
> (c) If the policy of the law were otherwise, the corporation employer can have devious ways for evading payment of back wages. . . .
>
> (d) The record does not clearly identify "the officer or officers" of RANSOM directly responsible for failure to pay the back wages of the 22 strikers. In the absence of definite Proof in that regard, we believe it should be presumed that the responsible officer is the President of the corporation who can be deemed the chief operation officer thereof. Thus, in RA 602, criminal responsibility is with the "Manager or in his default, the person acting as such." In RANSOM. the President appears to be the Manager.

Sergio F. Naguiat, admittedly, was the president of CFTI who actively managed the business. Thus, applying the ruling in A.C. Ransom, he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees.

Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations" owned by the Naguiat family.

Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort.

Our jurisprudence is wanting as to the definite scope of "corporate tort." Essentially, "tort" consists in the violation of a right given or the omission of a duty imposed by law. 35 Simply stated, tort is a breach of a legal duty. Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable.

Furthermore, in MAM Realty Development vs. NLRC, Court recognized that a director or officer may still be held solidarily liable with a corporation by specific provision of law. Thus:

. . . A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. (footnotes omitted)

As pointed out earlier, the fifth paragraph of Section 100 of the Corporation Code specifically imposes personal liability upon the stockholder actively managing or operating the business and affairs of the close corporation.

In fact, in posting the surety bond required by this Court for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, only Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation thereunder, i.e., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto.

The Court here finds no application to the rule that a corporate officer cannot be held solidarily liable with a corporation in the absence of evidence that he had acted in bad faith or with malice. In the present case, Sergio Naguiat is held solidarily liable for corporate tort because he had actively engaged in the management and operation of CFTI, a close corporation.

(3)
Antolin T. Naguiat was the vice president of the CFTI. Although he carried the title of "general manager" as well, it had not been shown that he had acted in such capacity. Furthermore, no evidence on the extent of his participation in the management or operation of the business was proffered. In this light, he cannot be held solidarily liable for the obligations of CFTI and Sergio Naguiat to the private respondents."

GREGORIO SINGIAN, JR, *Petitioners,* -versus- THE HONORABLE SANDIGANBAYAN (Third Division), THE PEOPLE OF THE PHILIPPINES, and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Respondents*

G.R. Nos. 160577-94, SECOND DIVISION, DECEMBER 16, 2005, CHICO-NAZARIO, *J*.

True, the powers to increase capitalization and to offer or give collateral to secure indebtedness are lodged with the corporation's board of directors. However, this does not mean that the officers of the corporation other than the board of directors cannot be made criminally liable for their criminal acts if it can be proven that they participated therein. In the instant case, there is evidence that petitioner participated in the loan transactions when he signed the undertaking.

FACTS:
ISI applied for a five-year confirmed irrevocable deferred letter of credit amounting to US$2,500,000.00 (₱16,287,500.00) to finance its purchase of a complete line of machinery and equipment. The letter of credit was recommended to the PNB Board of Directors by then Senior Vice President, Mr. Constantino Bautista.

On 27 January 1972, the PNB approved the loan, subject to certain stipulations.

The Committee found that the loans extended to ISI bore characteristics of behest loans specifically for not having been secured with sufficient collaterals and obtained with undue haste.

Atty. Orlando L. Salvador, Presidential Commission On Good Government Consultant on detail with the Presidential Ad Hoc Committee on Behest Loans (Committee), filed with the Office of the

Ombudsman a sworn complaint dated 20 March 1996, for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, as amended, against the following: Panfilo Domingo, former PNB President, Constantino Bautista, former PNB Senior Vice President, Domingo Ingco, former member of the PNB Board of Directors, John Does, former members of the PNB Board of Directors, Francisco Teodoro, President of ISI, Leticia Teodoro, Vice President of ISI, Marfina Singian, Incorporator of ISI, Tomas Teodoro, General Manager of ISI, and Gregorio Singian, Jr., Executive Vice President of ISI. The complaint, docketed as OMB-0-96-0967, was assigned to Graft Investigation Officer I Atty. Edgar R. Navales (Investigator Navales) of the Evaluation and Preliminary Investigation Bureau (EPIB) for investigation.

In a Resolution, Investigator Navales recommended the dismissal of the complaint on the grounds of prescription and insufficiency of evidence.

The recommendation of Investigator Navales was disapproved by then Ombudsman Aniano A. Desierto. Thereafter, the case was assigned to Special Prosecution Officer I Florita S. Linco (Prosecutor Linco) for review.

Prosecutor Linco found that probable cause existed to indict petitioner, among other respondents, and recommended that they be charged with violation of Section 3(e) and (g) of Rep. Act No. 3019. petitioner filed before the Sandiganbayan an Urgent Consolidated Motions for Reinvestigation.

On 31 August 2001, the Sandiganbayan issued an order granting petitioner's motion for reinvestigation. Pursuant thereto, the Office of the Special Prosecutor conducted the reinvestigation of Criminal Cases No. 26297 to No. 26314 through Special Prosecution Officer III Joselito R. Ferrer (Prosecutor Ferrer).

The recommendations of Prosecutor Ferrer exonerating petitioner and his co-accused of the charges were, however, disapproved by Ombudsman Simeon V. Marcelo.

From the adverse finding of the Ombudsman, petitioner filed before the Sandiganbayan a Motion for Re-determination of Existence of Probable Cause which was denied by the latter in a resolution dated 18 August 2003. Petitioner filed a motion for reconsideration which was eventually denied by the Sandiganbayan in a resolution dated 24 October 2003.

Hence, this petition for certiorari

Petitioner argues that he cannot be made criminally liable for ISI's failure to put up the additional capitalization and collaterals required by the undertaking because it is not his responsibility, but that of the board of directors of ISI, to comply with the same. As an Executive Vice President of ISI, he has no power to legally compel and cause it to comply with PNB's conditions stipulated in the undertaking. He added that implicit in the Sandiganbayan's finding is that there is no probable cause that has been established against petitioner in Criminal Cases No. 26297 to No. 26314 since the undertaking he signed covers specifically the deferred Letter of Credit for US$2,500,000.00 subject of Criminal Case No. 26297.

ISSUE:

Whether petitioner Singian is criminally responsible for ISI's purported failure to put up additional capitalization and collaterals (YES)

RULING:

True, the powers to increase capitalization and to offer or give collateral to secure indebtedness are lodged with the corporation's board of directors. However, this does not mean that the officers of the corporation other than the board of directors cannot be made criminally liable for their criminal acts if it can be proven that they participated therein. In the instant case, there is evidence that petitioner participated in the loan transactions when he signed the undertaking. As correctly pointed out by the Sandiganbayan:

> . . . The Court finds that although it is true that accused Gregorio Singian, Jr. is not a stockholder or director of Integrated Shoe, Inc. (ISI), the evidence on record, however, shows that aside from the fact that he was the Executive Vice President of Integrated Shoe, Inc. (ISI) during the time material to this case, he also executed a "Deed of Undertaking and Conformity to Bank Conditions" jointly with Francisco J. Teodoro, President of Integrated Shoe, Inc. and other officers of the corporation namely: Marfina T. Singian, Leticia T. Teodoro, Tomas T. Teodoro in connection with the application and granting by the PNB of a five year confirmed irrevocable, deferred loan Letter of Credit for US $2,500,000.00 (P16,287,500.00) in favor of the Integrated Shoe, Inc. (ISI), which loan remained unpaid by ISI.

A careful reading of the resolution of the respondent court reveals that it never mentioned that the undertaking was the only evidence that led it to its pronouncement that there exists probable cause against petitioner. In fact, the circumstances surrounding the granting of the first loan for US$2,500,000.00 which is subject matter of Criminal Case No. 26297 and the subsequent loan transactions which are the subject matters of Criminal Cases No. 26298 to No. 26314 appear at first blush to be connected with each other and form part of the whole design to prejudice the government.

THE EXECUTIVE SECRETARY, THE SECRETARY OF JUSTICE, THE SECRETARY OF LABOR AND EMPLOYMENT, AND THE SECRETARY OF FOREIGN AFFAIRS, OWWA PUNO, ADMINISTRATOR, and POEA ADMINISTRATOR, *Petitioners,* -versus- THE HON. COURT OF APPEALS and ASIAN RECRUITMENT COUNCIL PHILIPPINE CHAPTER (ARCO-PHIL.), INC, *Respondents*

G.R. No. 131719, SECOND DIVISION, MAY 25, 2004, CALLEJO, SR., *J.*

True, the powers to increase capitalization and to offer or give collateral to secure indebtedness are lodged with the corporation's board of directors. However, this does not mean that the officers of the corporation other than the board of directors cannot be made criminally liable for their criminal acts if it can be proven that they participated therein. In the instant case, there is evidence that petitioner participated in the loan transactions when he signed the undertaking.

FACTS:

Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, took effect on July 15, 1995. The Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipino Act of 1995 was, thereafter, published in the April 7, 1996 issue of the Manila Bulletin. However, even before the law took effect, the Asian Recruitment Council Philippine Chapter, Inc. (ARCO-Phil.) filed, on July 17, 1995, a petition for declaratory relief under Rule 63 of the Rules of

Court with the Regional Trial Court of Quezon City to declare as unconstitutional Section 2, paragraph (g), Section 6, paragraphs (a) to (j), (l) and (m), Section 7, paragraphs (a) and (b), and Sections 9 and 10 of the law, with a plea for the issuance of a temporary restraining order and/or writ of preliminary injunction enjoining the respondents therein from enforcing the assailed provisions of the law.

In a supplement to its petition, the ARCO-Phil. alleged that Rep. Act No. 8042 was self-executory and that no implementing rules were needed. It prayed that the court issue a temporary restraining order to enjoin the enforcement of Section 6, paragraphs (a) to (m) on illegal recruitment, Section 7 on penalties for illegal recruitment, and Section 9 on venue of criminal actions for illegal recruitments.

On August 1, 1995, the trial court issued a temporary restraining order effective for a period of only twenty (20) days therefrom.

After the petitioners filed their comment on the petition, the ARCO-Phil. filed an amended petition, the amendments consisting in the inclusion in the caption thereof eleven (11) other corporations which it alleged were its members and which it represented in the suit, and a plea for a temporary restraining order enjoining the respondents from enforcing Section 6 subsection (i), Section 6 subsection (k) and paragraphs 15 and 16 thereof, Section 8, Section 10, paragraphs 1 and 2, and Sections 11 and 40 of Rep. Act No. 8042.

The respondent ARCO-Phil. assailed Section 2(g) and (i), Section 6 subsection (a) to (m), Section 7(a) to (b), and Section 10 paragraphs (1) and (2)

The respondent averred that the aforequoted provisions of Rep. Act No. 8042 violate Section 1, Article III of the Constitution. According to the respondent, Section 6(g) and (i) discriminated against unskilled workers and their families and, as such, violated the equal protection clause, as well as Article II, Section 126 and Article XV, Sections 17 and 3(3) of the Constitution. As the law encouraged the deployment of skilled Filipino workers, only overseas skilled workers are granted rights. The respondent stressed that unskilled workers also have the right to seek employment abroad. According to the respondent, the right of unskilled workers to due process is violated because they are prevented from finding employment and earning a living abroad. It cannot be argued that skilled workers are immune from abuses by employers, while unskilled workers are merely prone to such abuses. It was pointed out that both skilled and unskilled workers are subjected to abuses by foreign employers. Furthermore, the prohibition of the deployment of unskilled workers abroad would only encourage fly-by-night illegal recruiters.

According to the respondent, the grant of incentives to service contractors and manning agencies to the exclusion of all other licensed and authorized recruiters is an invalid classification. Licensed and authorized recruiters are thus deprived of their right to property and due process and to the "equality of the person." It is understandable for the law to prohibit illegal recruiters, but to discriminate against licensed and registered recruiters is unconstitutional.

The respondent, likewise, alleged that Section 6, subsections (a) to (m) is unconstitutional because licensed and authorized recruitment agencies are placed on equal footing with illegal recruiters. It contended that while the Labor Code distinguished between recruiters who are holders of licenses and non-holders thereof in the imposition of penalties, Rep. Act No. 8042 does not make any distinction.

The petitioners asserted that the respondent is not the real party-in-interest as petitioner in the trial court. It is inconceivable how the respondent, a non-stock and non-profit corporation, could sustain direct injury as a result of the enforcement of the law. They argued that if, at all, any damage would result in the implementation of the law, it is the licensed and registered recruitment agencies and/or the unskilled Filipino migrant workers discriminated against who would sustain the said injury or damage, not the respondent. The respondent, as petitioner in the trial court, was burdened to adduce preponderant evidence of such irreparable injury, but failed to do so.

ISSUES:

(1) Whether respondent has locus standi (YES in so far as to File the Petition in the RTC in representation of the eleven licensed and registered recruitment agencies impleaded in the amended petition but NO locus standi to file the petition for and in behalf of unskilled workers)

(2) Whether trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed order and writ of preliminary injunction (YES)

RULING:

(1)
The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.

In Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections, we held that standing jus tertii would be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the right of the third party would be diluted unless the party in court is allowed to espouse the third party's constitutional claims.

In this case, the respondent filed the petition for declaratory relief under Rule 64 of the Rules of Court for and in behalf of its eleven (11) licensed and registered recruitment agencies which are its members, and which approved separate resolutions expressly authorizing the respondent to file the said suit for and in their behalf. We note that, under its Articles of Incorporation, the respondent was organized for the purposes inter alia of promoting and supporting the growth and development of the manpower recruitment industry, both in the local and international levels; providing, creating and exploring employment opportunities for the exclusive benefit of its general membership; enhancing and promoting the general welfare and protection of Filipino workers; and, to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical. The respondent asserts that the assailed provisions violate the constitutional rights of its members and the officers and employees thereof. The respondent is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.19

However, the respondent has no locus standi to file the petition for and in behalf of unskilled workers. We note that it even failed to implead any unskilled workers in its petition. Furthermore, in failing to implead, as parties-petitioners, the eleven licensed and registered recruitment agencies it claimed to represent, the respondent failed to comply with Section 2 of Rule 6320 of the Rules of Court. Nevertheless, since the eleven licensed and registered recruitment agencies for which the respondent filed the suit are specifically named in the petition, the amended petition is deemed amended to avoid multiplicity of suits.

(2) It must be borne in mind that subject to constitutional limitations, Congress is empowered to define what acts or omissions shall constitute a crime and to prescribe punishments therefor. The power is inherent in Congress and is part of the sovereign power of the State to maintain peace and order. Whatever views may be entertained regarding the severity of punishment, whether one believes in its efficiency or its futility, these are peculiarly questions of legislative policy. The comparative gravity of crimes and whether their consequences are more or less injurious are matters for the State and Congress itself to determine. Specification of penalties involves questions of legislative policy.

Due process prohibits criminal stability from shifting the burden of proof to the accused, punishing wholly passive conduct, defining crimes in vague or overbroad language and failing to grant fair warning of illegal conduct. Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending. Bills of attainder are legislative acts which inflict punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial.

Penalizing unlicensed and licensed recruitment agencies and their officers and employees and their relatives employed in government agencies charged with the enforcement of the law for illegal recruitment and imposing life imprisonment for those who commit large scale illegal recruitment is not offensive to the Constitution. The accused may be convicted of illegal recruitment and large scale illegal recruitment only if, after trial, the prosecution is able to prove all the elements of the crime charged.

The possibility that the officers and employees of the recruitment agencies, which are members of the respondent, and their relatives who are employed in the government agencies charged in the enforcement of the law, would be indicted for illegal recruitment and, if convicted sentenced to life imprisonment for large scale illegal recruitment, absent proof of irreparable injury, is not sufficient on which to base the issuance of a writ of preliminary injunction to suspend the enforcement of the penal provisions of Rep. Act No. 8042 and avert any indictments under the law. The normal course of criminal prosecutions cannot be blocked on the basis of allegations which amount to speculations about the future.

There is no allegation in the amended petition or evidence adduced by the respondent that the officers and/or employees of its members had been threatened with any indictments for violations of the penal provisions of Rep. Act No. 8042. Neither is there any allegation therein that any of its members and/or their officers and employees committed any of the acts enumerated in Section 6(a) to (m) of the law for which they could be indicted. Neither did the respondent adduce any evidence in the RTC that any or all of its members or a great number of other duly licensed and registered recruitment agencies had to stop their business operations because of fear of indictments under Sections 6 and 7 of Rep. Act No. 8042. The respondent merely speculated and surmised that licensed and registered recruitment agencies would close shop and stop business operations because of the assailed penal provisions of the law. A writ of preliminary injunction to enjoin the enforcement of penal laws cannot be based on such conjectures or speculations. The Court cannot take judicial notice that the processing of deployment papers of overseas workers have come to a virtual standstill at the POEA because of the assailed provisions of Rep. Act No. 8042. The respondent must adduce evidence to prove its allegation, and the petitioners accorded a chance to adduce controverting evidence.

The respondent even failed to adduce any evidence to prove irreparable injury because of the enforcement of Section 10(1)(2) of Rep. Act No. 8042. Its fear or apprehension that, because of time constraints, its members would have to defend foreign employees in cases before the Labor Arbiter is based on speculations. Even if true, such inconvenience or difficulty is hardly irreparable injury.

The trial court even ignored the public interest involved in suspending the enforcement of Rep. Act No. 8042 vis-à-vis the eleven licensed and registered recruitment agencies represented by the respondent. In People v. Gamboa, we emphasized the primary aim of Rep. Act No. 8042:

> Preliminarily, the proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad is one of the primary considerations that led to the enactment of The Migrant Workers and Overseas Filipinos Act of 1995. Aimed at affording greater protection to overseas Filipino workers, it is a significant improvement on existing laws in the recruitment and placement of workers for overseas employment. Otherwise known as the Magna Carta of OFWs, it broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties thereto, especially those that constitute economic sabotage, i.e., Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.

By issuing the writ of preliminary injunction against the petitioners sans any evidence, the trial court frustrated, albeit temporarily, the prosecution of illegal recruiters and allowed them to continue victimizing hapless and innocent people desiring to obtain employment abroad as overseas workers, and blocked the attainment of the salutary policies embedded in Rep. Act No. 8042. It bears stressing that overseas workers, land-based and sea-based, had been remitting to the Philippines billions of dollars which over the years had propped the economy.

In issuing the writ of preliminary injunction, the trial court considered paramount the interests of the eleven licensed and registered recruitment agencies represented by the respondent, and capriciously overturned the presumption of the constitutionality of the assailed provisions on the barefaced claim of the respondent that the assailed provisions of Rep. Act No. 8042 are unconstitutional. The trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed order and writ of preliminary injunction. It is for this reason that the Court issued a temporary restraining order enjoining the enforcement of the writ of preliminary injunction issued by the trial court.

EDWARD C. ONG, *Petitioner,* -versus- THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, *Respondents*

G.R. No. 119858, FIRST DIVISION, APRIL 29, 2003, CARPIO*, J*.

The Trust Receipts Law expressly makes the corporation's officers or employees or other persons therein responsible for the offense liable to suffer the penalty of imprisonment. In the instant case, petitioner signed the two trust receipts on behalf of ARMAGRI as the latter could only act through its agents. When petitioner signed the trust receipts, he acknowledged receipt of the goods covered by the trust receipts. In addition, petitioner was fully aware of the terms and conditions stated in the trust receipts, including the obligation to turn over the proceeds of the sale or return the goods to the Bank.

When petitioner signed the trust receipts, he claimed he was representing ARMAGRI. The corporation obviously acts only through its human agents and it is the conduct of such agents which the law must deter. The existence of the corporate entity does not shield from prosecution the agent who knowingly and intentionally commits a crime at the instance of a corporation.

FACTS:

Petitioner, representing ARMAGRI International Corporation8 ("ARMAGRI"), applied for a letter of credit for P2,532,500.00 with SOLIDBANK Corporation ("Bank") to finance the purchase of differential assemblies from Metropole Industrial Sales. On 6 July 1990, petitioner, representing ARMAGRI, executed a trust receipt acknowledging receipt from the Bank of the goods valued at P2,532,500.00.

On 12 July 1990, petitioner and Benito Ong, representing ARMAGRI, applied for another letter of credit for P2,050,000.00 to finance the purchase of merchandise from Fertiphil Corporation. The Bank approved the application, opened the letter of credit and paid to Fertiphil Corporation the amount of P2,050,000.00. On 23 July 1990, petitioner, signing for ARMAGRI, executed another trust receipt in favor of the Bank acknowledging receipt of the merchandise.

Both trust receipts contained the same stipulations. Under the trust receipts, ARMAGRI undertook to account for the goods held in trust for the Bank, or if the goods are sold, to turn over the proceeds to the Bank. ARMAGRI also undertook the obligation to keep the proceeds in the form of money, bills or receivables as the separate property of the Bank or to return the goods upon demand by the Bank, if not sold. In addition, petitioner executed the following additional undertaking stamped on the dorsal portion of both trust receipts:

> I/We jointly and severally agreed to any increase or decrease in the interest rate which may occur after July 1, 1981, when the Central Bank floated the interest rates, and to pay additionally the penalty of 1% per month until the amount/s or installment/s due and unpaid under the trust receipt on the reverse side hereof is/are fully paid.

Petitioner signed alone the foregoing additional undertaking in the Trust Receipt for P2,253,500.00, while both petitioner and Benito Ong signed the additional undertaking in the Trust Receipt for P2,050,000.00.

When the trust receipts became due and demandable, ARMAGRI failed to pay or deliver the goods to the Bank despite several demand letters.12 Consequently, as of 31 May 1991, the unpaid account under the first trust receipt amounted to P1,527,180.66,13 while the unpaid account under the second trust receipt amounted to P1,449,395.71

Petitioner and Benito Ong were charged with two counts of estafa under separate Informations.

Petitioner appealed his conviction to the Court of Appeals. On 27 October 1994, the Court of Appeals affirmed the trial court's decision in toto.

ISSUES:

(1) Whether petitioner comes within the purview of Section 13 of the Trust Receipts Law (YES)

(2) Whether Petitioner's conviction under the allegations in the two Informations for Estafa is correct. (YES)

RULING:

(1)
The Trust Receipts Law is violated whenever the entrustee fails to: (1) turn over the proceeds of the sale of the goods, or (2) return the goods covered by the trust receipts if the goods are not sold.18 The mere failure to account or return gives rise to the crime which is malum prohibitum.19 There is no requirement to prove intent to defraud.20

The Trust Receipts Law recognizes the impossibility of imposing the penalty of imprisonment on a corporation. Hence, if the entrustee is a corporation, the law makes the officers or employees or other persons responsible for the offense liable to suffer the penalty of imprisonment. The reason is obvious: corporations, partnerships, associations and other juridical entities cannot be put to jail. Hence, the criminal liability falls on the human agent responsible for the violation of the Trust Receipts Law.

In the instant case, the Bank was the entruster while ARMAGRI was the entrustee. Being the entrustee, ARMAGRI was the one responsible to account for the goods or its proceeds in case of sale. However, the criminal liability for violation of the Trust Receipts Law falls on the human agent responsible for the violation. Petitioner, who admits being the agent of ARMAGRI, is the person responsible for the offense for two reasons. First, petitioner is the signatory to the trust receipts, the loan applications and the letters of credit. Second, despite being the signatory to the trust receipts and the other documents, petitioner did not explain or show why he is not responsible for the failure to turn over the proceeds of the sale or account for the goods covered by the trust receipts.

The Bank released the goods to ARMAGRI upon execution of the trust receipts and as part of the loan transactions of ARMAGRI. The Bank had a right to demand from ARMAGRI payment or at least a return of the goods. ARMAGRI failed to pay or return the goods despite repeated demands by the Bank.

It is a well-settled doctrine long before the enactment of the Trust Receipts Law, that the failure to account, upon demand, for funds or property held in trust is evidence of conversion or misappropriation. Under the law, mere failure by the entrustee to account for the goods received in trust constitutes estafa. The Trust Receipts Law punishes dishonesty and abuse of confidence in the handling of money or goods to the prejudice of public order. The mere failure to deliver the proceeds of the sale or the goods if not sold constitutes a criminal offense that causes prejudice not only to the creditor, but also to the public interest. Evidently, the Bank suffered prejudice for neither money nor the goods were turned over to the Bank.

The Trust Receipts Law expressly makes the corporation's officers or employees or other persons therein responsible for the offense liable to suffer the penalty of imprisonment. In the instant case, petitioner signed the two trust receipts on behalf of ARMAGRI as the latter could only act through its agents. When petitioner signed the trust receipts, he acknowledged receipt of the goods covered by the trust receipts. In addition, petitioner was fully aware of the terms and conditions stated in the trust receipts, including the obligation to turn over the proceeds of the sale or return the goods to the Bank.

True, petitioner acted on behalf of ARMAGRI. However, it is a well-settled rule that the law of agency governing civil cases has no application in criminal cases. When a person participates in the commission of a crime, he cannot escape punishment on the ground that he simply acted as an agent of another party. In the instant case, the Bank accepted the trust receipts signed by petitioner based on petitioner's representations. It is the fact of being the signatory to the two trust receipts, *and thus a direct participant to the crime*, which makes petitioner a person responsible for the offense.

Petitioner could have raised the defense that he had nothing to do with the failure to account for the proceeds or to return the goods. Petitioner could have shown that he had severed his relationship with ARMAGRI prior to the loss of the proceeds or the disappearance of the goods. Petitioner, however, waived his right to present any evidence, and thus failed to show that he is not responsible for the violation of the Trust Receipts Law.

There is no dispute that on 6 July 1990 and on 23 July 1990, petitioner signed the two trust receipts on behalf of ARMAGRI. Petitioner, acting on behalf of ARMAGRI, expressly acknowledged receipt of the goods in trust for the Bank. ARMAGRI failed to comply with its undertakings under the trust receipts. On the other hand, petitioner failed to explain and communicate to the Bank what happened to the goods despite repeated demands from the Bank. As of 13 May 1991, the unpaid account under the first and second trust receipts amounted to P1,527,180.60 and P1,449,395.71, respectively

(2)
Petitioner argues that he cannot be convicted on a new set of facts not alleged in the Informations. Petitioner claims that the trial court's decision found that it was ARMAGRI that transacted with the Bank, acting through petitioner as its agent. Petitioner asserts that this contradicts the specific allegation in the Informations that it was petitioner who was constituted as the entrustee and was thus obligated to account for the goods or its proceeds if sold. Petitioner maintains that this absolves him from criminal liability.

We find no merit in petitioner's arguments.

Contrary to petitioner's assertions, the Informations explicitly allege that petitioner, representing ARMAGRI, defrauded the Bank by failing to remit the proceeds of the sale or to return the goods despite demands by the Bank, to the latter's prejudice. As an essential element of estafa with abuse of confidence, it is sufficient that the Informations specifically allege that the entrustee received the goods. The Informations expressly state that ARMAGRI, represented by petitioner, received the goods in trust for the Bank under the express obligation to remit the proceeds of the sale or to return the goods upon demand by the Bank. There is no need to allege in the Informations in what capacity petitioner participated to hold him responsible for the offense. Under the Trust Receipts Law, it is sufficient to allege and establish the failure of ARMAGRI, whom petitioner represented, to remit the proceeds or to return the goods to the Bank.

When petitioner signed the trust receipts, he claimed he was representing ARMAGRI. The corporation obviously acts only through its human agents and it is the conduct of such agents which the law must deter. The existence of the corporate entity does not shield from prosecution the agent who knowingly and intentionally commits a crime at the instance of a corporation.

ALFREDO CHING, *Petitioner*, -versus - THE SECRETARY OF JUSTICE, ASST. CITY PROSECUTOR ECILYN BURGOS-VILLAVERT, JUDGE EDGARDO SUDIAM of the Regional Trial Court, Manila, Branch 52; RIZAL COMMERCIAL BANKING CORP. and THE PEOPLE OF THE PHILIPPINES, *Respondents*

G. R. No. 164317, FIRST DIVISION, FEBRUARY 6, 2O06, CALLEJO, SR., *J.*

The crime defined in P.D. No. 115 is malum prohibitum but is classified as estafa under paragraph 1(b), Article 315 of the Revised Penal Code, or estafa with abuse of confidence. It may be committed by a corporation or other juridical entity or by natural persons. However, the penalty for the crime is imprisonment for the periods provided in said Article 315.

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense.

In this case, petitioner signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI. In the words of Chief Justice Earl Warren, a corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor

FACTS:

Philippine Blooming Mills, Inc. (PBMI), through its Senior Vice-President, petitioner Ching, applied with the Rizal Commercial Banking Corporation (respondent bank) for the issuance of commercial letters of credit to finance its importation of assorted goods.

Respondent bank approved the application, and irrevocable letters of credit were issued in favor of petitioner. The goods were purchased and delivered in trust to PBMI. Petitioner signed 13 trust receipts as surety, acknowledging delivery of the goods.

When the trust receipts matured, petitioner failed to return the goods to respondent bank, or to return their value amounting to ₱6,940,280.66 despite demands. Thus, the bank filed a criminal complaint for estafa against petitioner in the Office of the City Prosecutor of Manila.

There was a finding of probable cause at first, but it was later dismissed.

In the meantime, the Court rendered judgment in Allied Banking Corporation v. Ordoñez, holding that the penal provision of P.D. No. 115 encompasses any act violative of an obligation covered by the trust receipt; it is not limited to transactions involving goods which are to be sold (retailed), reshipped, stored or processed as a component of a product ultimately sold. The Court also ruled that "the non-payment of the amount covered by a trust receipt is an act violative of the obligation of the entrustee to pay."

On February 27, 1995, respondent bank re-filed the criminal complaint for estafa against petitioner before the Office of the City Prosecutor of Manila

Preliminary investigation ensued. On December 8, 1995, the City Prosecutor ruled that there was no probable cause to charge petitioner with violating P.D. No. 115, as petitioner's liability was only civil, not criminal, having signed the trust receipts as surety. Respondent bank appealed the resolution to the Department of Justice (DOJ) via petition for review.

Secretary of Justice issued Resolution No. 250 granting the petition and reversing the assailed resolution of the City Prosecutor. CA rendered judgment dismissing the petition for lack of merit, and on procedural grounds

ISSUES:

> Whether Secretary Of Justice correctly ruled that petitioner is the officer responsible for the offense charged and that the acts of petitioner fall within the ambit of violation of P.D. [No.] 115 in relation to Article 315, par. 1(b) of the Revised Penal Code (YES)

RULING:

The Court rules that although petitioner signed the trust receipts merely as Senior Vice-President of PBMI and had no physical possession of the goods, he cannot avoid prosecution for violation of P.D. No. 115.

The penalty clause of the law, Section 13 of P.D. No. 115 reads:

> Section 13. Penalty Clause. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code.1âwphi1 If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

The crime defined in P.D. No. 115 is malum prohibitum but is classified as estafa under paragraph 1(b), Article 315 of the Revised Penal Code, or estafa with abuse of confidence. It may be committed by a corporation or other juridical entity or by natural persons. However, the penalty for the crime is imprisonment for the periods provided in said Article 315.

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense. The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.

A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act.53 Moreover, all parties active in promoting a crime, whether agents or not, are principals.54 Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

In this case, petitioner signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI. In the words of Chief Justice Earl Warren, a corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor

METROHEIGHTS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., ***Petitioner,*** **-versus - MS CONSTRUCTION AND DEVELOPMENT CORPORATION, TOMASITO T. CRUZ, TITA F. CRUZ, SIMONETTE F. CRUZ, ANGEL T. CRUZ, ERNESTO T. CRUZ AND METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS),** ***Respondents***

G.R. No. 209359, THIRD DIVISION, OCTOBER 17, 2018, PERALTA., *J.*

The crime defined in P.D. No. 115 is malum prohibitum but is classified as estafa under paragraph 1(b), Article 315 of the Revised Penal Code, or estafa with abuse of confidence. It may be committed by a corporation or other juridical entity or by natural persons. However, the penalty for the crime is imprisonment for the periods provided in said Article 315.

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense.

In this case, petitioner signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI. In the words of Chief Justice Earl Warren, a corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor

FACTS:

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 respondents liable for damages on the basis of abuse of right under Article 19 of the New Civil Code, giving credence to petitioner's claim that there was no notice to it prior to the implementation of respondents' project. The CA reversed the RTC and found that there was no abuse of right committed by the respondents, as the project was not undertaken without notice to petitioner

ISSUE:

(1) Whether 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 (YES)

(2) Whether the directors are personally liable (NO)

RULING:

(1)
While Article 19 of the New Civil Code may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, e.g. that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."

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.

The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on certiorari under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.

In finding that there was notice given by the respondents to petitioner, the CA relied on the testimonies of Tomasito Cruz, President of respondent CMS Construction, that prior to the actual implementation of the project, permissions from the Office of the City Engineer and the affected homeowners' associations were sought; and that of Engr. Victor Cariaga, consultant of respondent MWSS, saying that it is an operating procedure to give letters to the homeowners, as well as to the barangays affected, notifying them of the objective of the project and requesting for meetings.
Notably, however, the CA failed to consider that Tomasito Cruz testified during his cross-examination that there was no notice to petitioner coming from their company.

In fact, it was only after petitioner's officer investigated the reason behind the loss of water supply in their subdivision that it was learned that their existing line was cut-off and transferred by respondents. Also, it was only when petitioner's officer went to the office of respondent CMS

Construction and complained about the loss of water supply in their subdivision that petitioner's homeowners' water line was temporarily reconnected with a 2-inch rubber hose.

Clearly, had petitioner's officer not complained about the water service interruption in their subdivision and the rubber hose connection was not made to temporarily fix petitioner's concern, petitioner's homeowners would have continuously suffered loss of water service.

Notably, respondents admitted in their respective Comments that the inconvenience of the temporary stoppage of water supply in petitioner's area was highly inevitable in the process of changing petitioner's water pipe size crossing the bridge up to Visayas Avenue where the tapping source is connected. Notwithstanding, respondents proceeded with the cutting off and disconnection of petitioner's water connection without the latter's consent and notification thereby causing prejudice or injury to the petitioner's members because of the unexpected water loss for three (3) days. Respondents' actions were done in total disregard of the standards set by Article 19 of the New Civil Code which entitles petitioner to damages.

In *MWSS v. Act Theater, Inc*., we held that petitioner's act of cutting off respondents' water service connection without prior notice was arbitrary, injurious and prejudicial to the latter, justifying the award of damages under Article 19 of the New Civil Code

(2)
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

B. RECOVERY OF MORAL DAMAGES

FILIPINAS BROADCASTING NETWORK, INC., *Petitioner,* -versus - AGO MEDICAL AND EDUCATIONAL CENTER-BICOL CHRISTIAN COLLEGE OF MEDICINE, (AMEC-BCCM) and ANGELITA F. AGO, *Respondents*

G.R. No. 141994, FIRST DIVISION, JANURY 17, 2OO5, CARPIO., *J.*

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals cites Mambulao Lumber Co. v. PNB, et al. to justify the award of moral damages. However, the Court's statement in Mambulao that "a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages" is an obiter dictum.

Nevertheless, AMEC's claim for moral damages falls under item 7 of Article 2219 of the Civil Code. This provision expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. Article 2219(7) does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person such as a corporation can validly complain for libel or any other form of defamation and claim for moral damages.

FACTS:

Expos is a radio documentary program hosted by Carmelo Mel Rima (Rima) and Hermogenes Jun Alegre (Alegre). Expos is aired every morning over DZRC-AM which is owned by Filipinas Broadcasting Network, Inc. (FBNI). Expos is heard over Legazpi City, the Albay municipalities and other Bicol areas.

In the morning of 14 and 15 December 1989, Rima and Alegre exposed various alleged complaints from students, teachers and parents against Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC) and its administrators. Claiming that the broadcasts were defamatory, AMEC and Angelita Ago (Ago), as Dean of AMECs College of Medicine, filed a complaint for damages against FBNI, Rima and Alegre.

Trial court rendered a Decision finding FBNI and Alegre liable for libel except Rima. The trial court held that the broadcasts are libelous per se. CA affirmed but made Rima solidarily liable.

FBNI contends that AMEC is not entitled to moral damages because it is a corporation.

ISSUE:

Whether AMEC is entitled to moral damages (YES)

RULING:

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals cites Mambulao Lumber Co. v. PNB, et al. to justify the award of moral damages. However, the Court's statement in Mambulao that "a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages" is an obiter dictum.

Nevertheless, AMEC's claim for moral damages falls under item 7 of Article 2219 of the Civil Code. This provision expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. Article 2219(7) does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person such as a corporation can validly complain for libel or any other form of defamation and claim for moral damages.

Moreover, where the broadcast is libelous per se, the law implies damages. In such a case, evidence of an honest mistake or the want of character or reputation of the party libeled goes only in mitigation of damages. Neither in such a case is the plaintiff required to introduce evidence of actual damages as a condition precedent to the recovery of some damages. In this case, the broadcasts are libelous per se. Thus, AMEC is entitled to moral damages.

However, the Court found the award of P300,000 moral damages unreasonable. The record shows that even though the broadcasts were libelous per se, AMEC has not suffered any substantial or material damage to its reputation. Therefore, the Court reduced the award of moral damages from P300,000 to P150,000.

MANILA ELECTRIC COMPANY, *Petitioner,* -versus - T.E.A.M. ELECTRONICS CORPORATION, TECHNOLOGY ELECTRONICS ASSEMBLY and MANAGEMENT PACIFIC CORPORATION; and ULTRA ELECTRONICS INSTRUMENTS, INC., *Respondents*
G.R. No. 131723, THIRD DIVISION,DECEMBER 13, 2007 NACHURA, *J.*

As a rule, a corporation is not entitled to moral damages because, not being a natural person, it cannot experience physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is when the corporation has a reputation that is debased, resulting in its humiliation in the business realm. But in such a case, it is imperative for the claimant to present proof to justify the award. It is essential to prove the existence of the factual basis of the damage and its causal relation to petitioner's acts. In the present case, the records are bereft of any evidence that the name or reputation of TEC/TPC has been debased as a result of petitioner's acts.

FACTS:

In September 1986, TEC, under its former name National Semi-Conductors (Phils.) entered into a Contract of Lease with respondent Ultra Electronics Industries, Inc. (Ultra) for the use of the former's DCIM building for a period of five years or until September 1991. Ultra was, however, ejected from the premises on February 12, 1988 by virtue of a court order, for repeated violation of the terms and conditions of the lease contract.

On September 28, 1987, a team of petitioner's inspectors conducted a surprise inspection of the electric meters installed at the DCIM building, witnessed by Ultra's representative, Mr. Willie Abangan. The two meters covered by account numbers 09341-1322-16 and 09341-1812-13, were found to be allegedly tampered with and did not register the actual power consumption in the building. The results of the inspection were reflected in the Service Inspection Reports prepared by the team.

In a letter dated November 25, 1987, petitioner informed TEC of the results of the inspection and demanded from the latter the payment of P7,040,401.01 representing its unregistered consumption from February 10, 1986 until September 28, 1987, as a result of the alleged tampering of the meters. TEC received the letters on January 7, 1988. Since Ultra was in possession of the subject building during the covered period, TEC's Managing Director, Mr. Bobby Tan, referred the demand letter to Ultra which, in turn, informed TEC that its Executive Vice-President had met with petitioner's representative. Ultra further intimated that assuming that there was tampering of the meters, petitioner's assessment was excessive. For failure of TEC to pay the differential billing, petitioner disconnected the electricity supply to the DCIM building on April 29, 1988.

TEC demanded from petitioner the reconnection of electrical service, claiming that it had nothing to do with the alleged tampering but the latter refused to heed the demand. Hence, TEC filed a complaint on May 27, 1988 before the Energy Regulatory Board (ERB) praying that electric power be restored to the DCIM building. The ERB immediately ordered the reconnection of the service but petitioner complied with it only on October 12, 1988 after TEC paid P1,000,000.00, under protest. The complaint before the ERB was later withdrawn as the parties deemed it best to have the issues threshed out in the regular courts. Prior to the reconnection, or on June 7, 1988, petitioner conducted a scheduled inspection of the questioned meters and found them to have been tampered anew.

Meanwhile, on April 25, 1988, petitioner conducted another inspection, this time, in TEC's NS Building. The inspection allegedly revealed that the electric meters were not registering the correct power consumption. Petitioner, thus, sent a letter dated June 18, 1988 demanding payment of P280,813.72 representing the differential billing. TEC denied petitioner's allegations and claim in a letter dated June 29, 1988. Petitioner, thus, sent TEC another letter demanding payment of the aforesaid amount, with a warning that the electric service would be disconnected in case of continued refusal to pay the differential billing. To avert the impending disconnection of electrical service, TEC paid the above amount, under protest.

TEC and TPC filed a complaint for damages against petitioner and Ultra before RTC.

The trial court rendered a Decision in favor of respondents TEC and TPC which the CA affirmed.

ISSUE:

Whether TEC is entitled to moral damages (NO)

RULING:

We, however, deem it proper to delete the award of moral damages. TEC's claim was premised allegedly on the damage to its goodwill and reputation. As a rule, a corporation is not entitled to moral damages because, not being a natural person, it cannot experience physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is when the corporation has a reputation that is debased, resulting in its humiliation in the business realm. But in such a case, it is imperative for the claimant to present proof to justify the award. It is essential to prove the existence of the factual basis of the damage and its causal relation to petitioner's acts. In the present case, the records are bereft of any evidence that the name or reputation of TEC/TPC has been debased as a result of petitioner's acts. Besides, the trial court simply awarded moral damages in the dispositive portion of its decision without stating the basis thereof.

HERMAN C. CRYSTAL, LAMBERTO C. CRYSTAL, ANN GEORGIA C. SOLANTE, and DORIS C. MAGLASANG, as Heirs of Deceased SPOUSES RAYMUNDO I. CRYSTAL and DESAMPARADOS C. CRYSTAL, *Petitioners,* -versus - BANK OF THE PHILIPPINE ISLANDS, *Respondent*
G.R. No. 172428, SECOND DIVISION, NOVEMBER 28, 2O08 TINGA, *J.*

In the more recent cases of ABS-CBN Corp. v. Court of Appeals, et al., and Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM), the Court held that the statements in Manero and Mambulao were mere obiter dicta, implying that the award of moral damages to corporations is not a hard and fast rule. Indeed, while the Court may allow *the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts.*

The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate.

FACTS:

On 28 March 1978, spouses Raymundo and Desamparados Crystal obtained a P300,000.00 loan in behalf of the Cebu Contractors Consortium Co. (CCCC) from the Bank of the Philippine Islands-Butuan branch (BPI-Butuan). The loan was secured by a chattel mortgage on heavy equipment and machinery of CCCC. On the same date, the spouses executed in favor of BPI-Butuan a Continuing Suretyship where they bound themselves as surety of CCCC in the aggregate principal sum of not exceeding P300,000.00. Thereafter, or on 29 March 1979, Raymundo Crystal executed a promissory note[6] for the amount of P300,000.00, also in favor of BPI-Butuan.

Sometime in August 1979, CCCC renewed a previous loan, this time from BPI, Cebu City branch (BPI-Cebu City). The renewal was evidenced by a promissory note, signed by the spouses in their personal capacities and as managing partners of CCCC. The promissory note states that the spouses are jointly and severally liable with CCCC. It appears that before the original loan could be granted, BPI-Cebu City required CCCC to put up a security.

However, CCCC had no real property to offer as security for the loan; hence, the spouses executed a real estate mortgage over their own real property. On 3 October 1977, they executed another real estate mortgage over the same lot in favor of BPI-Cebu City, to secure an additional loan of P20,000.00 of CCCC.

CCCC failed to pay its loans to both BPI-Butuan and BPI-Cebu City when they became due. CCCC, as well as the spouses, failed to pay their obligations despite demands. Thus, BPI resorted to the foreclosure of the chattel mortgage and the real estate mortgage. The foreclosure sale on the chattel mortgage was initially stalled with the issuance of a restraining order against BPI. However, following BPI's compliance with the necessary requisites of extrajudicial foreclosure, the foreclosure sale on the chattel mortgage was consummated on 28 February 1988, with the proceeds amounting to P240,000.00 applied to the loan from BPI-Butuan which had then reached P707,393.90.

BPI filed a complaint for sum of money against CCCC and the spouses before the Regional Trial Court of Butuan City (RTC Butuan), seeking to recover the deficiency of the loan of CCCC and the spouses with BPI-Butuan. The trial court ruled in favor of BPI. Pursuant to the decision, BPI instituted extrajudicial foreclosure of the spouses' mortgaged property.

On the other hand, spouses filed an action for *Injunction With Damages, With A Prayer For A Restraining Order and/ or Writ of Preliminary Injunction*. The spouses claimed that the foreclosure of the real estate mortgages is illegal because BPI should have exhausted CCCC's properties first, stressing that they are mere guarantors of the renewed

The trial court dismissed the spouses' complaint and ordered them to pay moral and exemplary damages and attorney's fees to BPI. Spouses appealed to the CA but was denied.

ISSUE:

Whether BPI is entitled to moral damages (NO)

RULING:

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals found BPI as "being famous and having gained its familiarity and respect not only in the Philippines but also in the whole world because of its good will and good reputation must protect and defend the same against any unwarranted suit such as the case at bench."

In holding that BPI is entitled to moral damages, the Court of Appeals relied on the case of *People v. Manero*, wherein the Court ruled that "it is only when a juridical person has a good reputation that is debased, resulting in social humiliation, that moral damages may be awarded."

We do not agree with the Court of Appeals. A statement similar to that made by the Court in *Manero* can be found in the case of *Mambulao Lumber Co. v. PNB, et al.*, thus:

x x x Obviously, an artificial person like herein appellant corporation cannot experience physical sufferings, mental anguish, fright, serious anxiety, wounded feelings, moral shock or social humiliation which are basis of moral damages. **A corporation may have good reputation which, if besmirched may also be a ground for the award of moral damages**. x x x

Nevertheless, in the more recent cases of *ABS-CBN Corp. v. Court of Appeals, et al.*, and *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*, the Court held that the statements in Manero and Mambulao were mere obiter dicta, implying that the award of moral damages to corporations is not a hard and fast rule. Indeed, while the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury*** suffered and not to impose a penalty on the wrongdoer.

The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff. BPI may have been inconvenienced by the suit, but we do not see how it could have possibly suffered besmirched reputation on account of the single suit alone. Hence, the award of moral damages should be deleted.

2. DOCTRINE OF PIERCING THE CORPORATE VEIL

KUKAN INTERNATIONAL CORPORATION, *Petitioner,* -versus - HON. AMOR REYES, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and ROMEO M. MORALES, doing business under the name and style "RM Morales Trophies and Plaques,", *Respondents*

G.R. No. 182729, FIRST DIVISION, SEPTEMBER 29, 2O10 VELASCO JR., *J.*

The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case.

In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person..

FACTS:

Sometime in March 1998, Kukan, Inc. conducted a bidding for the supply and installation of signages in a building being constructed in Makati City. Morales tendered the winning bid and was awarded the PhP 5 million contract. Some of the items in the project award were later excluded resulting in the corresponding reduction of the contract price to PhP 3,388,502. Despite his compliance with his contractual undertakings, Morales was only paid the amount of PhP 1,976,371.07, leaving a balance of PhP 1,412,130.93, which Kukan, Inc. refused to pay despite demands. Shortchanged, Morales filed a Complaint6 with the RTC against Kukan, Inc. for a sum of money.

RTC rendered a Decision finding for Morales and against Kukan, Inc.

After the above decision became final and executory, Morales moved for and secured a writ of execution against Kukan, Inc. The sheriff then levied upon various personal properties found at what was supposed to be Kukan, Inc.'s office at Unit 2205, 88 Corporate Center, Salcedo Village, Makati City. Alleging that it owned the properties thus levied and that it was a different corporation from Kukan, Inc., Kukan International Corporation (KIC) filed an Affidavit of Third-Party Claim. Notably, KIC was incorporated in August 2000, or shortly after Kukan, Inc. had stopped participating in Civil Case No. 99-93173.

In reaction to the third party claim, Morales interposed an Omnibus Motion. In it, Morales prayed, applying the principle of piercing the veil of corporate fiction.

ISSUE:

Whether the trial and appellate courts correctly applied the principle of piercing the veil of corporate entity––called also as disregarding the fiction of a separate juridical personality of a corporation––to support a conclusion that Kukan, Inc. and KIC are but one and the same corporation with respect to the contract award referred to at the outset. This principle finds its context on the postulate that a corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related. (NO)

RULING:

In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person. The challenge was subsumed in KIC's primary assertion that it was not the same entity as Kukan, Inc. Pertinently, in its Comment and Opposition to Plaintiff's Omnibus Motion dated May 20, 2003, KIC entered its "**special but not voluntary appearance**" alleging therein that it was a different entity and has a separate legal personality from Kukan, Inc. And KIC would consistently reiterate this assertion in all its pleadings, thus effectively resisting all along the RTC's jurisdiction of its person. It cannot be overemphasized that KIC could not file before the RTC a motion to dismiss and its attachments in Civil Case No. 99-93173, precisely because KIC was neither impleaded nor served with summons. Consequently, KIC could only assert and claim through its affidavits, comments, and motions filed by special appearance before the RTC that it is separate and distinct from Kukan, Inc.

Following *La Naval Drug Corporation*, KIC cannot be deemed to have waived its objection to the court's lack of jurisdiction over its person. It would defy logic to say that KIC unequivocally submitted itself to the jurisdiction of the RTC when it strongly asserted that it and Kukan, Inc. are different entities. In the scheme of things obtaining, KIC had no other option but to insist on its separate identity and plead for relief consistent with that position.

The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:
23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x
This is so because the doctrine of piercing the veil of corporate fiction comes to play only <u>during the trial of the case after the court has already acquired jurisdiction over the corporation</u>. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x

The implication of the above comment is twofold: (1) the court must first acquire jurisdiction over the corporation or corporations involved before its or their separate personalities are disregarded; and (2) the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service.

GOLD LINE TOURS, INC, *Petitioner,* -versus - HON. AMOR REYES, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and ROMEO M. MORALES, doing business under the name and style "RM Morales Trophies and Plaques,", *Respondents*
G.R. No. 182729, FIRST DIVISION, SEPTEMBER 29, 2O10 VELASCO JR., *J.*

As we see it, the RTC had sufficient factual basis to find that petitioner and Travel and Tours Advisers, Inc. were one and the same entity, specifically: (a) documents submitted by petitioner in the RTC showing that William Cheng, who claimed to be the operator of Travel and Tours Advisers, Inc., was also *the President/Manager and an incorporator of the petitioner; and (b) Travel and Tours Advisers, Inc. had been known in Sorsogon as Goldline.*

The RTC thus rightly ruled that petitioner might not be shielded from liability under the final judgment through the use of the doctrine of separate corporate identity. Truly, this fiction of law could not be employed to defeat the ends of justice..

FACTS:
On August 2, 1993, Ma. Concepcion Lacsa (Concepcion) and her sister, Miriam Lacsa (Miriam), boarded a Goldline passenger bus owned and operated by Travel &Tours Advisers, Inc. They were enroute from Sorsogon to Cubao, Quezon City. At the time, Concepcion, having just obtained her degree of Bachelor of Science in Nursing was proceeding to Manila to take the nursing licensure board examination. Upon reaching the highway at Barangay San Agustin the Goldline bus, driven by Rene Abania (Abania), collided with a passenger jeepney coming from the opposite direction and driven by Alejandro Belbis. As a result, a metal part of the jeepney was detached and struck Concepcion in the chest, causing her instant death.

On August 23, 1993, Concepcions heirs, represented by Teodoro Lacsa, instituted in the RTC a suit against Travel & Tours Advisers Inc. and Abania to recover damages arising from breach of contract of carriage.

The defendants blamed the death of Concepcion to the recklessness of Bilbes as the driver of the jeepney, and of its operator, Salvador Romano; and that they had consequently brought a third-party complaint against the latter.

Both the RTC and the CA granted the ward for damages in favor of the heirs of Concepcion. Thereafter, the heirs move for the issuance of a writ of execution.

On April 20, 2001, petitioner submitted a so-called verified third party claim, claiming that the tourist bus be returned to petitioner because it was the owner; that petitioner had not been made a party to Civil Case No. 93-5917 and that petitioner was a corporation entirely different from Travel & Tours Advisers, Inc.

Respondents opposed petitioners verified third-party claim and contended that Travel & Tours Advisers, Inc. and petitioner were identical entities and were both operated and managed by the same person, William Cheng; and that petitioner was attempting to defraud its creditors respondents herein hence, the doctrine of piercing the veil of corporate entity was squarely applicable.

The defendants blamed the death of Concepcion to the recklessness of Bilbes as the driver of the jeepney, and of its operator, Salvador Romano; and that they had consequently brought a third-party complaint against the latter.

Both the RTC and the CA granted the ward for damages in favor of the heirs of Concepcion. Thereafter, the heirs move for the issuance of a writ of execution.

On April 20, 2001, petitioner submitted a so-called verified third party claim, claiming that the tourist bus be returned to petitioner because it was the owner; that petitioner had not been made a party to

Civil Case No. 93-5917 and that petitioner was a corporation entirely different from Travel & Tours Advisers, Inc.

The RTC dismissed petitioners verified third-party claim, observing that the identity of Travel & Tours Adivsers, Inc. could not be divorced from that of petitioner considering that Cheng had claimed to be the operator as well as the President/Manager/incorporator of both entities; and that Travel & Tours Advisers, Inc. had been known in Sorsogon as Goldline.

The petitioner filed a petition for certiorari before the CA but it was dismissed.

ISSUE:

Whether CA rightly find and conclude that the RTC did not gravely abuse its discretion in denying petitioners verified third-party claim. (YES)

RULING:

As we see it, the RTC had sufficient factual basis to find that petitioner and Travel and Tours Advisers, Inc. were one and the same entity, specifically: (a) documents submitted by petitioner in the RTC showing that William Cheng, who claimed to be the operator of Travel and Tours Advisers, Inc., was also the President/Manager and an incorporator of the petitioner; and (b) Travel and Tours Advisers, Inc. had been known in Sorsogon as Goldline.

The RTC thus rightly ruled that petitioner might not be shielded from liability under the final judgment through the use of the doctrine of separate corporate identity. Truly, this fiction of law could not be employed to defeat the ends of justice.

But petitioner continues to challenge the RTC orders by insisting that the evidence to establish its identity with Travel and Tours Advisers, Inc. was insufficient.

We cannot agree with petitioner. As already stated, there was sufficient evidence that petitioner and Travel and Tours Advisers, Inc. were one and the same entity. Moreover, we remind that a petition for the writ of certiorari neither deals with errors of judgment nor extends to a mistake in the appreciation of the contending parties evidence or in the evaluation of their relative weight.

PACIFIC REHOUSE CORPORATION, *Petitioner*, -versus - COURT OF APPEALS and EXPORT AND INDUSTRY BANK, INC., *Respondents*

G.R. No. 199687, FIRST DIVISION, MARCH 24, 2014 REYES, *J.*

The Court has laid down a three-pronged control test to establish when the alter ego doctrine should be operative: (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 plaintiff's legal right; and (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of. The absence of any one of these elements prevents 'piercing the *corporate veil' in applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. Hence, all three elements should concur for the alter ego doctrine to be applicable.*

There was nothing on record demonstrative of Export Bank's wrongful intent in setting up a subsidiary, E-Securities. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. To justify treating the sole stockholder or holding company as responsible, it is not enough that the subsidiary is so organized and controlled as to make it "merely an instrumentality, conduit or adjunct" of its stockholders. It must further appear that to recognize their separate entities would aid in the consummation of a wrong.

FACTS:

On the scales of justice precariously lie the right of a prevailing party to his victor's cup, no more, no less; and the right of a separate entity from being dragged by the ball and chain of the vanquished party.

This case began when Pacific Rehouse Corporation filed a case before the RTC Makati against EIB Securities Inc., for the unauthorized sale of 32,180,000 DMCI shares of private respondents Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation, and East Asia Oil Company, Inc. In its decision, RTC ordered E-Securities Inc. to return the plaintiffs' [private respondents herein] 32,180,000 DMCI shares, as of judicial demand. On the other hand, plaintiffs are directed to reimburse the defendant the amount of P 10,942,200.00, representing the buyback price of the 60,790,000 KPP shares of stocks at P 0.18 per share. The Resolution was ultimately affirmed by the Supreme Court and attained finality.

When the Writ of Execution was returned unsatisfied, private respondents moved for the issuance of an alias writ of execution to hold Export and Industry Bank, Inc. liable for the judgment obligation as E-Securities is "a wholly-owned controlled and dominated subsidiary of Export and Industry Bank, Inc., and thus, a mere alter ego and business conduit of the latter. E-Securities opposed the motion, arguing that it has a corporate personality that is separate and distinct from petitioner. Private respondents filed their Reply attaching for the first time a sworn statement executed by Atty. Ramon F. Aviado, Jr., the former corporate secretary of petitioner and E-Securities, to support their alter ego theory; and Ex-Parte Manifestation alleging service of copies of the Writ of Execution and Motion for Alias Writ of Execution on petitioner. RTC concluded that E-Securities is a mere business conduit or alter ego of petitioner, the dominant parent corporation, which justifies piercing of the veil of corporate fiction. The trial court ordered an Alias Writ of Execution to be issued directing defendant EIB Securities, Inc., and/or Export and Industry Bank, Inc., to fully comply therewith. With this development, petitioner filed an Omnibus Motion (Ex Abundanti Cautela) questioning the alias writ because it was not impleaded as a party to the case.

The RTC denied the motion and directed the garnishment of P1, 465,799,000.00, the total amount of the 32,180,000 DMCI shares at P45.55 per share, against petitioner and/or E-Securities. The Regional Trial Court (RTC) ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon EIB Securities, Inc. (E-Securities) has bestowed jurisdiction over both the parent and wholly-owned subsidiary. The RTC cited the cases of Sps. Violago v. BA Finance Corp. et al.4 and

Arcilla v. Court of Appeals where the doctrine of piercing the veil of corporate fiction was applied notwithstanding that the affected corporation was not brought to the court as a party.

Export and Industry Bank, Inc. (Export Bank) filed before the CA a petition for certiorari with prayer for the issuance of a TRO seeking the nullification of the RTC Order for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction. In its petition, Export Bank made reference to several rulings of the Court upholding the separate and distinct personality of a corporation. In a Resolution dated September 2, 2011, the CA issued a 60-day TRO enjoining the execution of the Orders of the RTC dated July 29, 2011 and August 26, 2011, which granted the issuance of an alias writ of execution and ordered the garnishment of the properties of E-Securities and/or Export Bank. The CA also set a hearing to determine the necessity of issuing a writ of injunction.

Pacific Rehouse Corporation (Pacific Rehouse), Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc. (petitioners) filed their Comment to Export Bank's petition and proffered that the cases mentioned by Export Bank are inapplicable owing to their clearly different factual antecedents. The petitioners alleged that unlike the other cases, there are circumstances peculiar only to E-Securities and Export Bank such as: 499,995 out of 500,000 outstanding shares of stocks of E-Securities are owned by Export Bank; Export Bank had actual knowledge of the subject matter of litigation as the lawyers who represented E-Securities are also lawyers of Export Bank. As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied. The CA granted the WPI. One of the petitioners herein, Pacific Rehouse filed before the Court a petition for certiorari under Rule 65, docketed as G.R. No. 199687, demonstrating its objection to the Resolutions.

CA ruled on the merit of the case and granted the petition of Export Bank and nullified the Alias Writ of Execution issued by the RTC of Makati. The CA explained that the alter ego theory cannot be sustained because ownership of a subsidiary by the parent company is not enough justification to pierce the veil of corporate fiction

ISSUES:

(1) Whether Export Bank may be held liable for a final and executory judgment against e-securities in an alias writ of execution by piercing its veil of corporate fiction. (NO)
(2) Whether the alter-ago doctrine is applicable. (NO)

RULING:

(1)
The Court already ruled in Kukan International Corporation v. Reyes that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit: "The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the

corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process."

From the preceding, it is therefore correct to say that the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no business in piercing its veil of corporate fiction because such action offends the corporation's right to due process. "Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, 'any judgment of the court which has no jurisdiction over the person of the defendant is null and void. "The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process." As Export Bank was neither served with summons, nor has it voluntarily appeared before the court, the judgment sought to be enforced against E-Securities cannot be made against its parent company, Export Bank. In dispensing with the requirement of service of summons or voluntary appearance of Export Bank, the RTC applied the cases of Violago and Arcilla. The RTC concluded that in these cases, the Court decided that the doctrine of piercing the veil of corporate personality can be applied even when one of the affected parties has not been brought to the Court as a party. A closer perusal on the rulings of this Court in Violago and Arcilla, however, reveals that the RTC misinterpreted the doctrines on these cases. The disparity between the instant case and those of Violago and Arcilla is that in said cases, although the corporations were not impleaded as defendant, the persons made liable in the end were already parties thereto since the inception of the main case. Consequently, it cannot be said that the Court had, in the absence of fraud and/or bad faith, applied the doctrine of piercing the veil of corporate fiction to make a non-party liable. In short, liabilities attached only to those who are parties.

(2)
"Where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere instrumentality or adjunct of the other, the fiction of the corporate entity of the "instrumentality" may be disregarded. The control necessary to invoke the rule is not majority or even completes stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. It must be kept in mind that the control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made." The Court has laid down a three-pronged control test to establish when the alter ego doctrine should be operative: (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 plaintiff's legal right; and (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of. The absence of any one of these elements prevents 'piercing the corporate veil' in applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. Hence, all three elements should concur for the alter ego doctrine to be applicable.

Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case." Moreover, there was nothing on record demonstrative of Export Bank's wrongful intent in setting up a subsidiary, E-Securities. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. To justify treating the sole stockholder or holding company as responsible, it is not enough that the subsidiary is so organized and controlled as to make it "merely an instrumentality, conduit or adjunct" of its stockholders. It must further appear that to recognize their separate entities would aid in the consummation of a wrong.

As established in the main case and reiterated by the CA, the subject 32,180,000 DMCI shares which E-Securities is obliged to return to the petitioners were originally bought at an average price of P0.38 per share and were sold for an average price of P0.24 per share. The proceeds were then used to buy back 61,100,000 KPP shares earlier sold by E-Securities. Quite unexpectedly however, the total amount of these DMCI shares ballooned to P1,465,799,000.00.74 It must be taken into account that this unexpected turnabout did not inure to the benefit of E-Securities, much less Export Bank. Furthermore, ownership by Export Bank of a great majority or all of stocks of E-Securities and the existence of interlocking directorates may serve as badges of control, but ownership of another corporation, per se, without proof of actuality of the other conditions are insufficient to establish an alter ego relationship or connection between the two corporations, which will justify the setting aside of the cover of corporate fiction. The Court has declared 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." The Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."

ERIC GODFREY STANLEY LIVESEY, *Petitioner,* -versus - BINSWANGER PHILIPPINES, INC. and KEITH ELLIOT, *Respondents*

G.R. No. 177493, SECOND DIVISION, MARCH 19, 2014 BRION, *J.*

Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

FACTS:

Petitioner Eric Godfrey Stanley Livesey filed a complaint for illegal dismissal with money claims4 against CBB Philippines Strategic Property Services, Inc. (CBB) and Paul Dwyer.
Labor arbiter Reyno found that Livesey had been illegally dismissed.

Thereafter, the parties entered into a compromise agreement which LA Reyno approved in an order dated November 6, 2002.8 Under the agreement, Livesey was to receive US$31,000.00 in full satisfaction of LA Reyno's decision, broken down into US$13,000.00 to be paid by CBB to Livesey or his authorized representative upon the signing of the agreement; US$9,000.00 on or before June 30, 2003; and US$9,000.00 on or before September 30, 2003. Further, the agreement provided that unless and until the agreement is fully satisfied, CBB shall not: (1) sell, alienate, or otherwise dispose of all or substantially all of its assets or business; (2) suspend, discontinue, or cease its entire, or a substantial portion of its business operations; (3) substantially change the nature of its business; and (4) declare bankruptcy or insolvency.

CBB paid Livesey the initial amount of US$13,000.00, but not the next two installments as the company ceased operations. In reaction, Livesey moved for the issuance of a writ of execution. LA Eduardo G. Magno granted the writ,9 but it was not enforced. Livesey then filed a motion for the issuance of an alias writ of execution,10 alleging that in the process of serving respondents the writ, he learned "that respondents, in a clear and willful attempt to avoid their liabilities to complainant x x x have organized another corporation, [Binswanger] Philippines, Inc."11 He claimed that there was evidence showing that CBB and Binswanger Philippines, Inc. (Binswanger) are one and the same corporation, pointing out that CBB stands for Chesterton Blumenauer Binswanger. Invoking the doctrine of piercing the veil of corporate fiction, Livesey prayed that an alias writ of execution be issued against respondents Binswanger and Keith Elliot, CBB's former President, and now Binswanger's President and Chief Executive Officer (CEO).

LA Catalino R. Laderas denied Livesey's motion for an alias writ of execution, holding that the doctrine of piercing the corporate veil was inapplicable in the case. He explained that the stockholders of the two corporations were not the same. NLRC found them solidarily liable. CA disagreed with the NLRC finding that the respondents are jointly and severally liable with CBB in the case. It emphasized that the mere fact that Binswanger and CBB have the same President is not in itself sufficient to pierce the veil of corporate fiction of the two entities

ISSUE:

Whether doctrine of piercing the veil of corporate fiction is applicable (YES)

RULING:

It has long been settled that the law vests a corporation with a personality distinct and separate from its stockholders or members. In the same vein, a corporation, by legal fiction and convenience, is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it. Nonetheless, the shield is not at all times impenetrable and cannot be extended to a point beyond its reason and policy. Circumstances might deny a claim for corporate personality, under the "doctrine of piercing the veil of corporate fiction."

Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

Livesey's evidence, whose existence the respondents never denied, converged to show this continuity of business operations from CBB to Binswanger. It was not just coincidence that Binswanger is engaged in the same line of business CBB embarked on: (1) it even holds office in the very same building and on the very same floor where CBB once stood; (2) CBB's key officers, Elliot, no less, and Catral moved over to Binswanger, performing the tasks they were doing at CBB; (3) notwithstanding CBB's closure, Binswanger's Web Editor (Young), in an e-mail correspondence, supplied the information that Binswanger is "now known" as either CBB (Chesterton Blumenauer Binswanger or as Chesterton Petty, Ltd., in the Philippines; (4) the use of Binswanger of CBB's paraphernalia (receiving stamp) in connection with a labor case where Binswanger was summoned by the authorities, although Elliot claimed that he bought the item with his own money; and (5) Binswanger's takeover of CBB's project with the PNB.

While the ostensible reason for Binswanger's establishment is to continue CBB's business operations in the Philippines, which by itself is not illegal, the close proximity between CBB's disestablishment and Binswanger's coming into existence points to an unstated but urgent consideration which, as we earlier noted, was to evade CBB's unfulfilled financial obligation to Livesey under the compromise agreement.

This underhanded objective, it must be stressed, can only be attributed to Elliot as it was apparent that Binswanger's stockholders had nothing to do with Binswanger's operations as noted by the NLRC and which the respondents did not deny. Elliot was well aware of the compromise agreement between Livesey and CBB, as he "agreed and accepted" the terms of the agreement49 for CBB. He was also well aware that the last two installments of CBB's obligation to Livesey were due on June 30, 2003 and September 30, 2003. These installments were not met and the reason is that after the alleged sale of the majority of CBB's shares of stock, it closed down.

With CBB's closure, Livesey asked why people would buy into a corporation and simply close it down immediately thereafter? The answer

— to pave the way for CBB's reappearance as Binswanger. Elliot's "guiding hand," as Livesey puts it, is very much evident in CBB's demise and Binswanger's creation. Elliot knew that CBB had not fully complied with its financial obligation under the compromise agreement. He made sure that it would not be fulfilled when he allowed CBB's closure, despite the condition in the agreement that "unless and until the Compromise Amount has been fully settled and paid by the Company in favor of Mr.

Livesey, the Company shall not x x x suspend, discontinue, or cease its entire or a substantial portion of its business operations."

What happened to CBB, we believe, supports Livesey's assertion that De Guzman, CBB's former Associate Director, informed him that at one time Elliot told her of CBB 's plan to close the corporation and organize another for the purpose of evading CBB 's liabilities to Livesey and its other financial liabilities.52 This wrongful intent we cannot and must not condone, for it will give a premium to an iniquitous business strategy where a corporation is formed or used for a non-legitimate purpose, such as to evade a just and due obligation.53 We, therefore, find Elliot as liable as Binswanger for CBB 's unfulfilled obligation to Livesey.

PRINCE TRANSPORT, Inc. and Mr. RENATO CLAROS, *Petitioners*, -versus - DIOSDADO GARCIA et al., *Respondents*
G.R. No. 167291, SECOND DIVISION, JANUARY 12, 2011 PERALTA, *J.*

Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

FACTS:

The present petition arose from various complaints filed by herein respondents charging petitioners with illegal dismissal, unfair labor practice and illegal deductions and praying for the award of premium pay for holiday and rest day, holiday pay, service leave pay, 13th month pay, moral and exemplary damages and attorney's fees.

Respondents alleged in their respective position papers and other related pleadings that they were employees of Prince Transport, Inc. (PTI), a company engaged in the business of transporting passengers by land; respondents were hired either as drivers, conductors, mechanics or inspectors, except for respondent Diosdado Garcia (Garcia), who was assigned as Operations Manager; in addition to their regular monthly income, respondents also received commissions equivalent to 8 to 10% of their wages; sometime in October 1997, the said commissions were reduced to 7 to 9%; this led respondents and other employees of PTI to hold a series of meetings to discuss the protection of their interests as employees; these meetings led petitioner Renato Claros, who is the president of PTI, to suspect that respondents are about to form a union; he made known to Garcia his objection to the formation of a union; in December 1997, PTI employees requested for a cash advance, but the same was denied by management which resulted in demoralization on the employees' ranks; later, PTI acceded to the request of some, but not all, of the employees; the foregoing circumstances led respondents to form a union for their mutual aid and protection; in order to block the continued formation of the union, PTI caused the transfer of all union members and sympathizers to one of its sub-companies, Lubas Transport (Lubas); despite such transfer, the schedule of drivers and conductors, as well as their company identification cards, were issued by PTI; the daily time records, tickets and reports of the respondents were also filed at the PTI office; and, all claims for salaries were transacted at the same office; later, the business of Lubas deteriorated because of the refusal of PTI to maintain and repair the units being used therein, which resulted in the virtual stoppage of its operations and respondents' loss of employment.

The Labor Arbiter ruled that petitioners are not guilty of unfair labor practice in the absence of evidence to show that they violated respondents' right to self-organization. The Labor Arbiter also held that Lubas is the respondents' employer and that it (Lubas) is an entity which is separate, distinct and independent from PTI.

CA rendered the herein assailed Decision which granted respondents' petition. The CA ruled that petitioners are guilty of unfair labor practice; that Lubas is a mere instrumentality, agent conduit or adjunct of PTI; and that petitioners' act of transferring respondents' employment to Lubas is indicative of their intent to frustrate the efforts of respondents to organize themselves into a union.

Petitioners contend that the CA erred in applying the doctrine of piercing the corporate veil with respect to Lubas, because the said doctrine is applicable only to corporations and Lubas is not a corporation but a single proprietorship; that Lubas had been found by the Labor Arbiter and the NLRC to have a personality which is separate and distinct from that of PTI; that PTI had no hand in the management and operation as well as control and supervision of the employees of Lubas.

ISSUE:

Whether doctrine of piercing the veil of corporate fiction is applicable (YES)

RULING:

The Court agrees with the CA that Lubas is a mere agent, conduit or adjunct of PTI. A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.

Thus, the Court agrees with the observations of the CA, to wit:
As correctly pointed out by petitioners, if Lubas were truly a separate entity, how come that it was Prince Transport who made the decision to transfer its employees to the former? Besides, Prince Transport never regarded Lubas Transport as a separate entity. In the aforesaid letter, it referred to said entity as "Lubas operations." Moreover, in said letter, it did not transfer the employees; it "assigned" them. Lastly, the existing funds and 201 file of the employees were turned over not to a new company but a "new management."

The Court also agrees with respondents that if Lubas is indeed an entity separate and independent from PTI why is it that the latter decides which employees shall work in the former?

What is telling is the fact that in a memorandum issued by PTI, dated January 22, 1998, petitioner company admitted that Lubas is one of its sub-companies. In addition, PTI, in its letters to its employees who were transferred to Lubas, referred to the latter as its "New City Operations Bus."

Moreover, petitioners failed to refute the contention of respondents that despite the latter's transfer to Lubas of their daily time records, reports, daily income remittances of conductors, schedule of drivers and conductors were all made, performed, filed and kept at the office of PTI. In fact, respondents' identification cards bear the name of PTI.

It may not be amiss to point out at this juncture that in two separate illegal dismissal cases involving different groups of employees transferred by PTI to other companies, the Labor Arbiter handling the cases found that these companies and PTI are one and the same entity; thus, making them solidarily liable for the payment of backwages and other money claims awarded to the complainants therein.

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus - MEGA PACIFIC Esolutions, INC., WILLY U. YU, BONNIE S. YU, ENRIQUE T. TANSIPEK, ROSITA Y. TANSIPEK, PEDRO O. TAN, JOHNSON W. FONG, BERNARD I. FONG, and *LAURIANO A. BARRIOS, *Respondents*
G.R. No. 184666, FIRST DIVISION, June 27, 2016 SERENO, *CJ.*

Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends. For reasons discussed below, We see red flags of fraudulent schemes in public procurement, all of which were established in the 2004 Decision, the totality of which strongly indicate that MPEI was a sham corporation formed merely for the purpose of perpetrating a fraudulent scheme.

The red flags are as follows: (1) overly narrow specifications; (2) unjustified recommendations and unjustified winning bidders; (3) failure to meet the terms of the contract; and (4) shell or fictitious company.

FACTS:

On the 2004 elections, the COMELEC again attempted to implement the automated election system. For this purpose, it invited bidders to apply for the procurement of supplies, equipment, and services. Respondent MPEI, as lead company, purportedly formed a joint venture - known as the Mega Pacific Consortium (MPC) - together with We Solv, SK C & C, ePLDT, Election.com and Oracle. Subsequently, MPEI, on behalf of MPC, submitted its bid proposal to COMELEC.

The COMELEC evaluated various bid offers and subsequently found MPC and another company eligible to participate in the next phase of the bidding process. The two companies were referred to the Department of Science and Technology (DOST) for technical evaluation. After due assessment, the Bids and Awards Committee (BAC) recommended that the project be awarded to MPC. The COMELEC favorably acted on the recommendation and issued Resolution No. 6074, which awarded the automation project to MPC.

Despite the award to MPC, the COMELEC and MPEI executed on 2 June 2003 the Automated Counting and Canvassing Project Contract (automation contract) for the aggregate amount of ₱l,248,949,088. MPEI agreed to supply and deliver 1,991 units of ACMs and such other equipment and materials necessary for the computerized electoral system in the 2004 elections. Pursuant to the automation contract, MPEI delivered 1,991 ACMs to the COMELEC. The latter, for its part, made partial payments to MPEI in the aggregate amount of ₱l.05 billion.

The full implementation of the automation contract was rendered impossible by the fact that, after a painstaking legal battle, this Court in its 2004 Decision declared the contract null and void.[6] We held that the COMELEC committed a clear violation of law and jurisprudence, as well as a reckless disregard of its own bidding rules and procedure. In addition, the COMELEC entered into the contract with inexplicable haste, and without adequately checking and observing mandatory financial, technical, and legal requirements

Upon the finality of the declaration of nullity of the automation contract, respondent MPEI filed a Complaint for Damages before the RTC Makati, arguing that, notwithstanding the nullification of the automation contract, the COMELEC was still bound to pay the amount of ₱200,165,681.89. This amount represented the difference between the value of the ACMs and the support services delivered on one hand, and on the other, the payment previously made by the COMELEC.

Petitioner filed its Answer with Counterclaim and argued that respondent MPEI could no longer recover the unpaid balance from the void automation contract, since the payments made were illegal disbursements of public funds. It contended that a null and void contract vests no rights and creates no obligations, and thus produces no legal effect at all. Petitioner further posited that respondent MPEI could not hinge its claim upon the principles of unjust enrichment and quasi-contract, because such presume that the acts by which the authors thereof become obligated to each other are lawful, which was not the case herein.

By way of a counterclaim, petitioner demanded from respondents the return of the payments made pursuant to the automation contract. It argued that individual respondents, being the incorporators of MPEI, likewise ought to be impleaded and held accountable for MPEI's liabilities. The creation of MPC was, after all, merely an ingenious scheme to feign eligibility to bid.

Pursuant to Section l(d) of Rule 57 of the Rules of Court, petitioner prayed for the issuance of a writ of preliminary attachment against the properties of MPEI and individual respondents. The application was grounded upon the fraudulent misrepresentation of respondents as to their eligibility to participate in the bidding for the COMELEC automation project and the failure of the ACMs to comply with mandatory technical requirements.

Subsequently, the trial court denied the prayer for the issuance of a writ of preliminary attachment, ruling that there was an absence of factual allegations as to how the fraud was actually committed.

CA reversed and set aside the trial court's decision.

Individual respondents argue that since they were not parties to the 2004 case, any factual findings or conclusions therein should not be binding upon them. Since they were strangers to that case, they are not bound by the judgment rendered by this Court. They claim that their fundamental right to due process would be violated if their properties were to be attached for a purported corporate debt on the basis of a court ruling in a case in which they were not given the right or opportunity to be heard.

ISSUE:

Whether issuance of a writ of preliminary attachment over the properties of the individual respondents is proper (YES)

RULING:

The Application of the piercing doctrine justifies the issuance of a writ of preliminary attachment over the properties of the individual respondents**.**

In the first place, it could not be reasonably expected that individual respondents would be impleaded in the 2004 case. As admitted by respondents, the issues resolved in the 2004 Decision were limited to the following: (1) whether to declare Resolution No. 6074 of the COMELEC null and void; (2) whether to enjoin the implementation of any further contract that may have been entered into by COMELEC with MPC or MPEI; and (3) whether to compel COMELEC to conduct a rebidding of the project. To implead individual respondents then was improper, considering that the automation contract was entered into by respondent MPEI. This Court even acknowledged this fact by directing that the liabilities of persons responsible for the nullity of the contract be determined in another appropriate proceeding and by directing the OSG to undertake measures to protect the interests of the government.

At any rate, individual respondents have been fully afforded the right to due process by being impleaded and heard in the subsequent proceedings before the courts *a quo*. Finally, they cannot argue violation of due process, as respondent MPEI, of which they are incorporators/stockholders, remains vulnerable to the piercing of its corporate veil.

A. There are red flags indicating thatMPEI was used to perpetrate the fraud against petitioner, thus allowing the piercing of its corporate veil.

Petitioner seeks the issuance of a writ of preliminary attachment over the personal assets of the individual respondents, notwithstanding the doctrine of separate juridical personality. It invokes the use of the doctrine of piercing the corporate veil, to which the canon of separate juridical personality is vulnerable, as a way to reach the personal properties of the individual respondents. Petitioner paints a picture of a sham corporation set up by all the individual respondents for the purpose of securing the automation contract.

We agree with petitioner.

Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends. For reasons discussed below, We see red flags of fraudulent schemes in public procurement, all of which were established in the 2004 Decision, the totality of which strongly indicate that MPEI was a sham corporation formed *merely for the purpose of perpetrating a fraudulent scheme.*

The red flags are as follows: (1) overly narrow specifications; (2) unjustified recommendations and unjustified winning bidders; (3) failure to meet the terms of the contract; and (4) shell or fictitious company.

The Handbook regards a **shell or fictitious company** as a "serious red flag," a concept that it elaborates upon:
Fictitious companies are by definition **fraudulent** and may also serve as fronts for government officials. The typical scheme involves corrupt government officials creating a fictitious company that will serve as a "vehicle" to secure contract awards. Often, the fictitious-or ghost-company will subcontract work to lower cost and sometimes unqualified firms. The fictitious company may also utilize designated losers as subcontractors to deliver the work, thus indicating collusion.
Shell companies have no significant assets, staff or operational capacity. They pose a **serious red flag**as a bidder on public contracts, because they often hide the interests of project or government officials, concealing a conflict of interest and opportunities for money laundering. **Also, by definition, they have no experience.**

MPEI qualifies as a shell or fictitious company. It was nonexistent at the time of the invitation to bid; to be precise, it was incorporated only 11 days before the bidding. It was a newly formed corporation and, as such, had no track record to speak of.

Further, MPEI misrepresented itself in the bidding process as "lead company" of the supposed joint venture. The misrepresentation appears to have been an attempt to justify its lack of experience. As a new company, it was not eligible to participate as a bidder. It could do so only by pretending that it was acting as an agent of the putative consortium.

The timing of the incorporation of MPEI is particularly noteworthy. Its close nexus to the date of the invitation to bid and the date of the bidding (11 days) provides a strong indicium of the intent to use the corporate vehicle for fraudulent purposes. This proximity unmistakably indicates that the automation contract served as motivation for the formation of MPEI: a corporation had to be organized so it could participate in the bidding by claiming to be an agent of a pretended joint venture.

Respondent MPEI was formed to perpetrate the fraud against petitioner.
The totality of the red flags found in this case leads Us to the inevitable conclusion that MPEI was nothing but a sham corporation formed for the purpose of defrauding petitioner. Its ultimate objective was to secure the ₱1,248,949,088 automation contract. The scheme was to put up a corporation that would participate in the bid and enter into a contract with the COMELEC, even if the former was not qualified or authorized to do so.

Without the incorporation of MPEI, the defraudation of the government would not have been possible. The formation of MPEI paved the way for its participation in the bid, through its claim that it was an agent of a supposed joint venture, its misrepresentations to secure the automation contract, its misrepresentation at the time of the execution of the contract, its delivery of the defective ACMs, and ultimately its acceptance of the benefits under the automation contract.
The foregoing considered, veil-piercing is justified in this case.

We shall next consider the question of whose assets shall be reached by the application of the piercing doctrine.

B. Because all the individual respondents actively participated in the perpetration of the fraud against petitioner, their personal assets may be subject to a writ of preliminary attachment by piercing the corporate veil.

Contrary to respondent Willy's claims, his participation in the fraud is clearly established by his unequivocal agreement to the execution of the automation contract with the COMELEC, and his signature that appears on the voided contract. As far back as in the 2004 Decision, his participation as a signatory to the automation contract was already established:

The foregoing argument is unpersuasive. *First,* the contract being referred to, entitled "The Automated Counting and Canvassing Project Contract,'' is between Comelec and MPEI, not the alleged consortium, MPC. To repeat, it is *MPEI* -- not MPC -- that is a party to the Contract. *Nowhere in that Contract is there any mention of a consortium or joint venture, of members thereof,much less of joint and several liability.* Supposedly executed sometime in May 2003, the Contract bears a notarization date of June 30, 2003, **and contains the signature of Willy U. Yu signing as president of MPEI (not for and on behalf of MPC), along with that of the Comclec chair.** It provides in Section 3.2 that MPEI (not MPC) is to supply the Equipment and perform the Services under the Contract, in accordance with the appendices thereof; nothing whatsoever is said about any consortium or joint venture or partnership. x x x (Emphasis supplied)

That his signature appears on the automation contract means that he agreed and acceded to its terms. His participation in the fraud involves his signing and executing the voided contract.

The execution of the automation contract with a non-eligible entity and the subsequent award of the contract despite the failure to meet the mandatory requirements were "badges of fraud" in the procurement process that should have been recognized by the CA to justify the issuance of the writ of preliminary attachment against the properties of respondent Willy.

With respect to the other individual respondents, petitioner, in its Answer with Counterclaim, alleged:

30. Also, inasmuch as MPEI is in truth a mere shell corporation with no real assets in its name, incorporated merely to feign eligibility for the bidding of the automated contract when it in fact had none, to the great prejudice of the Republic, ***plaintiff's individual incorporators should likewise be made liable together with MPEI*** *for the automated contract amount paid to and received by the latter.* The following circumstances altogether manifest that the individual incorporators merely cloaked themselves with the veil of corporate fiction to perpetrate a fraud and to eschew liability therefor, thus:

x x x x
f. From the time it was incorporated until today, MPEI has not complied with the reportorial requirements of the Securities and Exchange Commission;

g. **Individual incorporators, acting fraudulently through MPEI, and in violation of the bidding rules, then <u>subcontracted</u> the automation contract to four (4) other corporations,** namely: WeSolve Corporation, SK C&C, ePLDT and election.com, to comply with the capital requirements,

requisite five (5)-year corporate standing and the technical qualifications of the Request for Proposal;
x x x x

In response to petitioner's allegations, respondents Willy and Bonnie stated in their Reply and Answer (Re: Answer with Counterclaim dated 28 June 2004):

3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.

Respondents Johnson's and Bernard's denials were made in paragraphs 2.17 and 3.3 of their Answer with Counterclaim to the Republic's Counterclaim, to wit:

2.17 The erroneous conclusion of fact and law in paragraph 30 (f) and (g) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiff's dealings with the Republic.

3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the automated counting machines and its peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.

As regards Enrique and Rosita, the relevant paragraphs in the Answer with Counterclaim to the Republic's Counterclaim are quoted below:

2.17. The erroneous conclusion of fact and law in paragraph 30 (F) and (G) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiffs dealings with the Republic.

3.3. As **far as the plaintiff and herein answering defendants-in-counterclaim are concerned, they dealt with the Commission on Elections with full transparency and in utmost good faith.** All documents in support of its eligibility to bid for the supply of the automated counting machines and its peripheral services were submitted to the Commission on Elections for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.

Pedro and Laureano offer a similar defense in paragraph 3.3 of their Reply and Answer with Counterclaim to the Republic's Counterclaim [126] dated 28 June 2004, which reads:

3.3. As far as plaintiff MPEI and defendants-in-counterclaim are concerned, **they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.

It can be seen from the above-quoted paragraphs that the individual respondents never denied their participation in the questioned transactions of MPEI, merely raising the defense of good faith and shifting the blame to the COMELEC. The individual respondents have, in effect, admitted that they had knowledge of and participation in the fraudulent subcontracting of the automation contract to the four corporations.

It bears stressing that the remaining individual respondents, together with respondent Willy, incorporated MPEI. As incorporators, they are expected to be involved in the management of the corporation and they are charged with the duty of care. This is one of the reasons for the requirement of ownership of at least one share of stock by an incorporator:

The reason for this, as explained by the lawmakers, is to avoid the confusion and/or ambiguities arising in a situation under the old corporation law where there exists one set of incorporators **who are not even shareholders and another set of directors/incorporators who must all be shareholders of the corporation.** The people who deal with said corporation at such an early stage are confused as to who are the persons or group really authorized to act in behalf of the corporation. (Proceedings of the Batasan Pambansa on the Proposed Corporation Code). **Another reason may be anchored on the presumption that when an incorporator has pecuniary interest in the corporation, no matter how minimal, he will be more involved in the management of corporate affairs and to a greater degree, be concerned with the welfare of the corporation.** [128]
As incorporators and businessmen about to embark on a new business venture involving a sizeable capital (₱300 million), the remaining individual respondents should have known of Willy's scheme to perpetrate the fraud against petitioner, especially because the objective was a billion peso automation contract. Still, they proceeded with the illicit business venture.

It is clear to this Court that inequity would result if we do not attach personal liability to all the individual respondents.

ERSON ANG LEE DOING BUSINESS as "SUPER LAMINATION SERVICES," ***Petitioner,*** **-versus- SAMAHANG MANGGAGAWA NG SUPER LAMINATION (SMSLS-NAFLU-KMU),** ***Respondents***
G.R. No. 193816, FIRST DIVISION, November 21, 2016 SERENO, *CJ.*

Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

FACTS:

On 7 March 2008, Union A filed a Petition for Certification Election to represent all the rank-and-file employees of Super Lamination.

Notably, on the same date, Express Lamination Workers' Union (Union B) also filed a Petition for Certification Election to represent all the rank-and-file employees of Express Lamination.

Also on the same date, the Samahan ng mga Manggagawa ng Express Coat Enterprises, Inc. (Union C) filed a Petition for Certification Election to represent the rank-and-file employees of Express Coat.

Super Lamination, Express Lamination, and Express Coat, all represented by one counsel, separately claimed in their Comments and Motions to Dismiss that the petitions must be dismissed on the same ground - lack of employer-employee relationship between these establishments and the bargaining units that Unions A, B, and C seek to represent as well as these unions' respective members. Super Lamination, in its Motion, posited that a majority of the persons who were enumerated in the list of members and officers of Union A were not its employees, but were employed by either Express Lamination or Express Coat. Interestingly, both Express Lamination and Express Coat, in turn, maintained the same argument - that a majority of those who had assented to the Petition for Certification Election were not employees of either company, but of one of the two other companies involved.

All three Petitions for Certification Election of the Unions were denied. On 21 May 2008, an Order was issued by DOLE National Capital Region (NCR) Med-Arbiter Michael Angelo Parado denying the respective petitions of Unions B and C on the ground that there was no existing employer-employee relationship between the members of the unions and the companies concerned. On 23 May 2008, DOLE NCR Med-Arbiter Alma Magdaraog-Alba also denied the petition of respondent Union A on the same ground.

The three unions filed their respective appeals before the Office of the DOLE Secretary, which consolidated the appeal because the involved companies alternately referred to one another as the employer of the members of the bargaining units sought to be represented.15 The unions argued that their petitions should have been allowed considering that the companies involved were unorganized, and that the employers had no concomitant right to oppose the petitions. They also claimed that while the questioned employees might have been assigned to perform work at the other companies, they were all under one management's direct control and supervision.

DOLE found that Super Lamination, Express Lamination, and Express Coat were sister companies that had a common human resource department responsible for hiring and disciplining the employees of the three companies. The same department was found to have also given them daily instructions on how to go about their work and where to report for work. It also found that the three companies involved constantly rotated their workers, and that the latter's identification cards had only one signatory.

To DOLE, these circumstances showed that the companies were engaged in a work-pooling scheme, in light of which they might be considered as one and the same entity for the purpose of determining the appropriate bargaining unit in a certification election.

CA affirmed.

ISSUE:

Whether application of the doctrine of piercing the corporate veil is warranted (YES)

RULING:

Petitioner argues that separate corporations cannot be treated as a single bargaining unit even if their businesses are related, as these companies are indubitably distinct entities with separate juridical personalities. Hence, the employees of one corporation cannot be allowed to vote in the certification election of another corporation, lest the abovementioned rule be violated.

Petitioner's argument, while correct, is a general rule. This Court has time and again disregarded separate juridical personalities under the doctrine of piercing the corporate veil. It has done so in cases where a separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, among other grounds. In any of these situations, the law will regard it as an association of persons or, in case of two corporations, merge them into one.

A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same.

This formulation has been applied by this Court to cases in which the laborer has been put in a disadvantageous position as a result of the separate juridical personalities of the employers involved. Pursuant to veil-piercing, we have held two corporations jointly and severally liable for an employee's back wages. We also considered a corporation and its separately-incorporated branches as one and the same for purposes of finding the corporation guilty of illegal dismissal. These rulings were made pursuant to the fundamental doctrine that the corporate fiction should not be used as a subterfuge to commit injustice and circumvent labor laws.

Here, a certification election was ordered to be held for all the rank-and- file employees of Super Lamination, Express Lamination, and Express Coat. The three companies were supposedly distinct entities based on the fact that Super Lamination is a sole proprietorship while Express Lamination and Express Coat were separately registered with the SEC. The directive was therefore, in effect, a piercing of the separate juridical personalities of the corporations involved. We find the piercing to be proper and in accordance with the law as will be discussed below.

The following established facts show that Super Lamination, Express Lamination, and Express Coat are under the control and management of the same party - petitioner Ang Lee. In effect, the employees of these three companies have petitioner as their common employer, as shown by the following facts:
1. Super Lamination, Express Lamination, and Express Coat were engaged in the same business of providing lamination services to the public as admitted by petitioner in his petition.
2. The three establishments operated and hired employees through a common human resource department as found by DOLE in a clarificatory hearing. Though it was not clear which company the human resource department was officially attached to, petitioner admits in his petition that such department was *shared* by the three companies for purposes of convenience.
3. The workers of all three companies were constantly rotated and periodically assigned to Super Lamination or Express Lamination or Express Coat to perform the same or similar tasks. This finding was further affirmed when petitioner admitted in his petition before us that the Super Lamination had entered into a work-pooling agreement with the two other companies and shared a number of their employees.

4. DOLE found and the CA affirmed that the common human resource department imposed disciplinary sanctions and directed the daily performance of all the members of Unions A, B, and C.

5. Super Lamination included in its payroll and SSS registration not just its own employees, but also the supposed employees of Express Lamination and Express Coat. This much was admitted by petitioner in his Motion to Dismiss which was affirmed by the Med-Arbiter in the latter's Order.

6. Petitioner admitted that Super Lamination had issued and signed the identification cards of employees who were actually working for Express Lamination and Express Coat.

7. Super Lamination, Express Lamination, and Express Coat were represented by the same counsel who interposed the same arguments in their motions before the Med-Arbiters and DOLE.

Further, we discern from the synchronized movements of petitioner and the two other companies an attempt to frustrate or defeat the workers' right to collectively bargain through the shield of the corporations' separate juridical personalities. We make this finding on the basis of the motions to dismiss filed by the three companies. While similarly alleging the absence of an employer-employee relationship, they alternately referred to one another as the employer of the members of the bargaining units sought to be represented respectively by the unions. This fact was affirmed by the Med-Arbiters' Orders finding that indeed, the supposed employees of each establishment were found to be alternately the employees of either of the two other companies as well. This was precisely the reason why DOLE consolidated the appeals filed by Unions A, B, and C.

Due to the finger-pointing by the three companies at one another, the petitions were dismissed. As a result, the three unions were not able to proceed with the conduct of the certification election. This also caused confusion among the employees as to who their real employer is, as Union A claims in its Comment.

We hold that if we allow petitioner and the two other companies to continue obstructing the holding of the election in this manner, their employees and their respective unions will never have a chance to choose their bargaining representative. We take note that all three establishments were unorganized. That is, no union therein was ever duly recognized or certified as a bargaining representative.

Therefore, it is only proper that, in order to safeguard the right of the workers and Unions A, B, and C to engage in collective bargaining, the corporate veil of Express Lamination and Express Coat must be pierced. The separate existence of Super Lamination, Express Lamination, and Express Coat must be disregarded. In effect, we affirm the lower tribunals in ruling that these companies must be treated as one and the same unit for purposes of holding a certification election.

Petitioner has cited *Diatagon Labor Federation Local v. Ople* and *lndophil Textile Mill Worker Union v. Calica* in which this Court refused to treat separate corporations as a single bargaining unit. Those cases, however, are not substantially identical with this case and would not warrant their application herein. Unlike in the instant case, the corporations involved were found to be completely independent or were not involved in any act that frustrated the laborers' rights.

In *Diatagon,* we refused to include the 236 employees of Georgia Pacific International Corporation in the bargaining unit of the employees of Liangga Bay Logging Co., Inc. This Court's refusal was in light of the fact that the two corporations were indubitably distinct entities with separate corporate identities and origins. Moreover, there was no discernible attempt to frustrate any of their labor-related rights, as the only conflict was over which bargaining unit they belonged to.

In *Indophil,* this Court refused to pierce the corporate veil of Indophil Textile Mill and Indophil Acrylic Manufacturing. We found that the creation of Indophil Acrylic was not a device to evade the application of the collective bargaining agreement (CBA) between petitioner union and Indophil Textile Mill. This Court further found that despite the similarity in their business operations, the separate personalities of the two corporations were maintained and were not used for any of the purposes specified under the law that would warrant piercing. It is also apparent in this case that the workers' rights were not being hampered by the employers concerned, as the only issue between them was the extent of the subject CBA's application.

In this case, not only were Super Lamination, Express Lamination, and Express Coat found to be under the control of petitioner, but there was also a discernible attempt to disregard the workers' and unions' right to collective bargaining.

The foregoing considered, we find no error in the CA' s affirmance of the DOLE directive. We affirm DOLE's application by analogy of the concept of multi-employer bargaining to justify its Decision to treat the three companies as one. While the multi-employer bargaining mechanism is relatively new and purely optional under Department Order No. 40-03, it illustrates the State's policy to promote the primacy of free and responsible exercise of the right to collective bargaining.[51] The existence of this mechanism in our labor laws affirm DOLE's conclusion that its treatment of the employees of the three companies herein as a single bargaining unit is neither impossible nor prohibited. It is justified under the circumstances discussed above.

Besides, it is an established rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded by the courts not only respect but even finality when supported by substantial evidence; *i.e.,* that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

MANUELA AZUCENA MAYOR, *Petitioner,* -versus- EDWIN TIU and DAMIANA CHARITO MARTY, *Respondents*

G.R. No. 203770, SECOND DIVISION, NOVEMBER 23, 2016 MENDOZA, *J.*

A corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. Resultantly, any proceedings taken against the corporation and its properties would infringe on its right to due process.

In the case at bench, the probate court applied the doctrine of piercing the corporate veil ratiocinating that Rosario had no other properties that comprise her estate other than her shares in Primrose. Although the probate court's intention to protect the decedent's shares of stock in Primrose from dissipation is laudable, it is still an error to order the corporation's tenants to remit their rental payments to the estate of Rosario.

FACTS:

On May 25, 2008, Rosario Guy-Juco Villasin Casilan (Rosario), the widow of the late Primo Villasin (Primo), passed away and left a holographic Last Will and Testament, wherein she named her sister, Remedios Tiu (Remedios), and her niece, Manuela Azucena Mayor (Manuela), as executors. Immediately thereafter, Remedios and Manuela filed a petition for the probate of Rosario's holographic will with prayer for the issuance of letters testamentary (probate proceedings). The petition was raffled to the Regional Trial Court, Branch 9, Tacloban City (RTC-Br. 9) and docketed as Sp. Proc. No. 2008-05-30. They averred that Rosario left properties valued at approximately ₱2.5 million.

On May 29, 2008, respondent Damiana Charito Marty (Marty) claiming to be the adopted daughter of Rosario, filed a petition for letters of administration before the RTC, Branch 34, Tacloban City (RTC- Br. 34), docketed as Sp. Proc. No. 2008-05-32, but it was not given due course because of the probate proceedings. Per records, this dismissal is subject of a separate proceeding filed by Marty with the CA Cebu City, docketed as CA-G.R. SP No. 04003.

On June 12, 2008, in its Order, the RTC-Br. 9 found the petition for probate of will filed by Remedios and Manuela as sufficient in form and substance and set the case for hearing.

Consequently, Marty filed her Verified Urgent Manifestation and Motion, dated June 23, 2008, stating that Remedios kept the decedent Rosario a virtual hostage for the past ten (10) years and her family was financially dependent on her which led to the wastage and disposal of the properties owned by her and her husband, Primo. Marty averred that until the alleged will of the decedent could be probated and admitted, Remedios and her ten (10) children had no standing to either possess or control the properties comprising the estate of the Villasins. She prayed for the probate court to: 1) order an immediate inventory of all the properties subject of the proceedings; 2) direct the tenants of the estate, namely, Mercury Drug and Chowking, located at Primrose Hotel, to deposit their rentals with the court; 3) direct Metro bank, P. Burgos Branch, to freeze the accounts in the name of Rosario, Primrose Development Corporation (Primrose) or Remedios; and 4) lock up the Primrose Hotel in order to preserve the property until final disposition by the court.

On July 8, 2008, Remedios and Manuela filed their Comment/Opposition to the urgent manifestation averring that Marty was not an adopted child of the Villasins based on a certification issued by the Office of the Clerk of Court of Tacloban City, attesting that no record of any adoption proceedings involving Marty existed in their records. They also argued that the probate court had no jurisdiction over the properties mistakenly claimed by Marty as part of Rosario's estate because these properties were actually owned by, and titled in the name of, Primrose. Anent the prayer to direct the tenants to deposit the rentals to the probate court, Remedios and Manuela countered that the probate court had no jurisdiction over properties owned by third persons, particularly by Primrose, the latter having a separate and distinct personality from the decedent's estate.

Marty cited an order of the Court of First Instance of Leyte *(CF! Leyte)* in SP No. 1239, claiming that as early as March 3, 1981, the veil of corporate entity of Primrose was pierced on the ground that it was a closed family corporation controlled by Rosario after Primo's death. Thus, Marty alleged that "piercing" was proper in the case of Rosario's estate because the incorporation of Primrose was founded on a fraudulent consideration, having been done in contemplation of Primo's death.

In its January 14, 2009 Order, the RTC-Br. 9 granted the motion of Marty and appointed the OIC Clerk of Court as special administrator of the Estate. The Probate Court also ordered Mercury Drug and Chowking to deposit the rental income to the court and Metrobank to freeze the bank accounts mentioned in the motion of Marty. The doctrine of piercing the corporate veil was applied in the case considering that Rosario had no other properties that comprised her estate other than Primrose. According to the probate court, for the best interest of whoever would be adjudged as the legal heirs of the Estate, it was best to preserve the properties from dissipation

ISSUE:

Whether application of the doctrine of piercing the corporate veil is warranted (NO)

RULING:

The probate court in this case has not acquired jurisdiction over Primrose and its properties. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction; it is basically applied only to determine established liability. It is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be even applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation.

Hence, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. Resultantly, any proceedings taken against the corporation and its properties would infringe on its right to due process.

In the case at bench, the probate court applied the doctrine of piercing the corporate veil ratiocinating that Rosario had no other properties that comprise her estate other than her shares in Primrose. Although the probate court's intention to protect the decedent's shares of stock in Primrose from dissipation is laudable, it is still an error to order the corporation's tenants to remit their rental payments to the estate of Rosario.

Considering the above disquisition, the Court holds that a permanent and final injunction is in order in accordance with Section 9, Rule 58 of the Rules of Court which provides that "if after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction." Undoubtedly, Primrose stands to suffer an irreparable injury from the subject order of the probate court.

REYNO C. DIMSON, *Petitioner,* -versus- GERRY T. CHUA, *Respondent*

G.R. No. 1923182, THIRD DIVISION, DECEMBER 5, 2016 REYES, *J.*

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

Based on the records, the petitioner and the private respondents in the NLRC case failed to specifically allege either in their complaint or position paper that the respondent, as an officer of SEASUMCO, willfully and knowingly assented to the corporations' patently unlawful act of closing the corporation, or that the respondent had been guilty of gross negligence or bad faith in directing the affairs of the corporation. In fact, there was no evidence at all to show the respondent's participation in the petitioner's illegal dismissal. Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold the respondent personally liable for the monetary awards to the petitioner, are lacking.

FACTS:

The instant case filed by the petitioner, representing the other 14 complainants, against the respondent, is an offshoot of the labor case entitled "Reyno Dimson, et al. v. SEASUMCO, MAC, United Coconut Planters Bank (UPCB), and Cotabato Sugar Central Co., Inc. (COSUCECO)."

On September 22, 2003, the said labor case for illegal dismissal with monetary claims was decided in favor of the complainants. Hence, SEASUMCO and MAC, as well as the members of their board of directors, were ordered to pay jointly and severally the sum of Three Million Eight Hundred Twenty-Seven Thousand Four Hundred Seventy Pesos and Fifty-One Centavos (P3,827,470.51).

The respondent filed a Motion for Reconsideration, but the NLRC Resolution denied his motion. Hence, he filed a petition for *certiorari* with application for temporary restraining order (TRO)/preliminary injunction before the CA. He maintained that the labor tribunals violated his right to due process when the LA authorized the issuance of the amended alias writ of execution against him for the corporation's judgment debt, although he has never been a party to the underlying suit.

Meanwhile, upon the petitioner's motion, a Second Alias Writ of Execution was since the previous writ has already expired. Pursuant to this, on December 2, 2008, a Certificate of Sale/Award was issued to the petitioner upon the levy on execution that was made over the shares of stocks belonging to the respondent at New Frontier Sugar Corporation (NFSC)

On January 30, 2009, the CA denied the respondent's application for a TRO and set the case for hearing on the propriety of the issuance of a writ of preliminary injunction (WPI).

In the Resolution dated April 16, 2009, the CA issued a WPI enjoining the NLRC, its sheriff and any person acting for and its behalf from transferring in the names of the petitioner and other private respondents in the NLRC case, the respondent shares of stocks with NFSC pending resolution of the petition.

the CA rendered the assailed judgment, which nullified and set aside the rulings of the NLRC, and made the WPI permanent. The CA held that the respondent was indeed denied due process

ISSUE:

> Whether respondent can be held solidarily liable with the corporation, of which he was an officer and a stockholder, when he was not served with summons and was never impleaded as a party to the case. (NO)

RULING:

Court sustains the CA's ruling that the respondent, as one of SEASUMCO's corporate officer and stockholder, should not be held solidarily liable with the corporation for its monetary liabilities with the petitioner.

Here, the LA pierced the veil of corporate fiction of SEASUMCO and held the respondent, in his personal capacity, jointly and severally liable with the corporation for the enforcement of the monetary awards to the petitioner. Even assuming that the labor tribunals had jurisdiction over the respondent, it was still improper to hold him liable for SEASUMCO's obligations to its employees.

In the recent case of Jose Emmanuel P. Guillermo v. Crisanto P. Uson, the Court resolved the twin doctrines of piercing the veil of corporate fiction and personal liability of company officers in labor cases. According to the Court:

The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarity in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance, does not connote bad judgment or negligence but imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through motive or interest or ill will; it partakes of the nature of fraud.

As the foregoing implies, there is no hard and fast rule on when corporate fiction may be disregarded; instead, each case must be evaluated according to its peculiar circumstances. For the case at bar, applying the above criteria, a finding of personal and solidary liability against a corporate Officer like Guillermo must be rooted on a satisfactory showing of fraud, bad faith or malice, or the presence of any of the justifications for disregarding the corporate fiction. x x x. (Citations omitted)

"A corporation is a juridical entity with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee." Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation. To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

Based on the records, the petitioner and the private respondents in the NLRC case failed to specifically allege either in their complaint or position paper that the respondent, as an officer of SEASUMCO, willfully and knowingly assented to the corporations' patently unlawful act of closing the corporation, or that the respondent had been guilty of gross negligence or bad faith in directing the affairs of the corporation. In fact, there was no evidence at all to show the respondent's participation in the petitioner's illegal dismissal. Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold the respondent personally liable for the monetary awards to the petitioner, are lacking.

The respondent is merely one of the officers of SEASUMCO and to single him out and require him to personally answer for the liabilities of SEASUMCO are without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the labor tribunals to hold him responsible.

The Court had repeatedly emphasized that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

A. GROUNDS FOR APPLICATION OF DOCTRINE

VILLA REY TRANSIT, INC, *Petitioner*, -versus- EUSEBIO E. FERRER, PANGASINAN TRANSPORTATION CO., INC. and PUBLIC SERVICE COMMISSION, *Respondents*
G.R. No. L-23893, EN BANC, OCTOBER 29, 1968 ANGELES, *J.*

The doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law. When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals.

Villarama's explanation on the matter of his involvement with the corporate affairs of the Corporation only renders more credible Pantranco's claim that his control over the corporation, especially in the management and disposition of its funds, was so extensive and intimate that it is impossible to segregate and identify which money belonged to whom. The interference of Villarama in the complex affairs of the corporation, and particularly its finances, are much too inconsistent with the ends and purposes of the Corporation law, which, precisely, seeks to separate personal responsibilities from corporate undertakings. It is the very essence of incorporation that the acts and conduct of the corporation be carried out in its own corporate name because it has its own personality.

FACTS:

Prior to 1959, Jose M. Villarama was an operator of a bus transportation, under the business name of Villa Rey Transit, pursuant to certificates of public convenience granted him by the Public Service Commission (PSC, for short) in Cases Nos. 44213 and 104651, which authorized him to operate a total of thirty-two (32) units on various routes or lines from Pangasinan to Manila, and vice-versa. On January 8, 1959, he sold the aforementioned two certificates of public convenience to the Pangasinan Transportation Company, Inc. (otherwise known as Pantranco), for P350,000.00 with the condition, among others, that the seller (Villarama) "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer."

Barely three months thereafter, or on March 6, 1959: a corporation called Villa Rey Transit, Inc. (which shall be referred to hereafter as the Corporation) was organized with a capital stock of P500,000.00 divided into 5,000 shares of the par value of P100.00 each; P200,000.00 was the subscribed stock; Natividad R. Villarama (wife of Jose M. Villarama) was one of the incorporators, and she subscribed for P1,000.00; the balance of P199,000.00 was subscribed by the brother and sister-in-law of Jose M. Villarama; of the subscribed capital stock, P105,000.00 was paid to the treasurer of the corporation, who was Natividad R. Villarama.

In less than a month after its registration with the Securities and Exchange Commission (March 10, 1959), the Corporation, on April 7, 1959, bought *five* certificates of public convenience, forty-nine buses, tools and equipment from one Valentin Fernando, for the sum of P249,000.00, of which P100,000.00 was paid upon the signing of the contract; P50,000.00 was payable upon the final approval of the sale by the PSC; P49,500.00 one year after the final approval of the sale; and the balance of P50,000.00 "shall be paid by the BUYER to the different suppliers of the SELLER."

The very same day that the aforementioned contract of sale was executed, the parties thereto immediately applied with the PSC for its approval, with a prayer for the issuance of a provisional authority in favor of the vendee Corporation to operate the service therein involved.[1] On May 19, 1959, the PSC granted the provisional permit prayed for, upon the condition that "it may be modified or revoked by the Commission at any time, shall be subject to whatever action that may be taken on the basic application and shall be valid only during the pendency of said application." Before the PSC could take final action on said application for approval of sale, however, the Sheriff of Manila, on July 7, 1959, levied on *two of the five certificates of public convenience* involved therein, namely, those issued under PSC cases Nos. 59494 and 63780, pursuant to a writ of execution issued by the Court of First Instance of Pangasinan in Civil Case No. 13798, in favor of Eusebio Ferrer, plaintiff, judgment creditor, against Valentin Fernando, defendant, judgment debtor. The Sheriff made and entered the levy in the records of the PSC. On July 16, 1959, a public sale was conducted by the Sheriff of the said *two* certificates of public convenience. Ferrer was the highest bidder, and a certificate of sale was issued in his name.

Thereafter, Ferrer sold the *two* certificates of public convenience to Pantranco, and jointly submitted for approval their corresponding contract of sale to the PSC. Pantranco therein prayed that it be authorized provisionally to operate the service involved in the said *two* certificates.

The applications for approval of sale, filed before the PSC, by Fernando and the Corporation, Case No. 124057, and that of Ferrer and Pantranco, Case No. 126278, were scheduled for a joint hearing. In the meantime, to wit, on July 22, 1959, the PSC issued an order disposing that during the pendency of the cases and before a final resolution on the aforesaid applications, the Pantranco shall be the one to operate provisionally the service under the *two*certificates embraced in the contract between Ferrer and Pantranco. The Corporation took issue with this particular ruling of the PSC and elevated the matter to the Supreme Court,[3] which decreed, after deliberation, that until the issue on the ownership of the disputed certificates shall have been finally settled by the proper court, the Corporation should be the one to operate the lines provisionally.

On November 4, 1959, the Corporation filed in the Court of First Instance of Manila, a complaint for the annulment of the sheriff's sale of the aforesaid *two* certificates of public convenience (PSC Cases Nos. 59494 and 63780) in favor of the defendant Ferrer, and the subsequent sale thereof by the latter to Pantranco, against Ferrer, Pantranco and the PSC. The plaintiff Corporation prayed therein that all the orders of the PSC relative to the parties' dispute over the said certificates be annulled.

Pantranco, on its part, filed a third-party complaint against Jose M. Villarama, alleging that Villarama and the Corporation, are one and the same; that Villarama and/or the Corporation was disqualified from operating the two certificates in question by virtue of the aforementioned agreement between said Villarama and Pantranco, which stipulated that Villarama "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer."

Upon the joinder of the issues in both the complaint and third-party complaint, the case was tried, and thereafter decision.

This is a tri-party appeal from the decision of the Court of First Instance of Manila, Civil Case No. 41845, declaring null and void the sheriff's sale of two certificates of public convenience in favor of defendant Eusebio E. Ferrer and the subsequent sale thereof by the latter to defendant Pangasinan Transportation Co., Inc.; declaring the plaintiff Villa Rey Transit, Inc., to be the lawful owner of the said certificates of public convenience; and ordering the private defendants, jointly and severally, to pay to the plaintiff, the sum of P5,000.00 as and for attorney's fees. The case against the PSC was dismissed.

ISSUE:

Whether Villa Rey Transit, Inc. is an alter ego of Jose M. Villarama. (YES)

RULING:

The evidence has disclosed that Villarama, albeit was not an incorporator or stockholder of the Corporation, alleging that he did not become such, because he did not have sufficient funds to invest, his wife, however, was an incorporator with the least subscribed number of shares, and was elected treasurer of the Corporation. The finances of the Corporation which, under all concepts in the law, are supposed to be under the control and administration of the treasurer keeping them as trust fund for the Corporation, were, nonetheless, manipulated and disbursed as if they were the private funds of Villarama, in such a way and extent that Villarama appeared to be the actual owner-treasurer of the business without regard to the rights of the stockholders.

The evidence further shows that the initial cash capitalization of the corporation of P105,000.00 was mostly financed by Villarama.

Further, the evidence shows that when the Corporation was in its initial months of operation, Villarama purchased and paid with his personal checks Ford trucks for the Corporation.

Taking account of the foregoing evidence, together with Celso Rivera's testimony, it would appear that: Villarama supplied the organization expenses and the assets of the Corporation, such as trucks and equipment;[17] there was no actual payment by the original subscribers of the amounts of P95,000.00 and P100,000.00 as appearing in the books; Villarama made use of the money of the Corporation and deposited them to his private accounts; and the Corporation paid his personal accounts.

Villarama himself admitted that he mingled the corporate funds with his own money. He also admitted that gasoline purchases of the Corporation were made in his name because "he had existing account with Stanvac which was properly secured and he wanted the Corporation to benefit from the rebates that he received."

The foregoing circumstances are strong persuasive evidence showing that Villarama has been too much involved in the affairs of the Corporation to altogether negative the claim that he was only a part-time general manager. They show beyond doubt that the Corporation is his *alter ego*.

It is significant that not a single one of the acts enumerated above as proof of Villarama's oneness with the Corporation has been denied by him. On the contrary, he has admitted them with offered excuses.

Villarama has admitted, for instance, having paid P85,000.00 of the initial capital of the Corporation with the lame excuse that "his wife had requested him to reimburse the amount entrusted to her by the incorporators and which she had used to pay the obligations of Dr. Villarama (her husband) incurred while he was still the owner of Villa Rey Transit, a single proprietorship." But with his admission that he had received P350,000.00 from Pantranco for the sale of the *two* certificates and one unit, it becomes difficult to accept Villarama's explanation that he and his wife, after consultation, spent the money of their relatives (the stockholders) when they were supposed to have their own money. Even if Pantranco paid the P350,000.00 in check to him, as claimed, it could have been easy for Villarama to have deposited said check in his account and issued his own check to pay his obligations. And there is no evidence adduced that the said amount of P350,000.00 was all spent or was insufficient to settle his prior obligations in his business, and in the light of the stipulation in the deed of sale between Villarama and Pantranco that P50,000.00 of the selling price was earmarked for the payments of accounts due to his creditors, the excuse appears unbelievable.

Indeed, while Villarama was not the Treasurer of the Corporation but was, allegedly, only a part-time manager,[27] he admitted not only having held the corporate money but that he advanced and lent funds for the Corporation, and yet there was no Board Resolution allowing it.

Villarama's explanation on the matter of his involvement with the corporate affairs of the Corporation only renders more credible Pantranco's claim that his control over the corporation, especially in the management and disposition of its funds, was so extensive and intimate that it is impossible to segregate and identify which money belonged to whom. The interference of Villarama in the complex affairs of the corporation, and particularly its finances, are much too inconsistent with the ends and purposes of the Corporation law, which, precisely, seeks to separate personal responsibilities from corporate undertakings. It is the very essence of incorporation that the acts and conduct of the corporation be carried out in its own corporate name because it has its own personality.

The doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law. When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals.

Upon the foregoing considerations, We are of the opinion, and so hold, that the preponderance of evidence have shown that the Villa Rey Transit, Inc. is an *alter ego* of Jose M. Villarama, and that the restrictive clause in the contract entered into by the latter and Pantranco is also enforceable and binding against the said Corporation. For the rule is that a seller or promisor may not make use of a corporate entity as a means of evading the obligation of his covenant. Where the Corporation is substantially the *alter ego* of the covenantor to the restrictive agreement, it can be enjoined from competing with the covenantee.

A.C. RANSOM LABOR UNION-CCLU, *Petitioner*, -versus- NATIONAL LABOR RELATIONS COMMISSION, First Division, A.C. RANSOM (PHILS.) CORPORATION, RUBEN HERNANDEZ, MAXIMO C. HERNANDEZ, JR., PORFIRIO R. VALENCIA, LAURA H. CORNEJO, FRANCISCO HERNANDEZ, CELESTINO C. HERNANDEZ & MA. ROSARIO HERNANDEZ, *Respondents*
G.R. No. L-69494, FIRST DIVISION, JUNE 10, 1986 MELENCIO-HERRERA, *J.*

Aggravating RANSOM's clear evasion of payment of its financial obligations is the organization of a "run-away corporation," ROSARIO, in 1969 at the time the unfair labor practice case was pending before the CIR by the same persons who were the officers and stockholders of RANSOM, engaged in the same line of business as RANSOM, producing the same line of products, occupying the same compound, using the same machineries, buildings, laboratory, bodega and sales and accounts departments used by RANSOM, and which is still in existence. Both corporations were closed corporations owned and managed by members of the same family. Its organization proved to be a convenient instrument to avoid payment of backwages and the reinstatement of the 22 workers. This is another instance where the fiction of separate and distinct corporate entities should be disregarded.

It is very obvious that the second corporation seeks the protective shield of a corporate fiction whose veil in the present case could, and should, be pierced as it was deliberately and maliciously designed to evade its financial obligation to its employees.

FACTS:

The records show that, upon application filed by RANSOM on April 2, 1973, it was granted clearance by the Secretary of Labor on June 7, 1973 to cease operation and terminate employment effective May 1, 1973, without prejudice to the right of subject employees to seek redress of grievances under existing laws and decrees. The reasons given by RANSOM for the clearance application were financial difficulties on account of obligations incurred prior to 1966.

The UNION filed another Motion for Execution alleging that although RANSOM had assumed a posture of suffering from business reverse, its officers and principal stockholders had organized a new corporation, the Rosario Industrial Corporation (thereinafter called ROSARIO), using the same equipment, personnel, business stocks and the same place of business. For its part, RANSOM declared that ROSARIO is a distinct and separate corporation, which was organized long before these instant cases were decided adversely against RANSOM.

It appears that sometime in 1969, ROSARIO, a closed corporation, was, in fact, established. It was engaged in the same line of business as RANSOM with the same Hernandez family as the owners, the same officers, the same President, the same counsel and the same address at 555 Quirino Avenue, Paranaque, Rizal. The compound, building, plant, equipment, machinery, laboratory and bodega were the same as those occupied and used by RANSOM. The UNION claims that ROSARIO thrives to this day.

Writs of execution were issued successively against RANSOM on June 23, 1976, and February 17, 1977, to no avail. On December 18, 1978, the UNION again filed an ex-parte Motion for Writ of Execution and Garnishment praying that the Writ issue against the Officers/Agents of RANSOM personally and or their estates, as the case may be, considering their success in hiding or shielding the assets of said company. RANSOM countered that the CIR Decision, dated August 19, 1972, could no longer be enforced by mere Motion because more than five (5) years had already lapsed.

LA held the respondent corporation liable. It appears that among the persons named in the aforequoted Order, Ma. Rosario Hernandez died in 1971; Francisco Hernandez died in 1977: and Celestino C. Hernandez passed away in 1979. And Maximo Hernandez who was named in the CIR Decision, died in 1966. NLRC affirmed the decision of LA.

Both parties have moved for reconsideration. Private respondents point out that they were never impleaded as parties in the Trial Court, and that their personal liabilities were never at issue; that judgment holding Ruben Hernandez personally liable is tantamount to deprivation of property without due process of law; and that he was not an officer of the corporation at the time the unfair labor practices were committed. The UNION on the other hand, in its own Motion for Reconsideration, prays that the veil of corporate fiction be pierced that the Decision be modified, in that all the individual private respondents and not only the President, should be held jointly and severally liable with RANSOM. On November 4, 1986, it further filed an Urgent Motion for Preliminary Mandatory Injunction "directing private respondents to deposit the amount of P 199,276.00 or to put up a supersedeas bond of the same sum."

ISSUE:

Whether doctrine of piercing of corporate veil shall apply in this case. (YES)

RULING:

Incontrovertible is the fact that RANSOM was found guilty by the CIR, in its Decision of August 19, 1972, of unfair labor practice; that its officers and agents were ordered to cease and desist from further committing acts constitutive of the same, and to reinstate immediately the 22 union members to their respective positions with backwages from July 25, 1969 until actually reinstated. The officers and agents listed in the Genilo Order except for those who have since passed away, should, as affirmed by this Court, be held jointly and severally liable for the payment of backwages to the 22 strikers.

This finding does not ignore the legal fiction that a corporation has a personality separate and distinct from its stockholders and members, for, as this Court had held "where the incorporators and directors belong to a single family, the corporation and its members can be considered as one in order to avoid its being used as an instrument to commit injustice."

The alleged bankruptcy of RANSOM furnishes no justification for non-payment of backwages to the employees concerned taking into consideration Article 110 of the Labor Code, The alleged bankruptcy of RANSOM furnishes no justification for non-payment of backwages to the employees concerned taking into consideration Article 110 of the Labor Code.

The Decision of the CIR was rendered on August 19, 1972. Clearance to RANSOM to cease operations and terminate employment granted by the Secretary of Labor was made effective on May 1, 1973. The right of the employees concerned to backwages awarded them, therefore, had already vested at the time and even before clearance was granted. Note should also be taken of the fact that the clearance was without prejudice to the right of subject employees to seek redress of grievances under existing laws and decrees.

The worker preference applies even if the employer's properties are encumbered by means of a mortgage contract, as in this case. So that, when machinery and equipment of RANSOM were sold to Revelations Manufacturing Corporation for P 2M in 1975, the right of the 22 laborers to be paid from the proceeds should have been recognized, even though it is claimed that those proceeds were turned over to the Commercial Bank and Trust Company (Comtrust) in payment of RANSOM obligations, since the workers' preference is over and above the claim of other creditors.

The contention, therefore, of the heirs of the late Maximo C. Hernandez, Sr. that since they paid from their own personal funds the balance of the amount owing by RANSOM to Comtrust they are the "preferential creditors" of RANSOM, is clearly without merit. Workers are to be paid in full before other creditors may establish any claim to a share in the assets of the employer.

Aggravating RANSOM's clear evasion of payment of its financial obligations is the organization of a "run-away corporation," ROSARIO, in 1969 at the time the unfair labor practice case was pending before the CIR by the same persons who were the officers and stockholders of RANSOM, engaged in the same line of business as RANSOM, producing the same line of products, occupying the same compound, using the same machineries, buildings, laboratory, bodega and sales and accounts departments used by RANSOM, and which is still in existence. Both corporations were closed corporations owned and managed by members of the same family. Its organization proved to be a convenient instrument to avoid payment of backwages and the reinstatement of the 22 workers. This is another instance where the fiction of separate and distinct corporate entities should be disregarded.

It is very obvious that the second corporation seeks the protective shield of a corporate fiction whose veil in the present case could, and should, be pierced as it was deliberately and maliciously designed to evade its financial obligation to its employees.

The UNION's plea, therefore, for the reinstatement of the 22 strikers in ROSARIO should be favorably heard. However, ROSARIO shall have the option to award them separation pay equivalent to one-half month for every year of service actually rendered by the 22 strikers. The plea of the UNION for the restoration of the original computation of P199,276.00 or to grant the 22 Union members three (3) years backwages is rejected. It is the amount of P164,984.00 as backwages, which was the subject of the Writ of Execution issued by the Labor Arbiter pursuant to the CIR Decision of 1972..

TIMES TRANSPORTATION COMPANY, INC., *Petitioner,* -versus- SANTOS SOTELO, *Respondent*
G.R. No. 163786, FIRST DIVISION, FEBRUARY 16, 2005 YNARES-SANTIAGO, *J.*

We have held that piercing the corporate veil is warranted only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. It 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; (2) such control must have been used 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 a legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.

We uphold the findings of the labor arbiter and the Court of Appeals. The sale of Times' franchise as well as most of its bus units to a company owned by Rondaris' daughter and family members, right in the middle of a labor dispute, is highly suspicious. It is evident that the transaction was made in order to remove Times' remaining assets from the reach of any judgment that may be rendered in the unfair labor practice cases filed against it.

FACTS:

Prior to the closure of Petitioner Times Transportation Company, Inc. (Times) in 1997, the Times Employees Union (TEU) was formed and issued a certificate of union registration. Times challenged the legitimacy of TEU by filing a petition for the cancellation of its union registration.

TEU held a strike in response to Times' alleged attempt to form a rival union and its dismissal of the employees identified to be active union members. Upon petition by Times, then Labor Secretary referred the matter to the NLRC for compulsory arbitration. The case was docketed as NLRC NCR CC-000134-97. A return-to-work order was likewise issued on March 10, 1997.

In a certification election held on July 1, 1997, TEU was certified as the sole and exclusive collective bargaining agent in Times. Consequently, TEU's president wrote the management of Times and requested for collective bargaining. Times refused on the ground that the decision of the Med-Arbiter upholding the validity of the certification election was not yet final and executory.

TEU filed a Notice of Strike on August 8, 1997. Another conciliation/mediation proceeding was conducted for the purpose of settling the brewing dispute. In the meantime, Times' management implemented a retrenchment program.

TEU held a strike vote on grounds of unfair labor practice on the part of Times. For alleged participation in what it deemed was an illegal strike, Times terminated all the 123 striking employees.

TEU held a strike vote on grounds of unfair labor practice on the part of Times.

DOLE Secretary Quisumbing issued the second return-to-work order certifying the dispute to the NLRC. While the strike was ended, the employees were no longer admitted back to work.

In the meantime, by December 12, 1997, Mencorp Transport Systems, Inc. (Mencorp) had acquired ownership over Times' Certificates of Public Convenience and a number of its bus units by virtue of several deeds of sale. Mencorp is controlled and operated by Mrs. Virginia Mendoza, daughter of Santiago Rondaris, the majority stockholder of Times.

NLRC held that while the first strike was legal, the second was not.

Times and TEU both appealed the decision of the NLRC, which the Court of Appeals affirmed. It held that respondents Times Company, Inc. and Santiago Rondaris as the officer administratively held liable of the unfair labor practice and respondents Times Company, Inc. and/or Santiago Rondaris to pay jointly and severally said complainants.

On the propriety of the piercing of the corporate veil, Times claims that "to drag Mencorp, [Spouses] Mendoza and Rondaris into the picture on the purported ground that a fictitious sale of Times' assets in their favor was consummated with the end in view of frustrating the ends of justice and for purposes of evading compliance with the judgment is … the height of judicial arrogance." The Court of Appeals believes otherwise and reckons that Times and Mencorp failed to adduce evidence to refute allegations of collusion between them

ISSUE:

Whether doctrine of piercing of corporate veil shall apply in this case. (YES)

RULING:

We have held that piercing the corporate veil is warranted only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. It 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; (2) such control must have been used 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 a legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.
The following findings of the Labor Arbiter, which were cited and affirmed by the Court of Appeals, have not been refuted by Times, to wit:

1. The sale was transferred to a corporation controlled by V. Mendoza, the daughter of respondent S. Rondaris of [Times] where she is/was also a director, as proven by the articles of incorporation of [Mencorp];
2. All of the stockholders/incorporators of [Mencorp]: Reynaldo M. Mendoza, Virginia R. Mendoza, Vernon Gerard R. Mendoza, Vivian Charity R. Mendoza, Vevey Rosario R. Mendoza are all relatives of respondent S. Rondaris;
3. The timing of the sale evidently was to negate the employees/complainants/members' right to organization as it was effected when their union (TEU) was just organized/requesting [Times] to bargain;
…
5. [Mencorp] never obtained a franchise since its supposed incorporation in 10 May 1994 but at present, all the buses of [Times] are already being run/operated by respondent [Mencorp], the franchise of [Times] having been transferred to it.

We uphold the findings of the labor arbiter and the Court of Appeals. The sale of Times' franchise as well as most of its bus units to a company owned by Rondaris' daughter and family members, right in the middle of a labor dispute, is highly suspicious. It is evident that the transaction was made in order to remove Times' remaining assets from the reach of any judgment that may be rendered in the unfair labor practice cases filed against it.

PAMPLONA PLANTATION COMPANY, INC. and/or JOSE LUIS BONDOC., *Petitioners,* -versus- RODEL TINGHIL, MARYGLENN SABIHON, ESTANISLAO BOBON, CARLITO TINGHIL, BONIFACIO TINGHIL, NOLI TINGHIL, EDGAR TINGHIL, ERNESTO ESTOMANTE, SALLY TOROY, BENIGNO TINGHIL JR., ROSE ANN NAPAO, DIOSDADO TINGHIL, ALBERTO TINGHIL, ANALIE TINGHIL, and ANTONIO ESTOMANTE, *Respondents*

G.R. No. 159121, THIRD DIVISION, FEBRUARY 3, 2005 PANGANIBAN, *J.*

The principle requiring the piercing of the corporate veil mandates courts to see through the protective shroud that distinguishes one corporation from a seemingly separate one. The corporate mask may be removed and the corporate veil pierced when a corporation is the mere alter ego of another. Where badges of fraud exist, where public convenience is defeated, where a wrong is sought to be justified thereby, or where a separate corporate identity is used to evade financial obligations to employees or to third parties, the notion of separate legal entity should be set aside and the factual truth upheld.

Both the leisure corporation and petitioner-company were identified or described as entities engaged in the development and operation of sugar and coconut plantations, as well as recreational facilities such as a golf course. These allegations reveal that petitioner successfully confused the workers as to who their true and real employer was. All things considered, their faulty belief that the plantation company and the leisure corporation were one and the same can be attributed solely to petitioners. It would certainly be unjust to prejudice the claims of the workers because of the misleading actions of their employer.

FACTS:

Sometime in 1993, Petitioner Pamplona Plantations Company, Inc. (company for brevity) was organized for the purpose of taking over the operations of the coconut and sugar plantation of Hacienda Pamplona located in Pamplona, Negros Oriental. It appears that Hacienda Pamplona was formerly owned by a certain Mr. Bower who had in his employ several agricultural workers.

Sometime in 1995, Pamplona Plantation Leisure Corporation was established for the purpose of engaging in the business of operating tourist resorts, hotels, and inns, with complementary facilities, such as restaurants, bars, boutiques, service shops, entertainment, golf courses, tennis courts, and other land and aquatic sports and leisure facilities.

On 1996, the Pamplona Plantation Labor Independent Union (PAPLIU) conducted an organizational meeting wherein several respondents who are either union members or officers participated in said meeting.

Upon learning that some of the respondents attended the said meeting, Petitioner Jose Luis Bondoc, manager of the company, did not allow respondents to work anymore in the plantation.

Respondents filed their respective complaints with the NLRC for unfair labor practice, illegal dismissal, underpayment, overtime pay, premium pay for rest day and holidays, service incentive leave pay, damages, attorney's fees and 13th month pay.

Carlito Tinghil amended his complaint to implead Pamplona Plantation Leisure Corporation.

On 31 August 1998, Labor Arbiter Jose G. Gutierrez rendered a decision finding respondents except Rufino Bacubac, Antonio CaÃ±olas and Felix Torres who were complainants in another case, to be entitled to separation pay.

NLRC reversed. It ruled that respondents, except Carlito Tinghil, failed to implead Pamplona Plantation Leisure Corporation, an indispensable party and that 'there exist no employer-employee relation between the parties.

Nonetheless, CA ruled on the matter and found that respondents were illegally dismissed.

ISSUE:

> Whether the case should be dismissed for the non-joinder of the Pamplona Plantation Leisure Corporation. (NO)

RULING:

In examination of the facts reveals that, for both the coconut plantation and the golf course, there is only one management which the laborers deal with regarding their work. A portion of the plantation (also called Hacienda Pamplona) had actually been converted into a golf course and other recreational facilities. The weekly payrolls issued by petitioner-company bore the name "Pamplona Plantation Co., Inc." It is also a fact that respondents all received their pay from the same person, Petitioner Bondoc - - the managing director of the company. Since the workers were working for a firm known as Pamplona Plantation Co., Inc., the reason they sued their employer through that name was natural and understandable.

True, the Petitioner Pamplona Plantation Co., Inc., and the Pamplona Plantation Leisure Corporation appear to be separate corporate entities. But it is settled that this fiction of law cannot be invoked to further an end subversive of justice.

The principle requiring the piercing of the corporate veil mandates courts to see through the protective shroud that distinguishes one corporation from a seemingly separate one. The corporate mask may be removed and the corporate veil pierced when a corporation is the mere alter ego of another. Where badges of fraud exist, where public convenience is defeated, where a wrong is sought to be justified thereby, or where a separate corporate identity is used to evade financial obligations to employees or to third parties, the notion of separate legal entity should be set aside and the factual truth upheld. When that happens, the corporate character is not necessarily abrogated. It continues for other legitimate objectives. However, it may be pierced in any of the instances cited in order to promote substantial justice.

In the present case, the corporations have basically the same incorporators and directors and are headed by the same official. Both use only one office and one payroll and are under one management. In their individual Affidavits, respondents allege that they worked under the supervision and control of Petitioner Bondoc - - the common managing director of both the petitioner-company and the leisure corporation. Some of the laborers of the plantation also work in the golf course. Thus, the attempt to make the two corporations appear as two separate entities, *insofar as the workers are concerned*, should be viewed as a devious but obvious means to defeat the ends of the law. Such a ploy should not be permitted to cloud the truth and perpetrate an injustice.

We note that this defense of separate corporate identity was not raised during the proceedings before the labor arbiter. The main argument therein raised by petitioners was their alleged lack of employer-employee relationship with, and power of control over, the means and methods of work of respondents because of the seasonal nature of the latter's work.

Neither was the issue of non-joinder of indispensable parties raised in petitioners' appeal before the NLRC. Nevertheless, the Commission concluded that the plantation company and the leisure corporation were two separate and distinct corporations, and that the latter was an indispensable party that should have been impleaded.

Indeed, it was only after this NLRC Decision was issued that the petitioners harped on the separate personality of the Pamplona Plantation Co., Inc., vis - Ã -vis the Pamplona Plantation Leisure Corporation.

NLRC dismissed the Complaints because of the alleged admission of respondents in their Affidavits that they had been working at the golf course. However, it failed to appreciate the rest of their averments. Just because they worked at the golf course did not necessarily mean that they were not employed to do other tasks, especially since the golf course was merely a portion of the coconut plantation. Even petitioners admitted that respondents had been hired as coconut filers, coconut scoopers or charcoal makers. Consequently, NLRC's conclusion derived from the Affidavits of respondents stating that they were employees of the Pamplona Plantation Leisure Corporation *alone* was the result of an improper selective appreciation of the entire evidence.

Furthermore, we note that, contrary to the NLRC's findings, some respondents indicated that their employer was the Pamplona Plantation Leisure Corporation, while others said that it was the Pamplona Plantation Co., Inc. But in all these Affidavits, both the leisure corporation and petitioner-company were identified or described as entities engaged in the development and operation of sugar and coconut plantations, as well as recreational facilities such as a golf course. These allegations reveal that petitioner successfully confused the workers as to who their true and real employer was.

All things considered, their faulty belief that the plantation company and the leisure corporation were one and the same can be attributed solely to petitioners. It would certainly be unjust to prejudice the claims of the workers because of the misleading actions of their employer.

SPS. PEDRO AND FLORENCIA VIOLAGO, *Petitioners*, -versus- BA FINANCE CORPORATION and AVELINO VIOLAGO, *Respondents*
G.R. No. 158262, SECOND DIVISION, JULY 21, 2008 VELASCO JR., *J.*

The test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows:

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 acts in contravention of plaintiffs legal rights; and
3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

This case meets the foregoing test. VMSC is a family-owned corporation of which Avelino was president. Avelino committed fraud in selling the vehicle to petitioners, a vehicle that was previously sold to Avelino's other cousin, Esmeraldo. Nowhere in the pleadings did Avelino refute the fact that the vehicle in this case was already previously sold to Esmeraldo; he merely insisted that he cannot be held liable because he was not a party to the transaction. The fact that Avelino and Pedro are cousins, and that Avelino claimed to have a need to increase the sales quota, was likely among the factors which motivated the spouses to buy the car. Avelino, knowing fully well that the vehicle was already sold, and with abuse of his relationship with the spouses, still proceeded with the sale and collected the down payment from petitioners. The trial court found that the vehicle was not delivered to the spouses. Avelino clearly defrauded petitioners. His actions were the proximate cause of petitioners' loss.

FACTS:

Sometime in 1983, Avelino Violago, President of Violago Motor Sales Corporation (VMSC), offered to sell a car to his cousin, Pedro F. Violago, and the latter's wife, Florencia. Avelino explained that he needed to sell a vehicle to increase the sales quota of VMSC, and that the spouses would just have to pay a down payment of PhP 60,500 while the balance would be financed by respondent BA Finance. The spouses would pay the monthly installments to BA Finance while Avelino would take care of the documentation and approval of financing of the car. Under these terms, the spouses then agreed to purchase a Toyota Cressida Model 1983 from VMSC.

On August 4, 1983, the spouses and Avelino signed a promissory note under which they bound themselves to pay jointly and severally to the order of VMSC the amount of PhP 209,601 in 36 monthly installments of PhP 5,822.25 a month, the first installment to be due and payable on September 16, 1983. Avelino prepared a Disclosure Statement of Loan/Credit Transportation which showed the net purchase price of the vehicle, down payment, balance, and finance charges. VMSC then issued a sales invoice in favor of the spouses with a detailed description of the Toyota Cressida car. In turn, the spouses executed a chattel mortgage over the car in favor of VMSC as security for the amount of PhP 209,601. VMSC, through Avelino, endorsed the promissory note to BA Finance **without recourse**. After receiving the amount of PhP 209,601, VMSC executed a Deed of Assignment of its rights and interests under the promissory note and chattel mortgage in favor of BA Finance. Meanwhile, the spouses remitted the amount of PhP 60,500 to VMSC through Avelino.

The sales invoice was filed with the LTO Baliwag Branch, which issued Certificate of Registration in the name of Pedro on August 8, 1983. The spouses were unaware that the same car had already been sold in 1982 to Esmeraldo Violago, another cousin of Avelino, and registered in Esmeraldo's name by the LTO-San Rafael Branch. Despite the spouses' demand for the car and Avelino's repeated assurances, there was no delivery of the vehicle. Since VMSC failed to deliver the car, Pedro did not pay any monthly amortization to BA Finance.

On March 1, 1984, BA Finance filed with RTC a complaint for Replevin with Damages against the spouses.

The RTC issued an Order of Replevi. The Violago spouses, as defendants a quo, were declared in default for failing to file an answer. Eventually, the RTC rendered on December 3, 1984 a decision in favor of BA Finance. A writ of execution was thereafter issued followed by an alias writ of execution.

In the meantime, Esmeraldo conveyed the vehicle to Jose V. Olvido. On May 8, 1987, Jose executed a Chattel Mortgage over the vehicle in favor of Generoso Lopez as security for a loan covered by a promissory note in the amount of PhP 260,664. This promissory note was later endorsed to BA Finance.

On August 21, 1989, the spouses Violago filed a Motion for Reconsideration and Motion to Quash Writ of Execution on the basis of lack of a valid service of summons on them, among other reasons. The RTC denied the motions; hence, the spouses filed a petition for *certiorari* under Rule 65 before the CA, docketed as CA G.R. No. 2002-SP. On May 31, 1991, the CA nullified the RTC's order. This CA decision became final and executory.

On January 28, 1992, the spouses filed their Answer before the RTC, allegingthe recourse of BA Finance should be against VMSC.

On February 25, 1995, the Violago spouses, with prior leave of court, filed a Third Party Complaint against Avelino praying that he be held liable to them in the event that they be held liable to BA Finance, as well as for damages. VMSC was not impleaded as third party defendant.

In his Motion to Dismiss and Answer, Avelino contended that he was not a party to the transaction personally, but VMSC. Avelino's motion was denied and the third party complaint against him was entertained by the trial court. Subsequently, the spouses belabored to prove that they affixed their signatures on the promissory note and chattel mortgage in favor of VMSC in blank.

The RTC rendered a Decision on March 5, 1994, finding for BA Finance but against the Violago spouses. The RTC, however, declared that they are entitled to be indemnified by Avelino.

CA set aside the trial court's order holding Avelino liable for damages to the spouses without prejudice to the action of the spouses against VMSC and Avelino in a separate action

From the third party complaint to the present petition, however, petitioners pray that the veil of corporate fiction be set aside and Avelino be adjudged directly liable to BA Finance. Petitioners likewise pray for damages for the fraud committed upon them.

ISSUE:

Whether the application of piercing the corporate veil is warranted. (YES)

RULING:

In *Concept Builders, Inc. v. NLRC*, we held:
It is a fundamental principle of corporation law that 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. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.
x x x
The test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows:
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 acts in contravention of plaintiffs legal rights; and
3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

This case meets the foregoing test. VMSC is a family-owned corporation of which Avelino was president. Avelino committed fraud in selling the vehicle to petitioners, a vehicle that was previously sold to Avelino's other cousin, Esmeraldo. Nowhere in the pleadings did Avelino refute the fact that the vehicle in this case was already previously sold to Esmeraldo; he merely insisted that he cannot be held liable because he was not a party to the transaction. The fact that Avelino and Pedro are cousins, and that Avelino claimed to have a need to increase the sales quota, was likely among the factors which motivated the spouses to buy the car. Avelino, knowing fully well that the vehicle was already sold, and with abuse of his relationship with the spouses, still proceeded with the sale and collected the down payment from petitioners. The trial court found that the vehicle was not delivered to the spouses. Avelino clearly defrauded petitioners. His actions were the proximate cause of petitioners' loss. He cannot now hide behind the separate corporate personality of VMSC to escape from liability for the amount adjudged by the trial court in favor of petitioners.

The fact that VMSC was not included as defendant in petitioners' third party complaint does not preclude recovery by petitioners from Avelino; neither would such non-inclusion constitute a bar to the application of the piercing-of-the-corporate-veil doctrine. We suggested as much in *Arcilla v. Court of Appeals*, an appellate proceeding involving petitioner Arcilla's bid to avoid the adverse CA decision on the argument that he is not personally liable for the amount adjudged since the same constitutes a corporate liability which nevertheless cannot even be enforced against the corporation which has not been impleaded as a party below. In that case, the Court found as well-taken the CA's act of disregarding the separate juridical personality of the corporation and holding its president, Arcilla, liable for the obligations incurred in the name of the corporation although it was not a party to the collection suit before the trial court. An excerpt from Arcilla:

x x x In short, even if We are to assume arguendo that the obligation was incurred in the name of the corporation, the petitioner [Arcilla] would still be personally liable therefor because for all legal intents and purposes, he and the corporation are one and the same. Csar Marine Resources, Inc. is nothing more than his business conduit and alter ego. The fiction of separate juridical personality conferred upon such corporation by law should be disregarded. Significantly, petitioner does not seriously challenge the [CA's] application of the doctrine which permits the piercing of the corporate veil and the disregarding of the fiction of a separate juridical personality; this is because he knows only too well that from the beginning, he merely used the corporation for his personal purposes

CLAUDE P. BAUTISTA, *Petitioner,* -versus- BA FINANCE CORPORATION and AVELINO VIOLAG AUTO PLUS TRADERS, INCORPORATED and COURT OF APPEALS (Twenty-First Division), *Respondents*

G.R. No. 166405, SECOND DIVISION, AUGUST 6, 2008 QUISUMBING, *J.*

Juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. These situations, however, do not exist in this case. The evidence shows that it is Cruiser Bus Lines and Transport Corporation that has obligations to Auto Plus Traders, Inc. for tires. There is no agreement that petitioner shall be held liable for the corporation's obligations in his personal capacity.

FACTS:

Petitioner Claude P. Bautista, in his capacity as President and Presiding Officer of Cruiser Bus Lines and Transport Corporation, purchased various spare parts from private respondent Auto Plus Traders, Inc. and issued two postdated checks to cover his purchases. The checks were subsequently dishonored. Private respondent then executed an affidavit-complaint for violation of Batas Pambansa Blg. 223 against petitioner. Consequently, two Informations for violation of BP Blg. 22 were filed with the Municipal Trial Court in Cities (MTCC) of Davao City against the petitioner.

Petitioner pleaded not guilty. Trial on the merits ensued. After the presentation of the prosecution's evidence, petitioner filed a demurrer to evidence which was granted.

Petitioner moved for partial reconsideration but his motion was denied. Thereafter, both parties appealed to the RTC. RTC modified the decision and ordered accused to pay and/or reimburse the complainant. CA affirmed.

Petitioner asserts that BP Blg. 22 merely pertains to the criminal liability of the accused and that the corporation, which has a separate personality from its officers, is solely liable for the value of the two checks.

ISSUE:

> Whether the Court of Appeals erred in upholding the RTC's ruling that petitioner, as an officer of the corporation, is personally and civilly liable to the private respondent for the value of the two checks. (YES)

RULING:

We find the appellate court in error for affirming the decision of the RTC holding petitioner liable for the value of the checks considering that petitioner was acquitted of the crime charged and that the debts are clearly corporate debts for which only Cruiser Bus Lines and Transport Corporation should be held liable.

Juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice. These situations, however, do not exist in this case. The evidence shows that it is Cruiser Bus Lines and Transport Corporation that has obligations to Auto Plus Traders, Inc. for tires. There is no agreement that petitioner shall be held liable for the corporation's obligations in his personal capacity. Hence, he cannot be held liable for the value of the two checks issued in payment for the corporation's obligation in the total amount of P248,700.

SIAIN ENTERPRISES, INC., *Petitioner*, -versus- CUPERTINO REALTY CORP. and EDWIN R. CATACUTAN, *Respondents*

G.R. No. 170782, THIRD DIVISION, JUNE 22, 2009 NACHRA, *J.*

As a general rule, a corporation will be deemed a separate legal entity until sufficient reason to the contrary appears. But the rule is not absolute. A corporation's separate and distinct legal personality may be disregarded and the veil of corporate fiction pierced when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime

It is crystal clear that petitioner corporation, Yuyek and Siain Transport are characterized by oneness of operations vested in the person of their common president, Cua Le Leng, and unity in the keeping and maintenance of their corporate books and records through their common accountant and bookkeeper, Rosemarie Ragodon. Consequently, these corporations are proven to be the mere alter-ego of their president Cua Leleng, and considering that Cua Leleng and Alberto Lim have been living together as common law spouses with three children, this Court believes that while Alberto Lim does not appear to be an officer of Siain and Yuyek, nonetheless, his receipt of certain checks and debit memos from Willie Lua and Victoria Lua was actually for the account of his common-law wife, Cua Leleng and her alter ego corporations.

FACTS:

On April 10, 1995, petitioner Siain Enterprises, Inc. obtained a loan of P37,000,000.00 from respondent Cupertino Realty Corporation (Cupertino) covered by a promissory note signed by both petitioner's and Cupertino's respective presidents, Cua Le Leng and Wilfredo Lua. The promissory note authorizes Cupertino, as the creditor, to place in escrow the loan proceeds of P37,000,000.00 with Metropolitan Bank & Trust Company to pay off petitioner's loan obligation with Development Bank of the Philippines (DBP). To secure the loan, petitioner, on the same date, executed a real estate mortgage over two (2) parcels of land and other immovables, such as equipment and machineries.

Two (2) days thereafter, or on April 12, 1995, the parties executed an amendment to promissory note which provided for a seventeen percent (17%) interest per annum on the P37,000,000.00 loan.3 The amendment to promissory note was likewise signed by Cua Le Leng and Wilfredo Lua on behalf of petitioner and Cupertino, respectively.

On August 16, 1995, Cua Le Leng signed a second promissory note in favor of Cupertino for P160,000,000.00. Cua Le Leng signed the second promissory note as maker, on behalf of petitioner, and as co-maker, liable to Cupertino in her personal capacity.

Parenthetically, on even date, the parties executed an amendment of real estate mortgage.

Curiously however, and contrary to the tenor of the foregoing loan documents, petitioner, on March 11, 1996, through counsel, wrote Cupertino and demanded the release of the P160,000,000.00 loan increase covered by the amendment of real estate mortgage.[6] In the demand letter, petitioner's counsel stated that despite repeated verbal demands, Cupertino had yet to release the P160,000,000.00 loan. On May 17, 1996, petitioner demanded anew from Cupertino the release of the P160,000,000.00 loan.

In complete refutation, Cupertino, likewise through counsel, responded and denied that it had yet to release the P160,000,000.00 loan. Cupertino maintained that petitioner had long obtained the proceeds of the aforesaid loan. Cupertino declared petitioner's demand as made to "abscond from a just and valid obligation," a mere afterthought, following Cupertino's letter demanding payment of the P37,000,000.00 loan covered by the first promissory note which became overdue on March 5, 1996.

Not surprisingly, Cupertino instituted extrajudicial foreclosure proceedings over the properties subject of the amended real estate mortgage. The auction sale was scheduled on October 11, 1996 with respondent Notary Public Edwin R. Catacutan commissioned to conduct the same. This prompted petitioner to file a complaint with a prayer for a restraining order to enjoin Notary Public Catacutan from proceeding with the public auction.'

RTC rendered a decision dismissing petitioner's complaint and ordering it to pay Cupertino P100,000.00 each for actual and exemplary damages, and P500,000.00 as attorney's fees. The RTC recalled and set aside its previous order declaring the notarial foreclosure of the mortgaged properties as null and void. On appeal, the CA, as previously adverted to, affirmed the RTC's ruling.
In dismissing petitioner's complaint and finding for Cupertino, both the lower courts upheld the validity of the amended real estate mortgage. The RTC found, as did the CA, that although the

amended real estate mortgage fell within the exceptions to the parol evidence rule under Section 9, Rule 130 of the Rules of Court, petitioner still failed to overcome and debunk Cupertino's evidence that the amended real estate mortgage had a consideration, and petitioner did receive the amount of P160,000,000.00 representing its incurred obligation to Cupertino. Both courts ruled that as between petitioner's bare denial and negative evidence of non-receipt of the P160,000,000.00, and Cupertino's affirmative evidence on the existence of the consideration, the latter must be given more weight and value. In all, the lower courts gave credence to Cupertino's evidence that the P160,000,000.00 proceeds were the total amount received by petitioner and its affiliate companies over the years from Wilfredo Lua, Cupertino's president. In this regard, the lower courts applied the doctrine of "piercing the veil of corporate fiction" to preclude petitioner from disavowing receipt of the P160,000,000.00 and paying its obligation under the amended real estate mortgage.

ISSUE:

Whether the corporate veil shall be pierced. (YES)

RULING:

As a general rule, a corporation will be deemed a separate legal entity until sufficient reason to the contrary appears. But the rule is not absolute. A corporation's separate and distinct legal personality may be disregarded and the veil of corporate fiction pierced when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime.

In this case, Cupertino presented overwhelming evidence that petitioner and its affiliate corporations had received the proceeds of the P160,000,000.00 loan increase which was then made the consideration for the Amended Real Estate Mortgage. We quote with favor the RTC's and the CA's disquisitions on this matter:

That the checks, debit memos and the pledges of the jewelries, condominium units and trucks were constituted not exclusively in the name of petitioner but also either in the name of Yuyek Manufacturing Corporation, Siain Transport, Inc., Cua Leleng and Alberto Lim is of no moment. For the facts established in the case at bar has convinced the Court of the propriety to apply the principle known as "piercing the veil of the corporate entity" by virtue of which, the juridical personalities of the various corporations involved are disregarded and the ensuing liability of the corporation to attach directly to its responsible officers and stockholders. x x x

x x x
The conjunction of the identity of the petitioner corporation in relation to Siain Transport, Inc. (Siain Transport), Yuyek Manufacturing Corp. (Yuyek), as well as the individual personalities of Cua Leleng and Alberto Lim has been indubitably shown in the instant case by the following established considerations, to wit:

1. Siain and Yuyek have a common set of incorporators, stockholders and board of directors;
2. They have the same internal bookkeeper and accountant in the person of Rosemarie Ragodon;
3. They have the same office address at 306 Jose Rizal St., Mandaluyong City;
4. They have the same majority stockholder and president in the person of Cua Le Leng; and

5. In relation to Siain Transport, Cua Le Leng had the unlimited authority by and on herself, without authority from the Board of Directors, to use the funds of Siain Trucking to pay the obligation incurred by the petitioner corporation.

Thus, it is crystal clear that petitioner corporation, Yuyek and Siain Transport are characterized by oneness of operations vested in the person of their common president, Cua Le Leng, and unity in the keeping and maintenance of their corporate books and records through their common accountant and bookkeeper, Rosemarie Ragodon. Consequently, these corporations are proven to be the mere alter-ego of their president Cua Leleng, and considering that Cua Leleng and Alberto Lim have been living together as common law spouses with three children, this Court believes that while Alberto Lim does not appear to be an officer of Siain and Yuyek, nonetheless, his receipt of certain checks and debit memos from Willie Lua and Victoria Lua was actually for the account of his common-law wife, Cua Leleng and her alter ego corporations. While this Court agrees with Siain that a corporation has a personality separate and distinct from its individual stockholders or members, this legal fiction cannot, however, be applied to its benefit in this case where to do so would result to injustice and evasion of a valid obligation, for well settled is the rule in this jurisdiction that the veil of corporate fiction may be pierced when it is used as a shield to further an end subversive of justice, or for purposes that could not have been intended by the law that created it; or to justify wrong, or for evasion of an existing obligation. Resultantly, the obligation incurred and/or the transactions entered into either by Yuyek, or by Siain Trucking, or by Cua Leleng, or by Alberto Lim with Cupertino are deemed to be that of the petitioner itself.

The same principle equally applies to Cupertino. Thus, while it appears that the issuance of the checks and the debit memos as well as the pledges of the condominium units, the jewelries, and the trucks had occurred prior to March 2, 1995, the date when Cupertino was incorporated, the same does not affect the validity of the subject transactions because applying again the principle of piercing the corporate veil, the transactions entered into by Cupertino Realty Corporation, it being merely the alter ego of Wilfredo Lua, are deemed to be the latter's personal transactions and vice-versa.
x x x
x x x Firstly. As can be viewed from the extant record of the instant case, Cua Leleng is the majority stockholder of the three (3) corporations namely, Yuyek Manufacturing Corporation, Siain Transport, Inc., and Siain Enterprises Inc., at the same time the President thereof. Second. Being the majority stockholder and the president, Cua Le leng has the unlimited power, control and authority without the approval from the board of directors to obtain for and in behalf of the [petitioner] corporation from [Cupertino] thereby mortgaging her jewelries, the condominiums of her common law husband, Alberto Lim, the trucks registered in the name of petitioner orporation's sister company, Siain Transport Inc., the subject lots registered in the name of corporation and her oil mill property at Iloilo City. And, to apply the proceeds thereof in whatever way she wants, to the prejudice of the public.

As such, petitioner corporation is now estopped from denying the above apparent authorities of Cua Le Leng who holds herself to the public as possessing the power to do those acts, against any person who dealt in good faith as in the case of Cupertino.

ARCO PULP AND PAPER CO., INC. and CANDIDA A. SANTOS, *Petitioners,* -versus- CUPERTINO REALTY CORP. and DAN T. LIM, doing business under the name and style of QUALITY PAPERS & PLASTIC PRODUCTS ENTERPRISES, *Respondent*

G.R. No. 206806, THIRD DIVISION, JUNE 25, 2014 LEONEN, *J.*

This veil of corporate fiction may be pierced if complainant is able to prove, as in this case, that (1) the officer is guilty of negligence or bad faith, and (2) such negligence or bad faith was clearly and convincingly proven.

When petitioner Arco Pulp and Paper's obligation to respondent became due and demandable, she not only issued an unfunded check but also contracted with a third party in an effort to shift petitioner Arco Pulp and Paper's liability. She unjustifiably refused to honor petitioner corporation's obligations to respondent. These acts clearly amount to bad faith. In this instance, the corporate veil may be pierced, and petitioner Santos may be held solidarily liable with petitioner Arco Pulp and Paper.

FACTS:

Dan T. Lim works in the business of supplying scrap papers, cartons, and other raw materials, under the name Quality Paper and Plastic Products, Enterprises, to factories engaged in the paper mill business. From February 2007 to March 2007, he delivered scrap papers worth P7, 220, 968.31 to Arco Pulp and Paper Company, Inc. (Arco Pulp and Paper) through its Chief Executive Officer and President, Candida A. Santos. The parties allegedly agreed that Arco Pulp and Paper would either pay Dan T. Lim the value of the raw materials or deliver to him their finished products of equivalent value. Dan T. Lim alleged that when he delivered the raw materials, Arco Pulp and Paper issued a post-dated check dated April 18, 20077 in the amount of P1, 487, 766.68 as partial payment, with the assurance that the check would not bounce. When he deposited the check, it was dishonored for being drawn against a closed account. On the same day, Arco Pulp and Paper and a certain Eric Sy executed a memorandum of agreement where Arco Pulp and Paper bound themselves to deliver their finished products to Megapack Container Corporation, owned by Eric Sy, for his account. According to the memorandum, the raw materials would be supplied by Dan T. Lim, through his company, Quality Paper and Plastic Products.

Dan T. Lim sent a letter to Arco Pulp and Paper demanding payment but no payment was made to him.

Lim filed a complaint for collection of sum of money with prayer for attachment before the RTC. He was allowed to submit evidence ex-parte due to the failure of the defendant's representative to attend the pre-trial hearing. The trial court rendered a judgment in favor of Arco Pulp and Paper and dismissed the complaint, holding that when Arco Pulp and Paper and Eric Sy entered into the memorandum of agreement, novation took place, which extinguished Arco Pulp and Paper's obligation to Dan T. Lim.

Dan T. Lim filed an appeal before the Court of Appeals. The appellate court ruled that the facts and circumstances in this case clearly showed the existence of an alternative obligation. Arco Pulp and Paper filed a MR but it was denied. Thus, this present petition for certiorari before the SC.

Before the SC, the petitioners argue that the execution of the memorandum of agreement constituted a novation of the original obligation since Eric Sy became the new debtor of respondent. They also argue that there is no legal basis to hold petitioner Candida A. Santos personally liable for the transaction that petitioner corporation entered into with respondent. Respondent, on the other hand, argues that the Court of Appeals was correct in ruling that there was no proper novation in this case. He argues that the Court of Appeals was correct in ordering the payment of 7,220,968.31 with damages since the debt of petitioners remains unpaid. He also argues that the Court of Appeals was correct in holding petitioners' solidarily liable since petitioner Candida A. Santos was "the prime mover for such outstanding corporate liability.

ISSUE:

Whether Candida Santos should be held solidary liable with Arco Pulp and Paper. (YES)

RULING:

Basic is the rule in corporation law that 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. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues. Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

As a general rule, directors, officers, or employees of a corporation cannot be held personally liable for obligations incurred by the corporation. However, this veil of corporate fiction may be pierced if complainant is able to prove, as in this case, that (1) the officer is guilty of negligence or bad faith, and (2) such negligence or bad faith was clearly and convincingly proven.

Here, petitioner Santos entered into a contract with respondent in her capacity as the President and Chief Executive Officer of Arco Pulp and Paper. She also issued the check in partial payment of petitioner corporation's obligations to respondent on behalf of petitioner Arco Pulp and Paper. This is clear on the face of the check bearing the account name, "Arco Pulp & Paper, Co., Inc." Any obligation arising from these acts would not, ordinarily, be petitioner Santos' personal undertaking for which she would be solidarily liable with petitioner Arco Pulp and Paper.

We find, however, that the corporate veil must be pierced. In Livesey v. Binswanger Philippines: "Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical."

According to the Court of Appeals, petitioner Santos was solidarily liable with petitioner Arco Pulp and Paper, stating that:

"In the present case, we find bad faith on the part of the [petitioners] when they unjustifiably refused to honor their undertaking in favor of the [respondent]. After the check in the amount of P1, 487,766.68 issued by [petitioner] Santos was dishonored for being drawn against a closed account; [petitioner] corporation denied any privity with [respondent]. These acts prompted the [respondent] to avail of the remedies provided by law in order to protect his rights."

We agree with the Court of Appeals. Petitioner Santos cannot be allowed to hide behind the corporate veil. When petitioner Arco Pulp and Paper's obligation to respondent became due and demandable, she not only issued an unfunded check but also contracted with a third party in an effort to shift petitioner Arco Pulp and Paper's liability. She unjustifiably refused to honor petitioner corporation's obligations to respondent. These acts clearly amount to bad faith. In this instance, the corporate veil may be pierced, and petitioner Santos may be held solidarily liable with petitioner Arco Pulp and Paper.

WPM INTERNATIONAL TRADING, INC. and WARLITO P. MANLAPAZ, *Petitioners,* -versus- FE CORAZON LABAYEN, *Respondent*
G.R. No. 182770, SECOND DIVISION, SEPTEMBER 17, 2014 BRION, *J.*

Piercing the corporate veil based on the alter ego theory requires the concurrence of three elements, 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.xxx.

Here, the respondent failed to prove that Manlapaz, acting as president, had absolute control over WPM. Even granting that he exercised a certain degree of control over the finances, policies and practices of WPM, in view of his position as president, chairman and treasurer of the corporation, such control does not necessarily warrant piercing the veil of corporate fiction since there was not a single proof that WPM was formed to defraud CLN or the respondent, or that Manlapaz was guilty of bad faith or fraud.

FACTS:
The respondent, Fe Corazon Labayen, is the owner of H.B.O. Systems Consultants, a management and consultant firm. The petitioner, WPM International Trading, Inc. (WPM), is a domestic corporation engaged in the restaurant business, while Warlito P. Manlapaz (Manlapaz) is its president.

Sometime in 1990, WPM entered into a management agreement with the respondent, by virtue of which the respondent was authorized to operate, manage and rehabilitate Quickbite, a restaurant owned and operated by WPM. As part of her tasks, the respondent looked for a contractor who would renovate the two existing Quickbite outlets in Divisoria, Manila and Lepanto St., University Belt, Manila. Pursuant to the agreement, the respondent engaged the services of CLN Engineering Services (CLN) to renovate Quickbite-Divisoria at the cost of ₱432,876.02.

On June 13, 1990, Quickbite-Divisoria's renovation was finally completed, and its possession was delivered to the respondent. However, out of the ₱432,876.02 renovation cost, only the amount of ₱320,000.00 was paid to CLN, leaving a balance of ₱112,876.02,

On October 19, 1990, CLN filed a complaint for sum of money and damages before the RTC against the respondent and Manlapaz.

Thereafter, the respondent instituted a complaint for damages against the petitioners, WPM and Manlapaz. The respondent alleged that in Civil Case No. Q-90-7013, she was adjudged liable for a contract that she entered into for and in behalf of the petitioners, to which she should be entitled to reimbursement; that her participation in the management agreement was limited only to introducing Manlapaz to Engineer Carmelo Neri (Neri), CLN's general manager; that it was actually Manlapaz and Neri who agreed on the terms and conditions of the agreement; that when the complaint for damages was filed against her, she was abroad; and that she did not know of the case until she returned to the Philippines and received a copy of the decision of the RTC.

In his defense, Manlapaz claims that it was his fellow incorporator/director Edgar Alcansaje who was in-charge with the daily operations of the Quickbite outlets; that when Alcansaje left WPM, the remaining directors were compelled to hire the respondent as manager; that the respondent had entered into the renovation agreement with CLN in her own personal capacity; that when he found the amount quoted by CLN too high, he instructed the respondent to either renegotiate for a lower price or to look for another contractor; that since the respondent had exceeded her authority as agent of WPM, the renovation agreement should only bind her; and that since WPM has a separate and distinct personality, Manlapaz cannot be made liable for the respondent's claim.

RTC held that the respondent is entitled to indemnity from Manlapaz. The RTC found that based on the records, there is a clear indication that WPM is a mere instrumentality or business conduit of Manlapaz and as such, WPM and Manlapaz are considered one and the same. The RTC also found that Manlapaz had complete control over WPM considering that he is its chairman, president and treasurer at the same time. CA affirmed.

ISSUE:

Whether piercing the veil of corporate fiction is warranted (NO)

RULING:

The rule is settled that a corporation has a personality separate and distinct from the persons acting for and in its behalf and, in general, from the people comprising it. Following this principle, the obligations incurred by the corporate officers, orother persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs. Thus, a director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation; it is only in exceptional circumstances that solidary liability will attach to them.

Incidentally, the doctrine of piercing the corporate veil applies only in three (3) basic instances, namely: a) when the separate and distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or c) is used in alter ego cases, i.e., where a corporation is essentially 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 so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

Piercing the corporate veil based on the alter ego theory requires the concurrence of three elements, 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 plaintiff's legal right; and

(3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

The absence of any of these elements prevents piercing the corporate veil.

In the present case, the attendant circumstances do not establish that WPM is a mere alter ego of Manlapaz.

Aside from the fact that Manlapaz was the principal stockholder of WPM, records do not show that WPM was organized and controlled, and its affairs conducted in a manner that made it merely an instrumentality, agency, conduit or adjunct of Manlapaz. As held in Martinez v. Court of Appeals,the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality. To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.

Likewise, the records of the case do not support the lower courts' finding that Manlapaz had control or domination over WPM or its finances. That Manlapaz concurrently held the positions of president, chairman and treasurer, or that the Manlapaz's residence is the registered principal office of WPM, are insufficient considerations to prove that he had exercised absolute control over WPM.

In this connection, we stress that the control necessary to invoke the instrumentality or alter ego rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. The control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made.

Here, the respondent failed to prove that Manlapaz, acting as president, had absolute control over WPM. Even granting that he exercised a certain degree of control over the finances, policies and practices of WPM, in view of his position as president, chairman and treasurer of the corporation, such control does not necessarily warrant piercing the veil of corporate fiction since there was not a single proof that WPM was formed to defraud CLN or the respondent, or that Manlapaz was guilty of bad faith or fraud.

On the contrary, the evidence establishes that CLN and the respondent knew and acted on the knowledge that they were dealing with WPM for the renovation of the latter's restaurant, and not with Manlapaz. That WPM later reneged on its monetary obligation to CLN, resulting to the filing of a civil case for sum of money against the respondent, does not automatically indicate fraud, in the absence of any proof to support it.

This Court also observed that the CA failed to demonstrate how the separate and distinct personalityof WPM was used by Manlapaz to defeat the respondent's right for reimbursement. Neither was there any showing that WPM attempted to avoid liability or had no property against which to proceed.

Since no harm could be said to have been proximately caused by Manlapaz for which the latter could be held solidarily liable with WPM, and considering that there was no proof that WPM had insufficient funds, there was no sufficient justification for the RTC and the CA to have ruled that Manlapaz should be held jointly and severally liable to the respondent for the amount she paid to CLN. Hence, only WPM is liable to indemnify the respondent.

Finally, we emphasize that the piercing of the veil of corporate fiction is frowned upon and thus, must be done with caution. It can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception. The court must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights; it cannot be presumed.

HACIENDA CATAYWA/MANUEL VILLANUEVA, owner, JOEMARIE VILLANUEVA, manager, MANCY AND SONS ENTERPRISES, INC, *Petitioners,* -versus- ROSARIO LOREZO, *Respondent*
G.R. No. 179640, THIRD DIVISION, MARCH 18, 2015 PERALTA, *J.*

The Court has expressed the language of piercing doctrine when applied to alter ego cases, as follows: Where the stock of a corporation is owned by one person whereby the corporation functions only for the benefit of such individual owner, the corporation and the individual should be deemed the same.

This Court agrees with the petitioners that there is no need to pierce the corporate veil. Respondent failed to substantiate her claim that Mancy and Sons Enterprises, Inc. and Manuel and Jose Marie Villanueva are one and the same. She based her claim on the SSS form wherein Manuel Villanueva appeared as employer. However, this does not prove, in any way, that the corporation is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, warranting that its separate and distinct personality be set aside.

FACTS:

Respondent Rosario Lorezo received, upon inquiry, a letter from the Social Security System (SSS) Western Visayas Group informing her that she cannot avail of their retirement benefits since per their record she has only paid 16 months. Such is 104 months short of the minimum requirement of 120 months payment to be entitled to the benefit. She was also informed that their investigation of her alleged employment under employer Hda. Cataywa could not be confirmed because Manuel Villanueva was permanently residing in Manila and Joemarie Villanueva denied having managed the farm. She was also advised of her options: continue paying contributions as voluntary member; request for refund; leave her contributions in-trust with the System, or file a petition before the Social Security Commission (SSC) so that liabilities, if any, of her employer may be determined.3

Aggrieved, respondent then filed her Amended Petition dated September 30, 2003, before the SSC. She alleged that she was employed as laborer in Hda. Cataywa managed by Jose Marie Villanueva in 1970 but was reported to the SSS only in 1978. She alleged that SSS contributions were deducted from her wages from 1970 to 1995, but not all were remitted to the SSS which, subsequently, caused the rejection of her claim. She also impleaded Talisay Farms, Inc. by virtue of its Investment Agreement with Mancy and Sons Enterprises. She also prayed that the veil of corporate fiction be pierced since she alleged that Mancy and Sons Enterprises and Manuel and Jose Marie Villanueva are one and the same.

SSC ruled in favor of respondent. The SSC denied petitioners' Motion for Reconsideration. The petitioner, then, elevated the case before the CA where the case was dismissed outrightly due to technicalities.

ISSUE:

Whether piercing the veil of corporate fiction is warranted (NO)

RULING:

It was held in Rivera v. United Laboratories, Inc. that:

> While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the 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. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

This Court has cautioned against the inordinate application of this doctrine, reiterating the basic rule that "the corporate veil may be pierced only if it becomes a shield for fraud, illegality or inequity committed against a third person.

The Court has expressed the language of piercing doctrine when applied to alter ego cases, as follows: Where the stock of a corporation is owned by one person whereby the corporation functions only for the benefit of such individual owner, the corporation and the individual should be deemed the same.

This Court agrees with the petitioners that there is no need to pierce the corporate veil. Respondent failed to substantiate her claim that Mancy and Sons Enterprises, Inc. and Manuel and Jose Marie Villanueva are one and the same. She based her claim on the SSS form wherein Manuel Villanueva appeared as employer. However, this does not prove, in any way, that the corporation is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, warranting that its separate and distinct personality be set aside. Also, it was not alleged nor proven that Mancy and Sons Enterprises, Inc. functions only for the benefit of Manuel Villanueva, thus, one cannot be an alter ego of the other.

DUTCH MOVERS, INC. CESAR LEE AND YOLANDA LEE, *Petitioners,* -versus- EDILBERTO LEQUIN, CHRISTOPHER R. SALVADOR, REYNALDO L. SINGSING, AND RAFFY B. MASCARDO, *Respondents*

G.R. No. 210032, FIRST DIVISION, April 25, 2017, DEL CASTILLO, *J.*

Piercing the veil of corporate fiction is allowed, and responsible persons may be impleaded, and be held solidarily liable even after final judgment and on execution, provided that such persons deliberately used the corporate vehicle to unjustly evade the judgment obligation, or resorted to fraud, bad faith, or malice in evading their obligation.

In this case, petitioners were impleaded from the inception of this case. They had ample opportunity to debunk the claim that they illegally dismissed respondents, and that they should be held personally liable for having controlled DMI and actively participated in its management, and for having used it to evade legal obligations to respondents.

While it is true that one's control does not by itself result in the disregard of corporate fiction; however, considering the irregularity in the incorporation of DMI, then there is sufficient basis to hold that such corporation was used for an illegal purpose, including evasion of legal duties to its employees, and as such, the piercing of the corporate veil is warranted.

FACTS:

This case is an offshoot of the illegal dismissal Complaint8 filed by Edilberto Lequin (Lequin), Christopher Salvador, Reynaldo Singsing, and Raffy Mascardo (respondents) against Dutch Movers, Inc. (DMI), and/or spouses Cesar Lee and Yolanda Lee (petitioners), its alleged President/Owner, and Manager respectively.

In their Amended Complaint and Position Paper, respondents stated that DMI, a domestic corporation engaged in hauling liquefied petroleum gas, employed Lequin as truck driver and the rest of respondents as helpers; on December 28, 2004, Cesar Lee, through the Supervisor Nazario Furio, informed them that DMI would cease its hauling operation for no reason; as such, they requested DMI to issue a formal notice regarding the matter but to no avail. Later, upon respondents' request, the DOLE NCR10 issued a certification revealing that DMI did not file any notice of business closure. Thus, respondents argued that they were illegally dismissed as their termination was without cause and only on the pretext of closure.

LA dismissed the case. NLRC reversed.

The NLRC Decision became final and executory.

Consequently, respondents filed a Motion for Writ of Execution. Pending resolution of these motions, respondents filed a Manifestation and Motion to Implead stating that upon investigation, they discovered that DMI no longer operates. They, nonetheless, insisted that petitioners - who managed and operated DMI, and consistently represented to respondents that they were the owners of DMI - continue to work at Toyota Alabang, which they also own and operate. They further averred that the Articles of Incorporation (AOI) of DMI ironically did not include petitioners as its directors or officers; and those named directors and officers were persons unknown to them. They likewise claimed that per inquiry with the SEC 20 and the DOLE, they learned that DMI did not tile any notice of business closure; and the creation and operation of DMI was attended with fraud making it convenient for petitioners to evade their legal obligations to them.

Given these developments, respondents prayed that petitioners, and the officers named in DMI's AOI, which included Edgar N. Smith and Millicent C. Smith (spouses Smith), be impleaded, and be held solidarity liable with DMI in paying the judgment awards.

ISSUE:

Whether piercing the veil of corporate fiction is warranted (YES)

RULING:

The Court is not unmindful of the basic tenet that a corporation has a separate and distinct personality from its stockholders, and from other corporations it may be connected with. However, such personality may be disregarded, or the veil of corporate fiction may be pierced attaching personal liability against responsible person if the corporation's personality "is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws x x x." By responsible person, we refer to an individual or entity responsible for, and who acted in bad faith in committing illegal dismissal or in violation of the Labor Code; or one who actively participated in the management of the corporation. Also, piercing the veil of corporate fiction is allowed where a corporation is a mere alter ego or a conduit of a person, or another corporation.36

Here, the veil of corporate fiction must be pierced and accordingly, petitioners should be held personally liable for judgment awards because the peculiarity of the situation shows that they controlled DMI; they actively participated in its operation such that DMI existed not as a separate entity but only as business conduit of petitioners. As will be shown be shown below, petitioners controlled DMI by making it appear to have no mind of its own, and used DMI as shield in evading legal liabilities, including payment of the judgment awards in favor of respondents.

First, petitioners and DMI jointly filed their Position Paper, Reply, and Rejoinder in contesting respondents' illegal dismissal. Perplexingly, petitioners argued that they were not part of DMI and were not privy to its dealings; yet, petitioners, along with DMI, collectively raised arguments on the illegal dismissal case against them.

Stated differently, petitioners denied having any participation in the management and operation of DMI; however, they were aware of and disclosed the circumstances surrounding respondents' employment, and propounded arguments refuting that respondents were illegally dismissed.

To note, petitioners revealed the annual compensation of respondents and their length of service; they also set up the defense that respondents were merely project employees, and were not terminated but that DMI's contract with its client was discontinued resulting in the absence of hauling projects for respondents.

If only to prove that they were not part of DMI, petitioners could have revealed who operated it, and from whom they derived the information embodied in their pleadings. Such failure to reveal thus gives the Court reasons to give credence to respondents' firm stand that petitioners are no strangers to DMI, and that they were the ones who managed and operated it.

Second, the declarations made by spouses Smith further bolster that petitioners and no other controlled DMI, to wit:

> Complainants [herein respondents] in their own motion admit that they never saw [spouses Smith] at the office of [DMI], and do not know them at all. This is because [spouses Smith's] services as lawyers had long been dispensed by the Spouses Lee and had no hand whatsoever in the management of the company. The Smiths, as counsel of the spouses at [that] time, [lent] their names as incorporators to facilitate the [incorporation of DMI.] Respondent Edgard Smith was then counsel of Toyota Alabang and acts as its corporate secretary and as favor to his former client and employer, Respondent Cesar Lee, agreed to help incorporate [DMI] and even asked his wife Respondent, Millicent Smith, to act as incorporator also [to] complete the required 5 man incorporators. After the incorporation they assigned and transferred all their purported participation in the company to the Respondents Spouses Cesar and Yolanda Lee, who acted as managers and are the real owners of the corporation. Even at the time complainant[s were] fired from [their] employment respondents Spouses Smith had already given up their shares. The failure to an1end the Articles of Incorporation of [DMI], and to apply for closure is the fault of the new board, if any was constituted subsequently, and not of Respondents Smiths. Whatever fraud committed was not committed by the Respondents Smiths, hence they could not be made solidarily liable with Respondent Corporation or with the spouses Lee. If bad faith or fraud did attend the termination of complainant[s], respondents Smiths would know nothing of it because they had ceased any connection with [DMI] even prior to such time. And they had at the inception of the corporation never exercised management prerogatives in the selection, hiring, and firing of employees of [DMI].

Spouses Smith categorically identified petitioners as the owners and managers of DMI. In their Motion to Quash, however, petitioners neither denied the allegation of spouses Smith nor adduced evidence to establish that they were not the owners and managers of DMI. They simply insisted that they could not be held personally liable because of the immutability of the final and executory NLRC Decision, and of the separate and distinct personality of DMI.

Furthermore, the assailed CA Decision heavily relied on the declarations of spouses Smith but still petitioners did not address the matters raised by spouses Smith in the instant Petition with the Court.

Indeed, despite sufficient opportunity to clarify matters and/or to refute them, petitioners simply brushed aside the allegations of spouses Smith that petitioners owned and managed DMI. Petitioners just maintain that they did not act in bad faith; that the NLRC Decision is final and executory; and that DMI has a distinct and separate personality. Hence, for failure to address, clarify, or deny the declarations of spouses Smith, the Court finds respondents' position that petitioners owned, and operated DMI with merit.

Third, piercing the veil of corporate fiction is allowed, and responsible persons may be impleaded, and be held solidarily liable even after final judgment and on execution, provided that such persons deliberately used the corporate vehicle to unjustly evade the judgment obligation, or resorted to fraud, bad faith, or malice in evading their obligation.

In this case, petitioners were impleaded from the inception of this case. They had ample opportunity to debunk the claim that they illegally dismissed respondents, and that they should be held personally liable for having controlled DMI and actively participated in its management, and for having used it to evade legal obligations to respondents.

While it is true that one's control does not by itself result in the disregard of corporate fiction; however, considering the irregularity in the incorporation of DMI, then there is sufficient basis to hold that such corporation was used for an illegal purpose, including evasion of legal duties to its employees, and as such, the piercing of the corporate veil is warranted. The act of hiding behind the cloak of corporate fiction will not be allowed in such situation where it is used to evade one's obligations, which "equitable piercing doctrine was formulated to address and prevent."45

Clearly, petitioners should be held liable for the judgment awards as they resorted to such scheme to countermand labor laws by causing the incorporation of DMI but without any indication that they were part thereof. While such device to defeat labor laws may be deemed ingenious and imaginative, the Court will not hesitate to draw the line, and protect the right of workers to security of tenure, including ensuring that they will receive the benefits they deserve when they fall victims of illegal dismissal.

ROMMEL M. ZAMBRANO et al. *Petitioners,* -versus- PHILIPPINE CARPET MANUFACTURING CORPORATION/ PACIFIC CARPET MANUFACTURING CORPORATION, DAVIDE. T. LIM, and EVELYN LIM FORBES, *Respondents*

G.R. No. 224099, SECOND DIVISION, JUNE 21, 2017, MENDOZA, *J.*

Although ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, these circumstances are insufficient to establish an alter ego relationship or connection between Phil Carpet on the one hand and Pacific Carpet on the other hand, that will justify the puncturing of the latter's corporate cover.

This Court has declared 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." It has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."

FACTS:

The petitioners averred that they were employees of private respondent Philippine Carpet Manufacturing Corporation (Phil Carpet). On January 3, 2011, they were notified of the termination of their employment effective February 3, 2011 on the ground of cessation of operation due to serious business losses. They were of the belief that their dismissal was without just cause and in violation of due process because the closure of Phil Carpet was a mere pretense to transfer its operations to its wholly owned and controlled corporation, Pacific Carpet Manufacturing Corporation (PacificCarpet). They claimed that the job orders of some regular clients of PhilCarpet were transferred to Pacific Carpet; and that from October to November 2011, several machines were moved from the premises of Phil Carpet to Pacific Carpet. They asserted that their dismissal constituted unfair labor practice as it involved the mass dismissal of all union officers and members of the Philippine Carpet Manufacturing Employees Association (PHILCEA).

In its defense, Phil Carpet countered that it permanently closed and totally ceased its operations because there had been a steady decline in the demand for its products due to global recession, stiffer competition, and the effects of a changing market.

Labor Arbiter *(LA)* dismissed the complaints for illegal dismissal and unfair labor practice. It ruled that the termination of the petitioners' employment was due to total cessation of manufacturing operations of Phil Carpet because it suffered continuous serious business losses. NLRC and CA affirmed.

Petitioners claim that their termination was a mere pretense because Phil Carpet continued operation through Pacific Carpet

ISSUE:

Whether Pacific Carpet may be held liable for Phil Carpet's obligations (NO)

RULING:

A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which may be related.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

Further, the Court's ruling in Philippine National Bank v. HydroResources Contractors Corporation is enlightening, viz.:

> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) 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.

x x x x

In this connection, case law lays down a three-pronged test to determine the application of the alter ego theory, which is also known as the instrumentality 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.

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.1âwphi1 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.

The Court finds that none of the tests has been satisfactorily met in this case.

Although ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, these circumstances are insufficient to establish an alter ego relationship or connection between Phil Carpet on the one hand and Pacific Carpet on the other hand, that will justify the puncturing of the latter's corporate cover.

This Court has declared 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." It has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."

It must be noted that Pacific Carpet was registered with the Securities and Exchange Commission on January 29, 1999,41 such that it could not be said that Pacific Carpet was set up to evade Phil Carpet's liabilities. As to the transfer of Phil Carpet's machines to Pacific Carpet, settled is the rule that "where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor. "

All told, the petitioners failed to present substantial evidence to prove their allegation that Pacific Carpet is a mere alter ego of Phil Carpet.

MARICALUM MINING CORPORATION *Petitioner,* -versus- ELY G. FLORENTINO et al, *Respondents*
G.R. No. 221813, THIRD DIVISION, JULY 23, 2018, GESMUNDO, *J.*

A subsidiary company's separate corporate personality may be disregarded only when the evidence shows that such separate personality was being used by its parent or holding corporation to perpetrate a fraud or evade an existing obligation. Concomitantly, employees of a corporation have no cause of action for labor-related claims against another unaffiliated corporation, which does not exercise control over them.

FACTS:

On October 2, 1992, the National Government thru the Asset Privatization Trust (APT) 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. In exchange, the PSA obliged G Holdings to pay APT the amount of P673,161,280.00, with a down payment of P98,704,000.00 and with the balance divided into four tranches payable in installment over a period of ten years.7 Concomitantly, G Holdings also assumed Maricalum Mining's liabilities in the form of company notes. The said financial liabilities were converted into three (3) Promissory Notes (PNs) totaling P550,000,000.00 (P114,715,360.00, P186,550,560.00 and P248,734,080.00), which were secured by mortgages over some of Maricalum Mining's properties. These PNs obliged Maricalum Mining to pay G Holdings the stipulated amount of P550,000,000.00.

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.

On January 26, 1999, the Sipalay General Hospital, Inc. (Sipalay Hospital) was duly incorporated to provide medical services and facilities to the general public.

Afterwards, some of Maricalum Mining's employees retired and formed several manpower cooperatives

In 2000, 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 effective July 1, 2001 in order to avert continuing losses brought about by the low metal prices and high cost of production.

In July 2001, 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 December 3, 2001.

On September 23, 2010, some of Maricalum Mining's workers, including complainants, and some of Sipalay General Hospital's employees jointly filed a Complaint15 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, underpayment of overtime pay, underpayment of premium pay for holiday, nonpayment of separation pay, underpayment of holiday pay, nonpayment of service incentive leave pay, nonpayment of vacation and sick leave, nonpayment of 13th month pay, moral and exemplary damages, and attorneys fees.

On December 2, 2010, complainants and CeMPC Chairman Alejandro H. Sitchon surprisingly filed his complaint for illegal dismissal and corresponding monetary claims with the LA against G Holdings, its officer--in-charge and CeMPC.

Thereafter, the complaints were consolidated by the LA.

After the hearings were concluded, complainants presented their Position Paper claiming that: they have not received any increase in wages since they were allegedly rehired; except for Sipalay Hospital's employees, they worked as an augmentation force to the security guards charged with securing Maricalum Mining's assets which were acquired by G Holdings; Maricalum Mining's assets have been exposed to pilferage by some of its rank-and-file employees whose claims for collective bargaining benefits were undergoing litigation; the Sipalay Hospital is purportedly "among the assets" of Maricalum Mining acquired by G Holdings; the payrolls for their wages were supposedly prepared by G Holdings' accounting department; since the second half of April 2007, they have not been paid their salary; and some of their services were dismissed without any due process.

Based on these factual claims, complainants posited that: the manpower cooperatives were mere alter egos of G Holdings organized to subvert the "tenurial rights" of the complainants; G Holdings implemented a retrenchment scheme to dismiss the caretakers it hired before the foreclosure of Maricalum Mining's assets; and G Holdings was their employer because it allegedly had the power to hire, pay wages, control working methods and dismiss them.

LA ruled in favor of complainants. It held that G Holdings is guilty of labor-only contracting with the manpower cooperatives thereby making all of them solidarily and directly liable to complainants.

NLRC modified and ruled that it was Maricalum Mining-not G Holdings-who entered into service contracts by way of a Memorandum of Agreement with each of the manpower cooperatives. CA affirmed.

ISSUE:

Whether G Holdings is liable (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. 262961 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.69

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.

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. (emphases and underscoring supplied)

Again, all these three elements must concur before the corporate veil may be pierced under the alter ego theory. Keeping in mind the parameters, guidelines and indicators for proper piercing of the corporate veil, the Court now proceeds to determine whether Maricalum Mining's corporate veil may be pierced in order to allow complainants to enforce their monetary awards against G Holdings.

I. Control or Instrumentality Test

In Concept Builders, Inc. v. National Labor Relations Commission, et al., the Court first laid down the first set of probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, viz:
1) Stock ownership by one or common ownership of both corporations.
2) Identity of directors and officers.
3) The manner of keeping corporate books and records.
4) Methods of conducting the business.

Later, in Philippine National Bank v. Ritratto Group Inc., et al., the Court expanded the aforementioned probative factors and enumerated a combination of any of the following common circumstances that may also render a subsidiary an instrumentality, to wit:

1) The parent corporation owns all or most of the capital stock of the subsidiary;
2) The parent and subsidiary corporations have common directors or officers;
3) The parent corporation finances the subsidiary;
4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;
5) The subsidiary has grossly inadequate capital;
6) The parent corporation pays the salaries and other expenses or losses of the subsidiary;
7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;
8) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;
9) The parent corporation uses the property of the subsidiary as its own;
10) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation; and
11) The formal legal requirements of the subsidiary are not observed.

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.74

II. Fraud Test

The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice.75 To aid in the determination of the presence or absence of fraud, the following factors in the "Totality of Circumstances Test"76 may be considered, viz:

1) Commingling of funds and other assets of the corporation with those of the individual shareholders;
2) Diversion of the corporation's funds or assets to non-corporate uses (to the personal uses of the corporation's shareholders);
3) Failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock, such as formal approval of the stock issue by the board of directors;
4) An individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation;
5) Failure to maintain corporate minutes or adequate corporate records;
6) Identical equitable ownership in two entities;
7) Identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);
8) Failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;
9) Absence of separately held corporate assets;
10) Use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;
11) Sole ownership of all the stock by one individual or members of a single family;
12) Use of the same office or business location by the corporation and its individual shareholder(s);
13) Employment of the same employees or attorney by the corporation and its shareholder(s);
14) Concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders (sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security);
15) Disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;
16) Use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity;

17) Diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;
18) Contracting by the corporation with another person with the intent to avoid the risk of nonperformance by use of the corporate entity; or the use of a corporation as a subterfuge for illegal transactions; and
19) The formation and use of the corporation to assume the existing liabilities of another person or entity.

Aside from the aforementioned circumstances, it must be determined whether the transfer of assets from Maricalum Mining to G Holdings is enough to invoke the equitable remedy of piercing the corporate veil. The same issue was resolved in Y-I Leisure Phils., Inc., et al. v. Yu where this Court applied the "Nell Doctrine" regarding the transfer of all the assets of one corporation to another. It was discussed in that case that as a general rule that where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except:

1) Where the purchaser expressly or impliedly agrees to assume such debts;
2) Where the transaction amounts to a consolidation or merger of the corporations;
3) Where the purchasing corporation is merely a continuation of the selling corporation; and
4) Where the transaction is entered into fraudulently in order to escape liability for such debts.

If any of the above-cited exceptions are present, then the transferee corporation shall assume the liabilities of the transferor.

In this case, G Holdings cannot be held liable for the satisfaction of labor-related claims against Maricalum Mining under the fraud test for the following reasons:

First, the transfer of some Maricalum Mining's assets in favor G Holdings was by virtue of the PSA as part of an official measure to dispose of the government's non-performing assets-not to evade its monetary obligations to the complainants. Even before complainants' monetary claims supposedly existed in 2007, some of Maricalum Mining's assets had already been validly extrajudicially foreclosed and eventually sold to G Holdings in 2001. Thus, G Holdings could not have devised a scheme to avoid a non-existent obligation. No fraud could be attributed to G Holdings because the transfer of assets was pursuant to a previously perfected valid contract.

Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor. In other words, control or ownership of substantially all of a subsidiary's assets is not by itself an indication of a holding company's fraudulent intent to alienate these assets in evading labor-related claims or liabilities. As discussed earlier, the PSA was not designed to evade the monetary claims of the complainants. Although there was proof that G Holdings has an office in Maricalum Mining's premises and that that some of their assets have been commingled due to the PSA's unavoidable consequences, there was no fraudulent diversion of corporate assets to another corporation for the sole purpose of evading complainants' claim.

Besides, it is evident that the alleged continuing depletion of Maricalum Mining's assets is due to its disgruntled employees' own acts of pilferage, which was beyond the control of G Holdings. More so, complainants also failed to present any clear and convincing evidence that G Holdings was grossly negligent and failed to exercise the required degree of diligence in ensuring that Maricalum Mining's assets would be protected from pilferage. Hence, no fraud can be imputed against G Holdings considering that there is no evidence in the records that establishes it systematically tried to alienate Maricalum Mining's assets to escape the liabilities to complainants.

Second, it was not proven that all of Maricalum Mining's assets were transferred to G Holdings or were totally depleted. Complainants never offered any evidence to establish that Maricalum Mining had absolutely no substantial assets to cover for their monetary claims. Their allegation that their claims will be reduced to a mere "paper victory" has not confirmed with concrete proof. At the very least, substantial evidence should be adduced that the subsidiary company's "net realizable value"82 of "current assets" and "fair value" of "non-current assets" are collectively insufficient to cover the whole amount of its liability subject in the instant litigation.

Third, G Holdings purchased Maricalum Mining's shares from the APT not for the purpose of continuing the latter's existence and operations but for the purpose of investing in the mining industry without having to directly engage in the management and operation of mining. As discussed earlier, a holding company's primary business is merely to invest in the equity of another corporation for the purpose of earning from the latter's endeavors. It generally does not undertake to engage in the daily operating activities of its subsidiaries that, in turn, have their own separate sets of directors and officers. Thus, there should be proof that a holding company had indeed fraudulently used the separate corporate personality of its subsidiary to evade an obligation before it can be held liable. Since G Holdings is a holding company, the corporate veil of its subsidiaries may only be pierced based on fraud or gross negligence amounting to bad faith.

Lastly, no clear and convincing evidence was presented by the complainants to conclusively prove the presence of fraud on the part of G Holdings. Although the quantum of evidence needed to establish a claim for illegal dismissal in labor cases is substantial evidence, the quantum need to establish the presence of fraud is clear and convincing evidence. Thus, to disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly-it cannot be presumed.

Here, 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. To be clear, the presence of control per se is not enough to justify the piercing of the corporate veil.

III. Harm or Casual Connection Test

In WPM International Trading, Inc., et al. v. Labayen, the Court laid down the criteria for the harm or casual connection test, to wit:

In this connection, we stress that the control necessary to invoke the instrumentality or alter ego rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. The control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximatelv cause the injury or unjust loss for which the complaint is made.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.90 More comprehensively, the proximate legal cause is that "acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."91 Hence, for an act or event to be considered as proximate legal cause, it should be shown that such act or event had indeed caused injury to another.

In the case at bench, 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.

A. TEST IN DETERMINING APPLICABILITY

HEIRS OF FE TAN UY (Represented by her heir, Mauling Uy Lim), ***Petitioners,*** **-versus- INTERNATIONAL EXCHANGE BANK,** ***Respondent***
G.R. No. 166282, THIRD DIVISION, FEBRUARY 13, 2013, MENDOZA, *J.*

Any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

Indeed, there is no showing that Uy committed gross negligence. And in the absence of any of the aforementioned requisites for making a corporate officer, director or stockholder personally liable for the obligations of a corporation, Uy, as a treasurer and stockholder of Hammer, cannot be made to answer for the unpaid debts of the corporation.

FACTS:
On several occasions, from June 23, 1997 to September 3, 1997, respondent International Exchange Bank (*iBank*), granted loans to Hammer Garments Corporation (*Hammer*), covered by promissory notes and deeds of assignment.

These were made pursuant to the Letter-Agreementd between iBank and Hammer, represented by its President and General Manager, Manuel Chua *(Chua)* a.k.a. Manuel Chua Uy Po Tiong, granting Hammer a P 25 Million-Peso Omnibus Line. The loans were secured by a P 9 Million-Peso Real Estate Mortgage by Goldkey Development Corporation (*Goldkey*) over several of its properties and a P 25 Million-Peso Surety Agreement signed by Chua and his wife, Fe Tan Uy (*Uy*).

Hammer defaulted in the payment of its loans, prompting iBank to foreclose on Goldkey's third-party Real Estate Mortgage.

For failure of Hammer to pay the deficiency, iBank filed a Complaint for sum of money against Hammer, Chua, Uy, and Goldkey

Despite service of summons, Chua and Hammer did not file their respective answers and were declared in default. In her separate answer, Uy claimed that she was not liable to iBank because she never executed a surety agreement in favor of iBank. Goldkey, on the other hand, also denies liability, averring that it acted only as a third-party mortgagor and that it was a corporation separate and distinct from Hammer.

Meanwhile, iBank applied for the issuance of a writ of preliminary attachment which was granted by the RTC.The Notice of Levy on Attachment of Real Properties, dated July 15, 1998, covering the properties under the name of Goldkey, was sent by the sheriff to the Registry of Deeds of Quezon City. The RTC ruled in favor of iBank. While it made the pronouncement that the signature of Uy on the Surety Agreement was a forgery, it nevertheless held her liable for the outstanding obligation of Hammer because she was an officer and stockholder of the said corporation. The RTC agreed with Goldkey that as a third-party mortgagor, its liability was limited to the properties mortgaged. It came to the conclusion, however, that Goldkey and Hammer were one and the same entity for the following reasons: (1) both were family corporations of Chua and Uy, with Chua as the President and Chief Operating Officer; (2) both corporations shared the same office and transacted business from the same place, (3) the assets of Hammer and Goldkey were co-mingled; and (4) when Chua absconded, both Hammer and Goldkey ceased to operate. As such, the piercing of the veil of corporate fiction was warranted. Uy, as an officer and stockholder of Hammer and Goldkey, was found liable to iBank together with Chua, Hammer and Goldkey for the deficiency of ₱13,420,177.

Aggrieved, the heirs of Uy and Goldkey *(petitioners)* elevated the case to the CA. On August 16, 2004, it promulgated its decision affirming the findings of the RTC.

Hence, these petitions filed separately by the heirs of Uy and Goldkey.

ISSUES:

(1) Whether Uy is liable (NO)
(2) Whether GoldKey is a mere alter ego (YES)

RULING:

(1)
Basic is the rule in corporation law that 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. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

While it is true that the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction is a question of fact which cannot be the subject of a petition for review on certiorari under Rule 45, this Court can take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts.

In this case, petitioners are correct to argue that it was not alleged, much less proven, that Uy committed an act as an officer of Hammer that would permit the piercing of the corporate veil. A reading of the complaint reveals that with regard to Uy, iBank did not demand that she be held liable for the obligations of Hammer because she was a corporate officer who committed bad faith or gross negligence in the performance of her duties such that the lifting of the corporate mask would be merited. What the complaint simply stated is that she, together with her errant husband Chua, acted as surety of Hammer, as evidenced by her signature on the Surety Agreement which was later found by the RTC to have been forged.

Considering that the only basis for holding Uy liable for the payment of the loan was proven to be a falsified document, there was no sufficient justification for the RTC to have ruled that Uy should be held jointly and severally liable to iBank for the unpaid loan of Hammer. Neither did the CA explain its affirmation of the RTC's ruling against Uy. The Court cannot give credence to the simplistic declaration of the RTC that liability would attach directly to Uy for the sole reason that she was an officer and stockholder of Hammer.

At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. Furthermore, if it was true, as petitioners claim, that she no longer performed the functions of a treasurer, then she should have formally resigned as treasurer to isolate herself from any liability that could result from her being an officer of the corporation. Nonetheless, these shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence. Gross negligence is one that is characterized by the lack of the slightest care, acting or failing to act in a situation where there is a duty to act, wilfully and intentionally with a conscious indifference to the consequences insofar as other persons may be affected.

It behooves this Court to emphasize that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception. As aptly explained in *Philippine National Bank v. Andrada Electric & Engineering Company*:

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

Indeed, there is no showing that Uy committed gross negligence. And in the absence of any of the aforementioned requisites for making a corporate officer, director or stockholder personally liable for the obligations of a corporation, Uy, as a treasurer and stockholder of Hammer, cannot be made to answer for the unpaid debts of the corporation.

(2)
There is no reason to discount the findings of the CA that iBank duly inspected the viability of Hammer and satisfied itself that the latter was a good credit risk based on the Financial Statement submitted. In addition, iBank required that the loan be secured by Goldkey's Real Estate Mortgage and the Surety Agreement with Chua and Uy. The records support the factual conclusions made by the RTC and the CA.

To the Court's mind, Goldkey's argument, that iBank is barred from pursuing Goldkey for the satisfaction of the unpaid obligation of Hammer because it had already limited its liability to the real estate mortgage, is completely absurd. Goldkey needs to be reminded that it is being sued not as a consequence of the real estate mortgage, but rather, because it acted as an alter ego of Hammer. Accordingly, they must be treated as one and the same entity, making Goldkey accountable for the debts of Hammer.

In fact, it is Goldkey who is now precluded from denying the validity of the Real Estate Mortgage. In its Answer with Affirmative Defenses and Compulsory Counterclaim, dated January 5, 1998, it already admitted that it acted as a third-party mortgagor to secure the obligation of Hammer to iBank. Thus, it cannot, at this late stage, question the due execution of the third-party mortgage.

Similarly, Goldkey is undoubtedly mistaken in claiming that iBank is seeking to enforce an obligation of Chua. The records clearly show that it was Hammer, of which Chua was the president and a stockholder, which contracted a loan from iBank. What iBank sought was redress from Goldkey by demanding that the veil of corporate fiction be lifted so that it could not raise the defense of having a separate juridical personality to evade liability for the obligations of Hammer.

Under a variation of the doctrine of piercing the veil of corporate fiction, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same.

While the conditions for the disregard of the juridical entity may vary, the following are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, as laid down in *Concept Builders, Inc. v NLRC*:

(1) Stock ownership by one or common ownership of both corporations;
(2) Identity of directors and officers;
(3) The manner of keeping corporate books and records, and
(4) Methods of conducting the business.

These factors are unquestionably present in the case of Goldkey and Hammer, as observed by the RTC, as follows:

1. Both corporations are family corporations of defendants Manuel Chua and his wife Fe Tan Uy. The other incorporators and shareholders of the two corporations are the brother and sister of Manuel Chua (Benito Ng Po Hing and Nenita Chua Tan) and the sister of Fe Tan Uy, Milagros Revilla. The other incorporator/share holder is Manling Uy, the daughter of Manuel Chua Uy Po Tiong and Fe Tan Uy.

The stockholders of Hammer Garments as of March 23, 1987, aside from spouses Manuel and Fe Tan Uy are: Benito Chua, brother Manuel Chua, Nenita Chua Tan, sister of Manuel Chua and Tessie See Chua Tan. On March 8, 1988, the shares of Tessie See Chua Uy were assigned to Milagros T. Revilla, thereby consolidating the shares in the family of Manuel Chua and Fe Tan Uy.

2. Hammer Garments and Goldkey share the same office and practically transact their business from the same place.

3. Defendant Manuel Chua is the President and Chief Operating Officer of both corporations. All business transactions of Goldkey and Hammer are done at the instance of defendant Manuel Chua who is authorized to do so by the corporations.

The promissory notes subject of this complaint are signed by him as Hammer's President and General Manager. The third-party real estate mortgage of defendant Goldkey is signed by him for Goldkey to secure the loan obligation of Hammer Garments with plaintiff "iBank". The other third-party real estate mortgages which Goldkey executed in favor of the other creditor banks of Hammer are also assigned by Manuel Chua.

4. The assets of Goldkey and Hammer are co-mingled. The real properties of Goldkey are mortgaged to secure Hammer's obligation with creditor banks.

The proceed of at least two loans which Hammer obtained from plaintiff "iBank", purportedly to finance its export to Wal-Mart are instead used to finance the purchase of a manager's check payable to Goldkey. The defendants' claim that Goldkey is a creditor of Hammer to justify its receipt of the Manager's check is not substantiated by evidence. Despite subpoenas issued by this Court, Goldkey thru its treasurer, defendant Fe Tan Uy and or its corporate secretary Manling Uy failed to produce the Financial Statement of Goldkey.

5. When defendant Manuel Chua "disappeared", the defendant Goldkey ceased to operate despite the claim that the other "officers" and stockholders like Benito Chua, Nenita Chua Tan, Fe Tan Uy, Manling Uy and Milagros T. Revilla are still around and may be able to continue the business of Goldkey, if it were different or distinct from Hammer which suffered financial set back.

Based on the foregoing findings of the RTC, it was apparent that Goldkey was merely an adjunct of Hammer and, as such, the legal fiction that it has a separate personality from that of Hammer should be brushed aside as they are, undeniably, one and the same.

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus- HYDRO RESOURCES CONTRACTORS CORPORATION, *Respondent*

GR No. 167530, FIRST DIVISION, MARCH 13, 2013, DE CASTRO, *J.*

In applying the alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to "such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal." In addition, the control must be shown to have been exercised at the time the acts complained of took place.

Both the RTC and the Court of Appeals applied the alter ego theory and penetrated the corporate cover of NMIC based on two factors: (1) the ownership by DBP and PNB of effectively all the stocks of NMIC, and (2) the alleged interlocking directorates of DBP, PNB and NMIC. Unfortunately, the conclusion of the trial and appellate courts that the DBP and PNB fit the alter ego theory with respect to NMIC's transaction with HRCC on the premise of complete stock ownership and interlocking directorates involved a quantum leap in logic and law exposing a gap in reason and fact.

While ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, however, these circumstances are insufficient to establish an alter ego relationship or connection between DBP and PNB on the one hand and NMIC on the other hand, that will justify the puncturing of the latter's corporate cover.

FACTS:

Sometime in 1984, petitioners DBP and PNB foreclosed on certain mortgages made on the properties of Marinduque Mining and Industrial Corporation (MMIC). As a result of the foreclosure, DBP and PNB acquired substantially all the assets of MMIC and resumed the business operations of the defunct MMIC by organizing NMIC. DBP and PNB owned 57% and 43% of the shares of NMIC, respectively, except for five qualifying shares. As of September 1984, the members of the Board of Directors of NMIC, namely, Jose Tengco, Jr., Rolando Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada, were either from DBP or PNB.

Subsequently, NMIC engaged the services of Hercon, Inc., for NMIC's Mine Stripping and Road Construction Program in 1985 for a total contract price of P35,770,120. After computing the payments already made by NMIC under the program and crediting the NMIC's receivables from Hercon, Inc., the latter found that NMIC still has an unpaid balance of P8,370,934.74.[10] Hercon, Inc. made several demands on NMIC, including a letter of final demand dated August 12, 1986, and when these were not heeded, a complaint for sum of money was filed in the RTC of Makati, Branch 136 seeking to hold petitioners NMIC, DBP, and PNB solidarily liable for the amount owing Hercon, Inc. The case was docketed as Civil Case No. 15375.

Here, HRCC has alleged from the inception of this case that DBP and PNB (and the APT as assignee of DBP and PNB) should be held solidarily liable for using NMIC as alter ego. The RTC sustained the allegation of HRCC and pierced the corporate veil of NMIC pursuant to the alter ego theory when it concluded that NMIC "is a mere adjunct, business conduit or alter ego of both DBP and PNB." The Court of Appeals upheld such conclusion of the trial court. In other words, both the trial and appellate courts relied on the alter ego theory when they disregarded the separate corporate personality of NMIC.

ISSUE:

Whether the alter ego theory is applicable (NO).

RULING:

In this connection, case law lays down a three-pronged test to determine the application of the alter ego theory, which is also known as the instrumentality 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 plaintiff's legal right; and

(3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

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.

This Court finds that none of the tests has been satisfactorily met in this case.

In applying the alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to "such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal." In addition, the control must be shown to have been exercised at the time the acts complained of took place.

Both the RTC and the Court of Appeals applied the alter ego theory and penetrated the corporate cover of NMIC based on two factors: (1) the ownership by DBP and PNB of effectively all the stocks of NMIC, and (2) the alleged interlocking directorates of DBP, PNB and NMIC. Unfortunately, the conclusion of the trial and appellate courts that the DBP and PNB fit the alter ego theory with respect to NMIC's transaction with HRCC on the premise of complete stock ownership and interlocking directorates involved a quantum leap in logic and law exposing a gap in reason and fact.

While ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, however, these circumstances are insufficient to establish an alter ego relationship or connection between DBP and PNB on the one hand and NMIC on the other hand, that will justify the puncturing of the latter's corporate cover. This Court has declared 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." This Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."

True, the findings of fact of the Court of Appeals are conclusive and cannot be reviewed on appeal to this Court, provided they are borne out of the record or are based on substantial evidence.[68] It is equally true that the question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether the requisite quantum of evidence has been adduced warranting the piercing of the veil of corporate personality. Nevertheless, it has been held in Sarona v. National Labor Relations Commission that this Court has the power to resolve a question of fact, such as whether a corporation is a mere alter ego of another entity or whether the corporate fiction was invoked for fraudulent or malevolent ends, if the findings in the assailed decision are either not supported by the evidence on record or based on a misapprehension of facts.

In this case, nothing in the records shows that the corporate finances, policies and practices of NMIC were dominated by DBP and PNB in such a way that NMIC could be considered to have no separate mind, will or existence of its own but a mere conduit for DBP and PNB. On the contrary, the evidence establishes that HRCC knew and acted on the knowledge that it was dealing with NMIC, not with NMIC's stockholders. The letter proposal of Hercon, Inc., HRCC's predecessor-in-interest, regarding the contract for NMIC's mine stripping and road construction program was addressed to and accepted by NMIC. The various billing reports, progress reports, statements of accounts and communications of Hercon, Inc./HRCC regarding NMIC's mine stripping and road construction program in 1985 concerned NMIC and NMIC's officers, without any indication of or reference to the control exercised by DBP and/or PNB over NMIC's affairs, policies and practices.

HRCC has presented nothing to show that DBP and PNB had a hand in the act complained of, the alleged undue disregard by NMIC of the demands of HRCC to satisfy the unpaid claims for services rendered by HRCC in connection with NMIC's mine stripping and road construction program in 1985.

On the contrary, the overall picture painted by the evidence offered by HRCC is one where HRCC was dealing with NMIC as a distinct juridical person acting through its own corporate officers.

Moreover, the finding that the respective boards of directors of NMIC, DBP, and PNB were interlocking has no basis. HRCC's Exhibit "I-5,"the initial General Information Sheet submitted by NMIC to the Securities and Exchange Commission, relied upon by the trial court and the Court of Appeals may have proven that DBP and PNB owned the stocks of NMIC to the extent of 57% and 43%, respectively. However, nothing in it supports a finding that NMIC, DBP, and PNB had interlocking directors as it only indicates that, of the five members of NMIC's board of directors, four were nominees of either DBP or PNB and only one was a nominee of both DBP and PNB. Only two members of the board of directors of NMIC, Jose Tengco, Jr. and Rolando Zosa, were established to be members of the board of governors of DBP and none was proved to be a member of the board of directors of PNB. No director of NMIC was shown to be also sitting simultaneously in the board of governors/directors of both DBP and PNB.

In reaching its conclusion of an alter ego relationship between DBP and PNB on the one hand and NMIC on the other hand, the Court of Appeals invoked Sibagat Timber Corporation v. Garcia,which it described as "a case under a similar factual milieu." However, in Sibagat Timber Corporation, this Court took care to enumerate the circumstances which led to the piercing of the corporate veil of Sibagat Timber Corporation for being the alter ego of Del Rosario & Sons Logging Enterprises, Inc. Those circumstances were as follows: holding office in the same building, practical identity of the officers and directors of the two corporations and assumption of management and control of Sibagat Timber Corporation by the directors/officers of Del Rosario & Sons Logging Enterprises, Inc.

Here, DBP and PNB maintain an address different from that of NMIC. As already discussed, there was insufficient proof of interlocking directorates. There was not even an allegation of similarity of corporate officers. Instead of evidence that DBP and PNB assumed and controlled the management of NMIC, HRCC's evidence shows that NMIC operated as a distinct entity endowed with its own legal personality. Thus, what obtains in this case is a factual backdrop different from, not similar to, Sibagat Timber Corporation.

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.

In this case, the Court of Appeals declared:

We are not saying that PNB and DBP are guilty of fraud in forming [NMIC], nor are we implying that [NMIC] was used to conceal fraud. x x x.

Such a declaration clearly negates the possibility that DBP and PNB exercised control over NMIC which DBP and PNB used "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 plaintiff's legal rights." It is a recognition that, even assuming that DBP and PNB exercised control over NMIC, there is no evidence that the juridical personality of NMIC was used by DBP and PNB to commit a fraud or to do a wrong against HRCC.

There being a total absence of evidence pointing to a fraudulent, illegal or unfair act committed against HRCC by DBP and PNB under the guise of NMIC, there is no basis to hold that NMIC was a mere alter ego of DBP and PNB. As this Court ruled in Ramoso v. Court of Appeals:

As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, there must have been fraud, and proof of it. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.

As regards the third element, in the absence of both control by DBP and PNB of NMIC and fraud or fundamental unfairness perpetuated by DBP and PNB through the corporate cover of NMIC, no harm could be said to have been proximately caused by DBP and PNB on HRCC for which HRCC could hold DBP and PNB solidarily liable with NMIC.

Considering that, under the deeds of transfer executed by DBP and PNB, the liability of the APT as transferee of the rights, titles and interests of DBP and PNB in NMIC will attach only if DBP and PNB are held liable, the APT incurs no liability for the judgment indebtedness of NMIC. Even HRCC recognizes that "as assignee of DBP and PNB's loan receivables," the APT simply "stepped into the shoes of DBP and PNB with respect to the latter's rights and obligations" in NMIC. As such assignee, therefore, the APT incurs no liability with respect to NMIC other than whatever liabilities may be imputable to its assignors, DBP and PNB.

Even under Section 2.02 of the respective deeds of transfer executed by DBP and PNB which HRCC invokes, the APT cannot be held liable. The contingent liability for which the National Government, through the APT, may be held liable under the said provision refers to contingent liabilities of DBP and PNB. Since DBP and PNB may not be held solidarily liable with NMIC, no contingent liability may be imputed to the APT as well. Only NMIC as a distinct and separate legal entity is liable to pay its corporate obligation to HRCC in the amount of P8,370,934.74, with legal interest thereon from date of demand.

CALIFORNIA MANUFACTURING COMPANY, INC., *Petitioner*, -versus - ADVANCED TECHNOLOGY SYSTEM, INC., *Respondent*
G.R. No. 202454, FIRST DIVISION, APRIL 25, 2017, SERENO, C.J.,

CMCI 's alter ego theory rests on the alleged interlocking boards of directors and stock ownership of the two corporations. The CA, however, rejected this theory based on the settled rule that mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation, by itself, is not sufficient ground to disregard the corporate veil. We can only sustain the CA's ruling. The instrumentality or control test of the alter ego doctrine requires not mere majority or complete stock control, but complete domination of finances, policy and business practice with respect to the transaction in question. The corporate entity must be shown to have no separate mind, will, or existence of its own at the time of the transaction.

Without question, the Spouses Celones are incorporators, directors, and majority stockholders of the ATSI and PPPC. But that is all that CMCI has proven. There is no proof that PPPC controlled the financial policies and business practices of ATSI either in July 2001 when Felicisima proposed to set off the unpaid ₱3.2 million mobilization fund with CMCI's rental of Prodopak machines; or in August 2001 when the lease agreement between CMCI and ATSI commenced. Assuming arguendo that Felicisima was sufficiently clothed with authority to propose the offsetting of obligations, her proposal cannot bind ATSI because at that time the latter had no transaction yet with CMCI. Besides, CMCI had leased only one Prodopak machine. Felicisima's reference to the Prodopak machines in its letter in July 2001 could only mean that those were different from the Prodopak machine that CMCI had leased from A TSI.

FACTS:

CMCI leased from ATSI a Prodopak machine which was used to pack products in 20-ml. pouches. Upon receipt of an open purchase order on 6 August 2001, ATSI delivered the machine to CMCI's plant at Gateway Industrial Park, General Trias, Cavite on 8 August 2001.

In November 2003, ATSI filed a Complaint for Sum of Money against CMCI to collect unpaid rentals for the months of June, July, August, and September 2003. ATSI alleged that CMCI was consistently paying the rents until June 2003 when the latter defaulted on its obligation without just cause.

CMCI moved for the dismissal of the complaint on the ground of extinguishment of obligation through legal compensation. The RTC, however, ruled that the conflicting claims of the parties required trial on the merits. It therefore dismissed the motion to dismiss and directed CMCI to file an Answer.

In its Answer, CMCI averred that ATSI was one and the same with Processing Partners and Packaging Corporation (PPPC), which was a toll packer of CMCI products. To support its allegation, CMCI submitted copies of the Articles of Incorporation and General Information Sheets (GIS) of the two corporations. CMCI pointed out that ATSI was even a stockholder of PPPC as shown in the latter's GIS.

CMCI alleged that in 2000, PPPC agreed to transfer the processing of CMCI's product line from its factory in Meycauayan to Malolos, Bulacan. Upon the request of PPPC, through its Executive Vice President Felicisima Celones, CMCI advanced ₱4 million as mobilization fund. PPPC President and Chief Executive Officer Francis Celones allegedly committed to pay the amount in 12 equal instalments deductible from PPPC's monthly invoice to CMCI beginning in October 2000. 11 CMCI likewise claims that in a letter dated 30 July 2001, Felicisima proposed to set off PPPC's obligation to pay the mobilization fund with the rentals for the Prodopak machine.

CMCI argued that the proposal was binding on both PPPC and ATSI because Felicisima was an officer and a majority stockholder of the two corporations. Moreover, in a letter dated 16 September 2003, she allegedly represented to the new management of CMCI that she was authorized to request the offsetting of PPPC's obligation with ATSI's receivable from CMCI. When ATSI filed suit in November 2003, PPPC's debt arising from the mobilization fund allegedly amounted to ₱10,766.272.

After trial, the RTC rendered a Decision in favor of ATSI. CA affirmed the trial court's ruling that legal compensation had not set in because the element of mutuality of parties was lacking.

ISSUE:

Whether PPPC had a separate legal personality from its individual stockholders, the Spouses Celones, and ATSI. (YES)

RULING:

Any piercing of the corporate veil must be done with caution. As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC* instructs, thus:

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) 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.

CMCI 's alter ego theory rests on the alleged interlocking boards of directors and stock ownership of the two corporations. The CA, however, rejected this theory based on the settled rule that mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation, by itself, is not sufficient ground to disregard the corporate veil. We can only sustain the CA's ruling. The instrumentality or control test of the alter ego doctrine requires not mere majority or complete stock control, but complete domination of finances, policy and business practice with respect to the transaction in question. The corporate entity must be shown to have no separate mind, will, or existence of its own at the time of the transaction.

Without question, the Spouses Celones are incorporators, directors, and majority stockholders of the ATSI and PPPC. But that is all that CMCI has proven. There is no proof that PPPC controlled the financial policies and business practices of ATSI either in July 2001 when Felicisima proposed to set off the unpaid ₱3.2 million mobilization fund with CMCI's rental of Prodopak machines; or in August 2001 when the lease agreement between CMCI and ATSI commenced. Assuming *arguendo* that Felicisima was sufficiently clothed with authority to propose the offsetting of obligations, her proposal cannot bind ATSI because at that time the latter had no transaction yet with CMCI. Besides, CMCI had leased only one Prodopak machine. Felicisima's reference to the Prodopak machines in its letter in July 2001 could only mean that those were different from the Prodopak machine that CMCI had leased from A TSI.

Contrary to the claim of CMCI, none of the letters from the Spouses Celones tend to show that ATSI was even remotely involved in the proposed offsetting of the outstanding debts of CMCI and PPPC.

Even Felicisima's letter to the new management of CMCI in 2003 contains nothing to support CMCI's argument that Felicisima represented herself to be clothed with authority to propose the offsetting.

n all its pleadings, CMCI averred that the P4 million mobilization fund was in furtherance of its agreement with PPPC in 2000. Prior thereto, PPPC had been a toll packer of its products as early as 1996. Clearly, CMCI had been dealing with PPPC as a distinct juridical person acting through its own corporate officers from 1996 to 2003.

CMCI's dealing with ATSI began only in August 2001. It appears, however, that CMCI now wants the Court to gloss over the separate corporate existence ATSI and PPPC notwithstanding the dearth of evidence showing that either PPPC or ATSI had used their corporate cover to commit fraud or evade their respective obligations to CMCI. It even appears that CMCI faithfully discharged its obligation to ATSI for a good two years without raising any concern about its relationship to PPPC.

The fraud test, which is the second of the three-prong test to determine the application of the alter ego doctrine, requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. Under the third prong, or the harm test, 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 has to be established. None of these elements have been demonstrated in this case. Hence, we can only agree with the CA and RTC in ruling out mutuality of parties to justify the application of legal compensation in this case.

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. Nos. 220926, 221058, 221109, 221135 & 221218, THIRD DIVISION, JULY 5, 2017, VELASCO, JR. *J,*

Concept Builders, Inc. v. NLRC instructs that as a fundamental principle of corporation law, 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.

Virata used 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.

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, and one of the bank's affiliates. Offered to him were "sans recourse" transactions with the following mechanics as summarized by the CA:

x x x 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 which the latter can draw upon in a series of availments over a period of time. The agreement stipulates that Wincorp shall extend a credit facility on "best effort" basis and that 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.

Wincorp issued Ng Wee and his trustees Confirmation Advices informing them of the identity of the borrower with whom they were matched, and the terms under which the said borrower would repay them.

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, which has substantial interests in the Manila Cavite Express Tollway Project (Cavitex).

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. A Writ of Preliminary Attachment was then issued against Halim Saad's properties, which included the assets of UEM-MARA Philippines Corporation (UEM-MARA). Virata was not impleaded as a party defendant in the case.

To induce the parties to settle, petitioner Virata offered to guarantee the full payment of the loan. Virata was then able to broker a compromise between Wincorp and Halim Saad that paved the way for the execution of a Settlement Agreement dated July 28, 1999. In the Settlement Agreement, Halim Saad agreed to pay USD l,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.

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 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." 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.

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.

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.

As an annex to the Complaint, Ng Wee cited the May 5, 2000 Cease and Desist Order issued by the Prosecution and Enforcement Department of the Securities and Exchange Commission. Data gathered by the SEC showed that, as of December 31, 1999, Wincorp has sourced funds from 2,200 individuals with an average of ₱7,000,000,000.00 worth of commercial papers per month. In its subsequent October 27, 2000 Resolution, the SEC found that the Confirmation Advices that Wincorp had been issuing to its investors takes the form of a security that ought to have been registered before being offered to the public, and that the investment house had also been advancing the payment of interest to the investors to cover up its borrowers' insolvency.

The defendants moved for the dismissal of the case for failure to state a cause of action, among other reasons, moored on the fact that the investments were not recorded in the name of Ng Wee. These motions, however, were denied by the RTC up until the Supreme Court.

In their respective Answers, the Wincorp and Power Merge camps presented opposing defenses. 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.

For their part, the Wincorp directors argued that they can only be held liable under Section 31 of Batas Pambansa Big. (BP) 68, 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.

Reyes meanwhile asseverated that the first paragraph of Sec. 31 cannot find application to his case since he is not a director of Wincorp, but its officer. It is his argument that he can only be held liable under the second paragraph of the provision if he is guilty of conflict of interest, which he is not.

On the other hand, 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.

ISSUE:

Whether piercing the veil of corporate fiction may be allowed in this case. (YES)

RULING:

Indubitably, Wincorp and Power Merge are liable to Ng Wee for fraud and under contract, respectively. The thrust of majority of the petitioners, however, is that they cannot be held liable for the business judgments of the corporations they are part of given the latter's separate juridical personalities.

G.R. No. 220926: The liabilities of Luis Juan L. Virata and UEM-MARA

a. 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. Concept Builders, Inc. v. NLRC instructs that as a fundamental principle of corporation law, 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.

b. UEM-MARA cannot be held liable
There is, however, merit in the argument that UEM-MARA cannot be held liable to respondent Ng Wee. The RIC and the CA held that the corporation ought to be held solidarily liable with the other petitioners "in order that justice can reach the illegal proceeds from the defrauded investments of [Ng Wee] under the Power Merge account." 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.

A cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

The third requisite is severely lacking 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.

VETERANS FEDERATION OF THE PHILIPPINES, *Petitioner,* -versus - EDUARDO L. MONTENEJO, MYLENE M. BONIFACIO, EVANGELINE E. VALVERDE, DEANA N. PAGAL, and VFP MANAGEMENT DEVELOPMENT CORPORATION, *Respondents*
G.R. No. 184819, THIRD DIVISION, NOVEMBER 29, 2017, VELASCO, JR., *J.*

Relative to the Concept Builders test are the ff. critical ruminations from Rufina Luy Lim v. CA:
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 a sufficient reason for disregarding the fiction of separate corporate personalities..

Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the ''finances,. .. policy and business practice" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same 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 another's legal rights.".

FACTS:

In 1967, through the government's Proclamation No. 192, VFP was able to obtain control and possession of a vast parcel of land located in Taguig. VFP eventually developed said land into an industrial complex, which is now known as the VFP Industrial Area (VFPIA). Respondent VFP Management and Development Corporation (VMDC), on the other hand, is a private management company organized in 1990 pursuant to the general incorporation law.

On January 4, 1991, VFP entered into a management agreement with VMDC. Under the said agreement, VMDC was to assume exclusive management and operation of the VFPIA in exchange for forty percent (40%) of the lease rentals generated from the area. In managing and operating the VFPIA, VMDC hired its own personnel and employees. Among those hired by VMDC were respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal (hereafter collectively referred to as "Montenejo, et al.").

The management agreement between VFP and VMDC had a term of five (5) years, or up to 4 January 1996, and is renewable for another five (5) years. Subsequently, both parties acceded to extend the agreement up to 1998. After 1998, the agreement was again extended by VFP and VMDC albeit only on a month-to-month basis.

Then, the VFP board passed a resolution terminating the management agreement effective December 31, 1999. VMDC conceded to the termination and eventually agreed to turn over to VFP the possession of all buildings, equipment and other properties necessary to the operation of the VFPIA.

On January 3, 2000, the President of VMDC issued a memorandum informing the company's employees of the termination of their services effective at the close of office hours on January 31, 2000 "in view of the termination of the management agreement." True to the memorandum's words, VMDC dismissed all of its employees and paid each his or her separation pay.

Contending in the main that their dismissals had been effected without cause and observance of due process, Montenejo, et al. filed before the Labor Arbiter (LA) a complaint for illegal dismissal, money claims and damages. They impleaded both VMDC and VFP as defendants in the complaint. VMDC, for its part, denied the contention. It argued that the dismissals of Montenejo, et al. were valid as they were due to an authorized cause-the cessation or closure of its business. VMDC claimed that the cessation of its operations was but the necessary consequence of the termination of such agreement. VFP, on the other hand, seconded the arguments of VMDC. In addition, however, VFP asserted that it could not, at any rate, be held liable under the complaint because it is not the employer of Montenejo, et al.

ISSUE:

Whether piercing the veil of corporation fiction is warranted. (NO)

RULING:

The NLRC and the CA's stance is based on their submission that the doctrine of piercing the veil of corporate fiction is applicable to this case, i.e., that VFP and VMDC could, for purposes of satisfying any monetary award that may be due to Montenejo, et al., be treated as one and the same entity. According to the two tribunals, the doctrine may be applied to this case because VFP apparently owns almost all of the shares of stock of VMDC.

In this regard, both the NLRC and the CA cite the Closing Agreement of VFP and VMDC which states that: NOW THEREFORE, for and in consideration of the foregoing premises the VFP and the VMDC hereby agree to terminate the management agreement for the development and management of the VFPIA in Taguig effective on 3 January 2000, subject to the following conditions:

1. The [VMDC] agrees that the [VFP] is the majority stockholder of the [VMDC] and that all its original incorporators have endorsed all their shares of stock to the [VFP] except one (1) qualifying share each to be able to sit as Director in the Board of Directors of the [VMDC]. We disagree with the submission.

The doctrine of piercing the veil of corporate fiction is a legal precept that allows a corporation's separate personality to be disregarded under certain cirumstances, so that a corporation and its stockholders or members, or a corporation and another related corporation could be treated as a single entity. The doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes. As Manila Hotel Corporation v. NLRC explains: Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime. It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation.

In Concept Builders, Inc. v. NLRC, we laid down the following test to determine when it would be proper to apply the doctrine of piercing the veil of corporate fiction:

1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy & 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 plaintiff's legal rights; and
3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents piercing the Ocorporate veil. In applying the instrumentality or alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation.

Relative to the Concept Builders test are the ff. critical ruminations from Rufina Luy Lim v. CA:
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 a sufficient reason for disregarding the fiction of separate corporate personalities.

Moreover, to disregard the separate juridical personality of a corporation, the wrong-doing must be clearly and convincingly established. It cannot be presumed.

Utilizing the foregoing standards, it becomes clear that the NLRC and the CA were mistaken in their application of the doctrine to the case at bench. The sole circumstance used by both to justify their disregard of the separate personalities of VFP and VMDC is the former's alleged status as the majority stockholder of the latter. Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the ''finances[,]. .. policy and business practice" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same 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 [another's] legal rights."

Given the absence of any convincing proof of misuse or abuse of the corporate shield, we, thus, find the application of the doctrine of piercing the veil of corporate fiction to the present case to be unwarranted, if not utterly improper. Consequently, we must also reject, for being erroneous, the pronouncement that VFP may be held solidarily liable with VMDC for any monetary award that may be adjudged in favor of Montenejo, et al. in this case.

INTERNATIONAL ACADEMY OF MANAGEMENT AND ECONOMICS (I/AME) ***Petitioner,*** **-versus - LITTON AND COMPANY, INC.,** ***Respondent***
G.R. No. 191525, FIRST DIVISION, DECEMBER 13, 2017, SERENO*, C.J.*

Relative to the Concept Builders test are the ff. critical ruminations from Rufina Luy Lim v. CA:
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 a sufficient reason for disregarding the fiction of separate corporate personalities..

Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the ''finances,. .. policy and business practice" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same 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 another's legal rights.".

FACTS:

Atty. Emmanuel T. Santos (Santos), a lessee to two (2) buildings owned by Litton, owed the latter rental arrears as well as his share of the payment of realty taxes. Consequently, Litton filed a complaint for unlawful detainer against Santos before the MeTC of Manila. The MeTC ruled in Litton's favor and ordered Santos to vacate A.I.D. Building and Litton Apartments and to pay various sums of money representing unpaid arrears, realty taxes, penalty, and attorney's fees.

It appears however that the judgment was not executed. Litton subsequently filed an action for revival of judgment, which was granted by the RTC. Santos then appealed the RTC decision to the CA, which nevertheless affirmed the RTC. The said CA decision became final and executory on 22 March 1994.

On 11 November 1996, the sheriff of the MeTC of Manila levied on a piece of real property covered by Transfer Certificate of Title (TCT) No. 187565 and registered in the name of International Academy of Management and Economics Incorporated (I/AME), in order to execute the judgment against Santos. The annotations on TCT No. 187565 indicated that such was "only up to the extent of the share of Emmanuel T. Santos."

I/AME filed with Me TC a "Motion to Lift or Remove Annotations Inscribed in TCT No. 187565 of the Register of Deeds of Makati City." I/AME claimed that it has a separate and distinct personality from Santos; hence, its properties should not be made to answer for the latter's liabilities. The motion was denied in an Order dated 29 October 2004.

Upon motion for reconsideration of I/AME, the Me TC reversed its earlier ruling and ordered the cancellation of the annotations of levy as well as the writ of execution. Litton then elevated the case to the RTC, which in turn reversed the Order granting I/AME's motion for reconsideration and reinstated the original Order dated 29 October 2004.

I/AME then filed a petition with the CA to contest the judgment of the RTC, which was eventually denied by the appellate court.

The issues boil down to the alleged denial of due process when the court pierced the corporate veil of I/ AME and its property was made to answer for the liability of Santos.

ISSUE:

Whether there is denial of due process (NO)

RULING:

Indeed, compliance with the recognized modes of acquisition ofjurisdiction cannot be dispensed with even in piercing the veil of corporation

When the corporate veil is pierced, the corporation and persons who are normally treated as distinct from the corporation are treated as one person, such that when the corporation is adjudged liable, these persons, too, become liable as if they were the corporation.
The piercing of the corporate veil is premised on the fact that the corporation concerned must have been properly served with summons or properly subjected to the jurisdiction of the court *a quo*. Corollary thereto, it cannot be subjected to a writ of execution meant for another in violation of its right to due process.

There exists, however, an exception to this rule: if it is shown "by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings. "

The resistance of the Court to offend the right to due process of a corporation that is a nonparty in a main case, may disintegrate not only when its director, officer, shareholder, trustee or member is a party to the main case, but when it finds facts which show that piercing of the corporate veil is merited.

Thus, as the Court has already ruled, a party whose corporation is vulnerable to piercing of its corporate veil cannot argue violation of due process.

In this case, the Court confirms the lower courts' findings that Santos had an existing obligation based on a court judgment that he owed monthly rentals and unpaid realty taxes under a lease contract he entered into as lessee with the Littons as lessor. He was not able to comply with this particular obligation, and in fact, refused to comply therewith.

This Court agrees with the CA that Santos used I/AME as a means to defeat judicial processes and to evade his obligation to Litton. Thus, even while I/AME was not imp leaded in the main case and yet was so named in a writ of execution to satisfy a court judgment against Santos, it is vulnerable to the piercing of its corporate veil. We will further expound on this matter.

Piercing the Corporate Veil may Apply to Non-stock Corporations

Petitioner I/AME argues that the doctrine of piercing the corporate veil applies only to stock corporations, and not to non-stock, nonprofit corporations such as I/AME since there are no stockholders to hold liable in such a situation but instead only members. Hence, they do not have investments or shares of stock or assets to answer for possible liabilities.

Thus, no one in a non-stock corporation can be held liable in case the corporate veil is disregarded or pierced.

The CA disagreed. It ruled that since the law does not make a distinction between a stock and non-stock corporation, neither should there be a distinction in case the doctrine of piercing the veil of corporate fiction has to be applied. While I/AME is an educational institution, the CA further ruled, it still is a registered corporation conducting its affairs as such.

This Court agrees with the CA.

In determining the propriety of applicability of piercing the veil of corporate fiction, this Court, in a number of cases, did not put in issue whether a corporation is a stock or non-stock corporation. In *Sula ng Bayan, Inc. v. Gregorio Araneta, Inc.* , we considered but ultimately refused to pierce the corporate veil of a non-stock non-profit corporation which sought to institute an action for reconveyance of real property on behalf of its members. This Court held that the non-stock corporation had no personality to institute a class suit on behalf of its members, considering that the non-stock corporation was not an assignee or transferee of the real property in question, and did not have an identity that was one and the same as its members.

In the United States, from which we have adopted our law on corporations, non-profit corporations are not immune from the doctrine of piercing the corporate veil. Their courts view piercing of the corporation asan equitable remedy, which justifies said courts to scrutnize any organization however organized and in whatever manner it operates. Moreover, control of ownership does not hinge on stock ownership.

As held in *Barineau v. Barineau:*
the mere fact that the corporation involved is a nonprofit corporation does not by itself preclude a court from applying the equitable remedy of piercing the corporate veil. The equitable character of the remedy permits a court to look to the substance of the organization, and its decision is not controlled by the statutory framework under which the corporation was formed and operated. While it may appear to be impossible for a person to exercise ownership control over a non-stock, not-for-profit corporation, a person can be held personally liable under the alter ego theory if the evidence shows that the person controlling the corporation did in fact exercise control, even though there was no stock ownership
.
The concept of equitable ownership, for stock or non-stock corporations, in piercing of the corporate veil scenarios, may also be considered. An equitable owner is an individual who is a non-shareholder defendant, who exercises sufficient control or considerable authority over the corporation to the point of completely disregarding the corporate form and acting as though its assets are his or her alone to manage and distribute.

Given the foregoing, this Court sees no reason why a non-stock corporation such as I/AME, may not be scrutinized for purposes of piercing the corporate veil or fiction.

Piercing the Corporate Veil may Apply to Natural Persons
The petitioner also insists that the piercing of the corporate veil cannot be applied to a natural person - in this case, Santos - simply because as a human being, he has no corporate veil shrouding or covering his person.

a) When the Corporation is the Alter Ego of a Natural Person
As cited in *Sula ng Bayan, Inc. v. Araneta, Inc.* "[t]he doctrine of alter ego is based upon the **misuse** of a corporation **by an individual** for wrongful or inequitable purposes, and in such case the court merely disregards the corporate entity and holds the individual responsible for acts knowingly and intentionally done in the name of the corporation." This, Santos has done in this case. Santos formed I/AME, using the non-stock corporation, to evade paying his judgment creditor, Litton.

The piercing of the corporate veil may apply to corporations as well as natural persons involved with corporations. This Court has held that the "corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of **a person** or of another corporation."

We have considered a deceased natural person as one and the same with his corporaticc to protect the succession rights of his legal heirs to his estate. In *Cease v. Court of Appeals,* the predecessor-in-interest organized a close corporation which acquired properties during its existence. When he died intestate, trouble ensued amongst his children on whether or not to consider his company one and the same with his person. The Court agreed with the trial court when it pierced the corporate veil of the decedent's corporation. It found that said corporation was his business conduit and alter ego. Thus, the acquired properties were actually properties of the decedent and as such, should be divided among the decedent's legitimate children in the partition of his estate.

In another instance, this Court allowed the piercing of the corporate veil against another natural person, in *Arcilla v. Court of Appeals.* The case stemmed from a complaint for sum of money against Arcilla for his failure to pay his loan from the private respondent. Arcilla, in his defense, alleged that the loan was in the name of his family corporation, CSAR Marine Resources, Inc. He further argued that the CA erred in holding CSAR Marine Resources liable to the private respondent since the latter was not impleaded as a party in the case. This Court allowed the piercing of the corporate veil and held that Arcilla used "his capacity as President, x x x [as] a sanctuary for a defense x x x to avoid complying with the liability adjudged against him x x x. " We held that his liability remained attached even if he was impleaded as a party, and not the corporation, to thecollection case and even if he ceased to be corporate president. Indeed, even if Arcilla had ceased to be corporate president, he remained personally liable for the judgment debt to pay his personal loan, for we treated him and the corporation as one and the same. CSAR Marine was deemed his alter ego.

We find similarities with *Arcilla* and the instant case. Like *Arcilla,* Santos: (1) was adjudged liable to pay on a judgment against him; (2) he became President of a corporation; (3) he formed a corporation to conceal assets which were supposed to pay for the judgment against his favor; (4) the corporation which has Santos as its President, is being asked by the court to pay on the judgment; and (5) he may not use as a defense that he is no longer President of *I*/AME (although a visit to the website of the school shows he is the current President).

This Court agrees with the CA that I/AME is the alter ego of Santos and Santos - the natural person - is the alter ego of I/AME. Santos falsely represented himself as President of I/AME in the Deed of

Absolute Sale when he bought the Makati real property, at a time when I/ AME had not yet existed. Uncontroverted facts in this case also reveal the findings of Me TC showing Santos and I/ AME as being one and the same person:

(1) Santos is the conceptualizer and implementor of I/AME;
(2) Santos' contribution is ₱1,200,000.00 (One Million Two Hundred Thousand Pesos) out of the ₱1,500,000.00 (One Million Five Hundred Thousand Pesos), making him the majority contributor of I/AME; and,
(3) The building being occupied by I/AME is named after Santos using his known nickname (to date it is called, the "Noli Santos Inte1national Tower").[48]
This Court deems I/AME and Santos as alter egos of each other based on the former's own admission in its pleadings before the trial court. In its Answer (to Amended Petition) with the RTC entitled *Litton and Company, Inc. v. Hon. Hernandez-Calledo,* Civil Case No. 06-115547, I/AME admitted the allegations found in paragraphs 2, 4 and 5 of the amended petition of Litton, particularly paragraph number 4 which states:
4. Respondent, **International Academy of Management and Economics Inc.** (hereinafter referred to as Respondent I/ AME), is a corporation organized and existing under Philippine laws with address at 1061 Metropolitan Avenue, San Antonie Village, Makati City, where it may be served with summons and other judicial processes. **It is the corporate entity used by Respondent Santos as his alter ego for the purpose of shielding his assets from the reach of his creditors,** one of which is herein Petitioner. (Emphases ours)

Hence, I/AME is the alter ego of the natural person, Santos, which the latter used to evade the execution on the Makati property, thus frustrating the satisfaction of the judgment won by Litton.

b) Reverse Piercing of the Corporate Veil

This Court in *Arcilla* pierced the corporate veil of CSAR Marine Resources to satisfy a money judgment against its erstwhile President, Arcilla.
We borrow from American parlance what is called reverse piercing or reverse corporate piercing or piercing the corporate veil "in reverse."

As held in the U.S. Case, *C.F. Trust, Inc., v. First Flight Limited Partnership,* "in a traditional veil-piercing action, a court disregards the existence of the corporate entity so a claimant can reach the assets of a corporate insider. In a reverse piercing action, however, the plaintiff seeks to reach the assets of a corporation to satisfy claims against a corporate insider."

"Reverse-piercing flows in the opposite direction (of traditional corporate veil-piercing) and makes the corporation liable for the debt of the shareholders."

It has two (2) types: outsider reverse piercing and insider reverse piercing. Outsider reverse piercing occurs when a party with a claim against an individual or corporation attempts to be repaid with assets of a corporation owned or substantially controlled by the defendant. In contrast, in insider reverse piercing, the controlling members will attempt to ignore the corporate fiction in order to take advantage of a benefit available to the corporation, such as an interest in a lawsuit or protection of personal assets.

Outsider reverse veil-piercing is applicable in the instant case. Litton, as judgment creditor, seeks the Court's intervention to pierce the corporate veil of I/AME in order to make its Makati real property answer for a judgment against Santos, who formerly owned and still substantially controls I/AME. In the U.S. case *Acree v. McMahan,* the American court held that "outsider reverse veil-piercing extends the traditional veil-piercing doctrine to permit a third-party creditor to pierce the veil to satisfy the debts of an individual out of the corporation's assets."

The Court has pierced the corporate veil in a reverse manner in the instances when the scheme was to avoid corporate assets to be included in the estate of a decedent as in the *Cease* case and when the corporation was used to escape a judgment to pay a debt as in the *Arcilla* case.

In a 1962 Philippine case, this Court also employed what we now call reverse-piercing of the corporate veil. In *Palacio v. Fely Transportation Co.,* we found that the president and general manager of the private respondent company formed the corporation to evade his subsidiary civil liability resulting from the conviction of his driver who ran over the child of the petitioner, causing injuries and medical expenses. The Court agreed with the plaintiffs that the president and general manager, and Fely Transportation, may be regarded as one and the same person. Thus, even if the president and general manager was not a party to the case, we reversed the lower court and declared both him and the private respondent company, jointly and severally liable to the plaintiffs. Thus, this Court allowed the outsider-plaintiffs to pierce the corporate veil of Fely Transportation to run after its corporate assets and pay the subsidiary civil liability of the company's president and general manager.

This notwithstanding, the equitable remedy of reverse corporate piercing or reverse piercing was not meant to encourage a creditor's failure to undertake such remedies that could have otherwise been available, to the detriment of other creditors.

Reverse corporate piercing is an equitable remedy which if utilized cavalierly, may lead to disastrous consequences for both stock and non-stock corporations. We are aware that ordinary judgment collection procedures or other legal remedies are preferred over that which would risk damage to third parties (for instance, innocent stockholders or voluntary creditors) with unprotected interests in the assets of the beleaguered corporation.

Thus, this Court would recommend the application of the current 1997 Rules on Civil Procedure on Enforcement of Judgments. Under the current Rules of Court on Civil Procedure, when it comes to satisfaction by levy, a judgment obligor is given the option to immediately choose which property or part thereof may be levied upon to satisfy the judgment. If the judgmentobligor does not exercise the option, personal properties, if any, shall be first levied and then on real properties if the personal properties are deemed insufficient to answer for the judgment.

In the instant case, it may be possible for this Court to recommend that Litton run after the other properties of Santos that could satisfy the money judgment - first personal, then other real properties other than that of the school. However, if we allow this, we frustrate the decades-old yet valid MeTC judgment which levied on the real property now titled under the name of the school. Moreover, this Court will unwittingly condone the action of Santos in hiding all these years behind the corporate form to evade paying his obligation under the judgment in the court *a quo*. This we cannot countenance without being a party to the injustice.

Thus, the reverse piercing of the corporate veil of I/AME to enforce the levy on execution of the Makati real property where the school now stands is applied.

E. INCORPORATION AND ORGANIZATION

MARIANO A. ALBERT, *Petitioner,* -versus - UNIVERSITY PUBLISHING CO., INC., *Respondent*
G.R. No. L-19118, EN BANC, JANUARY 30, 1965, BENGZON J.P., *J.*

Aruego represented a non-existent entity and induced not only the plaintiff but even the court to believe in such representation. He signed the contract as "President" of "University Publishing Co., Inc.," stating that this was "a corporation duly organized and existing under the laws of the Philippines," and obviously misled plaintiff (Mariano A. Albert) into believing the same. One who has induced another to act upon his wilful misrepresentation that a corporation was duly organized and existing under the law, cannot thereafter set up against his victim the principle of corporation by estoppel.

FACTS:

Fifteen years ago, Mariano A. Albert sued University Publishing Co., Inc. Plaintiff alleged inter alia that defendant, through Jose M. Aruego, its President, entered into a contract with plaintifif; that defendant had thereby agreed to pay plaintiff P30,000.00 for the exclusive right to publish his revised Commentaries on the Revised Penal Code and for his share in previous sales of the book's first edition; that defendant had undertaken to pay in eight quarterly installments of P3,750.00. That per contract failure to pay one installment would render the rest due; and that defendant had failed to pay the second installment.

Plaintiff, however, petitioned for a writ of execution against Jose M. Aruego, as the real defendant, stating, "plaintiff's counsel and the Sheriff of Manila discovered that there is no such entity as University Publishing Co., Inc." Plaintiff annexed to his petition a certification from the securities and Exchange Commission dated July 31, 1961, attesting: "The records of this Commission do not show the registration of UNIVERSITY PUBLISHING CO., INC., either as a corporation or partnership."

ISSUE:

Whether Jose M. Aruego is the real defendant, due to the non registration or existence of University Publishing co (YES)

RULING:

Aruego represented a non-existent entity and induced not only the plaintiff but even the court to believe in such representation. He signed the contract as "President" of "University Publishing Co., Inc.," stating that this was "a corporation duly organized and existing under the laws of the Philippines," and obviously misled plaintiff (Mariano A. Albert) into believing the same. One who has induced another to act upon his wilful misrepresentation that a corporation was duly organized and existing under the law, cannot thereafter set up against his victim the principle of corporation by estoppel (Salvatiera vs. Garlitos, 56 O.G. 3069).

"University Publishing Co., Inc." purported to come to court, answering the complaint and litigating upon the merits. But as stated, "University Publishing Co., Inc." has no independent personality; it is just a name. Jose M. Aruego was, in reality, the one who answered and litigated, through his own law firm as counsel. He was in fact, if not, in name, the defendant.

Even with regard to corporations duly organized and existing under the law, we have in many a case pierced the veil of corporate fiction to administer the ends of justice.* And in *Salvatiera vs. Garlitos*, *supra*, p. 3073, we ruled: "A person acting or purporting to act on behalf of a corporation which has no valid existence *assumes such privileges and obligations and becomes personally liable* for contracts entered into or for other acts performed as such agent." Had Jose M. Aruego been named as party defendant instead of, or together with, "University Publishing Co., Inc.," there would be no room for debate as to his personal liability. Since he was not so named, the matters of "day in court" and "due process" have arisen.

In this connection, it must be realized that parties to a suit are "persons who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from a decision" (67 C.J.S. 887) — and Aruego was, in reality, the person who had and exercised these rights. Clearly, then, Aruego had his day in court as the real defendant; and due process of law has been substantially observed.

By "due process of law" we mean " "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. ... ." (4 Wheaton, U.S. 518, 581.)"; or, as this Court has said, " "Due process of law" contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property" (Lopez vs. Director of Lands, 47 Phil. 23, 32)." (Sicat vs. Reyes, L-11023, Dec. 14, 1956.) And it may not be amiss to mention here also that the "due process" clause of the Constitution is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. For *substance* must prevail over *form*.

The evidence is patently clear that Jose M. Aruego, acting as representative of a non-existent principal, was the real party to the contract sued upon; that he was the one who reaped the benefits resulting from it, so much so that partial payments of the consideration were made by him; that he violated its terms, thereby precipitating the suit in question; and that in the litigation he was the real defendant. Perforce, in line with the ends of justice, responsibility under the judgment falls on him.

MSCI-NACUSIP LOCAL CHAPTER, *Petitioner,* -versus NATIONAL WAGES AND PRODUCTIVITY COMMISSION and MONOMER SUGAR CENTRAL, INC., *Respondents*

G.R. No. 125198, FIRST DIVISION, March 3, 1997, HERMOSISIMA, JR., *J.*

By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P 1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."

In the case under consideration, there is no dispute, and the Board even mentioned in its Decision, that MSCI was organized and incorporated on February 15, 1990 with an authorized capital stock of P60 million, P20 million of which was subscribed. Of the P20 million subscribed capital stock, P5 million was paid-up. This fact is only too glaring for the Board to have been misled into believing that MSCI'S paid-up capital stock was P64 million plus and not P5 million.

.

FACTS:

On January 11, 1990, Asturias Sugar Central, Inc. (ASCI) executed a Memorandum of Agreement with Monomer Trading Industries, Inc. (MTII), whereby MTII shall acquire the assets of ASCI by way of a Deed of Assignment provided that an entirely new organization in place of MTII shall be organized, which new corporation shall be the assignee of the assets of ASCI.

By virtue of this Agreement, a new corporation was organized and incorporated under the corporate name Monomer Sugar Central, Inc. or MSCI, the private respondent herein.
MSCI applied for exemption from the coverage of Wage Order No. RO VI-01 issued by the Board on the ground that it is a distressed employer.

The petitioner herein MSCI-NACUSIP Local Chapter (Union), in opposition, maintained that MSCI is not distressed; that respondent applicant has not complied with the requirements for exemption; and that the financial statements submitted by MSCI do not reflect the true and valid financial status of the company, and that the paid-up capital would have been higher than P5 million and thus impairment would have been lower than 25% had the pre-organization agreement between ASCI and MTII been complied with.

Regional Tripartite Wages and Productivity Board (Board) denied MSCI's application for exemption based on the finding that the applicant's losses of P3,400,738.00 constitute an impairment of only 5.25% of its paid-up capital of P64,688,528.00, can not be said to be sufficient to meet the required 25% in order to qualify for the exemption, as provided in NWPC Guidelines.

The Board held that the paid-up capital of MSCI on the aforesaid dates was actually P64,688,528.00 and not P5 million as claimed by MSCI in its application for exemption and, thus, the established losses amounting to P3,400,738.00 constitute an impairment of only 5.25% of the true paid-up capital of P64 million plus,2 which losses are not enough to meet the required 25% impairment requirement.

This conclusion is anchored on the belief of the Board that the value of the assets of ASCI, party to the Memorandum of Agreement, transferred to MSCI on March 28, 1990 should be taken into consideration in computing the paid-up capital of MSCI to reflect its true financial structure. Moreover, the loans or advances extended by MTII, the other party to the Agreement, to MSCI should allegedly be treated as additional investments to MSCI, 3 and must therefore be included in computing respondent's paid-up capital.

The motion for reconsideration, filed by MSCI was denied by the Board.

A timely appeal was brought before the public respondent Commission.

The Commission reversed and set aside the foregoing orders of the Board, and granted MSCI's application for exemption

In reversing the Board and granting the exemption, the Commission held that the Board exceeded its authority in computing and giving new valuation to what should be the paid-up capital of MSCI. It stressed that RA No. 6727, or the Wage Rationalization Act, and its implementing guidelines have not conferred upon the Board the authority to change the paid-up capital of a corporation

ISSUE:

Whether the correct paid-up capital of MSCI is P 5 million (YES)

RULING:

By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P 1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."

In the case under consideration, there is no dispute, and the Board even mentioned in its Decision, that MSCI was organized and incorporated on February 15, 1990 with an authorized capital stock of P60 million, P20 million of which was subscribed. Of the P20 million subscribed capital stock, P5 million was paid-up. This fact is only too glaring for the Board to have been misled into believing that MSCI'S paid-up capital stock was P64 million plus and not P5 million.

The submission of the Board that the value of the assets of Asturias Sugar Central, Inc. transferred to MSCI on March 28, 1990, as well as the loans or advances made by MTII to MSCI should have been taken into consideration in computing the paid-up capital of MSCI is unmeritorious, at best, and betrays the Board's sheer lack of grasp of a basic concept in Corporation Law, at worst. Not all funds or assets received by the corporation can be considered paid-up capital, for this term has a technical signification in Corporation Law. Such must form part of the authorized capital stock of the corporation, subscribed and then actually paid up.

Furthermore, the Commission aptly observed that the loans and advances of MTII to respondent MSCI cannot be treated as investments, unless the corresponding shares of stocks are issued. But as it turned out, such loans and advances were in fact treated as liabilities of MSCI to MTII as shown in its 1990 audited financial statements.

Henceforth, the paid-up capital stock of MSCI for the period covered by the application for exemption still stood at P5 million. The losses, therefore, amounting to P3,400,738.00 for the period February 15, 1990 to August 31, 1990 impaired MSCI's paid-up capital of P5 million by as much as 68%. Likewise, the losses incurred by MSCI for the interim period from September 1, 1990 to November 30, 1990, as found by the Commission, per MSCI's quarterly income statements, amounting to P13,554,337.33 impaired the company's paid-up capital of P5 million by a whopping 271.08%,8 more than enough to qualify MSCI as a distressed employer. Respondent Commission thus acted well within its jurisdiction in granting MSCI full exemption from Wage Order No. RO VI-01 as a distressed employer.

ISLAMIC DIRECTORATE OF THE PHILIPPINES, MANUEL F. PEREA and SECURITIES & EXCHANGE COMMISSION, *Petitioners,* -versus- COURT OF APPEALS and IGLESIA NI CRISTO, *Respondents*

G.R. No. 11789, FIRST DIVISION, May 14, 1997, HERMOSISIMA, JR., *J.*

There can be no question as to the authority of the SEC to pass upon the issue as to who among the different contending groups is the legitimate Board of Trustees of the IDP since this is a matter properly falling within the original and exclusive jurisdiction of the SEC by virtue of Sections 3 and 5(c) of Presidential Decree No. 902-A.

If the SEC can declare who is the legitimate IDP Board, then by parity of reasoning, it can also declare who is not the legitimate IDP Board.

FACTS:

Petitioner IDP-Tamano Group alleges that sometime in 1971, Islamic leaders of all Muslim major tribal groups in the Philippines headed by Dean Cesar Adib Majul organized and incorporated the ISLAMIC DIRECTORATE OF THE PHILIPPINES (IDP), the primary purpose of which is to establish an Islamic Center in Quezon City for the construction of a "Mosque (prayer place), Madrasah (Arabic School), and other religious infrastructures" so as to facilitate the effective practice of Islamic faith in the area. 2

Towards this end, that is, in the same year, the Libyan government donated money to the IDP to purchase land at Culiat, Tandang Sora, Quezon City, to be used as a Center for the Islamic populace. The land, with an area of 49,652 square meters, was covered by two titles: Transfer Certificate of Title Nos. RT-26520 (176616) 3 and RT-26521 (170567), 4 both registered in the name of IDP.

According to the petitioner, in 1972, after the purchase of the land by the Libyan government in the name of IDP, Martial Law was declared by the late President Ferdinand Marcos. Most of the members of the 1971 Board of Trustees like Senators Mamintal Tamano, Salipada Pendatun, Ahmad Alonto, and Congressman Al-Rashid Lucman flew to the Middle East to escape political persecution.

Thereafter, two Muslim groups sprung, the Carpizo Group, headed by Engineer Farouk Carpizo, and the Abbas Group, led by Mrs. Zorayda Tamano and Atty. Firdaussi Abbas. Both groups claimed to be the legitimate IDP. Significantly, on October 3, 1986, the SEC, in a suit between these two contending groups, came out with a Decision in SEC Case No. 2687 declaring the election of both the Carpizo Group and the Abbas Group as IDP board members to be null and void.

Neither group, however, took the necessary steps prescribed by the SEC in its October 3, 1986 Decision, and, thus, no valid election of the members of the Board of Trustees of IDP was ever called. Although the Carpizo Group attempted to submit a set of by-laws, the SEC found that, aside from Engineer Farouk Carpizo and Atty. Musib Buat, those who prepared and adopted the by-laws were not *bona fide* members of the IDP, thus rendering the adoption of the by-laws likewise null and void. On April 20, 1989, without having been properly elected as new members of the Board of Trustee of IDP, the Carpizo Group caused to be signed an alleged Board Resolution of the IDP, authorizing the sale of the subject two parcels of land to the private respondent INC for a consideration of P22,343,400.00, which sale was evidenced by a Deed of Absolute Sale dated April 20, 1989.

On May 30, 1991, the petitioner 1971 IDP Board of Trustees headed by former Senator Mamintal Tamano, or the Tamano Group, filed a petition before the SEC, docketed as SEC Case No. 4012, seeking to declare null and void the Deed of Absolute Sale signed by the Carpizo Group and the INC since the group of Engineer Carpizo was not the legitimate Board of Trustees of the IDP.

SEC, on July 5, 1993, finally came out with a Decision in SEC Case No. 4012 in this wise:
1. Declaring the by-laws submitted by the respondents as unauthorized, and hence, null and void.
2. Declaring the sale of the two (2) parcels of land in Quezon City covered by the Deed of Absolute Sale entered into by Iglesia ni Kristo and the Islamic Directorate of the Philippines, Inc. null and void;

INC elevated SEC Case No. 4012 to the public respondent Court of Appeals. The portion of the SEC Decision in SEC Case No. 4012 which declared the sale of the two (2) lots in question to INC as void was ordered set aside by the Court of Appeals.

ISSUE:

> Whether Court of Appeals commit reversible error in setting aside that portion of the SEC's Decision in SEC which declared the sale of two (2) parcels of land in Quezon City between the IDP-Carpizo Group and private respondent INC null and void (YES)

RULING:

There can be no question as to the authority of the SEC to pass upon the issue as to who among the different contending groups is the legitimate Board of Trustees of the IDP since this is a matter properly falling within the original and exclusive jurisdiction of the SEC by virtue of Sections 3 and 5(c) of Presidential Decree No. 902-A.

If the SEC can declare who is the legitimate IDP Board, then by parity of reasoning, it can also declare who is not the legitimate IDP Board. This is precisely what the SEC did in SEC Case No. 4012 when it adjudged the election of the Carpizo Group to the IDP Board of Trustees to be null and void. By this ruling, the SEC in effect made the unequivocal finding that the IDP-Carpizo Group is a bogus Board of Trustees. Consequently, the Carpizo Group is bereft of any authority whatsoever to bind IDP in any kind of transaction including the sale or disposition of ID property.

It must be noted that SEC Case No. 4012 is not the first case wherein the SEC had the opportunity to pass upon the status of the Carpizo Group. As far back as October 3, 1986, the SEC, in Case No. 2687, in a suit between the Carpizo Group and the Abbas Group, already declared the election of the Carpizo Group (as well as the Abbas Group) to the IDP Board as null and void for being violative of the Articles of Incorporation. Nothing thus becomes more settled than that the IDP-Carpizo Group with whom private respondent INC contracted is a fake Board.

Premises considered, all acts carried out by the Carpizo Board, particularly the sale of the Tandang Sora property, allegedly in the name of the IDP, have to be struck down for having been done without the consent of the IDP thru a legitimate Board of Trustees.

The Carpizo Group-INC sale is further deemed null and void ab initio because of the Carpizo Group's failure to comply with Section 40 of the Corporation Code pertaining to the disposition of all or substantially all assets of the corporation.

The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling squarely within the contemplation of the foregoing section. For the sale to be valid, the majority vote of the legitimate Board of Trustees, concurred in by the vote of at least 2/3 of the *bona* *fide* members of the corporation should have been obtained. These twin requirements were not met as the Carpizo Group which voted to sell the Tandang Sora property was a fake Board of Trustees, and those whose names and signatures were affixed by the Carpizo Group together with the sham Board Resolution authorizing the negotiation for the sale were, from all indications, not *bona fide* members of the IDP as they were made to appear to be. Apparently, there are only fifteen (15) official members of the petitioner corporation including the eight (8) members of the Board of Trustees.

All told, the disputed Deed of Absolute Sale executed by the fake Carpizo Board and private respondent INC was intrinsically void *ab initio*.

Furthermore, the Court observes that the INC bought the questioned property from the Carpizo Group without even seeing the owner's duplicate copy of the titles covering the property. This is very strange considering that the subject lot is a large piece of real property in Quezon City worth millions, and that under the Torrens System of Registration, the minimum requirement for one to be a good faith buyer for value is that the vendee at least sees the owner's duplicate copy of the title and relies upon the same. The private respondent, presumably knowledgeable on the aforesaid workings of the Torrens System, did not take heed of this and nevertheless went through with the sale with undue haste. The unexplained eagerness of INC to buy this valuable piece of land in Quezon City without even being presented with the owner's copy of the titles casts very serious doubt on the rightfulness of its position as vendee in the transaction.

INTERNATIONAL EXPRESS TRAVEL & TOUR SERVICES, INC., *Petitioners,* -versus- HON. COURT OF APPEALS, HENRI KAHN, PHILIPPINES FOOTBALL FEDERATION, *Respondents*
G.R. No. 119002, FIRST DIVISION, October 19, 2000, KAPUNAN., *J.*

While national sports associations may be accorded corporate status, such does not automatically take place by the mere passage of these laws. It is a basic postulate that before a corporation may acquire juridical personality, the State must give its consent either in the form of a special law or a general enabling act. The Philippine Football Federation did not come into existence upon the passage of these laws. Nowhere can it be found in RA 3135 or PD 604 any provision creating the Philippine Football Federation.

Accordingly, the Philippine Football Federation is not a national sports association within the purview of the aforementioned laws and does not have corporate existence of its own.

FACTS:

On June 30 1989, petitioner International Express Travel and Tour Services, Inc., (IETTSI) through its managing director wrote a letter to the Philippine Football Federation (Federation), through its president Henri Kahn, wherein the former offered its services as a travel agency to the latter. The offer was accepted.

IETTSI secured the airline tickets for the trips of the athletes and officials of the Federation to the South East Asian Games in Kuala Lumpur as well as various other trips to the People's Republic of China and Brisbane. The total cost of the tickets amounted to P449,654.83. For the tickets received, the Federation made two partial payments, both in September of 1989, in the total amount of P176,467.50.

Then, petitioner wrote the Federation, through the private respondent a demand letter requesting for the amount of P265,894.33. The Federation, through the Project Gintong Alay, paid the amount of P31,603.00. Also, Henri Kahn issued a personal check in the amount of P50,000 as partial payment for the outstanding balance of the Federation. Thereafter, no further payments were made despite repeated demands.

IETTSI filed a civil case before the Regional Trial Court of Manila against Henri Kahn in his personal capacity and as President of the Federation and impleaded the Federation as an alternative defendant. IETTSI sought to hold Henri Kahn liable for the unpaid balance for the tickets purchased by the Federation on the ground that Henri Kahn allegedly guaranteed the said obligation.

Kahn filed his answer with counterclaim, while the Federation failed to file its answer and was declared in default by the trial court. In due course, the trial court rendered judgment and ruled in favor of IETTSI and declared Henri Kahn personally liable for the unpaid obligation of the Federation. The complaint of IETTSI against the Philippine Football Federation and the counterclaims of Henri Kahn were dismissed, with costs against Kahn. Only Henri Kahn elevated the decision to the Court of Appeals. On 21 December 1994, the appellate court rendered a decision reversing the trial court. IETTSI filed a motion for reconsideration and as an alternative prayer pleaded that the Federation be held liable for the unpaid obligation. The same was denied by the appellate court in its resolution of 8 February 1995. Hence the petition.

ISSUES:

(1) Whether the Philippine Football Federation has a corporate existence of its own. (NO)
(2) Whether Kahn should be made personally liable for the unpaid obligations of the Philippine Football Federation. (YES)
(3) Whether the appellate court properly applied the doctrine of corporation by estoppel. (YES)

RULING:

(1)
Both RA 3135 (the Revised Charter of the Philippine Amateur Athletic Federation) and PD 604 recognized the juridical existence of national sports associations stated in Section 14 of RA 3135 and Section 8 of PD 604. The powers and functions granted to national sports associations indicate that these entities may acquire a juridical personality. The power to purchase, sell, lease and encumber property are acts which may only be done by persons, whether natural or artificial, with juridical capacity.

However, while national sports associations may be accorded corporate status, such does not automatically take place by the mere passage of these laws. It is a basic postulate that before a corporation may acquire juridical personality, the State must give its consent either in the form of a special law or a general enabling act. The Philippine Football Federation did not come into existence upon the passage of these laws. Nowhere can it be found in RA 3135 or PD 604 any provision creating the Philippine Football Federation. These laws merely recognized the existence of national sports associations and provided the manner by which these entities may acquire juridical personality. Section 11 of RA 3135 and Section 8 of PD 604 require that before an entity may be considered as a national sports association, such entity must be recognized by the accrediting organization, the

Philippine Amateur Athletic Federation under RA 3135, and the Department of Youth and Sports Development under PD 604. This fact of recognition, however, Henri Kahn failed to substantiate. A copy of the constitution and by-laws of the Philippine Football Federation does not prove that said Federation has indeed been recognized and accredited by either the Philippine Amateur Athletic Federation or the Department of Youth and Sports Development. Accordingly, the Philippine Football Federation is not a national sports association within the purview of the aforementioned laws and does not have corporate existence of its own.

(2)
Henry Kahn should be held liable for the unpaid obligations of the unincorporated Philippine Football Federation. It is a settled principal in corporation law that any person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and becomes personally liable for contract entered into or for other acts performed as such agent. As president of the Federation, Henri Kahn is presumed to have known about the corporate existence or non-existence of the Federation.

(3)
The Supreme Court did not subscribe to the position taken by the appellate court that even assuming that the Federation was defectively incorporated, IETTSI cannot deny the corporate existence of the Federation because it had contracted and dealt with the Federation in such a manner as to recognize and in effect admit its existence. The doctrine of corporation by estoppel is mistakenly applied by CA to the petitioner. The application of the doctrine applies to a third party only when he tries to escape liability on a contract from which he has benefited on the irrelevant ground of defective incorporation. In this case, IETTSI was not trying to escape liability from the contract but rather was the one claiming from the contract

SAMAHAN NG OPTOMETRISTS SA PILIPINAS, ILOCOS SUR-ABRA CHAPTER, EDUARDO MA. GUIRNALDA, DANTE G. PACQUING and OCTAVIO A. DE PERALTA, *Petitioners,* -versus- ACEBEDO INTERNATIONAL CORPORATION and the HON. COURT OF APPEALS, *Respondents*
G.R. No. 117097, FIRST DIVISION, MARCH 21, 1997, HERMOSISIMA, JR., *J.*

The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent understably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by persons with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses and other similar or allied instruments from suppliers thereof and selling the same to consumers.

It is significant to note that even under R.A. No. 8050, known as the Revised Optometry Law, we find no prohibition against the hiring by corporations of optometrists.

FACTS:

Private respondent, Acebedo filed an application with the Office of the Mayor of Candon, Ilocos Sur, for the issuance of a permit for the opening and operation of a branch of the Acebedo Optical in that municipality.

The application was opposed by the petitioner, Samahan ng Optometrists sa Pilipinas (SOP) which contended that Acebedo is a juridical entity not qualified to practice optometry.

Mayor of Candon created a committee which denied Acebedo's application for a mayor's permit to operate a branch in Candon and ordered private respondent to close its establishment within fifteen (15) days from receipt of the decision.

The trial court affirmed the denial of the the application.

The findings of the Commission reveal that the operation of Acebedo's local shop involves the practice of optometry. If indeed Acebedo is engaged in the sale of optical products, the absence of sales clerks more than demonstrate its real business. In the contested Decision, the floor plan of the shop was even commented on as that of an optical shop. As noted by the members of the Commission, there was also a banner in front of the shop prominently display advertising free consultations (libreng consulta sa mata). These facts, taken together, denote that Acebedo was operating in Candon an optical shop contrary to law.

While it is also true that a corporation has a personality separate and distinct from that of its personnel, the veil of corporate fiction cannot be used for the purpose of some illegal activity. The veil of corporate fiction can be pierced, as in this case, and the acts of the personnel of the corporation will be considered as those of the corporation. Acebedo then is engaged in the practice of optometry.

Disagreeing with the foregoing decision of the trial court, private respondent appealed therefrom and asked the respondent Court of Appeals to reverse the same on the ground that the court a quo erred in concluding that private respondent was engaged in the practice of optometry by operating an optical shop.

The herein petitioner most respectfully submits that the private respondent Acebedo International Corporation flagrantly violates R.A. No. 1998 and the Corporation Code of the Philippines when it employs optometrists to engage in the practice of optometry under its name

ISSUE:

> Whether corporations, engaged in the business of selling optical wares, supplies, substances and instruments which, as an incident to and in the ordinary course of the business hire optometrists, be said to be practicing the profession of optometry which is prohibited by law (NO)

RULING:
Private respondent does not deny that it employs optometrists whose role in the operations of its optical shops is to administer the proper eye examination in order to determine the correct type and grade of lenses to prescribe to persons purchasing the same from private respondent's optical shops. Petitioners vehemently insist that in so employing said optometrists, private respondent is in effect

itself practicing optometry. Such practice, petitioners conclude, is in violation of RA. No. 1998, which, it must be noted at this juncture, has been repealed and superseded by R.A. 8050.

Petitioners' contentions are, however, untenable. The fact that private respondent hires optometrists who practice their profession in the course of their employment in private respondent's optical shops, does not translate into a practice of optometry by private respondent itself. Private respondent is a corporation created and organized for the purpose of conducting the business of selling optical lenses or eyeglasses, among others. The clientele of private respondent understably, would largely be composed of persons with defective vision and thus need the proper lenses to correct the same and enable them to gain normal vision. The determination of the proper lenses to sell to private respondent's clientele entails the employment of optometrists who have been precisely trained for that purpose. Private respondent's business is not the determination itself of the proper lenses needed by persons with defective vision. Private respondent's business, rather, is the buying and importing of eyeglasses and lenses and other similar or allied instruments from suppliers thereof and selling the same to consumers.

For petitioners' argument to hold water, there need be clear showing that R.A. No. 1998 prohibits a corporation from hiring optometrists, for only then would it be undeniably evident that the intention of the legislature is to preclude the formation of the so-called optometry corporations because such is tantamount to the practice of the profession of optometry which is legally exercisable only by natural persons and professional partnerships. We have carefully reviewed R.A. No. 1998 however, and we find nothing therein that supports petitioner's insistent claims.

It is significant to note that even under R.A. No. 8050, known as the Revised Optometry Law, we find no prohibition against the hiring by corporations of optometrists.

All told, there is no law that prohibits the hiring by corporations of optometrists or considers the hiring by corporations of optometrists as a practice by the corporation itself of the profession of optometry.

1. PROMOTER

A. LIABILITY OF CORPORATION FOR PROMORER'S CONTRACTS

RIZAL LIGHT & ICE CO., INC., *Petitioner,* -versus- THE MUNICIPALITY OF MORONG, RIZAL and the PUBLIC SERVICE COMMISSION, *Respondents*
G.R. No. L-20993, EN BANC, SEPTEMBER 28, 1968, ZALDIVAR, *J.*

The fact that a company is not completely incorporated at the time the grant is made to it by a municipality to use the streets does not, in most jurisdictions, affect the validity of the grant. But such grant cannot take effect until the corporation is organized.

The incorporation of Morong Electric on October 17, 1962 and its acceptance of the franchise as shown by its action in prosecuting the application filed with the Commission for the approval of said franchise, not only perfected a contract between the respondent municipality and Morong Electric but also cured the deficiency pointed out by the petitioner in the application of Morong Electric. Thus, the Commission did not err in denying petitioner's motion to dismiss said application and in proceeding to hear the same.

FACTS:

On August 15, 1949, petitioner Rizal Light & Ice Co., Inc. was granted by the Commission a certificate of public convenience and necessity for the installation, operation and maintenance of an electric light, heat and power service in the municipality of Morong, Rizal.

In an order dated December 19, 1956, the Commission required the petitioner to appear before it on to show cause why it should not be penalized for violation of the conditions of its certificate of public convenience and the regulations of the Commission, and for failure to comply with the directives to raise its service voltage and maintain them within the limits prescribed in the Revised Order No. 1 of the Commission, and to acquire and install a kilowatt meter to indicate the load in kilowatts at any particular time of the generating unit.

For failure of the petitioner to appear at the hearing, the Commission ordered the cancellation and revocation of petitioner's certificate of public convenience and necessity and the forfeiture of its franchise. Petitioner moved for reconsideration of said order on the ground that its manager, Juan D. Francisco, was not aware of said hearing. Respondent municipality opposed the motion, alleging that petitioner has not rendered efficient and satisfactory service and has not complied with the requirements of the Commission for the improvement of its service. The motion was set for hearing.

Finding that the failure of the petitioner to appear at the hearing , the Commission set aside its order of revocation. Respondent municipality moved for reconsideration of this order of reinstatement of the certificate, but the motion was denied.

In a petition dated June 25, 1958, filed in the same case, respondent municipality formally asked the Commission to revoke petitioner's certificate of public convenience and to forfeit its franchise on the ground, among other things, that it failed to comply with the conditions of said certificate and franchise. Said petition was set for hearing jointly with the order to show cause. The hearings had been postponed several times.

Meanwhile, inspections had been made of petitioner's electric plant and installations by the engineers of the Commission, as follows: April 15, 1958 by Engineer Antonio M. Alli; September 18, 1959, July 12-13, 1960, and June 21-24, 1961, by Engineer Meliton S. Martinez. The inspection on June 21-24, 1961 was made upon the request of the petitioner who manifested during the hearing on December 15, 1960 that improvements have been made on its service since the inspection on July 12-13, 1960, and that, on the basis of the inspection report to be submitted, it would agree to the submission of the case for decision without further hearing.

When the case was called for hearing on July 5, 1961, petitioner failed to appear. Respondent municipality was then allowed to present its documentary evidence, and thereafter the case was submitted for decision.

On July 7, 1961, petitioner filed a motion to reopen the case upon the ground that it had not been furnished with a copy of the report of the June 21-24, 1961 inspection for it to reply as previously agreed. In an order dated August 25, 1961, petitioner was granted a period of ten (10) days within which to submit its written reply to said inspection report, on condition that should it fail to do so within the said period the case would be considered submitted for decision. Petitioner failed to file the reply. In consonance with the order of August 25, 1961, therefore, the Commission proceeded to decide the case. On July 29, 1962 petitioner's electric plant was burned.

In its decision, dated August 20, 1962, the Commission, on the basis of the inspection reports of its aforenamed engineers, found that the petitioner had failed to comply with the directives contained in its letters dated May 21, 1954 and September 4, 1954, and had violated the conditions of its certificate of public convenience as well as the rules and regulations of the Commission. The Commission concluded that the petitioner "cannot render the efficient, adequate and satisfactory electric service required by its certificate and that it is against public interest to allow it to continue its operation." Accordingly, it ordered the cancellation and revocation of petitioner's certificate of public convenience and the forfeiture of its franchise.

On September 18, 1962, petitioner moved for reconsideration of the decision

But eight days before said motion for reconsideration was filed, Morong Electric, having been granted a municipal franchise on May 6, 1962 by respondent municipality to install, operate and maintain an electric heat, light and power service in said municipality — approved by the Provincial Board of Rizal on August 31, 1962 — filed with the Commission an application for a certificate of public convenience and necessity for said service. Said application was entitled "Morong Electric Co., Inc., Applicant", and docketed as Case No. 62-5143.

Petitioner opposed in writing the application of Morong Electric, alleging among other things, that it is a holder of a certificate of public convenience to operate an electric light, heat and power service in the same municipality of Morong, Rizal, and that the approval of said application would not promote public convenience, but would only cause ruinous and wasteful competition.

But before said motion could be resolved, petitioner filed another motion dated, January 4, 1963, this time asking for the dismissal of the application upon the ground that applicant Morong Electric had no legal personality when it filed its application on September 10, 1962, because its certificate of incorporation was issued by the Securities and Exchange Commission only on October 17, 1962.

This motion to dismiss was denied by the Commission on the premise that applicant Morong Electric was a de facto corporation.

Consequently, the case was heard on the merits and both parties presented their respective evidence. On the basis of the evidence adduced, the Commission, in its decision dated March 13, 1963, found that there was an absence of electric service in the municipality of Morong and that applicant Morong Electric, a Filipino-owned corporation duly organized and existing under the laws of the Philippines, has the financial capacity to maintain said service. These circumstances, considered together with the denial of the motion for reconsideration filed by petitioner in Case No. 39715 on February 15, 1963, such that as far as the Commission was concerned the certificate of the petitioner was already declared revoked and cancelled, the Commission approved the application of Morong Electric and ordered the issuance in its favor of the corresponding certificate of public convenience and necessity.

Thus, Petitioner filed with this Court a petition to review the decision.

ISSUES:

(1) Whether Morong Electric did not yet have a legal personality on May 6, 1962 when a municipal franchise was granted (YES)

(2) Whether the granting of the franchise was valid (YES)

(3) Whether Morong Electric has the financial qualification to operate an electric light, heat and power service (YES)

RULING:

(1)
The juridical personality and legal existence of Morong Electric began only on October 17, 1962 when its certificate of incorporation, was issued by the SEC. Before that date, or pending the issuance of said certificate of incorporation, the incorporators cannot be considered as de facto corporation.

(2)
But the fact that Morong Electric had no corporate existence on the day the franchise was granted in its name does not render the franchise invalid, because later Morong Electric obtained its certificate of incorporation and then accepted the franchise in accordance with the terms and conditions thereof. This view is sustained by eminent American authorities. Thus. McQuillin says:

"The fact that a company is not completely incorporated at the time the grant is made to it by a municipality to use the streets does not, in most jurisdictions, affect the validity of the grant. But such grant cannot take effect until the corporation is organized. And in Illinois it has been decided that the ordinance granting the franchise may be presented before the corporation grantee is fully organized, where the organization is completed before the passage and acceptance."

Fletcher says:

"While a franchise cannot take effect until the grantee corporation is organized, the franchise may, nevertheless, be applied for before the company is fully organized.

"A grant of a street franchise is valid although the corporation is not created until afterwards."

And Thompson gives the reason for the rule:

"(I)n the matter of the secondary franchise the authorities are numerous in support of the proposition that an ordinance granting a privilege to a corporation is not void because the beneficiary of the ordinance is not fully organized at the time of the introduction of the ordinance. It is enough that organization is complete prior to the passage and acceptance of the ordinance. The reason is that a privilege of this character is a mere license to the corporation until it accepts the grant and complies with its terms and conditions." (Thompson on Corporations, Vol. 4, 3rd Ed., Sec. 2929) 26

The incorporation of Morong Electric on October 17, 1962 and its acceptance of the franchise as shown by its action in prosecuting the application filed with the Commission for the approval of said franchise, not only perfected a contract between the respondent municipality and Morong Electric but also cured the deficiency pointed out by the petitioner in the application of Morong Electric. Thus, the Commission did not err in denying petitioner's motion to dismiss said application and in proceeding to hear the same. The efficacy of the franchise, however, arose only upon its approval by the Commission on March 13, 1963. The reason is that —

"Under Act No. 667, as amended by Act No. 1022, a municipal council has the power to grant electric franchises, subject to the approval of the provincial board and the President. However, under Section 16 (b) of Commonwealth Act No. 146, as amended, the Public Service Commission is empowered' to approve, subject to constitutional limitations any franchise or privilege granted under the provisions of Act No. 667, as amended by Act 1022, by any political subdivision of the Philippines when, in the judgment of the Commission, such franchise or privilege will properly conserve the public interests, and the Commission shall in so approving impose such conditions as to construction, equipment, maintenance, service, or operation as the public interests and convenience may reasonably require, and to issue certificates of public convenience and necessity when such is required or provided by any law or franchise.' Thus, the efficacy of a municipal electric franchise arises, therefore, only after the approval of the Public Service Commission." (Almendras v. Ramos, 90 Phil. 231)

The conclusion herein reached regarding the validity of the franchise granted to Morong Electric is not incompatible with the holding of this Court in Cagayan Fishing Development Co., Inc. v. Teodoro Sandiko upon which the petitioner leans heavily in support of its position. In said case this Court held that a corporation should have a full and complete organization and existence as an entity before it can enter into any kind of a contract or transact any business. It should be pointed out, however, that this Court did not say in that case that the rule is absolute or that under no circumstances may the acts of promoters of a corporation be ratified or accepted by the corporation if and when subsequently organized. Of course, there are exceptions. It will be noted that American courts generally hold that a contract made by the promoters of a corporation on its behalf may be adopted, accepted or ratified by the corporation when organized.

(3) An examination of the record of this case readily shows that the testimony of Mr. Ingal and the documents he presented to establish the financial capability of Morong Electric provide reasonable grounds for the above finding of the Commission.

"It is now a very well-settled rule in this jurisdiction that the findings and conclusions of fact made by the Public Service Commission, after weighing the evidence adduced by the parties in a public service case, will not be disturbed by the Supreme Court unless those findings and conclusions appear not to be reasonably supported by evidence." (La Mallorca and Pampanga Bus Co. v. Mercado, L-19120, November 29, 1965)

"For purposes of appeal, what is decisive is that said testimonial evidence provides reasonable support for the Public Service Commission's findings of financial capacity on the part of applicants, rendering such findings beyond our power to disturb." (Del Pilar Transit v. Silva, L-21547, July 15, 1966)

It may be worthwhile to mention in this connection that per inspection report dated January 20, 1964 29 of Mr. Meliton Martinez of the Commission, who inspected the electric service of Morong Electric on January 15-16, 1964, Morong Electric "is serving electric service to the entire area covered by its approved plan and has constructed its line in accordance with the plans and specifications approved by the Commission." By reason thereof, it was recommended that the requests of Morong Electric (1) for the withdrawal of its deposit in the amount of P1,000.00 with the Treasurer of the Philippines, and (2) for the approval of Resolution No. 160 of the Municipal Council of Morong, Rizal, exempting the operator from making the additional P9,000.00 deposit mentioned in its petition, dated September 16, 1963, be granted. This report removes any doubt as to the financial capability of Morong Electric to operate and maintain an electric light, heat and power service.

2. NUMBER AND QUALIFICATION OF INCORPORATORS

NAUTICA CANNING CORPORATION, FIRST DOMINION PRIME HOLDINGS, INC. and FERNANDO R. ARGUELLES, JR. *Petitioners,* -versus- ROBERTO C. YUMUL, *Respondent*
G.R. No. 164588, FIRST DIVISION, OCTOBER 19, 2005, YNARES-SANTIAGO, *J.*

A transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.

In the case at bar, the SEC and the Court of Appeals correctly found Yumul to be a stockholder of Nautica, of one share of stock recorded in Yumul's name, although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws, as well as the General Information Sheet filed with the SEC indicated that Yumul was an incorporator and subscriber of one share. Even granting that there was an agreement between Yumul and Dee whereby the former is holding the share in trust for Dee, the same is binding only as between them. From the corporation's vantage point, Yumul is its stockholder with one share, considering that there is no showing that Yumul transferred his subscription to Dee, the alleged real owner of the share, after Nautica's incorporation.

FACTS:

On December 19, 1994, respondent Roberto C. Yumul was appointed Chief Operating Officer/General Manager of Nautica. On the same date, First Dominion Prime Holdings, Inc., Nautica's parent company, through its Chairman Alvin Y. Dee, granted Yumul an *Option to Purchase* up to 15% of the total stocks it subscribed from Nautica.

On June 22, 1995, a *Deed of Trust and Assignment* was executed between First Dominion Prime Holdings, Inc. and Yumul whereby the former assigned 14,999 of its subscribed shares in Nautica to the latter. The deed stated that the 14,999 "*shares were acquired and paid for in the name of the ASSIGNOR only for convenience, but actually executed in behalf of and in trust for the ASSIGNEE*."

In March 1996, Nautica declared a P35,000,000 cash dividend, P8,250,000 of which was paid to Yumul representing his 15% share
.

After Yumul's resignation from Nautica, he wrote a letter to Dee requesting the latter to formalize his offer to buy Yumul's 15% share in Nautica on or before August 20, 1996; and demanding the issuance of the corresponding certificate of shares in his name should Dee refuse to buy the same. Dee, through Atty. Fernando R. Arguelles, Jr., Nautica's corporate secretary, denied the request claiming that Yumul was not a stockholder of Nautica.

On September 6, 1996[8] and September 9, 1996, Yumul requested that the *Deed of Trust and Assignment* be recorded in the Stock and Transfer Book of Nautica, and that he, as a stockholder, be allowed to inspect its books and records.

Yumul's requests were denied allegedly because he neither exercised the option to purchase the shares nor paid for the acquisition price of the 14,999 shares. Atty. Arguelles maintained that the cash dividend received by Yumul is held by him only in trust for First Dominion Prime Holdings, Inc. Thus, Yumul filed on October 3, 1996, before the SEC a petition for mandamus with damages, with prayer that the *Deed of Trust and Assignment* be recorded in the Stock and Transfer Book of Nautica and that the certificate of stocks corresponding thereto be issued in his name.

SEC En Banc ruled in favor of Yumul which CA affirmed.

Petitioners contend that Yumul was not a stockholder of Nautica; that he was just a nominal owner of one share as the beneficial ownership belonged to Dee who paid for said share when Nautica was incorporated. They presented China Banking Corporation Check No. A2620636 and Citibank Check No. B82642 as proof of payment by Dee; a letter by Dee dated July 15, 1994 requesting the corporate secretary of Nautica to issue a certificate of stock in Yumul's name but in trust for Dee; and Stock Certificate No. 6 with annotation "ITF Alvin Y. Dee" which means that respondent held said stock "In Trust For Alvin Y. Dee"

As to whether or not Yumul is the beneficial owner of the 14,999 shares of stocks of Nautica, petitioners allege that Yumul was given the option to purchase shares of stocks in Nautica under the *Option to Purchase* dated December 19, 1994. However, he failed to exercise the option, thus there was no cause or consideration for the *Deed of Trust and Assignment*, which makes it void for being simulated or fictitious

ISSUES:

(1) Whether Yumul is a stockholder of Nautica (YES)
(2) Whether Yumul is the beneficial owner of the 14,999 shares of stock (UNRESOLVED)

RULING:

(1)
Indeed, it is possible for a business to be wholly owned by one individual. The validity of its incorporation is not affected when such individual gives nominal ownership of only one share of stock to each of the other four incorporators. This is not necessarily illegal. But, this is valid only between or among the incorporators privy to the agreement. It does bind the corporation which, at the time the agreement is made, was non-existent. Thus, incorporators continue to be stockholders of a corporation unless, subsequent to the incorporation, they have validly transferred their subscriptions to the real parties in interest. As between the corporation on the one hand, and its

shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.

In the case at bar, the SEC and the Court of Appeals correctly found Yumul to be a stockholder of Nautica, of one share of stock recorded in Yumul's name, although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws, as well as the General Information Sheet filed with the SEC indicated that Yumul was an incorporator and subscriber of one share. Even granting that there was an agreement between Yumul and Dee whereby the former is holding the share in trust for Dee, the same is binding only as between them. From the corporation's vantage point, Yumul is its stockholder with one share, considering that there is no showing that Yumul transferred his subscription to Dee, the alleged real owner of the share, after Nautica's incorporation.

We held in *Ponce v. Alsons Cement Corp.* that
... A transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.

Hence, 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.

Moreover, the contents of the articles of incorporation bind the corporation and its stockholders. Its contents cannot be disregarded considering that it was the basic document which legally triggered the creation of the corporation.

The Court of Appeals, in affirming the factual findings of SEC, held that:
The evidence submitted by petitioners to establish trust is palpably incompetent, consisting mainly of the self-serving allegations by the petitioners and the China Banking Corporation checks issued as payment for the shares of stock of Nautica. Dee did not testify on the supposed trust relationship between him and Yumul. While Atty. Arguelles testified, his testimony is barren of probative value since he had no first-hand knowledge of the relationship in question. The isolated fact that Dee might have paid for the share in the name of Yumul did not by itself make the latter a man of straw. Such act of payment is so nebulous and equivocal that it can not yield the meaning which the petitioners would want to squeeze from it without the clarificatory testimony of Dee.

We see no cogent reason to set aside the factual findings of the SEC, as upheld by the Court of Appeals. Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by the Supreme Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, moreso if the same has been upheld by the appellate court, as in this case.

Besides, other than petitioners' self-serving assertion that the beneficial ownership belongs to Dee, they failed to show that the subscription was transferred to Dee after Nautica's incorporation. The conduct of the parties also constitute sufficient proof of Yumul's status as a stockholder. On April 4, 1995, Yumul was elected during the regular annual stockholders' meeting as a Director of Nautica's

Board of Directors. Thereafter, he was elected as president of Nautica. Thus, Nautica and its stockholders knowingly held respondent out to the public as an officer and a stockholder of the corporation.

Section 23 of Batas Pambansa (BP) Blg. 68 or *The Corporation Code of the Philippines* requires that every director must own at least one share of the capital stock of the corporation of which he is a director. Before one may be elected president of the corporation, he must be a director. Since Yumul was elected as Nautica's Director and as President thereof, it follows that he must have owned at least one share of the corporation's capital stock.

Thus, from the point of view of the corporation, Yumul was the owner of one share of stock. As such, the SEC correctly ruled that he has the right to inspect the books and records of Nautica, pursuant to Section 74 of BP Blg. 68 which states that the records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

(2)
Anent this issue, the SEC did not make a categorical finding on whether Yumul exercised his option and also on the validity of the *Deed of Trust and Assignment*. Instead, it held that:
... Although unsubstantiated, the apparent objective of the respondents' allegation was to refute petitioners claim over the shares covered by the Deed of Trust and Assignment. This must therefore be deemed as nothing but a ploy to deprive petitioner of his right over the shares in question, which to us should not be countenanced.

Neither did the Court of Appeals rule on the issue.

Thus, other than defining and enumerating the requisites of a simulated contract or deed, the Court of Appeals did not make a determination whether the SEC has the jurisdiction to resolve the issue and whether the questioned deed was fictitious or simulated.

In *Intestate Estate of Alexander T. Ty v. Court of Appeals*, we held that:
… The question raised in the complaints is whether or not there was indeed a sale in the absence of cause or consideration. The proper forum for such a dispute is a regular trial court. The Court agrees with the ruling of the Court of Appeals that no special corporate skill is necessary in resolving the issue of the validity of the transfer of shares from one stockholder to another of the same corporation. Both actions, although involving different property, sought to declare the nullity of the transfers of said property to the decedent on the ground that they were not supported by any cause or consideration, and thus, are considered void *ab initio* for being absolutely simulated or fictitious. **The determination whether a contract is simulated or not is an issue that could be resolved by applying pertinent provisions of the Civil Code, particularly those relative to obligations and contracts. Disputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction. No special skill is necessary that would require the technical expertise of the SEC.** (Emphasis supplied)

Thus, when the controversy involves matters purely civil in character, it is beyond the ambit of the limited jurisdiction of the SEC. As held in *Viray v. Court of Appeals*, the better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties, but also the nature of the question that is the subject of their controversy. This, however, is now moot and academic due to the passage of Republic Act No. 8799 or *The Securities Regulation Code* which took effect on August 8, 2000. The Act transferred from the SEC to the regional trial court jurisdiction over cases involving intra-corporate disputes. Thus, whether or not the issue is intra-corporate, it is now the regional trial court and no longer the SEC that takes cognizance of the controversy.

Considering that the issue of the validity of the *Deed of Trust and Assignment* is civil in nature, thus, under the competence of the regular courts, and the failure of the SEC and the Court of Appeals to make a determinative finding as to its validity, we are constrained to refrain from ruling on whether or not Yumul can compel the corporate secretary to register said deed. It is only after an appropriate case is filed and decision rendered thereon by the proper forum can the issue be resolved.

3. CORPORATE NAME – LIMITATIONS ON USE OF CORPORATE NAME

REPUBLIC PLANTERS BANK, *Petitioner*, -versus- COURT OF APPEALS and FERMIN CANLAS, *Respondents*

G.R. No. 93073, SECOND DIVISION, DECEMBER 21, 1992, CAMPOS, JR., *J.*

A change in the corporate name does not make a new corporation, and whether effected by special act or under a general law, has no effect on the identity of the corporation, or on its property, rights, or liabilities.

The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred.

FACTS:

Defendant Shozo Yamaguchi and private respondent Fermin Canlas were President/Chief Operating Officer and Treasurer respectively, of Worldwide Garment Manufacturing, Inc.

By virtue of Board Resolution No.1 dated August 1, 1979, defendant Shozo Yamaguchi and private respondent Fermin Canlas were authorized to apply for credit facilities with the petitioner Republic Planters Bank in the forms of export advances and letters of credit/trust receipts accommodations. Petitioner bank issued nine promissory notes.

On December 20, 1982, Worldwide Garment Manufacturing, Inc. noted to change its corporate name to Pinch Manufacturing Corporation.

On February 5, 1982, petitioner bank filed a complaint for the recovery of sums of money covered among others, by the nine promissory notes with interest thereon, plus attorney's fees and penalty charges. The complainant was originally brought against Worldwide Garment Manufacturing, Inc. *inter alia*, but it was later amended to drop Worldwide Manufacturing, Inc. as defendant and substitute Pinch Manufacturing Corporation it its place. Defendants Pinch Manufacturing Corporation and Shozo Yamaguchi did not file an Amended Answer and failed to appear at the scheduled pre-trial conference despite due notice. Only private respondent Fermin Canlas filed an Amended Answer wherein he, denied having issued the promissory notes in question since according to him, he was not an officer of Pinch Manufacturing Corporation, but instead of Worldwide Garment Manufacturing, Inc., and that when he issued said promissory notes in behalf of Worldwide Garment Manufacturing, Inc., the same were in blank, the typewritten entries not appearing therein prior to the time he affixed his signature.

RTC ruled in favor of the plaintiff Republic Planters Bank, ordering defendant Pinch Manufacturing Corporation (formerly Worldwide Garment Manufacturing, Inc.) and defendants Shozo Yamaguchi and Fermin Canlas to pay, jointly and severally, the plaintiff bank. CA affirmed.

From the above decision only defendant Fermin Canlas appealed to the then Intermediate Court (now the Court Appeals). His contention was that inasmuch as he signed the promissory notes in his capacity as officer of the defunct Worldwide Garment Manufacturing, Inc, he should not be held personally liable for such authorized corporate acts that he performed. It is now the contention of the petitioner Republic Planters Bank that having unconditionally signed the nine (9) promissory notes with Shozo Yamaguchi, jointly and severally, defendant Fermin Canlas is solidarity liable with Shozo Yamaguchi on each of the nine notes.

ISSUE:

Whether private respondent Fermin Canlas is solidarily liable with the other defendants, namely Pinch Manufacturing Corporation and Shozo Yamaguchi, on the nine promissory notes (YES)

RULING:

Respondent Court made a grave error in holding that an amendment in a corporation's Articles of Incorporation effecting a change of corporate name, in this case from Worldwide Garment manufacturing Inc to Pinch Manufacturing Corporation extinguished the personality of the original corporation.

The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed.

A change in the corporate name does not make a new corporation, and whether effected by special act or under a general law, has no affect on the identity of the corporation, or on its property, rights, or *liabilities*.

The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred.

As a general rule, officers or directors under the old corporate name bear no personal liability for acts done or contracts entered into by officers of the corporation, if duly authorized. Inasmuch as such officers acted in their capacity as agent of the old corporation and the change of name meant only the continuation of the old juridical entity, the corporation bearing the same name is still bound by the acts of its agents if authorized by the Board. Under the Negotiable Instruments Law, the liability of a person signing as an agent is specifically provided for as follows:

Sec. 20. *Liability of a person signing as agent and so forth*. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal , or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Where the agent signs his name but nowhere in the instrument has he disclosed the fact that he is acting in a representative capacity or the name of the third party for whom he might have acted as agent, the agent is personally liable to take holder of the instrument and cannot be permitted to prove that he was merely acting as agent of another and parol or extrinsic evidence is not admissible to avoid the agent's personal liability.

GSIS FAMILY BANK - THRIFT BANK [Formerly Inc.], *Petitioner,* -versus- BPI FAMILY BANK, *Respondent*

G.R. NO. 175278, THIRD DIVISION, SEPTEMBER 23, 2015, JARDELZA, *J.*

If the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered.

Section 3 states that if there be identical, misleading or confusingly similar name to one already registered by another corporation or partnership with the SEC, the proposed name must contain at least one distinctive word different from the name of the company already registered. To show contrast with respondent's corporate name, petitioner used the words "GSIS" and "thrift." But these are not sufficiently distinct words that differentiate petitioner's corporate name from respondent's. While "GSIS" is merely an acronym of the proper name by which petitioner is identified, the word "thrift" is simply a classification of the type of bank that petitioner is. Even if the classification of the bank as "thrift" is appended to petitioner's proposed corporate name, it will not make the said corporate name distinct from respondent's because the latter is likewise engaged in the banking business.

FACTS:

Petitioner was originally organized as Royal Savings Bank and started operations in 1971 but encountered liquidity problems. It was placed under receivership and later temporarily closed by the Central Bank of the Philippines. Two (2) months after its closure, petitioner reopened and was renamed Comsavings Bank, Inc. under the management of the Commercial Bank of Manila

In 1987, GSIS acquired petitioner from the Commercial Bank of Manila. Petitioner's management and control was thus transferred to GSIS. To improve its marketability to the public, especially to the members of the GSIS, petitioner sought Securities and Exchange Commission (SEC) approval to change its corporate name to "GSIS Family Bank, a Thrift Bank."[8]Petitioner likewise applied with the Department of Trade and Industry (DTI) and Bangko Sentral ng Pilpinas (BSP) for authority to use "GSIS Family Bank, a Thrift Bank" as its business name. The DTI and the BSP approved the applications. Thus, petitioner operates under the corporate name "GSIS Family Bank – a Thrift Bank," pursuant to the DTI Certificate of Registration No. 741375 and the Monetary Board Circular approval.

Respondent BPI Family Bank was a product of the merger between the Family Bank and Trust Company (FBTC) and the Bank of the Philippine Islands (BPI). On June 27, 1969, the Gotianum family registered with the SEC the corporate name "Family First Savings Bank," which was amended to "Family Savings Bank," and then later to "Family Bank and Trust Company." Since its incorporation, the bank has been commonly known as "Family Bank." In 1985, Family Bank merged with BPI, and the latter acquired all the rights, privileges, properties, and interests of Family Bank, including the right to use names, such as "Family First Savings Bank,"

"Family Bank," and "Family Bank and Trust Company." BPI Family Savings Bank was registered with the SEC as a wholly-owned subsidiary of BPI. BPI Family Savings Bank then registered with the Bureau of Domestic Trade the trade or business name "BPI Family Bank," and acquired a reputation and goodwill under the name.

Eventually, it reached respondent's attention that petitioner is using or attempting to use the name "Family Bank." Thus, on March 8, 2002, respondent petitioned the SEC Company Registration and Monitoring Department (SEC CRMD) to disallow or prevent the registration of the name "GSIS Family Bank" or any other corporate name with the words "Family Bank" in it. Respondent claimed exclusive ownership to the name "Family Bank," having acquired the name since its purchase and merger with Family Bank and Trust Company way back 1985. Respondent also alleged that through the years, it has been known as "BPI Family Bank" or simply "Family Bank" both locally and internationally. As such, it has acquired a reputation and goodwill under the name, not only with clients here and abroad, but also with correspondent and competitor banks, and the public in general.

The SEC CRMD declared that upon the merger of FBTC with the BPI in 1985, the latter acquired the right to the use of the name of the absorbed corporation. Thus, BPI Family Bank has a prior right to the use of the name. SEC EN Banc upheld the ruling.

The Court of Appeals ruled that the approvals by the BSP and by the DTI of petitioner's application to use the name "GSIS Family Bank" do not constitute authority for its lawful and valid use. It said that the SEC has absolute jurisdiction, supervision and control over all corporations. CA held that respondent was entitled to the exclusive use of the corporate name because of its prior adoption of the name "Family Bank" since 1969

ISSUE:

Whether respondent was entitled to the exclusive use of the corporate name (YES)

RULING:

Section 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.

In Philips Export B.V. v. Court of Appeals, this Court ruled that to fall within the prohibition of the law on the right to the exclusive use of a corporate name, two requisites must be proven, namely:
(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) deceptive 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.

These two requisites are present in this case.

On the first requisite of a prior right, Industrial Refractories Corporation of the Philippines v. Court of Appeals (IRCP case) is instructive. In that case, Refractories Corporation of the Philippines (RCP) filed before the SEC a petition to compel Industrial Refractories Corporation of the Philippines (IRCP) to change its corporate name on the ground that its corporate name is confusingly similar with that of RCP's such that the public may be confused into believing that they are one and the same corporation. The SEC and the Court of Appeals found for petitioner, and ordered IRCP to delete or drop from its corporate name the word "Refractories." Upon appeal of IRCP, this Court upheld the decision of the CA.

Applying the priority of adoption rule to determine prior right, this Court said that RCP has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant. In arriving at this conclusion, the Court considered that RCP was incorporated on October 13, 1976 and since then continuously used the corporate name "Refractories Corp. of the Philippines." Meanwhile, IRCP only started using its corporate name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985.

In this case, respondent was incorporated in 1969 as Family Savings Bank and in 1985 as BPI Family Bank. Petitioner, on the other hand, was incorporated as GSIS Family – Thrift Bank only in 2002, or at least seventeen (17) years after respondent started using its name. Following the precedent in the IRCP case, we rule that respondent has the prior right over the use of the corporate name.

The second requisite in the Philips Export case likewise obtains on two points: the proposed name is (a) identical or (b) deceptive or confusingly similar to that of any existing corporation or to any other name already protected by law.
On the first point (a), the words "Family Bank" present in both petitioner and respondent's corporate name satisfy the requirement that there be identical names in the existing corporate name and the proposed one.

Respondent cannot justify its claim under Section 3 of the Revised Guidelines in the Approval of Corporate and Partnership Names, to wit:

3. The name shall not be identical, misleading or confusingly similar to one already registered by another corporation or partnership with the Commission or a sole proprietorship registered with the Department of Trade and Industry.

If the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered.

Section 3 states that if there be identical, misleading or confusingly similar name to one already registered by another corporation or partnership with the SEC, the proposed name must contain at least one distinctive word different from the name of the company already registered. To show contrast with respondent's corporate name, petitioner used the words "GSIS" and "thrift." But these are not sufficiently distinct words that differentiate petitioner's corporate name from respondent's. While "GSIS" is merely an acronym of the proper name by which petitioner is identified, the word "thrift" is simply a classification of the type of bank that petitioner is. Even if the classification of the bank as "thrift" is appended to petitioner's proposed corporate name, it will not make the said corporate name distinct from respondent's because the latter is likewise engaged in the banking business.

This Court used the same analysis in Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. v. Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan. In that case, Iglesia ng Dios Kay Cristo Jesus filed a case before the SEC to compel Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus to change its corporate name, and to prevent it from using the same or similar name on the ground that the same causes confusion among their members as well as the public. Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus claimed that it complied with SEC Memorandum Circular No. 14-2000 by adding not only two, but eight words to their registered name, to wit: "Ang Mga Kaanib" and "Sa Bansang Pilipinas, Inc.," which effectively distinguished it from Iglesia ng Dios Kay Cristo Jesus. This Court rejected the argument, thus:

The additional words "Ang Mga Kaanib" and "Sa Bansang Pilipinas, Inc." in petitioner's name are, as correctly observed by the SEC, merely descriptive of and also referring to the members, or kaanib, of respondent who are likewise residing in the Philippines. These words can hardly serve as an effective differentiating medium necessary to avoid confusion or difficulty in distinguishing petitioner from respondent. This is especially so, since both petitioner and respondent corporations are using the same acronym – H.S.K.; not to mention the fact that both are espousing religious beliefs and operating in the same place. Xxx[41]

On the second point (b), there is a deceptive and confusing similarity between petitioner's proposed name and respondent's corporate name, as found by the SEC. 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. And even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur.

Petitioner's corporate name is "GSIS Family Bank—A Thrift Bank" and respondent's corporate name is "BPI Family Bank." The only words that distinguish the two are "BPI," "GSIS," and "Thrift." The first two words are merely the acronyms of the proper names by which the two corporations identify themselves; and the third word simply describes the classification of the bank. The overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both petitioner and respondent are engaged in the same business of banking. "The likelihood of confusion is accentuated in cases where the goods or business of one corporation are the same or substantially the same to that of another corporation."

Respondent alleged that upon seeing a Comsavings Bank branch with the signage "GSIS Family Bank" displayed at its premises, some of the respondent's officers and their clients began asking questions. These include whether GSIS has acquired Family Bank; whether there is a joint arrangement between GSIS and Family Bank; whether there is a joint arrangement between BPI and GSIS regarding Family Bank; whether Comsavings Bank has acquired Family Bank; and whether there is there an arrangement among Comsavings Bank, GSIS, BPI, and Family Bank regarding BPI Family Bank and GSIS Family Bank.[46] The SEC made a finding that "[i]t is not a remote possibility that the public may entertain the idea that a relationship or arrangement indeed exists between BPI and GSIS due to the use of the term 'Family Bank' in their corporate names."

Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, more so if the same has been upheld by the appellate court, as in this case.

Petitioner cannot argue that the word "family" is a generic or descriptive name, which cannot be appropriated exclusively by respondent. "Family," as used in respondent's corporate name, is not generic. Generic marks are commonly used as the name or description of a kind of goods, such as "Lite" for beer or "Chocolate Fudge" for chocolate soda drink. Descriptive marks, on the other hand, convey the characteristics, function, qualities or ingredients of a product to one who has never seen it or does not know it exists, such as "Arthriticare" for arthritis medication.

Under the facts of this case, the word "family" cannot be separated from the word "bank." In asserting their claims before the SEC up to the Court of Appeals, both petitioner and respondent refer to the phrase "Family Bank" in their submissions. This coined phrase, neither being generic nor descriptive, is merely suggestive and may properly be regarded as arbitrary. Arbitrary marks are "words or phrases used as a mark that appear to be random in the context of its use. They are generally considered to be easily remembered because of their arbitrariness. They are original and unexpected in relation to the products they endorse, thus, becoming themselves distinctive." Suggestive marks, on the other hand, "are marks which merely suggest some quality or ingredient of goods. xxx The strength of the suggestive marks lies on how the public perceives the word in relation to the product or service."

In Ang v. Teodoro, this Court ruled that the words "Ang Tibay" is not a descriptive term within the meaning of the Trademark Law but rather a fanciful or coined phrase. In so ruling, this Court considered the etymology and meaning of the Tagalog words, "Ang Tibay" to determine whether they relate to the quality or description of the merchandise to which respondent therein applied them as trademark.

The word "family" is defined as "a group consisting of parents and children living together in a household" or "a group of people related to one another by blood or marriage." Bank, on the other hand, is defined as "a financial establishment that invests money deposited by customers, pays it out when requested, makes loans at interest, and exchanges currency." By definition, there can be no expected relation between the word "family" and the banking business of respondent. Rather, the words suggest that respondent's bank is where family savings should be deposited. More, as in the Ang case, the phrase "family bank" cannot be used to define an object.

Petitioner's argument that the opinion of the BSP and the certificate of registration granted to it by the DTI constitute authority for it to use "GSIS Family Bank" as corporate name is also untenable.

The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of the SEC Reorganization Act, as amended. 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.

The SEC correctly applied Section 18 of the Corporation Code, and Section 15 of SEC Memorandum Circular No. 14-2000, pertinent portions of which provide:
In implementing Section 18 of the Corporation Code of the Philippines (BP 69), the following revised guidelines in the approval of corporate and partnership names are hereby adopted for the information and guidance of all concerned:
xxx
15. Registrant corporations or partnership shall submit a letter undertaking to change their corporate or partnership name in case another person or firm has acquired a prior right to the use of the said firm name or the same is deceptively or confusingly similar to one already registered unless this undertaking is already included as one of the provisions of the articles of incorporation or partnership of the registrant.

The SEC, after finding merit in respondent's claims, can compel petitioner to abide by its commitment "to change its corporate name in the event that another person, firm or entity has acquired a prior right to use of said name or one similar to it."

Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law. The BSP opinion invoked by petitioner even acknowledges that "the issue on whether a proposed name is identical or deceptively similar to that of any of existing corporation is matter within the official jurisdiction and competence of the SEC."

Judicial notice may also be taken of the action of the IPO in approving respondent's registration of the trademark "BPI Family Bank" and its logo on October 17, 2008. The certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

P.C. JAVIER & SONS, INC., SPS. PABLO C. JAVIER, SR. and ROSALINA F. JAVIER, *Petitioners*, -versus- HON. COURT OF APPEALS, PAIC SAVINGS & MORTGAGE BANK, INC., SHERIFFS GRACE BELVIS, SOFRONIO VILLARIN, PIO MARTINEZ and NICANOR BLANCO, *Respondents*
G.R. No. 129552, SECOND DIVISION, JUNE 29, 2005, CHICO-NAZARIO, *J.*

It cannot be denied that petitioner corporation was aware of First Summa Savings and Mortgage Bank's change of corporate name to PAIC Savings and Mortgage Bank, Inc.

Knowing fully well of such change, petitioner corporation has no valid reason not to pay because the IGLF loans were applied with and obtained from First Summa Savings and Mortgage Bank. First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc., are one and the same bank to which petitioner corporation is indebted.

A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities.

FACTS:

Plaintiff Corporation, P.C. Javier and Sons Services, Inc., applied with First Summa Savings and Mortgage Bank, later on renamed as PAIC Savings and Mortgage Bank, Defendant Bank, for short, for a loan accommodation under the Industrial Guarantee Loan Fund (IGLF) for ₱1.5 Million.

On March 21, 1981, Plaintiff Corporation through Plaintiff Pablo C. Javier, Plaintiff Javier for short, was advised that its loan application was approved and that the same shall be forwarded to the Central Bank (CB) for processing and release.

Plaintiff Corporation defaulted in the payment of its IGLF loan with Defendant Bank hence Defendant Bank sent a demand letter dated reminding Plaintiff Javier to make payments because their accounts have been long overdue; Defendant Bank sent another demand letter to Plaintiff spouses informing them that since they have defaulted in paying their obligation, their mortgage will now be foreclosed; that when Plaintiffs still failed to pay, Defendant Bank initiated extrajudicial foreclosure of the real estate mortgage executed by Plaintiff spouses and accordingly the auction sale of the property covered by TCT No. 473216 was scheduled by the Ex–Officio Sheriff.

The instant complaint was filed to forestall the extrajudicial foreclosure sale of a piece of land covered by Transfer Certificate of Title (TCT) No. 473216 mortgaged by petitioner corporation in favor of First Summa Savings and Mortgage Bank which bank was later renamed as PAIC Savings and Mortgage Bank, Inc. It likewise asked for the nullification of the Real Estate Mortgages it entered into with First Summa Savings and Mortgage Bank.

Among the issues raised by petitioners at the RTC are whether or not First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc. are one and the same entity.

The RTC declared that First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc. are one and the same entity and that petitioner corporation is liable to respondent bank for the unpaid balance of its Industrial Guarantee Loan Fund (IGLF) loans. The RTC further ruled that respondent bank was justified in extrajudicially foreclosing the real estate mortgages executed by petitioner corporation in its favor because the loans were already due and demandable when it commenced foreclosure proceedings.

The Court of Appeals affirmed in toto the decision of the lower court.

Hence, this appeal by certiorari.

Petitioners argue that they are legally justified to withhold their amortized payments to the respondent bank until such time they would have been properly notified of the change in the corporate name of First Summa Savings and Mortgage Bank. They claim that they have never received any formal notice of the alleged change of corporate name of First Summa Savings and Mortgage Bank to PAIC Savings & Mortgage Bank, Inc. They further claim that the only and first time they received formal evidence of a change in the corporate name of First Summa Savings and Mortgage Bank surfaced when respondent bank presented its witness, Michael Caguioa, where he presented the Securities and Exchange Commission (SEC) Certificate of Filing of the Amended Articles of Incorporation of First Summa Savings and Mortgage Bank, the Central Bank (CB) Certificate of Authority to change the name of First Summa Savings and Mortgage Bank to PAIC Savings and Mortgage Bank, Inc., and the CB Circular Letter.

ISSUE:

Whether First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc. are one and the same entity (YES)

RULING:

Their defense that they should first be formally notified of the change of corporate name of First Summa Savings and Mortgage Bank to PAIC Savings and Mortgage Bank, Inc., before they will continue paying their loan obligations to respondent bank presupposes that there exists a requirement under a law or regulation ordering a bank that changes its corporate name to formally notify all its debtors. After going over the Corporation Code and Banking Laws, as well as the regulations and circulars of both the SEC and the Bangko Sentral ng Pilipinas (BSP), we find that there is no such requirement. This being the case, this Court cannot impose on a bank that changes its corporate name to notify a debtor of such change absent any law, circular or regulation requiring it. Such act would be judicial legislation. The formal notification is, therefore, discretionary on the bank. Unless there is a law, regulation or circular from the SEC or BSP requiring the formal notification of all debtors of banks of any change in corporate name, such notification remains to be a mere internal policy that banks may or may not adopt.

In the case at bar, though there was no evidence showing that petitioners were furnished copies of official documents showing the First Summa Savings and Mortgage Bank's change of corporate name to PAIC Savings and Mortgage Bank, Inc., evidence abound that they had notice or knowledge thereof.

Several documents establish this fact. First, letter dated 16 July 1983 signed by Raymundo V. Blanco, Accountant of petitioner corporation, addressed to PAIC Savings and Mortgage Bank, Inc. Part of said letter reads: "In connection with your inquiry as to the utilization of funds we obtained from the former First Summa Savings and Mortgage Bank, . . ." Second, Board Resolution of petitioner corporation signed by Pablo C. Javier, Sr. on 24 August 1983 authorizing him to execute a Chattel Mortgage over certain machinery in favor of PAIC Savings and Mortgage Bank, Inc. Third, Secretary's Certificate signed by Fortunato E. Gabriel, Corporate Secretary of petitioner corporation, on 01 September 1983, certifying that a board resolution was passed authorizing Mr. Pablo C. Javier, Sr. to execute a chattel mortgage on the corporation's equipment that will serve as collateral to cover the IGLF loan with PAIC Savings and Mortgage Bank, Inc. Fourth, undated letter signed by Pablo C. Javier, Sr. and addressed to PAIC Savings and Mortgage Bank, Inc., authorizing Mr. Victor F. Javier, General Manager of petitioner corporation, to secure from PAIC Savings and Mortgage Bank, Inc. certain documents for his signature.

From the foregoing documents, it cannot be denied that petitioner corporation was aware of First Summa Savings and Mortgage Bank's change of corporate name to PAIC Savings and Mortgage Bank, Inc.

Knowing fully well of such change, petitioner corporation has no valid reason not to pay because the IGLF loans were applied with and obtained from First Summa Savings and Mortgage Bank. First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc., are one and the same bank to which petitioner corporation is indebted.

A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed

ZUELLIG FREIGHT AND CARGO SYSTEMS, *Petitioner,* -versus- NATIONAL LABOR RELATIONS COMMISSION AND RONALDO V. SAN MIGUEL, *Respondents*
G.R. No. 157900, FIRST DIVISION, JULY 22, 2013, BERSAMIN, *J.*

Zeta and petitioner remained one and the same corporation. The change of name did not give petitioner the license to terminate employees of Zeta like San Miguel without just or authorized cause. The situation was not similar to that of an enterprise buying the business of another company where the purchasing company had no obligation to rehire terminated employees of the latter. Petitioner, despite its new name, was the mere continuation of Zeta's corporate being, and still held the obligation to honor all of Zeta's obligations, one of which was to respect San Miguel's security of tenure. The dismissal of San Miguel from employment on the pretext that petitioner, being a different corporation, had no obligation to accept him as its employee, was illegal and ineffectual.

FACTS:

San Miguel brought a complaint for unfair labor practice, illegal dismissal, non-payment of salaries and moral damages against petitioner, formerly known as Zeta Brokerage Corporation (Zeta). He alleged that he had been a checker/customs representative of Zeta since December 16, 1985; that in January 1994, he and other employees of Zeta were informed that Zeta would cease operations, and that all affected employees, including him, would be separated; that by letter dated February 28, 1994, Zeta informed him of his termination effective March 31, 1994; that he reluctantly accepted his separation pay subject to the standing offer to be hired to his former position by petitioner; and that on April 15, 1994, he was summarily terminated, without any valid cause and due process.

Labor arbiter held that San Miguel was illegally dimissed. Contrary to respondents' claim that Zeta ceased operations and closed its business, the LA stated that there was merely a change of business name and primary purpose and upgrading of stocks of the corporation.

NLRC and CA affirmed.

ISSUE:

Whether CA erred in holding that the NLRC did not act with grave abuse of discretion in ruling that the closure of the business operation of Zeta had not been bona fide, thereby resulting in the illegal dismissal of San Miguel (NO)

RULING:

It is worthy to point out that the Labor Arbiter, the NLRC, and the CA were united in concluding that the cessation of business by Zeta was not a bona fide closure to be regarded as a valid ground for the termination of employment of San Miguel within the ambit of Article 283 of the Labor Code. The provision pertinently reads:

Article 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. x x x.

The unanimous conclusions of the CA, the NLRC and the Labor Arbiter, being in accord with law, were not tainted with any abuse of discretion, least of all grave, on the part of the NLRC. Verily, the amendments of the articles of incorporation of Zeta to change the corporate name to Zuellig Freight and Cargo Systems, Inc. did not produce the dissolution of the former as a corporation. For sure, the Corporation Code defined and delineated the different modes of dissolving a corporation, and amendment of the articles of incorporation was not one of such modes. The effect of the change of name was not a change of the corporate being, for, as well stated in Philippine First Insurance Co., Inc. v. Hartigan: "The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person is begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports – a change of name, and not a change of being."

The consequences, legal and otherwise, of the change of name were similarly dealt with in P.C. Javier & Sons, Inc. v. Court of Appeals, with the Court holding thusly:

From the foregoing documents, it cannot be denied that petitioner corporation was aware of First Summa Savings and Mortgage Bank's change of corporate name to PAIC Savings and Mortgage Bank, Inc. Knowing fully well of such change, petitioner corporation has no valid reason not to pay because the IGLF loans were applied with and obtained from First Summa Savings and Mortgage Bank. First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc., are one and the same bank to which petitioner corporation is indebted. A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon to change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed. (Bold underscoring supplied for emphasis)

In short, Zeta and petitioner remained one and the same corporation. The change of name did not give petitioner the license to terminate employees of Zeta like San Miguel without just or authorized cause. The situation was not similar to that of an enterprise buying the business of another company where the purchasing company had no obligation to rehire terminated employees of the latter. Petitioner, despite its new name, was the mere continuation of Zeta's corporate being, and still held the obligation to honor all of Zeta's obligations, one of which was to respect San Miguel's security of tenure. The dismissal of San Miguel from employment on the pretext that petitioner, being a different corporation, had no obligation to accept him as its employee, was illegal and ineffectual.

INDIAN CHAMBER OF COMMERCE PHILS., INC. *Petitioner,* -versus- FILIPINO INDIAN CHAMBER OF COMMERCE IN THE PHILIPPINES, INC., *Respondent*

G.R. No. 184008, THIRD DIVISION, AUGUST 3, 2016, JARDELEZA, *J.*

On the second point, ICCPI's corporate name is deceptively or confusingly similar to that of FICCPI. It is settled that to determine 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 examine the record as well as the names themselves. Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.

In this case, the overriding consideration in determining wheiher a person, using ordinary care and discrimination, might be misled is the circumstance that both ICCPI and FICCPI have a common primary purpose, that is, the promotion of Filipino-Indian business in the Philippines..

FACTS:

Filipino-Indian Chamber of Commerce of the Philippines, Inc. (defunct FICCPI) was originally registered with the Securities and Exchange Commission (SEC) as Indian Chamber of Commerce of Manila, Inc. On November 24, 2001, FICCPI's corporate existence expired for it didn't apply for the extension of its term.

On January 20, 2005, Mr. Naresh Mansukhani (Mansukhani) reserved the corporate name "Filipino Indian Chamber of Commerce in the Philippines, Inc" (FICCPI) for the period from January 20, 2005 to April 20, 2005, with the Company Registration and Monitoring Department (CRMD) of the SEC. Ram Sitaldas (Sitaldas), who claimed to be the representative of the defunct FICCPI, opposed to this and argued that such unauthorized reservation was illegal.

According to the CRMD, the expiration of the defunct FICCPI's corporate existence signified the end of its right over the said name and thus, the same may be appropriated by another. Both the SEC and CA ruled in favor of Mansukhani.

A year after the reservation of the name, FICCPI was issued a Certificate of Incorporation. In 2005, Mr. Pracash Dayacanl, who represented the defunct FICCPI, applied for the reservation of the corporate name "Indian Chamber of Commerce Phils., Inc." (ICCPI) with the CRMD. Mansukhani filed an opposition to this, which the CRMD denied. It stated that the name "Indian Chamber of Commerce Phils., Inc." was not deceptively or confusingly similar to "Filipino Indian Chamber of Commerce in the Philippines, Inc." On the same date, the CRMD approved and issued a Certificate of Incorporation to ICCPI.

Upon appeal, the SEC En Banc ruled otherwise. The committee found the existence of a similarity between the names that could lead to confusion. It also ruled that FICCPI enjoys prior right to use its corporate name to the exclusion of the others. The CA affirmed such ruling, stating that by simply looking at the corporate names of ICCPI and FICCPI, one may readily notice the striking similarity between the two. An ordinary person using ordinary care and discrimination may be led to believe that the corporate names of ICCPI and FICCPI refer to one and the same corporation

ISSUE:

Whether there is similarity between the petitioner's and the respondent's corporate names that would inevitably lead to confusion (YES)

RULING:

YES. Section 18 of the Corporation Code expressly prohibits the use of a corporate name which is identical or deceptively or confusingly similar to that of any existing corporation. In Philips Export B. V. v. Court of Appeals, this Court ruled that to fall within the prohibition, two requisites must be proven, namely: a) that the complainant corporation acquired a prior right over the use of such corporate name, and b) that the proposed name is either identical, deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law, or patently deceptive, confusing or contrary to existing law.

In the case at bar, both requisites were proven. ICCPI was incorporated a month after FICCPI registered its corporate name.

Thus, applying the Priority of Adoption Rule, FICCPI, which was incorporated earlier, acquired a prior right over the use of the corporate name. ICCPI cannot argue that it first incorporated and held the "Filipino Indian Chamber of Commerce," until it failed to renew its name due to oversight. A corporation is deemed dissolved when its term expires.

According to SEC Memorandum Circular No. 14-2000, the name of a dissolved firm shall not be allowed to be used by other firms within three years after the approval of the dissolution of the corporation by the Commission, unless allowed by the last stockholders representing at least majority of the outstanding capital stock of the dissolved firm. Following this rule, FICCPI was able to reserve the name "Filipino Indian Chamber of Commerce in the Philippines, Inc." after the three-year prohibition.

Petitioner cannot argue that the combination of words in respondent's corporate name is merely descriptive and generic, and consequently cannot be appropriated as a corporate name to the exclusion of the others. Save for the words "Filipino," "in the," and "Inc.," the corporate names of petitioner and respondent are identical in all other respects. This issue was also discussed in the Iglesia case where this Court held,

Furthermore, the wholesale appropriation by petitioner of respondent's corporate name cannot find justification under the generic word rule. We agree with the Court of Appeals' conclusion that a contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.

On the second point, ICCPI's corporate name is deceptively or confusingly similar to that of FICCPI. It is settled that to determine 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 examine the record as well as the names themselves. Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.

In this case, the overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both ICCPI and FICCPI have a common primary purpose, that is, the promotion of Filipino-Indian business in the Philippines.

The primary purposes of ICCPI as provided in its Articles of Incorporation are:

Develop a stronger sense of brotherhood;

Enhance the prestige of the Filipino-Indian business community in the Philippines;

Promote cordial business relations with Filipinos and other business communities in the Philippines, and other overseas Indian business organizations;

Respond fully to the needs of a progressive economy and the Filipino-Indian Business community;

Promote and foster relations between the people and Governments of the Republics of the Philippines and
India in areas of Industry, Trade, and Culture.61chanroblesvirtuallawlibrary
Likewise, the primary purpose of FICCPI is "[t]o actively promote and enhance the Filipino-Indian business relationship especially in view of [current] local and global business trends."

Considering these corporate purposes, the SEC En Banc made a finding that "[i]t is apparent that both from the standpoint of their corporate names and the purposes for which they were established, there exist a I similarity that could inevitably lead to confusion." This finding of the SEC En Banc was fully concurred with and adopted by the CA.

Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, and more so if the same has been upheld by the appellate court, as in this case.

Petitioner cannot argue that the CA erred when it upheld the SEC En Banc's decision to cancel ICCPFs corporate name. By express mandate of law, 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 corporation involved, but more so for the protection of the public. It has the authority to de-register at all times, and under all circumstances corporate names which in its estimation are likely to generate confusion.68chanrobleslaw

Pursuant to its mandate, the SEC En Banc correctly applied Section 18 of the Corporation Code, and Section 15 of SEC Memorandum Circular No. 14-2000

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 7, 2018, JARDELEZA, *J.*

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.*

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.8 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 on June 30, 2008, and for its secondary courses on February 15, 2010.

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. Moreover, being the prior registrant, respondents have acquired the use of said phrases as part of their corporate names and have freedom from infringement of the same.

SEC OGC issued an Order directing petitioner to change or modify its corporate name.

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." This was upheld by SEC En Banc and CA.

ISSUE:

> Whether 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:

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. It is regarded, to a certain extent, as a property right and one which cannot be impaired or defeated by subsequent appropriation by another corporation in the same field. Furthermore, in Philips Export B.V. v. Court of Appeals, we held:

A name is peculiarly important as necessary to the very existence of a corporation x x x. Its name is one of its attributes, an element of its existence, and essential to its identity x x x. The general rule as to corporations is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person x x x; and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted x x x.

A corporation acquires its name by choice and need not select a name identical with or similar to one already appropriated by a senior corporation while an individual's name is thrust upon him x x x. A corporation can no more use a corporate name in violation of the rights of others than an individual can use his nan1e legally acquired so as to mislead the public and injure another x x x.

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

The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," 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.

Indeed, parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a non-profit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.

In Philips Export B.V. v. Court of Appeals,the Court held that to fall within the prohibition of Section , 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.32

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 Salle-Santiago 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. Al998-01021.34

On the other hand, petitioner was issued a Certificate of Registration only on July 5, 2007 under Company Registration No. CN200710647.35 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.

Petitioner asserts that it has the right to use the phrase "De La Salle" in its corporate name as respondents did not obtain the right to its exclusive use, nor did the words acquire secondary meaning. It endeavoured to demonstrate that no confusion will arise from its use of the said phrase by stating that its complete name, "De La Salle Montessori International of Malolos, Inc.," contains four other distinctive words that are not found in respondents' corporate names. Moreover, 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. Petitioner also compared its logo to that of respondent De La Salle University and argued that they are different. Further, petitioner argued that it does not charge as much fees as respondents, that its clients knew that it is not part of respondents' schools, and that it never misrepresented nor claimed to be an affiliate of respondents. Additionally, it has gained goodwill and a name worthy of trust in its own right.

We are not persuaded.

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 quote with approval the ruling of the SEC En Banc on this matter. Thus:

> Generic terms are those which constitute "the common descriptive name of an article or substance," or comprise the "genus of which the particular product is a species," or are "commonly used as the name or description of a kind of goods," or "characters," or "refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product," and are not legally protectable. It has been held that if a mark is so commonplace that it cannot be readily distinguished from others, then it is apparent that it cannot identify a particular business; and he who first adopted it cannot be injured by any subsequent appropriation or imitation by others, and the public will not be deceived.

> Contrary to [petitioner's] claim, the word salle only means "room" in French. The word la, on the other hand, is a definite article ("the") used to modify salle. Thus, since salle is nothing more than a room, [respondents'] use of the term is actually suggestive.
>
> A suggestive mark is therefore a word, picture, or other symbol that suggests, but does not directly describe something about the goods or services in connection with which it is used as a mark and gives a hint as to the quality or nature of the product. Suggestive trademarks therefore can be distinctive and are registrable.
>
> The appropriation of the term "la salle" to associate the words with the lofty ideals of education and learning is in fact suggestive because roughly translated, the words only mean "the room." Thus, the room could be anything - a room in a house, a room in a building, or a room in an office.
>
> x x x
>
> In fact, the appropriation by [respondents] is fanciful, whimsical and arbitrary because there is no inherent connection between the words la salle and education, and it is through [respondents'] painstaking efforts that the term has become associated with one of the top educational institutions in the country. Even assuming arguendo that la salle means "classroom" in French, imagination is required in order to associate the term with an educational institution and its particular brand of service.

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. As aptly observed by the SEC En Banc, petitioner's name gives the impression that it is a branch or affiliate of respondents. It is settled that proof of actual confusion need not be shown. It suffices that confusion is probable or likely to occur.

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.48

Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law.

4. CORPORATE TERM

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus- THE COURT OF FIRST INSTANCE OF RIZAL, PASIG — BRANCH XXI, PRESIDED BY JUDGE GREGORIO G. PINEDA, CHUNG SIONG PEK @ BONIFACIO CHUNG SIONG PEK AND VICTORIA CHING GENG TY @ VICTORIA CHENG GENG TY, and THE REGISTER OF DEEDS OF RIZAL, PASIG, METRO MANILA AND/OR HIS DEPUTIES AND AGENTS, *Respondents*

G.R. No. 63201, FIRST DIVISION, MAY 27, 1992, MEDIALDEA, *J.*

When the period of corporate life expires, the corporation ceases to be a body corporate for the purpose of continuing the business for which it was organized. But it shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its assets (Sec. 122, Corporation Code). There is no need for the institution of a proceeding for quo warranto to determine the time or date of the dissolution of a corporation because the period of corporate existence is provided in the articles of incorporation. When such period expires and without any extension having been made pursuant to law, the corporation is dissolved automatically insofar as the continuation of its business is concerned.

Considering the foregoing in relation to the contract of lease between the parties herein, when PBM's corporate life ended on January 19, 1977 and its 3-year period for winding up and liquidation expired on January 19, 1980, the option of extending the lease was likewise terminated on January 19, 1977 because PBM failed to renew or extend its corporate life in accordance with law.

FACTS:

Private respondents entered into a contract of lease with Philippine Blooming Mills, Co., Inc., (PBM for brevity) whereby the letter shall lease the aforementioned parcels of land as factory site. PBM was duly organized and incorporated on January 19, 1952 with a corporate term of twenty-five (25) years. This leasehold right of PBM covering the parcels of land was duly annotated at the back of the above stated certificates of title.

The contract of lease provides that the term of the lease is for twenty years beginning from the date of the contract and "is extendable for another term of twenty years at the option of the LESSEE should its term of existence be extended in accordance with law."

On October 11, 1963, PBM executed in favor of Philippine National Bank (PNB for brevity), petitioner herein, a deed of assignment, conveying and transferring all its rights and interests under the contract of lease which it executed with private respondents. The assignment was for and in consideration of the loans granted by PNB to PBM. The deed of assignment was registered and annotated at the back of the private respondents' certificates of title

On November 6, 1963 and December 23, 1963 respectively, PBM executed in favor of PNB a real estate mortgage for a loan of P100,000.00 and an addendum to real estate mortgage for another loan of P1,590,000.00, covering all the improvements constructed by PBM on the leased premises. These mortgages were registered and annotated.

PBM filed a petition for registration of improvements in the titles of real property owned by private respondents docketed as Case No. 6530.

On October 7, 1981, private respondents filed a motion in the same proceedings which was given a different case number to wit, LRC Case No. R-2744, because of the payment of filing fees for the motion. The motion sought to cancel the annotations on respondents' certificates of title pertaining to the assignment by PBM to PNB of the former's leasehold rights, inclusion of improvements and the real estate mortgages made by PBM in favor of PNB, on the ground that the contract of lease entered into between PBM and respondents-movants had already expired by the failure of PBM and/or its assignee to exercise the option to renew the second 20-year lease commencing on March 1, 1974 and also by the failure of PBM to extend its corporate existence in accordance with law. The motion also states that since PBM failed to remove its improvements on the leased premises before the expiration of the contract of lease, such improvements shall accrue to respondents as owners of the land.

On April 22, 1982, respondent court issued an order directing the cancellation of the inscriptions on respondents' certificates of title

ISSUE:

Whether the cancellation of the entries on respondent's certificates of title is valid and proper. (YES)

RULING:

The contract of lease expressly provides that the term of the lease shall be twenty years from the execution of the contract but can be extended for another period of twenty years at the option of the lessee should the corporate term be extended in accordance with law. Clearly, the option of the lessee to extend the lease for another period of twenty years can be exercised only if the lessee as corporation renews or extends its corporate term of existence in accordance with the Corporation Code which is the applicable law. Contracts are to be interpreted according to their literal meaning and should not be interpreted beyond their obvious intendment. Thus, in the instant case, the initial term of the contract of lease which commenced on March 1, 1954 ended on March 1, 1974. PBM as lessee continued to occupy the leased premises beyond that date with the acquiescence and consent of the respondents as lessor. Records show however, that PBM as a corporation had a corporate life of only twenty-five (25) years which ended an January 19, 1977. It should be noted however that PBM allowed its corporate term to expire without complying with the requirements provided by law for the extension of its corporate term of existence.

Section 11 of Corporation Code provides that a corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. Upon the expiration of the period fixed in the articles of incorporation in the absence of compliance with the legal requisites for the extension of the period, the corporation ceases to exist and is dissolved ipso facto (16 Fletcher 671 cited by Aguedo F. Agbayani, Commercial Laws of the Philippines, Vol. 3, 1988 Edition p. 617). When the period of corporate life expires, the corporation ceases to be a body corporate for the purpose of continuing the business for which it was organized. But it shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its assets (Sec. 122, Corporation Code). There is no need for the institution of a proceeding for quo warranto to determine the time or date of the dissolution of a corporation because the period of corporate existence is provided in the articles of incorporation. When such period expires and without any extension having been made pursuant to law, the corporation is dissolved automatically insofar as the continuation of its business is concerned. The quo warranto proceeding under Rule 66 of the Rules of Court, as amended, may be instituted by the Solicitor General only for the involuntary dissolution of a corporation on the following grounds: a) when the corporation has offended against a provision of an Act for its creation or renewal; b) when it has forfeited its privileges and franchises by non-user; c) when it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges or franchises; d) when it has mis-used a right, privilege or franchise conferred upon it by law, or when it has exercised a right, privilege or franchise in contravention of law. Hence, there is no need for the SEC to make an involuntary dissolution of a corporation whose corporate term had ended because its articles of incorporation had in effect expired by its own limitation.

Considering the foregoing in relation to the contract of lease between the parties herein, when PBM's corporate life ended on January 19, 1977 and its 3-year period for winding up and liquidation expired on January 19, 1980, the option of extending the lease was likewise terminated on January 19, 1977 because PBM failed to renew or extend its corporate life in accordance with law. From then on, the respondents can exercise their right to terminate the lease pursuant to the stipulations in the contract.

5. MINIMUM CAPITAL STOCK AND SUBSCRIPTION REQUIREMENTS

MSCI-NACUSIP LOCAL CHAPTER, *Petitioner,* -versus NATIONAL WAGES AND PRODUCTIVITY COMMISSION and MONOMER SUGAR CENTRAL, INC., *Respondents*
G.R. No. 125198, FIRST DIVISION, MARCH 3, 1997, HERMOSISIMA, JR., *J.*

By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P 1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."

In the case under consideration, there is no dispute, and the Board even mentioned in its Decision, that MSCI was organized and incorporated on February 15, 1990 with an authorized capital stock of P60 million, P20 million of which was subscribed. Of the P20 million subscribed capital stock, P5 million was paid-up. This fact is only too glaring for the Board to have been misled into believing that MSCI'S paid-up capital stock was P64 million plus and not P5 million.

FACTS:

On January 11, 1990, Asturias Sugar Central, Inc. (ASCI) executed a Memorandum of Agreement with Monomer Trading Industries, Inc. (MTII), whereby MTII shall acquire the assets of ASCI by way of a Deed of Assignment provided that an entirely new organization in place of MTII shall be organized, which new corporation shall be the assignee of the assets of ASCI.

By virtue of this Agreement, a new corporation was organized and incorporated under the corporate name Monomer Sugar Central, Inc. or MSCI, the private respondent herein.

MSCI applied for exemption from the coverage of Wage Order No. RO VI-01 issued by the Board on the ground that it is a distressed employer.

The petitioner herein MSCI-NACUSIP Local Chapter (Union), in opposition, maintained that MSCI is not distressed; that respondent applicant has not complied with the requirements for exemption; and that the financial statements submitted by MSCI do not reflect the true and valid financial status of the company, and that the paid-up capital would have been higher than P5 million and thus impairment would have been lower than 25% had the pre-organization agreement between ASCI and MTII been complied with.

Regional Tripartite Wages and Productivity Board (Board) denied MSCI's application for exemption based on the finding that the applicant's losses of P3,400,738.00 constitute an impairment of only 5.25% of its paid-up capital of P64,688,528.00, can not be said to be sufficient to meet the required 25% in order to qualify for the exemption, as provided in NWPC Guidelines.

The Board held that the paid-up capital of MSCI on the aforesaid dates was actually P64,688,528.00 and not P5 million as claimed by MSCI in its application for exemption and, thus, the established losses amounting to P3,400,738.00 constitute an impairment of only 5.25% of the true paid-up capital of P64 million plus,2 which losses are not enough to meet the required 25% impairment requirement.

This conclusion is anchored on the belief of the Board that the value of the assets of ASCI, party to the Memorandum of Agreement, transferred to MSCI on March 28, 1990 should be taken into consideration in computing the paid-up capital of MSCI to reflect its true financial structure. Moreover, the loans or advances extended by MTII, the other party to the Agreement, to MSCI should allegedly be treated as additional investments to MSCI, 3 and must therefore be included in computing respondent's paid-up capital.

The motion for reconsideration, filed by MSCI was denied by the Board.

A timely appeal was brought before the public respondent Commission.

The Commission reversed and set aside the foregoing orders of the Board, and granted MSCI's application for exemption

In reversing the Board and granting the exemption, the Commission held that the Board exceeded its authority in computing and giving new valuation to what should be the paid-up capital of MSCI. It stressed that RA No. 6727, or the Wage Rationalization Act, and its implementing guidelines have not conferred upon the Board the authority to change the paid-up capital of a corporation

ISSUE:

Whether the correct paid-up capital of MSCI is P 5 million (YES)

RULING:

By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P 1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."

In the case under consideration, there is no dispute, and the Board even mentioned in its Decision, that MSCI was organized and incorporated on February 15, 1990 with an authorized capital stock of P60 million, P20 million of which was subscribed. Of the P20 million subscribed capital stock, P5 million was paid-up. This fact is only too glaring for the Board to have been misled into believing that MSCI'S paid-up capital stock was P64 million plus and not P5 million.

The submission of the Board that the value of the assets of Asturias Sugar Central, Inc. transferred to MSCI on March 28, 1990, as well as the loans or advances made by MTII to MSCI should have been taken into consideration in computing the paid-up capital of MSCI is unmeritorious, at best, and betrays the Board's sheer lack of grasp of a basic concept in Corporation Law, at worst. Not all funds or assets received by the corporation can be considered paid-up capital, for this term has a technical signification in Corporation Law. Such must form part of the authorized capital stock of the corporation, subscribed and then actually paid up.

Furthermore, the Commission aptly observed that the loans and advances of MTII to respondent MSCI cannot be treated as investments, unless the corresponding shares of stocks are issued. But as it turned out, such loans and advances were in fact treated as liabilities of MSCI to MTII as shown in its 1990 audited financial statements.

Henceforth, the paid-up capital stock of MSCI for the period covered by the application for exemption still stood at P5 million. The losses, therefore, amounting to P3,400,738.00 for the period February 15, 1990 to August 31, 1990 impaired MSCI's paid-up capital of P5 million by as much as 68%. Likewise, the losses incurred by MSCI for the interim period from September 1, 1990 to November 30, 1990, as found by the Commission, per MSCI's quarterly income statements, amounting to P13,554,337.33 impaired the company's paid-up capital of P5 million by a whopping 271.08%,8 more than enough to qualify MSCI as a distressed employer. Respondent Commission thus acted well within its jurisdiction in granting MSCI full exemption from Wage Order No. RO VI-01 as a distressed employer.

6. ARTICLES OF INCORPORATION

A. NATURE AND FUNCTION OF ARTICLES

B. CONTENTS

CLAVECILLIA RADIO SYSTEM, *Petitioner,* -versus- HON. AGUSTIN ANTILLON, as City Judge of the Municipal Court of Cagayan de Oro City and NEW CAGAYAN GROCERY, *Respondents*
G.R. No. L-22238, EN BANC, FEBRUARY 18, 1967, REGALA, *J.*

Settled is the principle in corporation law that the residence of a corporation is the place where its principal office is established. Since it is not disputed that the Clavecilla Radio System has its principal office in Manila, it follows that the suit against it may properly be filed in the City of Manila.

FACTS:

New Cagayan Grocery filed a complaint against the Clavecilla Radio System alleging, in effect, that on March 12, 1963, the following message, addressed to the former, was filed at the latter's Bacolod Branch Office for transmittal thru its branch office at Cagayan de Oro:

> NECAGRO CAGAYAN DE ORO (CLAVECILLA)
> REURTEL WASHED NOT AVAILABLE REFINED TWENTY FIFTY IF AGREEABLE SHALL SHIP LATER REPLY POHANG

The Cagayan de Oro branch office having received the said message omitted, in delivering the same to the New Cagayan Grocery, the word "NOT" between the words "WASHED" and "AVAILABLE," thus changing entirely the contents and purport of the same and causing the said addressee to suffer damages.

After service of summons, the Clavecilla Radio System filed a motion to dismiss the complaint on the grounds that it states no cause of action and that the venue is improperly laid.

Thereafter, the City Judge, on September 18, 1963, denied the motion to dismiss for lack of merit and set the case for hearing.

Hence, the Clavecilla Radio System filed a petition for prohibition with preliminary injunction with the Court of First Instance praying that the City Judge of Cagayan de Oro, Honorable Agustin Antillon, be enjoined from further proceeding with the case on the ground of improper venue.

In dismissing the case, the lower court held that the Clavecilla Radio System may be sued either in Manila where it has its principal office or in Cagayan de Oro City where it may be served, as in fact it was served, with summons through the Manager of its branch office in said city. In other words, the court upheld the authority of the city court to take cognizance of the case.1äwphï1.ñët

In appealing, the Clavecilla Radio System contends that the suit against it should be filed in Manila where it holds its principal office.

ISSUE:

Whether the venue is proper (NO)

RULING:

Settled is the principle in corporation law that the residence of a corporation is the place where its principal office is established. Since it is not disputed that the Clavecilla Radio System has its principal office in Manila, it follows that the suit against it may properly be filed in the City of Manila.

The appellee maintain, however, that with the filing of the action in Cagayan de Oro City, venue was properly laid on the principle that the appellant may also be served with summons in that city where it maintains a branch office. This Court has already held in the case of *Cohen vs. Benguet Commercial Co., Ltd.*, 34 Phil. 526; that the term "may be served with summons" does not apply when the defendant resides in the Philippines for, in such case, he may be sued only in the municipality of his residence, regardless of the place where he may be found and served with summons. As any other corporation, the Clavecilla Radio System maintains a residence which is Manila in this case, and a person can have only one residence at a time.

The fact that it maintains branch offices in some parts of the country does not mean that it can be sued in any of these places. To allow an action to be instituted in any place where a corporate entity has its branch offices would create confusion and work untold inconvenience to the corporation.

It is important to remember, as was stated by this Court in *Evangelista vs. Santos, et al., supra*, that the laying of the venue of an action is not left to plaintiff's caprice because the matter is regulated by the Rules of Court. Applying the provision of the Rules of Court, the venue in this case was improperly laid.

HYATT ELEVATORS AND ESCALATORS CORPORATION, *Petitioner*, -versus- GOLDSTAR ELEVATORS, PHILS., INC., *Respondent*

G.R. No. 161026, THIRD DIVISION, OCTOBER 24, 2005, PANGANIBAN, *J.*

Admittedly, the latter's principal place of business is Makati, as indicated in its Articles of Incorporation. Since the principal place of business of a corporation determines its residence or domicile, then the place indicated in petitioner's articles of incorporation becomes controlling in determining the venue for this case.

Without merit is the argument of petitioner that the locality stated in its Articles of Incorporation does not conclusively indicate that its principal office is still in the same place. We agree with the appellate court in its observation that the requirement to state in the articles the place where the principal office of the corporation is to be located "is not a meaningless requirement. That proviso would be rendered nugatory if corporations were to be allowed to simply disregard what is expressly stated in their Articles of Incorporation.

FACTS:

In 1988, HYATT was appointed by LG Industrial Systems Co. Ltd. (LGISC) and LG International Corporation (LGIC) as the exclusive distributor of LG elevators and escalators in the Philippines under a 'Distributorship Agreement'.

LGISC, in the latter part of 1996, made a proposal to change the exclusive distributorship agency to that of a joint venture partnership. While it looked forward to a healthy and fruitful negotiation for a joint venture, however, the various meetings it had with LGISC and LGIC, through the latter's representatives, were conducted in utmost bad faith and with malevolent intentions; in the middle of the negotiations, in order to put pressures upon it, LGISC and LGIC terminated the Exclusive Distributorship Agreement.

HYATT filed a Complaint for unfair trade practices and damages under Articles 19, 20 and 21 of the Civil Code of the Philippines LGISC and LGIC

LGISC and LGIC filed a Motion to Dismiss which the Trial court denied.

On December 4, 2000, HYATT filed a motion for leave of court to amend the complaint, alleging that subsequent to the filing of the complaint, it learned that LGISC transferred all its organization, assets and goodwill, as a consequence of a joint venture agreement with Otis Elevator Company of the USA, to LG Otis Elevator Company (LG OTIS, for brevity). Thus, LGISC was to be substituted or changed to LG OTIS, its successor-in-interest.

Likewise, the motion averred that GOLDSTAR was being utilized by LG OTIS and LGIC in perpetrating their unlawful and unjustified acts against HYATT. Consequently, in order to afford complete relief, GOLDSTAR was to be additionally impleaded as a party-defendant. Hence, in the Amended Complaint, HYATT impleaded GOLDSTAR as a party-defendant, and all references to LGISC were correspondingly replaced with LG OTIS.

Trial court admitted the Amended Complaint.

LG OTIS (LGISC) and LGIC filed a motion for reconsideration thereto but was similarly rebuffed.

GOLDSTAR filed a Motion to Dismiss the amended complaint, raising the following grounds: (1) the venue was improperly laid, as neither HYATT nor defendants reside in Mandaluyong City, where the original case was filed; and (2) failure to state a cause of action since the amended complaint fails to allege with certainty what specific ultimate acts Goldstar performed in violation of Hyatt's rights.

In the Order dated May 27, 2002, which is the main subject of the present petition, the Trial court denied the motion to dismiss.

GOLDSTAR filed a motion for reconsideration thereto which was denied

The CA ruled that the trial court had committed palpable error amounting to grave abuse of discretion when the latter denied respondent's Motion to Dismiss. The appellate court held that the venue was clearly improper, because none of the litigants "resided" in Mandaluyong City, where the case was filed.

According to the appellate court, since Makati was the principal place of business of both respondent and petitioner, as stated in the latter's Articles of Incorporation, that place was controlling for purposes of determining the proper venue. The fact that petitioner had abandoned its principal office in Makati years prior to the filing of the original case did not affect the venue where personal actions could be commenced and tried.

Hence, this Petition

ISSUE:

Whether the venue is proper (NO)

RULING:

Residence is the permanent home -- the place to which, whenever absent for business or pleasure, one intends to return. Residence is vital when dealing with venue. A corporation, however, has no residence in the same sense in which this term is applied to a natural person. This is precisely the reason why the Court in Young Auto Supply Company v. Court of Appeals ruled that "for practical purposes, a corporation is in a metaphysical sense a resident of the place where its principal office is located as stated in the articles of incorporation." Even before this ruling, it has already been established that the residence of a corporation is the place where its principal office is established

Admittedly, the latter's principal place of business is Makati, as indicated in its Articles of Incorporation. Since the principal place of business of a corporation determines its residence or domicile, then the place indicated in petitioner's articles of incorporation becomes controlling in determining the venue for this case.

Without merit is the argument of petitioner that the locality stated in its Articles of Incorporation does not conclusively indicate that its principal office is still in the same place. We agree with the appellate court in its observation that the requirement to state in the articles the place where the principal office of the corporation is to be located "is not a meaningless requirement. That proviso would be rendered nugatory if corporations were to be allowed to simply disregard what is expressly stated in their Articles of Incorporation.

Inconclusive are the bare allegations of petitioner that it had closed its Makati office and relocated to Mandaluyong City, and that respondent was well aware of those circumstances. Assuming arguendo that they transacted business with each other in the Mandaluyong office of petitioner, the fact remains that, in law, the latter's residence was still the place indicated in its Articles of Incorporation. Further unacceptable is its faulty reasoning that the ground for the CA's dismissal of its Complaint was its failure to amend its Articles of Incorporation so as to reflect its actual and present principal office. The appellate court was clear enough in its ruling that the Complaint was dismissed because the venue had been improperly laid, not because of the failure of petitioner to amend the latter's Articles of Incorporation.

Indeed, it is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.

Allowing petitioner's arguments may lead precisely to what this Court was trying to avoid in Young Auto Supply Company v. CA: the creation of confusion and untold inconveniences to party litigants. Thus enunciated the CA:

"x x x. To insist that the proper venue is the actual principal office and not that stated in its Articles of Incorporation would indeed create confusion and work untold inconvenience. Enterprising litigants may, out of some ulterior motives, easily circumvent the rules on venue by the simple expedient of closing old offices and opening new ones in another place that they may find well to suit their needs."

C. AMENDMENT

7. REGISTRATION AND ISSUANCE OF CERTIFICATE OF INCORPORATION

8. ADOPTION OF BY-LAWS

A. NATURE AND FUNCTION OF BY-LAWS

JOHN GOKONGWEI, JR., *Petitioner,* -versus- SECURITIES AND EXCHANGE COMMISSION, ANDRES M. SORIANO, JOSE M. SORIANO, ENRIQUE ZOBEL, ANTONIO ROXAS, EMETERIO BUNAO, WALTHRODE B. CONDE, MIGUEL ORTIGAS, ANTONIO PRIETO, SAN MIGUEL CORPORATION, EMIGDIO TANJUATCO, SR., and EDUARDO R. VISAYA, *Respondents*

G.R. No. L-45911, EN BANC, APRIL 11, 1979, ANTONIO, *J.*

Corporations have the power to make by-laws declaring a person employed in the service of a rival company to be ineligible for the corporation's Board of Directors.

As respondent SMC aptly observes, knowledge by CFC-Robina of SMC's costs in various industries and regions in the country win enable the former to practice price discrimination. CFC-Robina can segment the entire consuming population by geographical areas or income groups and change varying prices in order to maximize profits from every market segment. CFC-Robina could determine the most profitable *volume at which it could produce for every product line in which it competes with SMC. Access to SMC pricing policy by CFC-Robina would in effect destroy free competition and deprive the consuming public of opportunity to buy goods of the highest possible quality at the lowest prices.*

FACTS:

On October 22, 1976, Gokongwei, as stockholder of San Miguel Corporation, filed with the SEC a petition for "declaration of nullity of amended by-laws, cancellation of certificate of filing of amended by- laws, injunction and damages with prayer for a preliminary injunction" against the majority of the members of the Board of Directors and San Miguel Corporation as an unwilling petitioner.

Gokongwei alleged that respondents amended its bylaws unlawfully. Prior to the questioned amendment, petitioner had all the qualifications to be a director of respondent corporation, and that in amending the by-laws, respondents purposely provided for petitioner's disqualification and deprived him of his vested right as afore-mentioned hence the amended by-laws are null and void.
It was alleged that corporations have no inherent power to disqualify a stockholder from being elected as a director and, therefore, the questioned act is ultra vires and void; that the Board has the prerogative of determining whether they are engaged in competitive or antagonistic business; that the Board may consider such factors as business and family relationship, is unreasonable and oppressive and, therefore, void; and that the portion of the amended by-laws which requires that "all nominations for election of directors ... shall be submitted in writing to the Board of Directors at least five (5) working days before the date of the Annual Meeting" is likewise unreasonable and oppressive.

It was, therefore, prayed that the amended by-laws be declared null and void and the certificate of filing thereof be cancelled, and that individual respondents be made to pay damages, in specified amounts, to petitioner.

ISSUE:

Whether amended by-laws of SMC of disqualifying a competitor from nomination or election to the Board of Directors of SMC are valid and reasonable (YES)

RULING:

It is recognized by an authorities that 'every corporation has the inherent power to adopt by-laws 'for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs. At common law, the rule was "that the power to make and adopt by-laws was *inherent* in every corporation as one of its necessary and inseparable legal incidents. And it is settled throughout the United States that in the absence of positive legislative provisions limiting it, every private corporation has this inherent power as one of its necessary and inseparable legal incidents, independent of any specific enabling provision in its charter or in general law, such power of self-government being essential to enable the corporation to accomplish the purposes of its creation.

In this jurisdiction, under section 21 of the Corporation Law, a corporation may prescribe in its by-laws "the qualifications, duties and compensation of directors, officers and employees ... " This must necessarily refer to a qualification in addition to that specified by section 30 of the Corporation Law, which provides that "every director must own in his right at least one share of the capital stock of the stock corporation of which he is a director ... " In *Government v. El Hogar,* the Court sustained the validity of a provision in the corporate by-law requiring that persons elected to the Board of Directors must be holders of shares of the paid up value of P5,000.00, which shall be held as security for their action, on the ground that section 21 of the Corporation Law expressly gives the power to the corporation to provide in its by-laws for the qualifications of directors and is "highly prudent and in conformity with good practice. "

Also, there is no vested right of stockholder to be elected director.

Any person "who buys stock in a corporation does so with the knowledge that its affairs are *dominated by a majority* of the stockholders and that *he impliedly contracts that the will* of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws and not forbidden by law." To this extent, therefore, the stockholder may be considered to have "parted with his personal right or privilege to regulate the disposition of his property which he has invested in the capital stock of the corporation, and surrendered it to the will of the majority of his fellow incorporators. ... It cannot therefore be justly said that the contract, express or implied, between the corporation and the stockholders is infringed ... by any act of the former which is authorized by a majority ...."

Pursuant to section 18 of the Corporation Law, any corporation may amend its articles of incorporation by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of the corporation If the amendment changes, diminishes or restricts the rights of the existing shareholders then the disenting minority has only one right, viz.: "to object thereto in writing and demand payment for his share." Under section 22 of the same law, the owners of the majority of the subscribed capital stock may amend or repeal any by-law or adopt new by-laws. It cannot be said, therefore, that petitioner has a vested right to be elected director, in the face of the fact that the law at the time such right as stockholder was acquired contained the prescription that the corporate charter and the by-law shall be subject to amendment, alteration and modification.
It being settled that the corporation has the power to provide for the qualifications of its directors, the next question that must be considered is whether the disqualification of a competitor from being elected to the Board of Directors is a reasonable exercise of corporate authority.

A DIRECTOR STANDS IN A FIDUCIARY RELATION TO THE CORPORATION AND ITS SHAREHOLDERS
Although in the strict and technical sense, directors of a private corporation are not regarded as trustees, there cannot be any doubt that their character is that of a fiduciary insofar as the corporation and the stockholders as a body are concerned. As agents entrusted with the management of the corporation for the collective benefit of the stockholders, "they occupy a fiduciary relation, and in this sense the relation is one of trust."

"The ordinary trust relationship of directors of a corporation and stockholders", according to *Ashaman v. Miller,* "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof * * *.

Justice Douglas, in *Pepper v. Litton,* emphatically restated the standard of fiduciary obligation of the directors of corporations, thus:

A director is a fiduciary. ... Their powers are powers in trust. ... He who is in such fiduciary position cannot serve himself first and his cestuis second. ... He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency. He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters ... He cannot utilize his inside information and strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. He cannot violate rules of fair play by doing indirectly though the corporation what he could not do so directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference or advantage of the fiduciary to the exclusion or detriment of the cestuis.

And in *Cross v. West Virginia Cent, & P. R. R. Co.,* it was said:

... A person cannot serve two hostile and adverse master, without detriment to one of them. A judge cannot be impartial if personally interested in the cause. No more can a director. Human nature is too weak -for this. Take whatever statute provision you please giving power to stockholders to choose directors, and in none will you find any express prohibition against a discretion to select directors having the company's interest at heart, and it would simply be going far to deny by mere implication the existence of such a salutary power

... If the by-law is to be held reasonable in disqualifying a stockholder in a competing company from being a director, the same reasoning would apply to disqualify the wife and immediate member of the family of such stockholder, on account of the supposed interest of the wife in her husband's affairs, and his suppose influence over her. It is perhaps true that such stockholders ought not to be condemned as selfish and dangerous to the best interest of the corporation until tried and tested. So it is also true that we cannot condemn as selfish and dangerous and unreasonable the action of the board in passing the by-law. The strife over the matter of control in this corporation as in many others is perhaps carried on not altogether in the spirit of brotherly love and affection. The only test that we can apply is as to whether or not the action of the Board is authorized and sanctioned by law. ... .
These principles have been applied by this Court in previous cases.

AN AMENDMENT TO THE CORPORATION BY-LAW WHICH RENDERS A STOCKHOLDER INELIGIBLE TO BE DIRECTOR, IF HE BE ALSO DIRECTOR IN A CORPORATION WHOSE BUSINESS IS IN COMPETITION WITH THAT OF THE OTHER CORPORATION, HAS BEEN SUSTAINED AS VALID
It is a settled state law in the United States, according to Fletcher, that corporations have the power to make by-laws declaring a person employed in the service of a rival company to be ineligible for the corporation's Board of Directors. ... An amendment which renders ineligible, or if elected, subjects to removal, a director if he be also a director in a corporation whose business is in competition with or is antagonistic to the other corporation is valid."

This is based upon the principle that where the director is so employed in the service of a rival company, he cannot serve both, but must betray one or the other. Such an amendment "advances the benefit of the corporation and is good." An exception exists in New Jersey, where the Supreme Court held that the Corporation Law in New Jersey prescribed the only qualification, and therefore the corporation was not empowered to add additional qualifications. This is the exact opposite of the situation in the Philippines because as stated heretofore, section 21 of the Corporation Law expressly provides that a corporation may make by-laws for the qualifications of directors. Thus, it has been held that an officer of a corporation cannot engage in a business in direct competition with that of the corporation where he is a director by utilizing information he has received as such officer, under "the established law that a director or officer of a corporation may not enter into a competing enterprise which cripples or injures the business of the corporation of which he is an officer or director.

It is also well established that corporate officers "are not permitted to use their position of trust and confidence to further their private interests." In a case where directors of a corporation cancelled a contract of the corporation for exclusive sale of a foreign firm's products, and after establishing a rival business, the directors entered into a new contract themselves with the foreign firm for exclusive sale of its products, the court held that equity would regard the new contract as an offshoot of the old contract and, therefore, for the benefit of the corporation, as a "faultless fiduciary may not reap the fruits of his misconduct to the exclusion of his principal.

The doctrine of "corporate opportunity" is precisely a recognition by the courts that the fiduciary standards could not be upheld where the fiduciary was acting for two entities with competing interests. This doctrine rests fundamentally on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection.

It is not denied that a member of the Board of Directors of the San Miguel Corporation has access to sensitive and highly confidential information, such as: (a) marketing strategies and pricing structure; (b) budget for expansion and diversification; (c) research and development; and (d) sources of funding, availability of personnel, proposals of mergers or tie-ups with other firms.

It is obviously to prevent the creation of an opportunity for an officer or director of San Miguel Corporation, who is also the officer or owner of a competing corporation, from taking advantage of the information which he acquires as director to promote his individual or corporate interests to the prejudice of San Miguel Corporation and its stockholders, that the questioned amendment of the by-laws was made. Certainly, where two corporations are competitive in a substantial sense, it would seem improbable, if not impossible, for the director, if he were to discharge effectively his duty, to satisfy his loyalty to both corporations and place the performance of his corporation duties above his personal concerns.

Thus, in *McKee & Co. v. First National Bank of San Diego*, *supra* the court sustained as valid and reasonable an amendment to the by-laws of a bank, requiring that its directors should not be directors, officers, employees, agents, nominees or attorneys of any other banking corporation, affiliate or subsidiary thereof. Chief Judge Parker, in *McKee,* explained the reasons of the court, thus: ... A bank director has access to a great deal of information concerning the business and plans of a bank which would likely be injurious to the bank if known to another bank, and it was reasonable and prudent to enlarge this minimum disqualification to include any director, officer, employee, agent, nominee, or attorney of any other bank in California. The *Ashkins* case, supra, specifically recognizes protection against rivals and others who might acquire information which *might* be used against the interests of the corporation as a legitimate object of by-law protection. With respect to attorneys or persons associated with a firm which is attorney for another bank, in addition to the direct conflict or potential conflict of interest, there is also the danger of inadvertent leakage of confidential information through casual office discussions or accessibility of files. Defendant's directors determined that its welfare was best protected if this opportunity for conflicting loyalties and potential misuse and leakage of confidential information was foreclosed.

In *McKee* the Court further listed qualificational by-laws upheld by the courts, as follows:
(1) A director shall not be directly or indirectly interested as a stockholder in any other firm, company, or association which competes with the subject corporation.
(2) A director shall not be the immediate member of the family of any stockholder in any other firm, company, or association which competes with the subject corporation,
(3) A director shall not be an officer, agent, employee, attorney, or trustee in any other firm, company, or association which compete with the subject corporation.
(4) A director shall be of good moral character as an essential qualification to holding office.
(5) No person who is an attorney against the corporation in a law suit is eligible for service on the board. (At p. 7.)

These are not based on theorical abstractions but on human experience — that a person cannot serve two hostile masters without detriment to one of them.

The offer and assurance of petitioner that to avoid any possibility of his taking unfair advantage of his position as director of San Miguel Corporation, he would absent himself from meetings at which confidential matters would be discussed, would not detract from the validity and reasonableness of the by-laws here involved. Apart from the impractical results that would ensue from such arrangement, it would be inconsistent with petitioner's primary motive in running for board membership — which is to protect his investments in San Miguel Corporation. More important, such a proposed norm of conduct would be against all accepted principles underlying a director's duty of fidelity to the corporation, for the policy of the law is to encourage and enforce responsible corporate management. As explained by Oleck: "The law win not tolerate the passive attitude of directors ... without active and conscientious participation in the managerial functions of the company. As directors, it is their duty to control and supervise the day to day business activities of the company or to promulgate definite policies and rules of guidance with a vigilant eye toward seeing to it that these policies are carried out. It is only then that directors may be said to have fulfilled their duty of fealty to the corporation."

Sound principles of corporate management counsel against sharing sensitive information with a director whose fiduciary duty of loyalty may well require that he disclose this information to a competitive arrival. These dangers are enhanced considerably where the common director such as the petitioner is a controlling stockholder of two of the competing corporations. It would seem manifest that in such situations, the director has an economic incentive to appropriate for the benefit of his own corporation the corporate plans and policies of the corporation where he sits as director. Indeed, access by a competitor to confidential information regarding marketing strategies and pricing policies of San Miguel Corporation would subject the latter to a competitive disadvantage and unjustly enrich the competitor, for advance knowledge by the competitor of the strategies for the development of existing or new markets of existing or new products could enable said competitor to utilize such knowledge to his advantage.

There is another important consideration in determining whether or not the amended by-laws are reasonable. The Constitution and the law prohibit combinations in restraint of trade or unfair competition. Thus, section 2 of Article XIV of the Constitution provides: "The State shall regulate or prohibit private monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be snowed."

There are other legislation in this jurisdiction, which prohibit monopolies and combinations in restraint of trade (e.g. Article 186 of RPC).

Basically, these anti-trust laws or laws against monopolies or combinations in restraint of trade are aimed at raising levels of competition by improving the consumers' effectiveness as the final arbiter in free markets. These laws are designed to preserve free and unfettered competition as the rule of trade. "It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices and the highest quality ... ."

The terms "monopoly", "combination in restraint of trade" and "unfair competition" appear to have a well defined meaning in other jurisdictions. A "monopoly" embraces any combination the tendency of which is to prevent competition in the broad and general sense, or to control prices to the detriment of the public.

Obviously, if a competitor has access to the pricing policy and cost conditions of the products of San Miguel Corporation, the essence of competition in a free market for the purpose of serving the lowest priced goods to the consuming public would be frustrated, The competitor could so manipulate the prices of his products or vary its marketing strategies by region or by brand in order to get the most out of the consumers. Where the two competing firms control a substantial segment of the market this could lead to collusion and combination in restraint of trade. Reason and experience point to the inevitable conclusion that the inherent tendency of interlocking directorates between companies that are related to each other as competitors is to blunt the edge of rivalry between the corporations, to seek out ways of compromising opposing interests, and thus eliminate competition. As respondent SMC aptly observes, knowledge by CFC-Robina of SMC's costs in various industries and regions in the country win enable the former to practice price discrimination. CFC-Robina can segment the entire consuming population by geographical areas or income groups and change varying prices in order to maximize profits from every market segment. CFC-Robina could determine the most profitable volume at which it could produce for every product line in which it competes with SMC. Access to SMC pricing policy by CFC-Robina would in effect destroy free competition and deprive the consuming public of opportunity to buy goods of the highest possible quality at the lowest prices.

Neither are We persuaded by the claim that the by-law was Intended to prevent the candidacy of petitioner for election to the Board. If the by-law were to be applied in the case of one stockholder but waived in the case of another, then it could be reasonably claimed that the by-law was being applied in a discriminatory manner. However, the by law, by its terms, applies to all stockholders. The equal protection clause of the Constitution requires only that the by-law operate equally upon all persons of a class. Besides, before petitioner can be declared ineligible to run for director, there must be hearing and evidence must be submitted to bring his case within the ambit of the disqualification. Sound principles of public policy and management, therefore, support the view that a by-law which disqualifies a competition from election to the Board of Directors of another corporation is valid and reasonable.

In the absence of any legal prohibition or overriding public policy, wide latitude may be accorded to the corporation in adopting measures to protect legitimate corporation interests. Thus, "where the reasonableness of a by-law is a mere matter of judgment, and 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 expressed their authority.

Although it is asserted that the amended by-laws confer on the present Board powers to perpetua themselves in power such fears appear to be misplaced. This power, but is very nature, is subject to certain well established limitations. One of these is inherent in the very convert and definition of the terms "competition" and "competitor". "Competition" implies a struggle for advantage between two or more forces, each possessing, in substantially similar if not Identical degree, certain characteristics essential to the business sought. It means an independent endeavor of two or more persons to obtain the business patronage of a third by offering more advantageous terms as an inducement to secure trade.

The test must be whether the business does in fact compete, not whether it is capable of an indirect and highly unsubstantial duplication of an isolated or non-characteristics activity. [47] It is, therefore, obvious that not every person or entity engaged in business of the same kind is a competitor. Such factors as quantum and place of business, Identity of products and area of competition should be taken into consideration. It is, therefore, necessary to show that petitioner's business covers a substantial portion of the same markets for similar products to the extent of not less than 10% of respondent corporation's market for competing products. While We here sustain the validity of the amended by-laws, it does not follow as a necessary consequence that petitioner is *ipso facto* disqualified. Consonant with the requirement of due process, there must be due hearing at which the petitioner must be given the fullest opportunity to show that he is not covered by the disqualification. As trustees of the corporation and of the stockholders, it is the responsibility of directors to act with fairness to the stockholders. Pursuant to this obligation and to remove any suspicion that this power may be utilized by the incumbent members of the Board to perpetuate themselves in power, any decision of the Board to disqualify a candidate for the Board of Directors should be reviewed by the Securities behind Exchange Commission en banc and its decision shall be final unless reversed by this Court on certiorari. Indeed, it is a settled principle that where the action of a Board of Directors is an abuse of discretion, or forbidden by statute, or is against public policy, or is ultra vires, or is a fraud upon minority stockholders or creditors, or will result in waste, dissipation or misapplication of the corporation assets, a court of equity has the power to grant appropriate relief.

CITIBANK, N.A., *Petitioner,* -versus- HON. SEGUNDINO G. CHUA, SANTIAGO M. KAPUNAN and LUIS L. VICTOR, ASSOCIATE JUSTICES OF THE HON. COURT OF APPEALS, THIRD DIVISION, MANILA, HON. LEONARDO B. CANARES, Judge of Regional, Trial Court of Cebu, Branch 10, and SPOUSES CRESENCIO AND ZENAIDA VELEZ, *Respondents*

G.R. No. 102300, SECOND DIVISION, March 17, 1993, CAMPOS JR., *J.*

It is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs.

FACTS:

Private respondents alleged in their complaint that the petitioner bank extended to them credit lines sufficiently secured with real estate and chattel mortgages on equipment. They claim that petitioner offered them special additional accommodation of Five Million Pesos (P5,000,000.00).

For the failure of petitioner bank to comply with this restructuring agreement private respondents sued for specific performance and damages. Petitioner bank submitted its answer to the complaint filed by private respondents.

On the date of the pre-trial conference, counsel for petitioner bank appeared, presenting a special power of attorney executed by Citibank officer Florencia Tarriela in favor of petitioner bank's counsel, the J.P. Garcia & Associates, to represent and bind petitioner bank at the pre-trial conference of the case at bar.

Inspite of this special power of attorney, counsel for private respondents orally moved to declare petitioner bank as in default on the ground that the special power of attorney was not executed by the Board of Directors of Citibank. Petitioner bank was then required to file a written opposition to this oral motion to declare it as in default.

In its opposition, petitioner bank attached another special power of attorney made by William W. Ferguson, Vice President and highest ranking officer of Citibank, Philippines, constituting and appointing the J.P. Garcia & Associates to represent and bind the BANK at the pre-trial conference and/or trial of the case of "Cresencio Velez, et al. vs. Citibank, N.A.". 4 In an Order dated April 23, 1990, respondent judge denied private respondents' oral motion to declare petitioner bank as in default and set the continuation of the pre-trial conference for May 2, 1990.

On the scheduled pre-trial conference, private respondents reiterated, by way of asking for reconsideration, their oral motion to declare petitioner bank as in default for its failure to appear through an authorized agent and that the documents presented are not in accordance with the requirements of the law.

Respondent judge issued an order declaring petitioner bank as in default. This order, received by petitioner bank cited the following as reason for the declaration of default:

"Defendant-bank, although a foreign corporation, is bound by Philippine laws when doing and conducting business in the Philippines (Sec. 129, B.P. Blg. 68), and its corporate powers could only be exercised by its Board of Directors (Sec. 23, B.P. Blg. 68). The exercise by the Board of Directors of such power could only be valid if it bears the approval of the majority of the Board (Sec. 25, par. 2, Corporation Code). The records does not show the requisite document. The alleged authority (Special Power of Attorney, Annex "A") executed by Mr. William W. Ferguson in favor of the alleged Citibank employees, assuming the same to be a delegable authority, to represent the defendant in the pre-trial conference, made no mention of J.P. Garcia & Associates as one of the employees of the defendant.

It stands to reason therefore, that the defendant-bank has no proper representation during the pre-trial conference. CA affirmed.

Petitioner bank contends that no board resolution was necessary for its legal counsel, Atty. Julius Z. Neri, or Citibank employees to act as its attorney-in-fact in the case at bar because petitioner bank's by-laws grant to its Executing Officer and Secretary Pro-Tem the power to delegate to a Citibank officer, in this case William W. Ferguson, the authority to represent and defend the bank and its interests.

Furthermore, it contends that the Court of Appeals erred in holding that the by-laws of petitioner bank cannot be given effect because it did not have the imprimatur of the Securities and Exchange Commission (SEC) as required by Section 46 of the Corporation Code of the Philippines.

ISSUES:

(1) Whether a resolution of the board of directors of a corporation is always necessary for granting authority to an agent to represent the corporation in court cases (NO)
(2) Whether by-laws of the petitioner foreign corporation which has previously been granted a license to do business in the Philippines, are effective in this jurisdiction (YES)

RULING:
(1)
In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.

Thus, although as a general rule, all corporate powers are to be exercised by the board of directors, exceptions are made where the Code provides otherwise.

Section 25 of said Code provides that the directors of the corporation shall elect its corporate officers, and further provides as follows:

> "SEC. 25. Corporate officers; quorum. — . . . The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation . . ."

Furthermore, Section 47 of the same Code enumerates what may be contained in the by-laws, among which is a provision for the "qualifications, duties and compensation of directors or trustees, officers and employees"

Taking all the above provisions of law together, it is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, the Executing Officer and the Secretary Pro-Tem, to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs. The relevant provision in the general power of attorney granted to him are as follows:

"A. That the Executing Officer and the Secretary Pro-Tem are of full age, competent to act in the premises, to me personally known, and that they are authorized to execute this instrument by virtue of the powers granted to them pursuant to the By-Laws of the Bank and the laws of the United States of America, and that the Executing Officer said that he, on the one hand, hereby revokes and cancels any instrument of power of attorney previously executed on behalf of the Bank for use in the PHILIPPINES, in favor of WILLIAM W. FERGUSON (hereinafter referred to as the "Attorney-in-fact"), of legal age, a Banker, and now residing in the PHILIPPINES, and that he (the Executing Officer), on the other hand, does hereby authorize and empower the Attorney-in-fact, acting in the name or on behalf of the Bank, or any of its Branches, or any interest it or they may have or represent, said revocation and authorization to be effective as of this date as follows:

xxx xxx xxx

XVII. To represent and defend the Bank and its interest before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceeding in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever . . .

xxx xxx xxx

XXI. To substitute or delegate this Power of Attorney in whole or in part in favor of such one or more employees of the Bank, as he may deem advisable, but without divesting himself of any of the powers granted to him by this Power of Attorney; and to grant and execute in favor of any one or more such employees, powers of attorney containing all or such authorizations, as he may deem advisable. . . "

Since paragraph XXI above specifically allows Ferguson to delegate his powers in whole or in part, there can be no doubt that the special power of attorney in favor, first, of J.P. Garcia & Associates and later, of the bank's employees, constitutes a valid delegation of Ferguson's express power (under paragraph XVII above) to represent petitioner bank in the pre-trial conference in the lower court.

(2)
The Court of Appeals relied on Section 46 of the Corporation Code to support its conclusion that the by-laws in question are without effect because they were not approved by the SEC. Said section reads as follows:
"SEC. 46. Adoption of by-laws. — Every corporation formed under this Code must, within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the members in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours; and a copy thereof, duly certified to by a majority of the directors or trustees and countersigned by the secretary of the corporation, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation.

Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code."

A careful reading of the above provision would show that a corporation can submit its by-laws, prior to incorporation, or within one month after receipt of official notice of the issuance of its certificate of incorporation by the SEC. When the third paragraph of the above provision mentions "in all cases", it can only refer to these two options; i.e., whether adopted prior to incorporation or within one month after incorporation, the by-laws shall be effective only upon the approval of the SEC. But even more important, said provision starts with the phrase "Every corporation formed under this Code", which can only refer to corporations incorporated in the Philippines. Hence, Section 46, in so far as it refers to the effectivity of corporate by-laws, applies only to domestic corporations and not to foreign corporations.

On the other hand, Section 125 of the same Code requires that a foreign corporation applying for a license to transact business in the Philippines must submit, among other documents, to the SEC, a copy of its articles of incorporation and by-laws, certified in accordance with law. Unless these documents are submitted, the application cannot be acted upon by the SEC. In the following section, the Code specifies when the SEC can grant the license applied for. Section 126 provides in part:
"SEC. 126. Issuance of a license. — If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license . . ."

Since the SEC will grant a license only when the foreign corporation has complied with all the requirements of law, it follows that when it decides to issue such license, it is satisfied that the applicant's by-laws, among the other documents, meet the legal requirements. This, in effect, is an approval of the foreign corporations by-laws. It may not have been made in express terms, still it is clearly an approval. Therefore, petitioner bank's by-laws, though originating from a foreign jurisdiction, are valid and effective in the Philippines.

In pursuance of the authority granted to him by petitioner bank's by-laws, its Executing Officer appointed William W. Ferguson, a resident of the Philippines, as its Attorney-in-Fact empowering the latter, among other things, to represent petitioner bank in court cases. In turn, William W. Ferguson executed a power of attorney in favor of J.P. Garcia & Associates (petitioner bank's counsel) to represent petitioner bank in the pre-trial conference before the lower court. This act of delegation is explicity authorized by paragraph XXI of his own appointment, which we have previously cited.

LOYOLA GRAND VILLAS HOMEOWNERS (SOUTH) ASSOCIATION, INC., *Petitioner,* -versus- HON. COURT OF APPEALS, HOME INSURANCE AND GUARANTY CORPORATION, EMDEN ENCARNACION and HORATIO AYCARDO, *Respondents*
G.R. No. 117188, SECOND DIVISION, AUGUST 7, 1997, ROMERO, *J.*

Failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution.

FACTS:

LGVHAI was organized on February 8, 1983 as the association of homeowners and residents of the Loyola Grand Villas. It was registered with the Home Financing Corporation, the predecessor of herein respondent HIGC, as the sole homeowners' organization in the said subdivision under Certificate of Registration No. 04-197. It was organized by the developer of the subdivision and its first president was Victorio V. Soliven, himself the owner of the developer. For unknown reasons, however, LGVHAI did not file its corporate by-laws.

Sometime in 1988, the officers of the LGVHAI tried to register its by-laws. They failed to do so. To the officers' consternation, they discovered that there were two other organizations within the subdivision — the North Association and the South Association.

In July, 1989, when Soliven inquired about the status of LGVHAI, Atty. Joaquin A. Bautista, the head of the legal department of the HIGC, informed him that LGVHAI had been automatically dissolved for two reasons. First, it did not submit its by-laws within the period required by the Corporation Code and, second, there was non-user of corporate charter because HIGC had not received any report on the association's activities.

These developments prompted the officers of the LGVHAI to lodge a complaint with the HIGC. They questioned the revocation of LGVHAI's certificate of registration without due notice and hearing and concomitantly prayed for the cancellation of the certificates of registration of the North and South Associations by reason of the earlier issuance of a certificate of registration in favor of LGVHAI.

Private respondents obtained a favorable ruling from HIGC. CA affirmed.

Petitioner contends that, since Section 46 uses the word "must" with respect to the filing of by-laws, noncompliance therewith would result in "self-extinction" either due to non-occurrence of a suspensive condition or the occurrence of a resolutory condition "under the hypothesis that by the issuance of the certificate of registration alone the corporate personality is deemed already formed." It asserts that the Corporation Code provides for a "gradation of violations of requirements." Hence, Section 22 mandates that the corporation must be formally organized and should commence transaction within two years from date of incorporation. Otherwise, the corporation would be deemed dissolved. On the other hand, if the corporation commences operations but becomes continuously inoperative for five years, then it may be suspended or its corporate franchise revoked.

ISSUE:

> Whether the LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation. (NO)

RULING:

As correctly postulated by the petitioner, interpretation of this provision of law begins with the determination of the meaning and import of the word "*must*" in this section Ordinarily, the word "must" connotes an imperative act or operates to impose a duty which may be enforced. It is synonymous with "ought" which connotes compulsion or mandatoriness. However, the word "must" in a statute, like "shall," is not always imperative. It may be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires. This is equally true as regards the word "must." Thus, if the languages of a statute considered as a whole and with due regard to its nature and object reveals that the legislature intended to use the words "shall" and "must" to be directory, they should be given that meaning.

The law itself provides the answer to the issue propounded by petitioner.

Taken as a whole and under the principle that the best interpreter of a statute is the statute itself (*optima statuli interpretatix est ipsum statutum*), Section 46 aforequoted reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence thereof. Note should be taken of the second paragraph of the law which allows the filing of the by-laws even *prior* to incorporation. This provision in the same section of the Code rules out mandatory compliance with the requirement of filing the by-laws "within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes.

There are in fact cases where by-laws are unnecessary to corporate existence or to the valid exercise of corporate powers, thus:

In the absence of charter or statutory provisions to the contrary, by-laws are not necessary either to the existence of a corporation or to the valid exercise of the powers conferred upon it, certainly in all cases where the charter sufficiently provides for the government of the body; and even where the governing statute in express terms confers upon the corporation the power to adopt by-laws, *the failure to exercise the power will be ascribed to mere nonaction which will not render void any acts of the corporation which would otherwise be valid*.

As Fletcher aptly puts it:

It has been said that the by-laws of a corporation are the rule of its life, and that until by-laws have been adopted the corporation may not be able to act for the purposes of its creation, and that the first and most important duty of the members is to adopt them. This would seem to follow as a matter of principle from the office and functions of by-laws. Viewed in this light, the adoption of by-laws is a matter of practical, if not one of legal, necessity. Moreover, the peculiar circumstances attending the formation of a corporation may impose the obligation to adopt certain by-laws, as in the case of a close corporation organized for specific purposes. And the statute or general laws from which the corporation derives its corporate existence may expressly require it to make and adopt by-laws and specify to some extent what they shall contain and the manner of their adoption. *The mere fact, however, of the existence of power in the corporation to adopt by-laws does not ordinarily and of necessity make the exercise of such power essential to its corporate life, or to the validity of any of its acts*.

Although the Corporation Code requires the filing of by-laws, it does not expressly provide for the consequences of the non-filing of the same within the period provided for in Section 46. However, such omission has been rectified by Presidential Decree No. 902-A, the pertinent provisions on the jurisdiction of the SEC of which state:

> Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
> xxx xxx xxx
> (1) To *suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations,* partnerships or associations, upon any of the grounds provided by law, including the following:
> xxx xxx xxx
> 5. Failure to file by-laws within the required period;
> xxx xxx xxx

In the exercise of the foregoing authority and jurisdiction of the Commission or by a Commissioner or by such other bodies, boards, committees and/or any officer as may be created or designated by the Commission for the purpose. The decision, ruling or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting *en banc* within thirty (30) days after receipt by the appellant of notice of such decision, ruling or order. The Commission shall promulgate rules of procedures to govern the proceedings, hearings and appeals of cases falling with its jurisdiction.

That the failure to file by-laws is not provided for by the Corporation Code but in another law is of no moment. P.D. No. 902-A, which took effect immediately after its promulgation on March 11, 1976, is very much apposite to the Code. Accordingly, the provisions abovequoted supply the law governing the situation in the case at bar, inasmuch as the Corporation Code and P.D. No. 902-A are statutes in *pari materia*. *Interpretare et concordare legibus est optimus interpretandi*. Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.

As the "rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it," by-laws are indispensable to corporations in this jurisdiction. These may not be essential to corporate birth but certainly, these are required by law for an orderly governance and management of corporations. Nonetheless, failure to file them within the period required by law by no means tolls the automatic dissolution of a corporation.

In this regard, private respondents are correct in relying on the pronouncements of this Court in *Chung Ka Bio v.Intermediate Appellate Court*, as follows:

> . . . . Moreover, failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution.

FOREST HILLS GOLF AND COUNTRY CLUB, INC., *Petitioner*, -versus- GARDPRO, INC., *Respondent*

G.R. No. 164686, FIRST DIVISION, OCTOBER 22, 2014, BERSAMIN, *J.*

The relevant provisions of the articles of incorporation and the bylaws of Forest Hills governed the relations of the parties as far as the issues between them were concerned. Indeed, the articles of incorporation of Forest Hills defined its charter as a corporation and the contractual relationships between Forest Hills and the State, between its stockholders and the State, and between Forest Hills and its stockholder; hence, there could be no gainsaying that the contents of the articles of incorporation were binding not only on Forest Hills but also on its shareholders. On the other hand, the bylaws were the self-imposed rules resulting from the agreement between Forest Hills and its members to conduct the corporate business in a particular way. In that sense, the by-laws were the private "statutes" by which Forest Hills was regulated, and would function. The charter and the by-laws were thus the fundamental documents governing the conduct of Forest Hills' corporate affairs; they established norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. Until repealed, the by-laws were a continuing rule for the government of Forest Hills and its officers, the proper function being to regulate the transaction of the incidental business of Forest Hills.

FACTS:

In 1996, Gardpro, Inc. (Gardpro) bought class "C" common shares of stock, which were special corporate shares that entitled the registered owner to designate two nominees or representatives for membership in the Club.

Gardpro designated Fernando R. Martin and Rolando N. Reyes to be its corporate nominees; hence, the two applied for membership in the Club. Forest Hills charged them membership fees of ₱50,000.00 each, prompting Martin to immediately call up Albert and complain about being thus charged despite having been assured that no such fees would be collected from them. With Albert assuring that the fees were temporary, both nominees of Gardpro paid the fees. At that time, the ₱45,000.00 membership fees of corporate members were increased to ₱75,000.00 per nominee by virtue of the August 26, 1997 resolution of the Board of Directors. Any nominee who paid the fees within a specified period was entitled to a discount of ₱25,000.00. Both nominees of Gardpro were then admitted as members upon approval of their applications by the Board of Directors. Later, Gardpro decided to change its designated nominees, and Forest Hills charged Gardpro new membership fees of ₱75,000.00 per nominee. When Gardpro refused to pay, the replacement did not take place.

Gardpro filed a complaint in the SEC. Martin and Reyes testified that when the shares of stock were being marketed, nothing about payment of membership fees was explained to them; that upon his inquiry, a certain Ms. Cacho, an agent of FEMAI, had told Martin that if a corporation bought class "C" common shares, its nominees would be automatically entitled to become members of the Club; that all that the corporation would have to do thereafter was to pay the monthly dues; that Albert had assured Martin that the membership fees he had paid would be refunded; and that Martin was not furnished copies of the by-laws of Forest Hills. On June 30, 2000, SEC Hearing Officer ruled in favor of Gardpro. SEC En Banc and CA affirmed.

ISSUES:

(1) Whether Court of Appeals committed an error of law in not holding that, under the applicable provisions of law on the interpretation of contracts, the replacement nominees of Gardpro, Inc., who were applying for membership in Forest Hills, should pay the required membership fees. (NO)
(2) Whether CA encroached upon the prerogative of Forest Hills to determine its own rules and procedure governing membership as well as in infringing on the power of its Board of Directors to decide upon all questions on the construction of Articles of Incorporation, By-Laws and rules and regulations of the Club (NO)

RULING:

(1)
Forest Hills was not authorized under its articles of incorporation and by-laws to collect new membership fees for the replacement nominees of Gardpro.

There is no question that Gardpro held class "C" common stocks that entitled it to two memberships in the Club. Its nominees could be admitted as regular members upon approval of the Board of Directors but only one nominee for each class "C" share as designated in the resolution could vote as such. A regular member was then entitled to use all the facilities and privileges of the Club. In that regard, Gardpro could only designate as its nominees/representatives its officers whose functions and office were defined by its own by-laws.

There was an inconsistency between the by-laws of Forest Hills and the affidavit of Albert as to the amounts of the membership fees of corporate members. On one hand, Section 13.7 (Membership Fees) of the by-laws stated that "the membership fee of Forty Five Thousand Pesos (₱45,000.00) x x x for corporate members must be paid by the applicant;" on the other, Albert's affidavit alleged that "each nominee shall pay the ₱75,000.00 membership fee." To resolve the inconsistency, the by-laws should prevail because they constituted the private statutes of the corporation and its members and must be strictly complied with and applied to the letter.

Martin attested that he and Reyes, as the nominees of Gardpro, paid ₱50,000.00 each as membership fees. With the payment of the fees being the personal obligation of Gardpro, the Court leaves the matter to the internal determination of Gardpro and its nominees.

The relevant provisions of the articles of incorporation and the bylaws of Forest Hills governed the relations of the parties as far as the issues between them were concerned. Indeed, the articles of incorporation of Forest Hills defined its charter as a corporation and the contractual relationships between Forest Hills and the State, between its stockholders and the State, and between Forest Hills and its stockholder; hence, there could be no gainsaying that the contents of the articles of incorporation were binding not only on Forest Hills but also on its shareholders. On the other hand, the bylaws were the self-imposed rules resulting from the agreement between Forest Hills and its members to conduct the corporate business in a particular way. In that sense, the by-laws were the private "statutes" by which Forest Hills was regulated, and would function. The charter and the by-laws were thus the fundamental documents governing the conduct of Forest Hills' corporate affairs; they established norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. Until repealed, the by-laws were a continuing rule for the government of Forest Hills and its officers, the proper function being to regulate the transaction of the incidental business of Forest Hills. The bylaws constituted a binding contract as between Forest Hills and its members, and as between the members themselves. Every stockholder governed by the by-laws was entitled to access them. The by-laws were self-imposed private laws binding on all members, directors and officers of Forest Hills. The prevailing rule is that the provisions of the articles of incorporation and the by-laws must be strictly complied with and applied to the letter.

(2)
The complaint of Gardpro stated a cause of action, and thus contained the operative acts that gave rise to its remedial right against Forest Hills. The cause of action required not only the interpretation of contracts and the application of corporate laws but also the application of the civil law itself, particularly its tenets on unjust enrichment and those regulating property rights arising from ownership. If Forest Hills were allowed to charge nominees membership fees, and then to still charge their replacement nominees every time a corporate member changed its nominees, Gardpro would be unduly deprived of its full enjoyment and control of its property even as the former would be unjustly enriched.

The interpretation and application of laws have been assigned to the Judiciary under our system of constitutional government. Indeed, defining and interpreting the laws are truly a judicial function. Hence, the CA could not be denied the authority to interpret the provisions of the articles of incorporation and by-laws of Forest Hills, because such provisions, albeit in the nature of private laws, impacted on the definition of the rights and obligations of the parties. This, notwithstanding that Section 16.4 of the bylaws gave to the Board of Directors of Forest Hills the authority to decide all questions on the construction of its articles of incorporation and by-laws, and its rules and regulations.

B. REQUISITES OF VALID BY-LAWS

GRACE CHRISTIAN HIGH SCHOOL, *Petitioner,* -versus- THE COURT OF APPEALS, GRACE VILLAGE ASSOCIATION, INC., ALEJANDRO G. BELTRAN, and ERNESTO L. GO, *Respondents*
G.R. No. 108905, SECOND DIVISION, OCTOBER 23, 1997, MENDOZA, *J.*

These provisions of the former and present corporation law leave no room for doubt as to their meaning: the board of directors of corporations must be elected from among the stockholders or members. There may be corporations in which there are unelected members in the board but it is clear that in the examples cited by petitioner the unelected members sit as ex officio members, i.e., by virtue of and for as long as they hold a particular office. But in the case of petitioner, there is no reason at all for its representative to be given a seat in the board. Nor does petitioner claim a right to such seat by virtue of an office held.

FACTS:

On December 20, 1975, a committee of the board of directors of Grace Village Association Inc. prepared a draft of an amendment to the by-laws, reading as follows:

VI. ANNUAL MEETING

The Annual Meeting of the members of the Association shall be held on the *second Thursday* of January of each year. Each *Charter or Associate* Member of the Association is entitled to vote. He shall be entitled to as many votes as he has acquired thru his monthly membership *fees only* computed on a ratio of *TEN (P10.00) PESOS* for one vote.

The *Charter and Associate Members* shall elect the Directors of the Association. The candidates receiving the *first fourteen (14)* highest number of votes shall be declared and proclaimed elected until their successors are elected and qualified. *GRACE CHRISTIAN HIGH SCHOOL representative is a permanent Director of the ASSOCIATION*.

This draft was never presented to the general membership for approval. Nevertheless, from 1975, after it was presumably submitted to the board, up to 1990, petitioner was given a permanent seat in the board of directors of the association. On February 13, 1990, the association's committee on election in a letter informed James Tan, principal of the school, that "it was the sentiment that all directors should be elected by members of the association" because "to make a person or entity a permanent Director would deprive the right of voters to vote for fifteen (15) members of the Board," and "it is undemocratic for a person or entity to hold office in perpetuity."

For this reason, Tan was told that "the proposal to make the Grace Christian High School representative as a permanent director of the association, although previously tolerated in the past elections should be reexamined." Following this advice, notices were sent to the members of the association that the provision on election of directors of the 1968 by-laws of the association would be observed.

Petitioner requested the chairman of the election committee to change the notice of election by following the procedure in previous elections, claiming that the notice issued for the 1990 elections ran "counter to the practice in previous years" and was "in violation of the by-laws (of 1975)" and "unlawfully deprived Grace Christian High School of its vested right [to] a permanent seat in the board."

As the association denied its request, the school brought suit for *mandamus* in the Home Insurance and Guaranty Corporation to compel the board of directors of the association to recognize its right to a permanent seat in the board.

HIGC affirmed the decision of the hearing officer which denied the petition. Petitioner appealed but CA likewise affirmed.

ISSUES:

Whether Grace Christian High School is entitled to the permanent seat in the Board of the Grace Village Association (NO).

RULING:

These provisions of the former and present corporation law leave no room for doubt as to their meaning: the board of directors of corporations must be elected from among the stockholders or members. There may be corporations in which there are unelected members in the board but it is clear that in the examples cited by petitioner the unelected members sit as *ex officio* members, *i.e.*, by virtue of and for as long as they hold a particular office. But in the case of petitioner, there is no reason at all for its representative to be given a seat in the board. Nor does petitioner claim a right to such seat by virtue of an office held. In fact it was not given such seat in the beginning. It was only in 1975 that a proposed amendment to the by-laws sought to give it one.

Since the provision in question is contrary to law, the fact that for fifteen years it has not been questioned or challenged but, on the contrary, appears to have been implemented by the members of the association cannot forestall a later challenge to its validity. Neither can it attain validity through acquiescence because, if it is contrary to law, it is beyond the power of the members of the association to waive its invalidity. For that matter the members of the association may have formally adopted the provision in question, but their action would be of no avail because no provision of the by-laws can be adopted if it is contrary to law.

It is probable that, in allowing petitioner's representative to sit on the board, the members of the association were not aware that this was contrary to law. It should be noted that they did not actually implement the provision in question except perhaps insofar as it increased the number of directors from 11 to 15, but certainly not the allowance of petitioner's representative as an unelected member of the board of directors. It is more accurate to say that the members merely tolerated petitioner's representative and tolerance cannot be considered ratification.

Nor can petitioner claim a vested right to sit in the board on the basis of "practice." Practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law. Even less tenable is petitioner's claim that its right is "coterminus with the existence of the association."

C. BINDING EFFECTS

CHINA BANKING CORPORATION, *Petitioner,* -versus- COURT OF APPEALS, and VALLEY GOLF and COUNTRY CLUB, INC., *Respondents*
G.R. No. 117604, FIRST DIVISION, MARCH 26, 1997, KAPUNAN, *J.*

The purpose of a by-law is to regulate the conduct and define the duties of the members towards the corporation and among themselves. They are self-imposed and, although adopted pursuant to statutory authority, have no status as public law. Therefore, it is the generally accepted rule that third persons are not bound by by-laws, except when they have knowledge of the provisions either actually or constructively.

In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction or agreement between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI could have easily informed petitioner of its by-laws when it sent notice formally recognizing petitioner as pledgee of one of its shares registered in Calapatia's name. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.

FACTS:

On 21 August 1974, Galicano Calapatia, Jr. (Calapatia) a stockholder of private respondent Valley Golf & Country Club, Inc. (VGCCI), pledged his Stock Certificate No. 1219 to petitioner China Banking Corporation (CBC). Petitioner wrote VGCCI requesting that the aforementioned pledge agreement be recorded in its books. VGCCI replied that the deed of pledge executed by Calapatia in petitioner's favor was duly noted in its corporate books. The pledge was due to the loan obtained by Calapatia from CBC.

Due to Calapatia's failure to pay his obligation, CBC, filed a petition for extrajudicial foreclosure

CBC informed VGCCI of the foreclosure proceedings and requested that the pledged stock be transferred to its name and the same be recorded in the corporate books. However, VGCCI expressed its inability to accede to petitioner's request in view of Calapatia's unsettled accounts with the club.

Notary Public de Vera held a public auction and petitioner emerged as the highest bidder at P20,000.00 for the pledged stock. Consequently, petitioner was issued the corresponding certificate of sale.

VGCCI sent Calapatia a notice demanding full payment of his overdue account in the amount of P18,783.24. Said notice was followed by a demand letter for the same amount and another notice.

VGCCI caused to be published in the newspaper Daily Express a notice of auction sale of a number of its stock certificates, to be held on 10 December 1986 at 10:00 a.m. Included therein was Calapatia's own share of stock (Stock Certificate No. 1219). VGCCI informed Calapatia of the termination of his membership due to the sale of his share of stock in the auction.

CBC advised VGCCI that it is the new owner of Calapatia's Stock Certificate No. 1219 by virtue of being the highest bidder in the September 17, 1985 auction and requested that a new certificate of stock be issued in its name. VGCCI replied that "for reason of delinquency" Calapatia's stock was sold at the public auction held on December 10, 1986 for P25,000.00.

CBC protested the sale by VGCCI of the subject share of stock and thereafter filed a case with RTC MaKATI for the nullification of the December 10, 1986 auction and for the issuance of a new stock certificate in its name. The RTC dismissed the complaint for lack of jurisdiction over the subject matter on the theory that it involves an intra-corporate dispute denied petitioner's motion for reconsideration.

CBC filed a complaint with the SEC for the nullification of the sale of Calapatia's stock by VGCCI.

SEC Hearing Officer rendered a decision in favor of VGCCI, stating that "considering that the said share is delinquent, (VGCCI) had valid reason not to transfer the share in the name of the petitioner in the books of (VGCCI) until liquidation of delinquency. The case was dismissed. SEC Hearing Officer denied petitioner's motion for reconsideration.

Petitioner appealed to the SEC *en banc* which issued an order reversing the decision of its hearing officer. The Commission *en banc* believes that appellant-petitioner has a prior right over the pledged share and because of pledgor's failure to pay the principal debt upon maturity, appellant-petitioner can proceed with the foreclosure of the pledged share. VGCCI sought reconsideration of the order. However, the SEC denied the same.

The CA rendered its decision nullifying and setting aside the orders of the SEC and its hearing officer on ground of lack of jurisdiction over the subject matter and, consequently, dismissed petitioner's original complaint. The Court of Appeals declared that the controversy between CBC and VGCCI is not intra-corporate.

Petitioner moved for reconsideration but the same was denied by the Court of Appeals.

VGCCI likewise insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws.

ISSUES:

(1) Whether SEC has jurisdiction (YES)
(2) Whether CBC is bound by VGCI's by-laws (NO).

RULING:
(1)
As to the first query, there is no question that the purchase of the subject share or membership certificate at public auction by petitioner (and the issuance to it of the corresponding Certificate of Sale) transferred ownership of the same to the latter and thus entitled petitioner to have the said share registered in its name as a member of VGCCI. It is readily observed that VGCCI did not assail the transfer directly and has in fact, in its letter of 27 September 1974, expressly recognized the pledge agreement executed by the original owner, Calapatia, in favor of petitioner and has even noted said agreement in its corporate books. In addition, Calapatia, the original owner of the subject share, has not contested the said transfer.

By virtue of the afore-mentioned sale, petitioner became a bona fide stockholder of VGCCI and, therefore, the conflict that arose between petitioner and VGCCI aptly exemplies an intra-corporate controversy between a corporation and its stockholder under Sec. 5(b) of P.D. 902-A.

An important consideration, moreover is that VGCCI caps its argument by asserting that its corporate by-laws should prevail. The bone of contention, thus, is the proper interpretation and application of VGCCI's by-laws, a subject which irrefutably calls for the special competence of the SEC.
VGCCI likewise insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws.

(2)
Private respondent's insistence comes to naught. It is significant to note that VGCCI began sending notices of delinquency to Calapatia *after* it was informed by petitioner (through its letter dated 14 May 1985) of the foreclosure proceedings initiated against Calapatia's pledged share, although Calapatia has been delinquent in paying his monthly dues to the club since 1975. Stranger still, petitioner, whom VGCCI had officially recognized as the pledgee of Calapatia's share, was neither informed nor furnished copies of these letters of overdue accounts until VGCCI itself sold the pledged share at another public auction. By doing so, VGCCI completely disregarded petitioner's rights as pledgee. It even failed to give petitioner notice of said auction sale. Such actuations of VGCCI thus belie its claim of good faith.

In defending its actions, VGCCI likewise maintains that petitioner is bound by its by-laws. It argues in this wise:

The general rule really is that third persons are not bound by the by-laws of a corporation since they are not privy thereto (Fleischer v. Botica Nolasco, 47 Phil. 584). The exception to this is when third persons have actual or constructive knowledge of the same. In the case at bar, petitioner had actual knowledge of the by-laws of private respondent when petitioner foreclosed the pledge made by Calapatia and when petitioner purchased the share foreclosed on September 17, 1985. This is proven by the fact that prior thereto, *i.e.*, on May 14, 1985 petitioner even quoted a portion of private respondent's by-laws which is material to the issue herein in a letter it wrote to private respondent. Because of this actual knowledge of such by-laws then the same bound the petitioner as of the time when petitioner purchased the share. Since the by-laws was already binding upon petitioner when the latter purchased the share of Calapatia on September 17, 1985 then the petitioner purchased the said share subject to the right of the private respondent to sell the said share for reasons of delinquency and the right of private respondent to have a first lien on said shares as these rights are provided for in the by-laws very very clearly.

VGCCI misunderstood the import of our ruling in *Fleischer v. Botica Nolasco Co.*:

And moreover, the by-law now in question cannot have any effect on the appellee. He had no knowledge of such by-law when the shares were assigned to him. He obtained them in good faith and for a valuable consideration. He was not a privy to the contract created by said by-law between the shareholder Manuel Gonzales and the Botica Nolasco, Inc. Said by-law cannot operate to defeat his rights as a purchaser.

An unauthorized by-law forbidding a shareholder to sell his shares without first offering them to the corporation for a period of thirty days is not binding upon an assignee of the stock as a personal contract, although his assignor knew of the by-law and took part in its adoption.

When no restriction is placed by public law on the transfer of corporate stock, a purchaser is not affected by any contractual restriction of which he had no notice.

The assignment of shares of stock in a corporation by one who has assented to an unauthorized by-law has only the effect of a contract by, and enforceable against, the assignor; the assignee is not bound by such by-law by virtue of the assignment alone.

A by-law of a corporation which provides that transfers of stock shall not be valid unless approved by the board of directors, while it may be enforced as a reasonable regulation for the protection of the corporation against worthless stockholders, cannot be made available to defeat the rights of third persons.

In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction or agreement between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI could have easily informed petitioner of its by-laws when it sent notice formally recognizing petitioner as pledgee of one of its shares registered in Calapatia's name. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.

The ruling of the SEC *en banc* is particularly instructive:

By-laws signifies the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it. In other words, by-laws are the relatively permanent and continuing rules of action adopted by the corporation for its own government and that of the individuals composing it and having the direction, management and control of its affairs, in whole or in part, in the management and control of its affairs and activities.

The purpose of a by-law is to regulate the conduct and define the duties of the members towards the corporation and among themselves. They are self-imposed and, although adopted pursuant to statutory authority, have no status as public law.

Therefore, it is the generally accepted rule that third persons are not bound by by-laws, except when they have knowledge of the provisions either actually or constructively. In the case of *Fleisher v. Botica Nolasco*, 47 Phil. 584, the Supreme Court held that the by-law restricting the transfer of shares cannot have any effect on the transferee of the shares in question as he "had no knowledge of such by-law when the shares were assigned to him. He obtained them in good faith and for a valuable consideration. *He was not a privy to the contract created by the by-law between the shareholder* . . .*and the Botica Nolasco, Inc*. Said by-law cannot operate to defeat his right as a purchaser.

By analogy of the above-cited case, the Commission *en banc* is of the opinion that said case is applicable to the present controversy. Appellant-petitioner bank as a third party cannot be bound by appellee-respondent's by-laws. It must be recalled that when appellee-respondent communicated to appellant-petitioner bank that the pledge agreement was duly noted in the club's books there was no mention of the shareholder-pledgor's unpaid accounts. The transcript of stenographic notes of the June 25, 1991 Hearing reveals that the pledgor became delinquent only in 1975. Thus, appellant-petitioner was in good faith when the pledge agreement was contracted.

The Commission *en banc* also believes that for the exception to the general accepted rule that third persons are not bound by by-laws to be applicable and binding upon the pledgee, knowledge of the provisions of the VGCI By-laws must be acquired at the time the pledge agreement was contracted. Knowledge of said provisions, either actual or constructive, at the time of foreclosure will not affect pledgee's right over the pledged share. Art. 2087 of the Civil Code provides that it is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists maybe alienated for the payment to the creditor.

In a letter dated March 10, 1976 addressed to Valley Golf Club, Inc., the Commission issued an opinion to the effect that:

According to the weight of authority, the pledgee's right is entitled to full protection without surrender of the certificate, their cancellation, and the issuance to him of new ones, and when done, the pledgee will be fully protected against a subsequent purchaser who would be charged with constructive notice that the certificate is covered by the pledge.

The pledgee is entitled to retain possession of the stock until the pledgor pays or tenders to him the amount due on the debt secured. In other words, the pledgee has the right to resort to its collateral for the payment of the debts.

To cancel the pledged certificate outright and the issuance of new certificate to a third person who purchased the same certificate covered by the pledge, will certainly defeat the right of the pledgee to resort to its collateral for the payment of the debt. The pledgor or his representative or registered stockholders has no right to require a return of the pledged stock until the debt for which it was given as security is paid and satisfied, regardless of the length of time which have elapsed since debt was created.

A bona fide pledgee takes free from any latent or secret equities or liens in favor either of the corporation or of third persons, if he has no notice thereof, but not otherwise. He also takes it free of liens or claims that may subsequently arise in favor of the corporation if it has notice of the pledge, although no demand for a transfer of the stock to the pledgee on the corporate books has been made. (12-A Fletcher 5634, 1982 ed., citing Snyder v. Eagle Fruit Co., 75 F2d739)

Similarly, VGCCI's contention that petitioner is duty-bound to know its by-laws because of Art. 2099 of the Civil Code which stipulates that the creditor must take care of the thing pledged with the diligence of a good father of a family, fails to convince. The case of *Cruz & Serrano v. Chua A. H. Lee*, is clearly not applicable:

In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket; and the contract of the pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge, if it is to be kept alive.

It is quite obvious from the aforequoted case that a membership share is quite different in character from a pawn ticket and to reiterate, petitioner was never informed of Calapatia's unpaid accounts and the restrictive provisions in VGCCI's by-laws.

Finally, Sec. 63 of the Corporation Code which provides that "no shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation" cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription, and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." In the case at bar, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate No. 1219. What Calapatia owed the corporation were merely the monthly dues. Hence, the aforequoted provision does not apply.

PMI COLLEGES, *Petitioner*, -versus- THE NATIONAL LABOR RELATIONS COMMISSION and ALEJANDRO GALVAN, *Respondents*
G.R. No. 121466, SECOND DIVISION, AUGUST 15, 1997, ROMERO, *J.*

The Court cannot concede that the employment contract would be invalid just because the signatory thereon was not the Chairman of the Board which allegedly violated petitioner's by-laws. Since by-laws operate merely as internal rules among the stockholders, they cannot affect or prejudice third persons who deal with the corporation, unless they have knowledge of the same." No proof appears on record that private respondent ever knew anything about the provisions of said by-laws. In fact, petitioner itself merely asserts the same without even bothering to attach a copy or excerpt thereof to show that there is such a provision.

FACTS:

Petitioner, hired private respondent as contractual instructor. Pursuant to this engagement, private respondent then organized classes in marine engineering.

Initially, private respondent and other instructors were compensated for services rendered during the first three periods of the abovementioned contract. However, for reasons unknown to private respondent, he stopped receiving payment for the succeeding rendition of services.

This claim of non-payment was embodied in a letter dated March 3, 1992, written by petitioner's Acting Director, Casimiro A. Aguinaldo, addressed to its President, Atty. Santiago Pastor, calling attention to and appealing for the early approval and release of the salaries of its instructors including that of private respondent. It appeared further in said letter that the salary of private respondent corresponding to the shipyard and plant visits and the ongoing on-the-job training of Class 41 on board MV "Sweet Glory" of Sweet Lines, Inc. was not yet included. This request of the Acting Director apparently went unheeded. Private respondent was soon constrained to file a complaint before the National Capital Region Arbitration Branch on September 14, 1993 seeking payment for salaries earned from the following: (1) basic seaman course Classes 41 and 42 for the period covering October 1991 to September 1992; (2) shipyard and plant visits and on-the-job training of Classes 41 and 42 for the period covering October 1991 to September 1992 on board M/V "Sweet Glory" vessel; and (3) as Acting Director of Seaman Training Course for 3-1/2 months.

Later in the proceedings below, petitioner manifested that Mr. Tomas G. Cloma, Jr., a member of the petitioner's Board of Trustees wrote a letter to the Chairman of the Board on May 23, 1994, clarifying the case of private respondent and stating therein, *inter alia*, that under petitioner's by-laws only the Chairman is authorized to sign any contract and that private respondent, in any event, failed to submit documents on the alleged shipyard and plant visits in Cavite Naval Base. Thus, petitioner argued that the employment contract is invalid.

Attempts at amicable settlement having failed, the parties were required to submit their respective position papers.

National Labor Relations Commission rendered a Decision affirming *in toto* the decision of Labor declaring petitioner PMI Colleges liable to pay private respondent Alejandro Galvan

ISSUES:

Whether the contract of employment is valid (YES)

RULING:

Petitioner places so much emphasis on its argument that private respondent did not produce a copy of the contract pursuant to which he rendered services. This argument is, of course, puerile. The absence of such copy does not in any manner negate the existence of a contract of employment since "Contracts shall be *obligatory, in whatever form they have been entered into*, provided all the essential requisites for their validity are present." The only exception to this rule is "when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way." However, there is no requirement under the law that the contract of employment of the kind entered into by petitioner with private respondent should be in any particular form. While it may have been desirable for private respondent to have produced a copy of his contract if one really exists, but the absence thereof, in any case, does not militate against his claims.

Neither can we concede that such contract would be invalid just because the signatory thereon was not the Chairman of the Board which allegedly violated petitioner's by-laws. Since by-laws operate merely as internal rules among the stockholders, *they cannot affect or prejudice third persons* who deal with the corporation, unless they have knowledge of the same." No proof appears on record that private respondent ever knew anything about the provisions of said by-laws. In fact, petitioner itself merely asserts the same without even bothering to attach a copy or excerpt thereof to show that there is such a provision. How can it now expect the Labor Arbiter and the NLRC to believe it? That this allegation has never been denied by private respondent does not necessarily signify admission of its existence because technicalities of law and procedure and the rules obtaining in the courts of law do not strictly apply to proceedings of this nature.

CATHERINE CHING, LORENZO CHING, LAURENCE CHING, AND CHRISTINE CHING, *Petitioners,* -versus- QUEZON CITY SPORTS CLUB, INC.; MEMBERS OF THE BOARD OF DIRECTORS, NAMELY: ANTONIO T. CHUA, MARGARET MARY A. RODAS, ALEJANDRO G. YABUT, JR., ROBERT C. GAW, EDGARDO A. HO, ROMULO D. SALES, BIENVENIDO ALANO, AUGUSTO E. OROSA, AND THE FINANCE MANAGER, LOURDES RUTH M. LOPEZ, *Respondents*

G.R. No. 200150, FIRST DIVISION, NOVEMBER 7, 2016, DE CASTRO, *J.*

In construing and applying the provisions of the articles of incorporation and by-laws of the country club, the Court, also in Forest Hills, sustained the application by the Court of Appeals therein of the rules on interpretation of contracts under Articles 1370 and 1374 of the Civil Code. The plain meaning rule *embodied in Article 1370 of the Civil Code provides that if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; while Article 1374 of the Civil Code declares that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Verily, all stipulations of the contract are considered and the whole agreement is rendered valid and enforceable, instead of treating some provisions as superfluous, void, or inoperable.*

Section 35(a) of the By-Laws requires notice and hearing prior to a member's suspension. Definitely, in this case, petitioner Catherine did not receive notice specifically advising her that she could be suspended for nonpayment of the special assessment imposed by Board Resolution No. 7-2001 and affording her a hearing prior to her suspension through Board Resolution No. 3-2002. Respondents merely relied on the general notice printed in petitioner Catherine's Statements of Account from September 2001 to April 2002 warning of automatic suspension for accounts of over P20,000.00 which are past due for 60 days, and accounts regardless of amount which are 75 days in arrears. While said general notice in the Statements of Account might have been sufficient for purposes of Section 33(a) of the By-Laws, it fell short of the stricter requirement under Section 35(a) of the same By-Laws

FACTS:

Because respondent Club was not in a financial position to pay the monetary awards in NLRC NCR Case No. 00-07-06219, respondent BOD approved on September 20, 200I Board Resolution No. 7-2001,[3]entitled "*Special Assessment for Club Members in Relation to the Marie Rose Navarro, et al. v. QCSI, et al. Case*," resolving to "seek the assistance of its members by assessing each member the amount of TWO THOUSAND FIVE HUNDRED PESOS (P2,500.00) payable in five (5) equal monthly payments starting the month of September 2001."

Petitioner Catherine was duly notified of the implementation of the special assessment through a Letter dated September 25, 2001 from the Treasurer of respondent Club. The amount of P500.00 was debited and/or charged to Catherine's account each month from September 2001 to January 2002, as reflected in the Statements of Account[5] issued by respondent Club

Petitioner Catherine believed that the imposition of the special assessment in Board Resolution No. 7-2001 was unjust and/or illegal, however, she took no action against the same. Petitioner Catherine simply avoided paying the special assessment by settling the amounts due in her Statements of Account from September 2001 to January 2002 short of P500.00.

Respondent BOD then passed Board Resolution No. 3-2002 on April 18, 2002 which suspended the privileges of the members of respondent Club who had not yet paid the special assessment

Petitioners instituted before the RTC a Complaint for damages against respondents, based on Articles 19, 20, and 21 of the Civil Code.

The RTC rendered. It based on the "Business Judgment Rule" and *Philippine Stock Exchange, Inc. v. Court of Appeals*, which stated that questions of policy and management are left to the honest decision of the officers and directors of a corporation; and the courts are without authority to substitute their judgment for that of the BOD unless said judgment had been attended with bad faith. The RTC found no evidence of bad faith on the part of respondents in adopting Board Resolution.

CA reversed and ruled in favor of respondent.

Petitioners, on one hand, maintain that petitioner Catherine's nonpayment of the special assessment of P2,500.00 was a violation of a resolution of the respondent Board, to which Section 35(a) of the By-Laws of respondent Club - requiring notice and hearing prior to the member's suspension - should have applied:

SUSPENSION AND EXPULSION

Sec. 35. (a)
For violating these By-Laws or rules and regulations of the Club, or resolution and orders duly promulgated at Board or stockholders' meeting, or for any other causes and acts of a member which in the opinion of the Board are serious or prejudicial to the Club such as acts or conduct of a member or the immediate members of his family, his guest or visitors, which the Board may deem disorderly or injurious to the interest or hostile to the objects of the Club, the offending member may be suspended, or expelled by a two-thirds (2/33) vote of the Board of Directors upon proper notice and hearing.

Respondents, on the other hand, invoke Section 33(a) of the By-Laws of respondent Club, which allows the suspension of a member with unpaid bills after notice:

Sec. 33. (a)
Billing of Members, Posting of Suspended Accounts As soon as possible after the end of every month, a statement showing the account or bill of a member for said month will be prepared and sent to them. If the bill of any regular member remains unpaid by the 20th of the month following that in which the bill was incurred, the Treasurer shall notify him that if his bill is not paid in full by the end of the same month, his name will be posted as suspended the following day at the Clubhouse Bulletin Board. While posted, a regular member together with the immediate members of his family mal not use the facilities or avail of the privileges of the Club.

ISSUES:

Whether there was a violation of the petitioner's right to due process (YES)

RULING:
In construing and applying the provisions of the articles of incorporation and by-laws of the country club, the Court, also in Forest Hills, sustained the application by the Court of Appeals therein of the rules on interpretation of contracts under Articles 1370 and 1374 of the Civil Code. The plain meaning rule embodied in Article 1370 of the Civil Code provides that if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; while Article 1374 of the Civil Code declares that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Verily, all stipulations of the contract are considered and the whole agreement is rendered valid and enforceable, instead of treating some provisions as superfluous, void, or inoperable.

Being guided accordingly, the Court now turns to the pertinent By-Laws of respondent Club.

At cursory glance, it would seem that the suspension of petitioner Catherine's privileges was due to the P2,500.00 special assessment charged in her Statements of Account from September 2001 to January 2002, which remained unpaid for over three months by the time respondent BOD passed Board Resolution No. 3-2002 on April 18, 2002; and for one year and four months by the time respondent Lopez issued her Memorandum dated May 22, 2003. However, tracing back, the P2,500.00 special assessment was not an ordinary account or bill incurred by petitioners in respondent Club, as contemplated in Section 33(a) of the By-Laws.

Section 33(a) of the By-Laws refers to the regular dues and ordinary accounts or bills incurred by members as they avail of the services at respondent Club, and for which the members are charged in their monthly Statement of Account. The immediate payment or collection of the amount charged in the member's monthly Statement of Account is essential so respondent Club can carry-on its day-to-day operations, which is why Section 33(a) allows for the automatic suspension of a nonpaying member after a specified period and notification.

The special assessment in the instant case arose from an extraordinary circumstance, i.e., the necessity of raising payment for the monetary judgment against respondent Club in an illegal dismissal case. The special assessment of P2,500.00 was imposed upon the members by respondent BOD through Board Resolution No. 7-2001 dated September 20, 2001; it only so happened that said Board Resolution was implemented by directly charging the special assessment, in P500.00 installments, in the members' Statements of Account for five months. Thus, petitioner Catherine's nonpayment of the special assessment was, ultimately, a violation of Board Resolution No. 7-2001, covered by Section 35(a) of the By-Laws. This much was acknowledged by respondent BOD itself when it mentioned in Board Resolution No. 3-2002 that "to enforce Board Resolution No. 7-2001," it was suspending the members who did not pay the special assessment.

Section 35(a) of the By-Laws requires notice and hearing prior to a member's suspension. Definitely, in this case, petitioner Catherine did not receive notice specifically advising her that she could be suspended for nonpayment of the special assessment imposed by Board Resolution No. 7-2001 and affording her a hearing prior to her suspension through Board Resolution No. 3-2002. Respondents merely relied on the general notice printed in petitioner Catherine's Statements of Account from September 2001 to April 2002 warning of automatic suspension for accounts of over P20,000.00 which are past due for 60 days, and accounts regardless of amount which are 75 days in arrears. While said general notice in the Statements of Account might have been sufficient for purposes of Section 33(a) of the By-Laws, it fell short of the stricter requirement under Section 35(a) of the same By-Laws. Petitioner Catherine's right to due process was clearly violated.

d. Amendment or Revision

- Cebu Country Club, Inc., et al. vs. Ricardo F. Elizagaque, G.R. No. 160273, January 18, 2008

CEBU COUNTRY CLUB, INC., SABINO R. DAPAT, RUBEN D. ALMENDRAS, JULIUS Z. NERI, DOUGLAS L. LUYM, CESAR T. LIBI, RAMONTITO* E. GARCIA and JOSE B. SALA, *PetitionerS – versus-* RICARDO F. ELIZAGAQUE, *Respondent.*

G.R. No. 160273, FIRST DIVISION, January 18, 2008, SANDOVAL-GUTIERREZ, J.:

The exercise of a right, though legal by itself, must nonetheless be in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible. It bears reiterating that the trial court and the Court of Appeals held that petitioners' disapproval of respondent's application is characterized by bad faith.

FACTS

Cebu Country Club, Inc. (CCCI), petitioner, is a domestic corporation operating as a non-profit and non-stock private membership club, having its principal place of business in Banilad, Cebu City. Petitioners herein are members of its Board of Directors.

Sometime in 1987, San Miguel Corporation, a special company proprietary member of CCCI, designated respondent Ricardo F. Elizagaque, its Senior Vice President and Operations Manager for the Visayas and Mindanao, as a special non-proprietary member. The designation was thereafter approved by the CCCI's Board of Directors.

In 1996, respondent filed with CCCI an application for proprietary membership. The application was indorsed by CCCI's two (2) proprietary members, namely: Edmundo T. Misa and Silvano Ludo.

As the price of a proprietary share was around the P5 million range, Benito Unchuan, then president of CCCI, offered to sell respondent a share for only P3.5 million. Respondent, however, purchased the share of a certain Dr. Butalid for only P3 million. Consequently, on September 6, 1996, CCCI issued Proprietary Ownership Certificate No. 1446 to respondent.

During the meetings dated April 4, 1997 and May 30, 1997 of the CCCI Board of Directors, action on respondent's application for proprietary membership was deferred. In another Board meeting held on July 30, 1997, respondent's application was voted upon. Subsequently, or on August 1, 1997, respondent received a letter from Julius Z. Neri, CCCI's corporate secretary, informing him that the Board disapproved his application for proprietary membership.

Edmundo T. Misa, on behalf of respondent, repeatedly wrote CCCI a letter of reconsideration but CCCI did not reply. Consequently, respondent filed with the Regional Trial Court (RTC), Branch 71, Pasig City a complaint for damages against petitioners. After trial, the RTC rendered its Decision in favor of respondent.

On appeal by petitioners, the Court of Appeals affirmed the trial court's Decision with modification.

ISSUE

Whether in disapproving respondent's application for proprietary membership with CCCI, petitioners are liable to respondent for damages, and if so, whether their liability is joint and several. (YES)

CCCI's Articles of Incorporation provide in part:
SEVENTH: That this is a non-stock corporation and membership therein as well as the right of participation in its assets shall be limited to qualified persons who are duly accredited owners of Proprietary Ownership Certificates issued by the corporation in accordance with its By-Laws.

Corollary, Section 3, Article 1 of CCCI's Amended By-Laws provides:

SECTION 3. HOW MEMBERS ARE ELECTED – The procedure for the admission of new members of the Club shall be as follows:

(a) Any proprietary member, seconded by another voting proprietary member, shall submit to the Secretary a written proposal for the admission of a candidate to the "Eligible-for-Membership List";
(b) Such proposal shall be posted by the Secretary for a period of thirty (30) days on the Club bulletin board during which time any member may interpose objections to the admission of the applicant by communicating the same to the Board of Directors;
(c) After the expiration of the aforesaid thirty (30) days, the Board may, by unanimous vote of all directors present at a regular or special meeting, approve the inclusion of the candidate in the "Eligible-for-Membership List".

(d) Once included in the "Eligible-for-Membership List" and after the candidate shall have acquired in his name a valid POC duly recorded in the books of the corporation as his own, he shall become a Proprietary Member, upon a non-refundable admission fee of P1,000.00, provided that admission fees will only be collected once from any person.

As shown by the records, the Board adopted a secret balloting known as the "black ball system" of voting wherein each member will drop a ball in the ballot box. A white ball represents conformity to the admission of an applicant, while a black ball means disapproval. Pursuant to Section 3(c), as amended, cited above, a unanimous vote of the directors is required. When respondent's application for proprietary membership was voted upon during the Board meeting on July 30, 1997, the ballot box contained one (1) black ball. Thus, for lack of unanimity, his application was disapproved.

Obviously, the CCCI Board of Directors, under its Articles of Incorporation, has the right to approve or disapprove an application for proprietary membership. But such right should not be exercised arbitrarily.

It bears stressing that the amendment to Section 3(c) of CCCI's Amended By-Laws requiring the unanimous vote of the directors present at a special or regular meeting was not printed on the application form respondent filled and submitted to CCCI. What was printed thereon was the original provision of Section 3(c) which was silent on the required number of votes needed for admission of an applicant as a proprietary member.

Petitioners explained that the amendment was not printed on the application form due to economic reasons. We find this excuse flimsy and unconvincing. Such amendment, aside from being extremely significant, was introduced way back in 1978 or almost twenty (20) years before respondent filed his application. We cannot fathom why such a prestigious and exclusive golf country club, like the CCCI, whose members are all affluent, did not have enough money to cause the printing of an updated application form.
It is thus clear that respondent was left groping in the dark wondering why his application was disapproved. He was not even informed that a unanimous vote of the Board members was required. When he sent a letter for reconsideration and an inquiry whether there was an objection to his application, petitioners apparently ignored him. Certainly, respondent did not deserve this kind of

treatment. Having been designated by San Miguel Corporation as a special non-proprietary member of CCCI, he should have been treated by petitioners with courtesy and civility. At the very least, they should have informed him why his application was disapproved.

The exercise of a right, though legal by itself, must nonetheless be in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible.6 It bears reiterating that the trial court and the Court of Appeals held that petitioners' disapproval of respondent's application is characterized by bad faith.

Lastly, petitioners' argument that they could not be held jointly and severally liable for damages because only one (1) voted for the disapproval of respondent's application lacks merit.
Section 31 of the Corporation Code provides:

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.

Corporate Powers

1. General Powers, Theory of General Capacity

- National Power Corporation vs. Honorable Abraham P. Vera, Presiding Judge, Regional Trial Court, National Capital Judicial Region, Branch 90, Quezon City and Sea Lion International Port Terminal Services, Inc., G.R. No. 83558, February 27, 1989

NATIONAL POWER CORPORATION, *Petitioner –versus-* ABRAHAM P. VERA, Presiding Judge, Regional Trial Court, National Capital Judicial Region, Branch 90, Quezon City and SEA LION INTERNATIONAL PORT TERMINAL SERVICES, INC, *Respondents.*
G.R. No. 83558, THIRD DIVISION, February 27, 1989, CORTEZ, J.:

The Court in the case of Teresa Electric & Power Co., Inc. v. Public Service Commission and Filipinos Cement Corporation [G.R. No. L-21804, September 25, 1967, 21 SCRA 198] in interpreting a provision found in respondent corporations articles of incorporation authorizing the corporation to perform any and all acts connected with the business of manufacturing portland cement or arising therefrom or incidental thereto, concluded that the corporation must be deemed authorized to operate and maintain an electric power plant exclusively for its own use in connection with the operation of its cement factory in a remote barrio. The Court found that the operation of such plant was necessarily connected with the business of manufacturing cement.
In the instant case, it is an undisputed fact that the pier located at Calaca, Batangas, which is owned by NPC, receives the various shipments of coal which is used exclusively to fuel the Batangas Coal-Fired Thermal Power Plant of the NPC for the generation of electric power. The stevedoring services which involve the unloading of the coal shipments into the NPC pier for its eventual conveyance to the power plant are incidental and indispensable to the operation of the plant The Court holds that NPC is

empowered under its Charter to undertake such services, it being reasonably necessary to the operation and maintenance of the power plant.

FACTS

Petitioner, National Power Corporation (NPC), seeks to annul the order of respondent judge dated June 8, 1988 issuing a writ of preliminary injunction which enjoined NPC from further undertaking stevedoring and arrastre services in its pier located at the Batangas Coal-Fired Thermal Power Plant at Calaca, Batangas and directing it either to enter into a contract for stevedoring and arrastre services or to conduct a public bidding therefor. Private respondent was also allowed to continue stevedoring and arrastre services at the pier.

The instant petition arose from a complaint for prohibition and mandamus with damages filed by private respondent against NPC and Philippine Ports Authority (PPA), wherein private respondent alleged that NPC had acted in bad faith and with grave abuse of discretion in not renewing its Contract for Stevedoring Services for Coal-Handling Operations at NPC's plant, and in taking over its stevedoring services.

Soon after the filing of private respondent's complaint, respondent judge issued a restraining order against NPC enjoining the latter from undertaking stevedoring services at its pier. Consequently, NPC filed an "Urgent Motion" to dissolve the restraining order, asserting, *inter alia:* (1) that by virtue of Presidential Decree No. 1818, respondent judge had no jurisdiction to issue the order; and (2) that private respondent, whose contract with NPC had expired prior to the commencement of the suit, failed to establish a cause of action for a writ of preliminary injunction.

Respondent judge issued the assailed Order denying NPC's motion and issuing a writ of preliminary injunction, after finding that NPC was not empowered by its Charter, Republic Act No. 6395, as amended, to engage in stevedoring and arrastre services. Hence, the instant petition.

On June 15, 1988, the Court issued a temporary restraining order. After private respondent filed its comment to the petition, and petitioner filed its reply, the Court considered the issues joined and the case submitted for decision.

ISSUE

Whether or not the undertaking of stevedoring services is empowered by the NPC's charter powers. (YES)

RULING

The undertaking of stevedoring services is empowered by the NPC's charter powers. To carry out the national policy of total electrification of the country, specifically the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources to meet the needs of industrial development and dispersal and the needs of rural electrification [Secs. 1 and 2, Rep. Act No. 6395, as amended], the NPC was created and empowered not only to construct, operate and maintain power plants, reservoirs, transmission lines, and other works, but also:

xxx xxx xxx

... To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish said purpose, . . . [Sec. 3 (1) of Rep. Act No. 6395, as amended.]

In determining whether or not an NPC act falls within the purview of the above provision, the Court must decide whether or not a logical and necessary relation exists between the act questioned and the corporate purpose expressed in the NPC charter. For if that act is one which is lawful in itself and not otherwise prohibited, and is done for the purpose of serving corporate ends, and reasonably contributes to the promotion of those ends in a substantial and not in a remote and fanciful sense, it may be fairly considered within the corporation's charter powers [Montelibano v. Bacolod-Murcia Milling Co., Inc., G.R. No. L-15092, May 18, 1962, 5 SCRA 36.]

This Court is, guided by jurisprudence in the application of the above standard. In the 1963 case of *Republic of the Philippines v. Acoje Mining Company, Inc.* [G.R. No. L-18062, February 28, 1963, 7 SCRA 3611 the Court affirmed the rule that a corporation is not restricted to the exercise of powers expressly conferred upon it by its charter, but has the power to do what is reasonably necessary or proper to promote the interest or welfare of the corporation. Thus, the Court, finding that a "post office is a vital improvement in the living condition of its employees and laborers who came to settle in its mining camp which is far removed from the postal facilities or means of communication accorded to people living in a city or municipality" [*Id*., at P. 365], held that respondent mining corporation was empowered to operate and maintain postal facilities servicing its employees and their families at its mining camp in Sta. Cruz, Zambales despite absence of a provision in the company's charter authorizing the former to do so.

The Court in the case of *Teresa Electric & Power Co., Inc. v. Public Service Commission and Filipinos Cement Corporation* [G.R. No. L-21804, September 25, 1967, 21 SCRA 198] in interpreting a provision found in respondent corporations articles of incorporation authorizing the corporation to perform any and all acts connected with the business of manufacturing portland cement or arising therefrom or incidental thereto, concluded that the corporation must be deemed authorized to operate and maintain an electric power plant exclusively for its own use in connection with the operation of its cement factory in a remote barrio. The Court found that the operation of such plant was necessarily connected with the business of manufacturing cement.

In the instant case, it is an undisputed fact that the pier located at Calaca, Batangas, which is owned by NPC, receives the various shipments of coal which is used exclusively to fuel the Batangas Coal-Fired Thermal Power Plant of the NPC for the generation of electric power. The stevedoring services which involve the unloading of the coal shipments into the NPC pier for its eventual conveyance to the power plant are incidental and indispensable to the operation of the plant The Court holds that NPC is empowered under its Charter to undertake such services, it being reasonably necessary to the operation and maintenance of the power plant.

- Aurbach vs. Sanitary Wares Manufacturing Corporation, 180 SCRA 130 (1989)

WOLRGANG AURBACH, JOHN GRIFFIN, DAVID P. WHITTINGHAM and CHARLES CHAMSAY, *Petitioners –versus-* SANITARY WARES MANUFACTURING CORPORATOIN, ERNESTO V. LAGDAMEO, ERNESTO R. LAGDAMEO, JR., ENRIQUE R. LAGDAMEO, GEORGE F. LEE, RAUL A. BONCAN, BALDWIN YOUNG and AVELINO V. CRUZ, *Respondents*.

G.R. No. 75875, THIRD DIVISION, December 15, 1989, GUTIERREZ, JR., J.:

The legal concept of a joint venture is of common law origin. It has no precise legal definition but it has been generally understood to mean an organization formed for some temporary purpose. The main distinction in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature.

This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others.

FACTS

Saniwares, a domestic corporation was incorporated for the primary purpose of manufacturing and marketing sanitary wares. One of the incorporators, went abroad to look for foreign partners, who could help in its expansion plans. In 1962, ASI, a foreign corporation domiciled in Delaware, United States entered into an Agreement with Saniwares and some Filipino investors whereby ASI and the Filipino investors agreed to participate in the ownership of an enterprise which would engage primarily in the business of manufacturing in the Philippines and selling here and abroad vitreous china and sanitary wares. The parties agreed that the business operations in the Philippines shall be carried on by an incorporated enterprise and that the name of the corporation shall initially be "Sanitary Wares Manufacturing Corporation."

The joint enterprise prospered. Unfortunately, with the business successes, there came a deterioration of the initially harmonious relations between the two groups. According to the Filipino group, a basic disagreement was due to their desire to expand the export operations of the company to which ASI objected. The annual stockholders' meeting was held. Disposing of the preliminary items in the agenda, the stockholders then proceeded to the election of the members of the board of directors. The ASI group nominated three persons namely; Wolfgang Aurbach, John Griffin and David P. Whittingham. The Philippine investors nominated six, namely; Ernesto Lagdameo, Sr., Raul A. Boncan, Ernesto R. Lagdameo, Jr., George F. Lee, and Baldwin Young.

Mr. Eduardo R, Ceniza then nominated Mr. Luciano E. Salazar, who in turn nominated Mr. Charles Chamsay. The chairman, Baldwin Young ruled the last two nominations out of order on the basis of section 5 (a) of the Agreement, the consistent practice of the parties during the past annual stockholders' meetings to nominate only nine persons as nominees for the nine-member board of directors. There were protests against the action of the Chairman and heated arguments ensued.
These incidents triggered off the filing of separate petitions by the parties with the (SEC). The first petition filed was for preliminary injunction by Saniwares, Emesto V. Lagdameo, Baldwin Young, Raul A. Bonean Ernesto R. Lagdameo, Jr., Enrique Lagdameo and George F. Lee against Luciano Salazar and Charles Chamsay. The second petition was for quo warranto and application for receivership by Wolfgang Aurbach, John Griffin, David Whittingham, Luciano E. Salazar and Charles Chamsay against the group of Young and Lagdameo and Avelino F. Cruz. Both sets of parties except for Avelino Cruz claimed to be the legitimate directors of the corporation.

Hearing officer who rendered a decision upholding the election of the Lagdameo Group and dismissing the quo warranto petition of Salazar and Chamsay. The ASI Group and Salazar appealed the decision to the SEC en banc which affirmed the hearing officer's decision.

Intermediate Appellate Court in its decision ordered the remand of the case to the Securities and Exchange Commission with the directive that a new stockholders' meeting of Saniwares be ordered. These consolidated petitions seek the review of the amended decision of the Court of Appeals in CA-G.R. SP Nos. 05604 and 05617 which set aside the earlier decision dated June 5, 1986, of the then Intermediate Appellate Court and directed that in all subsequent elections for directors of Sanitary Wares Manufacturing Corporation (Saniwares), American Standard Inc. (ASI) cannot nominate more than three (3) directors; that the Filipino stockholders shall not interfere in ASI's choice of its three (3) nominees; that, on the other hand, the Filipino stockholders can nominate only six (6) candidates and in the event they cannot agree on the six (6) nominees, they shall vote only among themselves to determine who the six (6) nominees will be, with cumulative voting to be allowed but without interference from ASI.

ISSUES

1. Whether or not the business established was a joint venture, not s corporation. (YES)
2. Whether or not the ASI Group may vote their additional 10% equity during elections of Saniwares' board of directors. (NO)

RULING

1. Joint Venture, the rule is that whether the parties to a particular contract have thereby established among themselves a joint venture or some other relation depends upon their actual intention which is determined in accordance with the rules governing the interpretation and construction of contracts.

Our examination of important provisions of the Agreement as well as the testimonial evidence presented by the Lagdameo and Young Group shows that the parties agreed to establish a joint venture and not a corporation. The history of the organization of Saniwares and the unusual arrangements which govern its policy making body are all consistent with a joint venture and not with an ordinary corporation. According to the unrebutted testimony of Mr. Baldwin Young, he negotiated the Agreement with ASI in behalf of the Philippine nationals. He testified that ASI agreed to accept the role of minority vis-a-vis the Philippine National group of investors, on the condition that the Agreement should contain provisions to protect ASI as the minority.

It is pertinent to note that the provisions of the Agreement requiring a 7 out of 9 votes of the board of directors for certain actions, in effect gave ASI (which designates 3 directors under the Agreement) an effective veto power. Furthermore, the grant to ASI of the right to designate certain officers of the corporation; the super-majority voting requirements for amendments of the articles and by-laws; and most significantly to the issues of tms case, the provision that ASI shall designate 3 out of the 9 directors and the other stockholders shall designate the other 6, clearly indicate that there are two distinct groups in Saniwares, namely ASI, which owns 40% of the capital stock and the Philippine National stockholders who own the balance of 60%, and that 2) ASI is given certain protections as the minority stockholder.

Premises considered, we believe that under the Agreement there are two groups of stockholders who established a corporation with provisions for a special contractual relationship between the parties, i.e., ASI and the other stockholders.

Moreover, ASI in its communications referred to the enterprise as joint venture. Baldwin Young also testified that Section 16(c) of the Agreement that "Nothing herein contained shall be construed to constitute any of the parties hereto partners or joint venturers in respect of any transaction hereunder" was merely to obviate the possibility of the enterprise being treated as partnership for tax purposes and liabilities to third parties.

2. This Court should recognize and uphold the division of the stockholders into two groups, and at the same time uphold the right of the stockholders within each group to cumulative voting in the process of determining who the group's nominees would be. In practical terms, as suggested by appellant Luciano E. Salazar himself, this means that if the Filipino stockholders cannot agree who their six nominees will be, a vote would have to be taken among the Filipino stockholders only. During this voting, each Filipino stockholder can cumulate his votes.

ASI, however, should not be allowed to interfere in the voting within the Filipino group. Otherwise, ASI would be able to designate more than the three directors it is allowed to designate under the Agreement, and may even be able to get a majority of the board seats, a result which is clearly contrary to the contractual intent of the parties.

Such a ruling will give effect to both the allocation of the board seats and the stockholder's right to cumulative voting. Moreover, this ruling will also give due consideration to the issue raised by the appellees on possible violation or circumvention of the Anti-Dummy Law (Com. Act No. 108, as amended) and the nationalization requirements of the Constitution and the laws if ASI is allowed to nominate more than three directors.

ASI Group and petitioner Salazar, now reiterate their theory that the ASI Group has the right to vote their additional equity pursuant to Section 24 of the Corporation Code which gives the stockholders of a corporation the right to cumulate their votes in electing directors and adds that this right if granted to the ASI Group would not necessarily mean a violation of the Anti-Dummy Act.

ASI Group's argument is correct within the context of Section 24 of the Corporation Code. The point of query, however, is whether or not that provision is applicable to a joint venture with clearly defined agreements.

The legal concept of a joint venture is of common law origin. It has no precise legal definition but it has been generally understood to mean an organization formed for some temporary purpose. The main distinction in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others.

With these findings, we the decisions of the SEC Hearing Officer and SEC which were impliedly affirmed by the appellate court declaring the first 9: Wolfgang Aurbach, John Griffin, David P Whittingham, Emesto V. Lagdameo, Baldwin young, Raul A. Boncan, Emesto V. Lagdameo, Jr., Enrique Lagdameo, and George F. Lee as the duly elected directors of Saniwares at the March 8,1983 annual stockholders' meeting.

- BENJIE B. GEORG represented by BENJAMIN C. BELARMINO, JR. vs. HOLY TRINITY COLLEGE, INC. (G .R. No. 190408, July 20, 2016, PEREZ, J.)

BENJIE B. GEORG represented by BENJAMIN C. BELARMINO, JR., ***Petitioner –versus-*** **HOLY TRINITY COLLEGE, INC.,** ***Respondent.***
G.R. No. 190408, THIRD DIVISION, July 20, 2016, PEREZ., J.:

The existence of apparent authority may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.26

In this case, Sr. Medalle formed and organized the Group. She had been giving financial support to the Group, in her capacity as President of Holy Trinity College. Sr. Navarro admitted that the Board of Trustees never questioned the existence and activities of the Group. Thus, any agreement or contract entered into by Sr. Medalle as President of Holy Trinity College relating to the Group bears the consent and approval of respondent. It is through these dynamics that we cannot fault petitioner for relying on Sr. Medalle's authority to transact with petitioner.

FACTS

The Holy Trinity College Grand Chorale and Dance Company (the Group) was organized in 1987 by Sister Teresita Medalle (Sr. Medalle), the President of respondent Holy Trinity College in Puerto Princesa City. The Grand Chorale and Dance Company were two separate groups but for the purpose of performing locally or abroad, they were usually introduced as one entity. The Group was composed of students from Holy Trinity College.

In 2001, the Group was slated to perform in Greece, Italy, Spain and Germany. Edward Enriquez (Enriquez), who allegedly represented Sr. Medalle, contacted petitioner Benjie B. Georg to seek assistance for payment of the Group's international airplane tickets. Petitioner is the Filipino wife of a German national Heinz Georg. Petitioner, in turn, requested her brother, Atty. Benjamin Belarmino, Jr. (Atty. Belarmino), to represent her in the negotiation with Enriquez. Enriquez was referred to petitioner by Leonora Dietz (Dietz), another Filipino-German who has helped Philippine cultural groups obtain European engagements, including financial assistance.

On 24 April 2001, a Memorandum of Agreement with Deed of Assignment3 (MOA) was executed. Under the said Agreement, petitioner, through her travel agency, will advance the payment of international airplane tickets amounting to P4,624,705.00 in favor of the Group on the assurance of the Group represented by Sr. Medalle through Enriquez that there is a confirmed financial allocation of P4,624,705.00 from the foundation-grantor, S.C. Roque Foundation (the Foundation). The second-party assignor assigned said amount in favor of petitioner. Petitioner paid for the Group's domestic and international airplane tickets.

Petitioner claimed that the second-party assignor/respondent and the foundation-grantor have not paid and refused to pay their obligation under the MOA. Petitioner prayed that they be ordered to solidarily pay the amount of P4,624,705.00 representing the principal amount mentioned in the Agreement, moral, exemplary, and actual damages, legal fees, and cost of suit.

ISSUE

Whether respondent is liable under the Memorandum of Agreement. (YES)

RULING

The trial court categorically ruled that Sr. Medalle affixed her thumbmark as President of Holy Trinity College and therefore, respondent is a party to the MOA, viz:

From the foregoing discussion and gathering also from the circumstances that is more or less contemporaneous and subsequent to the execution of the Memorandum of Agreement, this [c]ourt holds the view that when Sr. Teresita Medalle, O.P. affixed her thumb mark in the Memorandum of Agreement, that it was in her capacity as the President of the Holy Trinity College and not that of the Holy Trinity College Grand Chorale and Dance Company.

As aptly found the adjective "ITS" in the Memorandum of Agreement which describes the Parties thereat as:

HOLY TRINITY COLLEGE GRAND CHORALE & DANCE COMPANY Co., with postal address at Holy Trinity College, Puerto Princesa City, Palawan, herein represented by its President Sister TERESITA M. MEDALLE, O.P. and/or its attorney-in-fact EDWARD V. ENRIQUEZ ...

is descriptive that the entity being referred to is indeed the Holy Trinity College. Otherwise, if what were represented to by Sr. Teresita Medalle, O.P. was the Holy Trinity College Grand Chorale and Dance Co., it might have been written as:
Holy Trinity College Grand Chorale & Dance Company., represented by its President Sister Medalle, O.P., and/or its attorney-in-fact Edward V. Enriquez, with postal address at Holy Trinity College, Puerto Princesa City Palawan

The [c]ourt gives credence though to the testimony of Jearold Loyola that indeed the said Grand Chorale and Dance Company are not registered with the Securities and Exchange Commission and is therefore possessing no juridical personality and merely owe its life and existence through the school administration of the Holy Trinity College through its President, Holy Trinity College. There is no doubt indeed, that Sister Teresita Medalle was the President of the Holy Trinity College. She was never at any given time the President of the Holy Trinity Collge Grand Chorale & Dance Company, which is just similar to any science or math club in the school. We do not expect much less find it absurb that Sister Teresita Medalle, O.P. being the school President and Vice Chairman of the Board of Trustees would allow herself to go down to her level and hold a position as a President of student organization.

With the foregoing disquisitions, the import of the participation of Sister Teresita Medalle, O.P. in that Memorandum of Agreement, was in her capacity as the Holy Trinity College, Inc., Puerto Princesa City, Palawan. This Court cannot isolate the fact that right at the very commencement of conceptualization of the said European Tour 2001 sometime in 2001, it was Sister Teresita Medalle who spearheaded the whole activity. As above-mentioned, Sister Teresita Medalle personally communicated with Leonor Dietz, their coordinator in Germany and has herself made arrangement for the procurement of the visa of the group. The Grand Chorale and Dance Co., as testified to by Jearold Loyola have no hands (sic) at all in the financial aspect of the group. It was also Sister Teresita Medalle who arranges for the itinerary of the group and they have no discretion of disobeying. This makes clear to the understanding of the [c]ourt that [n]ot all contracts are drawn in perfection. Otherwise, there would have been no case at all that reached the courts of law.

Per records, it appears that the Holy Trinity Grand Chorale and Dance Company were actually two separate entities formed and organized by Sr. Medalle in her capacity as President of Holy Trinity College. Sr. Medalle made the following admission in her deposition.

Moreover, it was established, through the testimonies of the Group's Artistic Director, Jearold Loyola, the Musical Director, and Vocal Coach Errol Gallespen, that they were hired and given honorarium by Sr. Medalle. The costumes of the Group were financed by respondent. They also testified that all the performances of the group were directly under the supervision of the school administration. Effectively, respondent has control and supervision of the Group particularly in the selection, hiring and termination of the members. The trial court was convinced that the Group derived its existence and continuous operation from the school administration. Pertinently, the Court found:

The [c]ourt also found from the testimony of Jearold Loyola that in fact, the name Holy Trinity College Grand Chorale and Dance Company, is a joint common calling of two (2) separate performing groups, that is:

Holy Trinity College Grand Chorale, and Holy Trinity College Dance Company.

The Holy Trinity College Grand Chorale is being headed by Errol Gallespen as the Musical Director while the Holy Trinity College Dance Company is headed by Jearold Loyola as the Artistic Director. Because they usually perform together; that for brevity they were commonly called as Holy Trinity College Grand Chorale and Dance Company.

The nature of the said performing groups as well as their relation with the Memorandum of Agreement under consideration, is briefly described by Jearold Loyola.

In fine, the school administration of the Holy Trinity College has control and supervision of the Grand Chorale and Dance Company particularly in the selection and hiring of its trainers but as to their termination as well. A fortiori, Jearold Loyola and Errol Gallespen were formally severed per April 30, 2001 Letter of Sr. Estrella Tangan. This clearly shows that indeed, the Holy Trinity College Grand Chorale and Dance Company were both under the power of the school administration. Moreover, it is also clear that the costumes were likewise financed by the school administration

With the foregoing, the [c]ourt is convinced that the indeed the Holy Trinity College Grand Chorale and Dance Company do not have a life of its own and merely derive its creation, existence and continued operation or performance at the hands of the school administration. Without the decision of the school administration, the said Chorale and Dance Company is completely inoperative.

Sr. Aurelia Navarro (Sr. Navarro) claimed that she was appointed as Acting President on 21 March 2001. The trial court correctly observed some inconsistencies in the statements of Sr. Tangan and Sr. Navarro, to wit:

This [c]ourt also finds it confusing as well, when and if at all Sister Teresita Medalle, ceased to be the President of the Holy Trinity College. The own testimonial and documentary evidence of the [respondent] Holy Trinity College is seemingly conflicting and more so that the defense is conflicting. It was admitted, though by both parties that the thumb mark in the Memorandum of Agreement dated April 24, 2001, was that of Sister Teresita Medalle during which period Sister Aurelia Navarro so testified that Sister Teresita Medalle was the President per appointment dated March 27, 2001 issued by Sr. Ma. Aurora R. Villanueva, Prioress General of Congregation of St. Catherine of Siena (Exhibit 1). She knows this because she was the Secretary attesting to the said appointment and considering that she was still a member of the Board of Trustees during that date and until the year 2003.

The said appointment letter states, thus:

I direct you to accept the office of President of the Holy Trinity College and to full your duties with love and diligence for the good of the congregation and for the welfare of our Holy Mother Church.
It did not appear though that Sister Estrella Tangan accepted (as required) the said appointment. No evidence was on this matter was presented.

On the other hand, the April 23, 2001 Letter of Estrella Tangan (Exhibit G) herself to Jearold Loyola and Errol Gallespen, was clear to say that, it was not Sister Estrella Tangan who succeeded as the President or acted as President but Sister Lina Tuyac, O.P.

Sr. Medalle, as President of Holy Trinity, is clothed with sufficient authority to enter into a loan agreement. As held by the trial court, the Holy Trinity College's Board of Trustees never contested the standing of the Dance and Chorale Group and had in fact lent its support in the form of sponsoring unifonns or freely allowed the school premises to be used by the group for their practice sessions.
Assuming arguendo that Sr. Medalle was not authorized by the Holy Trinity College Board, the doctrine of apparent authority applies in this case.

The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.25

The existence of apparent authority may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.26

In this case, Sr. Medalle formed and organized the Group. She had been giving financial support to the Group, in her capacity as President of Holy Trinity College. Sr. Navarro admitted that the Board of Trustees never questioned the existence and activities of the Group. Thus, any agreement or contract entered into by Sr. Medalle as President of Holy Trinity College relating to the Group bears the consent and approval of respondent. It is through these dynamics that we cannot fault petitioner for relying on Sr. Medalle's authority to transact with petitioner.

Finding that Sr. Medalle possessed full mental faculty in affixing her thumbmark in the MOA and that respondent is hereby bound by her actions, we reverse the ruling of the Court of Appeals.

- LYLITH B. FAUSTO, JONATHAN FAUSTO, RICO ALVIA, ARSENIA TOCLOY, LOURDES ADOLFO and ANECITA MANCITA, Petitioners, - versus - MULTI AGRI-FOREST AND COMMUNITY DEVELOPMENT COOPERATIVE (formerly MAF CAMARINES SUR EMPLOYEES COOPERATIVE, INC.), Respondent. (G.R. No. 213939, THIRD DIVISION, October 12, 2016, REYES, J.)

LYLITH B. FAUSTO, JONATHAN FAUSTO, RICO ALVIA, ARSENIA TOCLOY, LOURDES ADOLFO and ANECITA MANCITA*, Petitioners –versus-* MULTI AGRI-FOREST AND COMMUNITY DEVELOPMENT COOPERATIVE (formerly MAF CAMARINES SUR EMPLOYEES COOPERATIVE, INC.), *Respondent*.

G.R. No. 213939, THIRD DIVISION, October 12, 2016, REYES., J.:

FACTS

Multi Agri-Forest and Community Development Cooperative (respondent) is a registered credit cooperative, where petitioners are active members. Petitioners obtained several loans from the respondent. However, they failed to pay their loans despite repeated demands. Thus, the respondent, through its acting manager Nacario, filed 5 separate complaints for collection of sum of money before the MTCC of Naga City against petitioners.

In defense, petitioners filed a motion to dismiss by way of demurrer to evidence on the ground of lack of authority of Nacario to file the complaints and to sign the verification against forum shopping. To counter the argument, respondent argued that there was a subsequent board resolution confirming the authority of Nacario to file the complaints on behalf of the respondent.

MTCC denied the petitioners' demurrer to evidence for lack of merit, because of their failure to raise the supposed lack of authority in their answer; hence, the said defense was deemed waived. It ruled that petitioners are liable for the payment of loans.

On appeal, the RTC affirmed the ruling of MTCC. Then, the CA affirmed the decision of the RTC.

ISSUE

Whether Nacario has authority to file the complaints. (YES)

RULING

The Respondent's Board of Directors ratified the acts of Nacario. As a rule, both the Corporation Code and the Cooperative Code recognize the authority of the board of directors, through a duly-issued board resolution, to act and represent the corporation or the cooperative, as the case may be, in the conduct of official business.

Based on jurisprudence, the following officials or employees of the company can sign the verification and certification without the need of a board resolution: 1. Chairperson of the BOD; 2. President; 3. The general Manager or Acting General manager; 4. Personnel Officer; and 5. An employment specialist in a labor case.

Further, the lack of authority of a corporate officer to undertake an action on behalf of the corporation or cooperative may be cured by ratification through the subsequent issuance of a board resolution, recognizing the validity of the action or the authority of the concerned officer.

Here, the respondent expressly recognized the authority of Nacario to file the complaints.

- GABRIEL YAP, SR. duly represented by GILBERT YAP and also in his personal capacity, GABRIEL YAP, JR., and HYMAN YAP, vs. LETECIA SIAO, L YNEL SIAO, JANELYN SIAO, ELEANOR FAYE SIAO, SHELETT SIAO and HONEYLET SIAO (G.R. No. 212493)
- CEBU SOUTH MEMORIAL GARDEN, INC. vs. LETECIA SIAO, L YNEL SIAO, JANELYN SIAO, ELEANOR FAYE SIAO, SHELETT SIAO and HONEYLET SIAO (G.R. No. 212504, June 1, 2016, PEREZ, J.)

GABRIEL YAP, SR. DULY REPRESENTED BY GILBERT YAP AND ALSO IN HIS PERSONAL CAPACITY, GABRIEL YAP, JR., AND HYMAN YAP, *Petitioners –versus-* LETECIA SIAO, LYNEL SIAO, JANELYN SIAO, ELEANOR FAYE SIAO, SHELETT SIAO AND HONEYLET SIAO, *Respondents*.
G.R. No. 212493, THIRD DIVISION, June 1, 2016, PEREZ., J.:

In Fuji Television Network v. Espiritu, we highlighted two rules relative to certification against forum-shopping:
4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

Clearly, a defect in the certification is allowed on the ground of substantial compliance as in this case. Applying the above-mentioned rule, the signatures of petitioners Gabriel Yap, Jr. and Hyman Yap are not indispensable for the validity of the certification. These petitioners indeed share a common cause of action with Gilbert Yap in that they are impleaded as officers and directors of Cebu South Memorial Garden, the very same corporation represented by Gilbert Yap.

FACTS

Respondent Letecia Siao's husband Sergio Siao was indebted to petitioner Gabriel Yap, Sr. Petitioners claim that the titles to the subject parcels of land were in the possession of Gabriel Yap, Sr. as collateral for the loan. In consideration of condoning the loan, Gabriel Yap, Sr. returned the titles to Letecia Siao on the condition that the parcels of land covered by the titles would be developed into memorial lots.

Petitioners claimed that respondents refused to transfer the ownership of the three parcels of land to Cebu South Memorial Garden, Inc., causing them to be exposed to numerous lawsuits from the buyers of the burial plots.

Respondents argued that Letecia Siao was coerced to sign the Certificate of Agreement, rendering it null and void. A panel of commissioners was appointment to determine the financial standing of petitioner corporation and the actual money received by Letecia Siao.

During the pendency of the case before the commissioners, respondents filed a Motion for Payment of Monthly Support for Leticia Siao's family and herself. Respondents relied on the agreement made by the parties during the preliminary conference to abide by the terms of the Certificate of Agreement. The RTC granted the motion for monthly support and ordered Gabriel Yap, Sr. to pay immediately Letecia Siao the amount of P1,300,000.00. Resultantly, petitioners filed a Motion for Summary Judgment on 24 May 2002 alleging that respondents had abandoned their defense of the nullity of the Certificate of Agreement when they agreed to implement its provisions.

Judge Generosa G. Labra of RTC of Cebu City issued an Order denying the motion and holding that there were no existing admissions or admitted facts by respondents to be considered. Petitioners filed a Motion for Reconsideration. Petitioners elevated the matter to the Court of Appeals.

The Court of Appeals through Associate Justice Eugenio S. Labitoria, reversed the trial court's decision and ordered its judge to render summary judgment in favor of petitioners.
Respondents sought for reconsideration but it was denied by the appellate court. Respondents did not file an appeal before the Supreme Court within the reglementary period. Thus, the Decision became final and executory on 7 June 2004 and the same had been recorded in the Book of Entries of Judgment.

In compliance with the Order that had become final, RTC of Cebu City Judge Meinrado P. Paredes rendered a Summary Judgment,

The motion for reconsideration filed by respondents was denied. Once again, respondents filed an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Summary Judgment rendered by the RTC.

On 9 October 2013, the Court of Appeals set aside the Summary Judgment on a technicality. The appellate court found that the certification against forum-shopping appended to the complaint is defective because there was no board resolution and special power of attorney vesting upon Gilbert Yap the authority to sign the certification on behalf of petitioner corporation and individual petitioners.

ISSUE

Whether the certificate against forum shopping is defective. (NO)

RULING

In the leading case of Cagayan Valley Drug Corporation v. Commission on Internal Revenue, the Court, in summarizing numerous jurisprudence, rendered a definitive rule that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. The rationale behind the rule is that these officers are "in a position to verify the truthfulness and correctness of the allegations in the petition."

In Ateneo de Naga University v. Manalo, we held that the lone signature of the University President was sufficient to fulfill the verification requirement, because such officer had sufficient knowledge to swear to the truth of the allegations in the petition.

In People's Aircargo and Warehousing Co., Inc. v. CA, we held that in the absence of a charter or by-law provision to the contrary, the president of a corporation 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. Moreover, even if a certain contract or undertaking is outside the usual powers of the president, the corporation's ratilication of the contract or undertaking and the acceptance of benefits therefrom make the corporate president's actions binding on the corporation.

Bolstering our conclusion that the certification of non-forum shopping is valid is the subsequent appending of the board resolution to petitioners' motion for reconsideration. The Board Resolution reads:

BOARD RESOLUTION NO. 01
Series of 2013

WHEREAS, the corporation is presently facing a Civil Case entitled Cebu South Memorial Garden, Inc. versus Letecia Siao, Lynel Siao, Janelyn Siao, Eleanor Faye Siao, Shelett Siao and Honeylet Siao, and docketed as Civil Case No. CEB-23707 before the Regional Trial Court of Ccbu City, Branch 13, and is mostly like to [raise] to the Court of Appeals and the Supreme Court by our corporation or by the opposing party depending on the outcome of the said case.

WHEREAS, the corporation needs to appoint its authorized representative who will be vested with the authority to sign the Verification and Certificate of Forum Shopping for any and all pleadings to be filed before the Court of Appeals and the Supreme Court as the need of the case requires.

WHEREAS, the corporation also needs to ratify the action taken by the president of the corporation in the person of Gilbert Yap who signed the Verification and the Certificate of Non-Forum Shopping in the Complaint filed by this corporation before the Regional Trial Court of Cebu City last April 27, 1999 and docketed as [Civil Case No. CEB-23707].

WHEREFORE, it is hereby resolved that:

1. The action of the president Gilbert Yap in signing the Verification and Certificate of Non-forum Shopping in [Civil Case No. CEB-23707] filed before the Regional Trial Court of Cebu City on April 27, 1999 is hereby ratified/affirmed by this Board with all legal effects and consequences.

2. The corporate president Gilbert Yap is given full authority to sign the Verification and Certificate on Non-forum Shopping for all pleadings to be filed with the Court of Appeals and after with the Supreme Court of the Philippines.

The Board of Directors of Cebu South Memorial Garden, through a Board Resolution, not only authorized the President of the corporation to sign the Certificate of Forum-Shopping but it ratified the action taken by Gilbert Yap in signing the forum-shopping certificate.

In Fuji Television Network v. Espiritu, we highlighted two rules relative to certification against forum-shopping:

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

Clearly, a defect in the certification is allowed on the ground of substantial compliance as in this case. Applying the above-mentioned rule, the signatures of petitioners Gabriel Yap, Jr. and Hyman Yap are not indispensable for the validity of the certification. These petitioners indeed share a common cause of action with Gilbert Yap in that they are impleaded as officers and directors of Cebu South Memorial Garden, the very same corporation represented by Gilbert Yap.

At any rate, any objection as to compliance with the requirement of verification in the complaint should have been raised in the proceedings below, and not in the appellate court for the first time.

Considering that this case has dragged on for 15 years with no concrete solution in sight, we shall proceed to discuss the merits.

We reiterate the ruling penned by Justice Labitoria of the Court of Appeals in CA-G.R. SP No. 73850[31] directing the trial court to render a summary judgment. The issues and arguments posed by respondents have already been passed upon and resolved by the Court of Appeals. By appealing the summary judgment, respondents are in effect asking the Court of Appeals to revisit the same issues. We cannot allow this under the principle of the "law of the case."

The "law of the case" doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court to effect the ruling; the question settled by the appellate court becomes the law of the case at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court.

The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of having propositions rewritten once gravely ruled on solemn argument and handed down as the law of a given case.

In the Labitoria decision, the Court of Appeals directed the trial court to render a summary judgment on the ground that there was no longer any legal controversy regarding the Certificate of Agreement when respondents relied on the same agreement to ask for support. This ruling became the law of the case between the parties which cannot be disturbed. Respondents cannot raise this same issue in another petition.

- Ligaya Esguerra, et al. vs. Holcim Philippines, Inc., G.R. No. 182571, September 2, 2013

LIGAYA ESGUERRA, LOWELL ESGUERRA AND LIESELL ESGUERRA *Petitioners –versus-* HOLCIM PHILIPPINES, INC.*, Respondents*.
G.R. No. 182571, FIRST DIVISION, September 2, 2013, REYES., J.:

In Bank of the Philippine Islands v. Court of Appeals, the Court held that the application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. This Court may go beyond the strict application of the rules only on exceptional cases when there is truly substantial compliance with the rule.

In the case at bar, HOLCIM attached to its Petition for Certiorari before the CA a Secretary's Certificate authorizing Mr. Paul M. O'Callaghan (O'Callaghan), its Chief Operating Officer, to nominate, designate and appoint the corporation's authorized representative in court hearings and conferences and the signing of court pleadings.

FACTS

As a backgrounder and as stated in our Decision dated December 27, 2002 in G.R. No. 120004, therein respondent Esguerra filed on December 12, 1989 with the RTC, Malolos, Bulacan, Branch 16 an action to annul the Free Patent in the name of de Guzman. Esguerra claimed that he was the owner of Lot 3308-B, located at Matiktik, Norzagaray, Bulacan, covered by Transfer Certificate of Title No. T-1685-P (M) of the Registry of Deeds of Bulacan, with an approximate area of 47,000 square meters. Esguerra learned that the said parcel of land was being offered for sale by de Guzman to Hi-Cement Corporation (now named HOLCIM Philippines, Inc.). The former possessor of the land, Felisa Maningas, was issued Free Patent No. 575674 which was subsequently issued in the name of de Guzman over said parcel of land located at Gidgid, Norzagaray, Bulacan with an area of 20.5631 hectares and described in Psu-216349, covered by Original Certificate of Title (OCT) No. P-3876. Esguerra also demanded that the portion of his property, which has been encroached upon and included in de Guzman's Free Patent, be excluded. He later amended his complaint to implead Hi-Cement as a co-defendant since the latter was hauling marble from the subject land. He also prayed that Hi-Cement be ordered to desist from hauling marble, to account for the marble already hauled and to pay him.

The RTC dismissed Esguerra's complaint but on appeal, the CA reversed in the Decision and declared De Guzman's OCT No. P-3876 null and void insofar as the disputed area which is part of Lot 3308-B, covered by TCT No. 1685-p in the name of Esguerra, ordered defendant-appellee Hi-Cement Corporation to immediately cease and desist from quarrying or extracting marble from the disputed area, ordered defendant-appellee Hi-Cement Corporation to make an accounting of the compensation or royalty it has paid to defendant-appellee Iluminada de Guzman for marbles quarried from the disputed area of 38,451 square meters from the time of the filing of the amended complaint and ordered defendant-appellee Iluminada de Guzman to pay and turn over to Esguerra all such amounts that she has received from her co-defendant Hi-Cement Corporation as compensation or royalty for marbles extracted or quarried from the disputed area of 38,451 square meters beginning March 23, 1990.

In our Decision dated December 27, 2002 in G.R. No. 120004, the Court affirmed in toto the aforesaid CA's decision. After attaining finality, the case was remanded to the RTC for execution.

Thereafter, the heirs of Esguerra, herein petitioners, filed an Omnibus with the RTC, manifesting that the Court's decision in G.R. No. 120004 has yet to be executed, and thus prayed that Sheriff be directed to submit his Return on the execution of the judgment, that defendant Iluminada de Guzman and Hi-Cement (now Union Cement Corporation Matictic, Sapang Kawayn [sic], Norzagaray, Bulacan) be directed to appear before this Honorable Court and that the plaintiffs be granted other legal and equitable reliefs. RTC issued an order granting the same.

However, contrary to the Order dated December 1, 2004, de Guzman and HOLCIM were not examined. Rather, the petitioners presented Engineer Louie Balicanta who testified that upon an examination of the topographical maps covering the land of the deceased Esguerra, the estimated volume of limestone hauled or quarried therefrom covering the years 1990 to 2003 was 3,535,020.471 cubic meters. Then the petitioners filed their Formal Offer of Exhibits.

Later, the petitioners filed a Supplement to the Motion for Execution dated August 16, 2005 and a Motion for Alias Writ of Execution dated November 9, 2005. They claimed that the royalties due them amounted to ₱10.00 per metric ton. Thus, for the 9,187,257.67 metric tons of limestone which HOLCIM allegedly acquired, the petitioners should receive a total royalty of ₱91,872,576.72.19. On December 1, 2005, the RTC made a finding that the total volume of limestone which HOLCIM allegedly quarried from the subject land amounted to ₱91,872,576.72. It also ordered the issuance of an Alias Writ of Execution for the royalties which were purportedly due to the petitioners.

The petitioners filed an Urgent Motion for Clarification praying that the alias writ of execution be clarified for the purpose of directing [de Guzman] and/or Hi-Cement Corporation and/or HOLCIM to pay the petitioners the amount of ₱91,872,576.72. Subsequently, an alias writ of execution and notices of garnishment on several banks, garnishing all amounts that may have been deposited or owned by HOLCIM, were issued on December 20, 2005 and December 21, 2005 respectively.

HOLCIM filed a motion for reconsideration. It alleged that it did not owe any amount of royalty to the petitioners for the extracted limestone from the subject land. HOLCIM averred that it had actually entered into an Agreement with the petitioners governing their respective rights and obligations in relation to the limestone allegedly extracted from the land in question. HOLCIM further asserted that it had paid advance royalty to the petitioners from year 1993, in an aggregate sum of ₱694,184.22, an amount more than the ₱218,693.10 which the petitioners were entitled under the Agreement.

On January 13, 2006, the petitioners filed its Opposition to the Motion for Reconsideration dated January 7, 2006, claiming that the Motion for Reconsideration is barred by the omnibus motion rule because HOLCIM failed to question the petitioners' motion for execution of this Court's decision in G.R. No. 120004. The petitioners also averred that HOLCIM is barred by estoppel to question the execution of the decision based on the Agreement, because said Agreement is in contravention with the trial court's previous orders which required HOLCIM to deposit to the clerk of court the royalties due the deceased Esguerra. The petitioners also argued that the Agreement is a way to evade the trial court's orders and has been procured by taking advantage of the petitioners' financial distress after Esguerra died.

HOLCIM filed a Manifestation and Motion (for Ocular Inspection).31 It asked the court to conduct an ocular inspection, advancing the argument that HOLCIM did not extract limestone from any portion of the 47,000-sq m property which Esguerra owned; and that the pictures, which the petitioners presented to prove that HOLCIM has been extracting limestone from the subject land until year 2005, were actually photographs of areas outside the contested land.

RTC denied HOLCIM's motion for reconsideration and motion for ocular inspection. It held that the petitioners proved their entitlement to the royalties totaling to ₱91,872,576.72. The RTC also blamed HOLCIM for not presenting its own witnesses and evidence. It further stated that to grant the motions for reconsideration and ocular inspection is to reopen the case despite the fact that the trial court has no more power to do so since the execution of this Court's decision in G.R. No. 120004 is now a matter of right on the petitioners' part.

HOLCIM filed a Petition for Certiorari (with Urgent Applications for Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA. On June 30, 2006, the petitioners filed their Comment on [the] "Petition for Certiorari" and Opposition, to which HOLCIM filed a Reply35 on July 25, 2006. On August 31, 2007, the CA promulgated the now assailed decision finding merit in HOLCIM's petition. The MR was denied, thus, the petitioner filed this petition for review under Rule 45 of the Rules of Court. Petitioners claim that HOLCIM's petition for certiorari in the CA failed to comply with the rules on Verification and Certification of Non-Forum Shopping because the latter did not secure and/or attach a certified true copy of a board resolution authorizing any of its officers to file said petition.51 Thus, the CA should have dismissed outright HOLCIM's petition before it.

ISSUE

Whether or not the petition for certiorari filed by HOLCIM before the CA complied with the rules on Verification and Certification of Non-Forum Shopping.

RULING

The general rule is that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course.

In Bank of the Philippine Islands v. Court of Appeals, the Court held that the application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. This Court may go beyond the strict application of the rules only on exceptional cases when there is truly substantial compliance with the rule.

In the case at bar, HOLCIM attached to its Petition for Certiorari before the CA a Secretary's Certificate authorizing Mr. Paul M. O'Callaghan (O'Callaghan), its Chief Operating Officer, to nominate, designate and appoint the corporation's authorized representative in court hearings and conferences and the signing of court pleadings. It also attached the Special Power of Attorney dated June 9, 2006, signed by O'Callaghan, appointing Sycip Salazar Hernandez & Gatmaitan and/or any of its lawyers to represent HOLCIM; and consequently, the Verification and Certification of Non Forum Shopping signed by the authorized representative.

To be sure, HOLCIM, in its Reply filed in the CA, attached another Secretary's Certificate, designating and confirming O'Callaghan's power to authorize Sycip Salazar Hernandez & Gatmaitan and/or any of its lawyers to file for and on behalf of HOLCIM, the pertinent civil and/or criminal actions in Civil Case No. 725-M-89 pending before the RTC, including any petition to be filed with the CA and/or the Supreme Court in connection with the Orders dated December 1, 2005, December 20, 2005 and June 7, 2006.

The foregoing convinces the Court that the CA did not err in admitting HOLCIM's petition before it. HOLCIM attached all the necessary documents for the filing of a petition for certiorari before the CA. Indeed, there was no complete failure to attach a Certificate of Non-Forum Shopping. In fact, there was such a certificate. While the board resolution may not have been attached, HOLCIM complied just the same when it attached the Secretary's Certificate dated July 17, 2006, thus proving that O'Callaghan had the authority from the board of directors to appoint the counsel to represent them in Civil Case No. 725-M-89. The Court recognizes the compliance made by HOLCIM in good faith since after the petitioners pointed out the said defect, HOLCIM submitted the Secretary's Certificate dated July 17, 2006, confirming the earlier Secretary's Certificate dated June 9, 2006.

For the Court, the ruling in General Milling Corporation v. NLRC is applicable where the Court rendered a decision in favor of the petitioner despite its failure to attach the Certification of Non-Forum Shopping. The Court held that there was substantial compliance when it eventually submitted the required documents. Substantial justice dictates that technical and procedural rules must give way because a deviation from the rigid enforcement of the rules will better serve the ends of justice. The Court ratiocinated: The rules of procedure are intended to promote, rather than frustrate, the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it, nevertheless, must not be met at the expense of substantial justice. Technical and procedural rules are intended to help secure, not suppress, the cause of justice and a deviation from the rigid enforcement of the rules may be allowed to attain that prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.60 (Citation omitted) HOLCIM's filing in the CA of a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is proper.

- Mid Pasig Land and Development Corporation vs. Tablante, G.R. No. 162924, February 4, 2010; PNCC Skyway Traffic Management and Security Division Workers Organization vs. PNCC Skyway Corporation, GR No. 171231, February 17, 2010

MID-PASIG LAND DEVELOPMENT CORPORATION, *Petitioner –versus-* MARIO TABLANTE, doing business under the name and style ECRM ENTERPRISES; ROCKLAND CONSTRUCTION COMPANY; LAURIE LITAM; and MC HOME DEPOT, INC, *Respondents*.
G.R. No. 162924, THIRD DIVISION, February 4, 2010, NACHURA., J.:

In a slew of cases, however, the Supreme Court have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. We have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

It is thus clear that the failure to attach the Secretary's Certificate, attesting to General Manager Antonio Merelos's authority to sign the Verification and Certification of Non-Forum Shopping, should not be considered fatal to the filing of the petition. Nonetheless, the requisite board resolution was subsequently submitted to the CA, together with the pertinent documents. Considering that petitioner substantially complied with the rules, the dismissal of the petition was, therefore, unwarranted.

FACTS

Petitioner is the registered owner of a piece of land situated in Pasig City, bounded by Meralco Avenue, Ortigas Avenue, Doña Julia Vargas Avenue, and Valle Verde Subdivision. Petitioner, represented by its Chairman and President, Ronaldo Salonga, and ECRM Enterprises, represented by its proprietor, Mario P. Tablante, executed an agreement whereby the former would lease to the latter an area, approximately one (1) hectare, of the aforesaid land, for a period of three (3) months, to be used as the staging area for the Home and Garden Exhibition Fair.

On March 6, 2000, the date of the expiration of the Lease Agreement, Tablante assigned all his rights and interests under the said agreement to respondents Litam and/or Rockland Construction Company, Inc. (Rockland) under a Deed of Assignment of the same date. Petitioner eventually learned that respondent Tablante had executed a Contract of Lease with respondent MC Home Depot, Inc. over the same parcel of land. Thereafter, respondent MC Home Depot, Inc. constructed improvements on the land and subdivided the area into fifty-nine (59) commercial stalls, which it leased to various entities. Upon the expiration of the lease, petitioner demanded that respondents vacate the land.

Consequently, petitioner filed for unlawful detainer against herein respondents.

Meantime, the MTC rendered judgment in the unlawful detainer case. In the main, the trial court ruled that the issue did not involve material or physical possession, but rather, whether or not ECRM had the right to exercise an option to renew its lease contract. The MTC stated that, considering that this issue was incapable of pecuniary estimation, jurisdiction over the case was vested in the RTC. The trial court, dismissed for lack of merit.

On appeal, RTC affirmed in toto. A petition for certiorari was consequently filed with the CA. In the assailed resolution CA resolved to dismiss the petition on the following grounds:

1) The verification and certification against non-forum shopping was signed by a certain Antonio A. Merelos as General Manager of the petitioner-corporation without attaching therewith a Corporate Secretary's certificate or board resolution that he is authorized to sign for and on behalf of the petitioner; and

2) Lack of pertinent and necessary documents which are material portions of the record as required by Section 2, Rule 42 of the Rules of Civil Procedure.

ISSUES

Whether or not Court of Appeals committed reversible error in holding that the verification and certification against forum-shopping in the petition failed to attach the board resolution showing the authority of the affiant. (YES)

RULING

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation.

In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. We have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition.

It is thus clear that the failure to attach the Secretary's Certificate, attesting to General Manager Antonio Merelos's authority to sign the Verification and Certification of Non-Forum Shopping, should not be considered fatal to the filing of the petition. Nonetheless, the requisite board resolution was subsequently submitted to the CA, together with the pertinent documents. Considering that petitioner substantially complied with the rules, the dismissal of the petition was, therefore, unwarranted. Time and again, we have emphasized that dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness. The rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice. For this reason, courts must proceed with caution so as not to deprive a party of statutory appeal.

- Spouses Afulugencia vs. Metropolitan Bank and Trust Co. G.R. No. 185145, February 05, 2014

SPOUSES VICENTE AFULUGENCIA and LETICIA AFULUGENCIA, *Petitioners –versus-* METROPOLITAN BANK & TRUST CO. and EMMANUEL L. ORTEGA, Clerk of Court, Regional Trial Court and Ex-Officio Sheriff, Province of Bulacan,, *Respondents*.
G.R. No. 185145, SECOND DIVISION, February 5, 2014, DEL CASTILLO, J.:

As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25 of the Rules, which provides –

Sec. 6. Effect of failure to serve written interrogatories.
Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own.

FACTS

Petitioners, spouses Vicente and Leticia Afulugencia, filed a Complaint for nullification of mortgage, foreclosure, auction sale, certificate of sale and other documents, with damages, against respondents Metropolitan Bank & Trust Co. (Metrobank) and Emmanuel L. Ortega (Ortega) before the Regional Trial Court (RTC) of Malolos City, where it was docketed as Civil Case No. 336-M-2004 and assigned to Branch 7.

Metrobank is a domestic banking corporation existing under Philippine laws, while Ortega is the Clerk of Court and Ex-Officio Sheriff of the Malolos RTC.

After the filing of the parties' pleadings and with the conclusion of pre-trial, petitioners filed a Motion for Issuance of Subpoena Duces Tecum Ad Testificandum to require Metrobank's officers to appear and testify as the petitioners' initial witnesses during the August 31, 2006 hearing for the presentation of their evidence-in-chief, and to bring the documents relative to their loan with Metrobank, as well as those covering the extrajudicial foreclosure and sale of petitioners' 200-square meter land in Meycauayan, Bulacan.

Metrobank filed an Opposition arguing that for lack of a proper notice of hearing, the Motion must be denied; that being a litigated motion, the failure of petitioners to set a date and time for the hearing renders the Motion ineffective and pro forma; that pursuant to Sections 1 and 611 of Rule 25 of the Rules, Metrobank's officers – who are considered adverse parties – may not be compelled to appear and testify in court for the petitioners since they were not initially served with written interrogatories; that petitioners have not shown the materiality and relevance of the documents sought to be produced in court; and that petitioners were merely fishing for evidence.

Petitioners submitted a Reply to Metrobank's Opposition, stating that the lack of a proper notice of hearing was cured by the filing of Metrobank's Opposition; that applying the principle of liberality, the defect may be ignored; that leave of court is not necessary for the taking of Metrobank's officers' depositions; that for their case, the issuance of a subpoena is not unreasonable and oppressive, but instead favorable to Metrobank, since it will present the testimony of these officers just the same during the presentation of its own evidence; that the documents sought to be produced are relevant and will prove whether petitioners have paid their obligations to Metrobank in full, and will settle the issue relative to the validity or invalidity of the foreclosure proceedings; and that the Rules do not prohibit a party from presenting the adverse party as its own witness.

The trial court issued an Order denying petitioners' Motion for Issuance of Subpoena Duces Tecum Ad Testificandum. Upon appeal, the Court of Appeals affirmed the RTC ruling.

ISSUE

Whether the Court of Appeals committed error in holding that the petitioners must first serve written interrogatories to respondent bank's officers before they can be subpoenaed. (NO)

RULING

As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25 of the Rules, which provides –

Sec. 6. Effect of failure to serve written interrogatories.

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful to its case if it later opts to call the adverse party to the witness stand as its witness. Instead, the process could be treated as a fishing expedition or an attempt at delaying the proceedings; it produces no significant result that a prior written interrogatories might bring.

Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand.

Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. Using its own judgment and discretion, the court can hold its own in resolving a dispute, and need not bear witness to the parties perpetrating unfair court practices such as fishing for evidence, badgering, or altogether ruining their own cases. Ultimately, such unnecessary processes can only constitute a waste of the court's precious time, if not pointless entertainment.

In the present case, petitioners seek to call Metrobank's officers to the witness stand as their initial and main witnesses, and to present documents in Metrobank's possession as part of their principal documentary evidence. This is improper. Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own. This is tantamount to building their whole case from the evidence of their opponent. The burden of proof and evidence falls on petitioners, not on Metrobank; if petitioners cannot prove their claim using their own evidence, then the adverse party Metrobank may not be pressured to hang itself from its own defense.

It is true that under the Rules, a party may, for good cause shown and to prevent a failure of justice, be compelled to give testimony in court by the adverse party who has not served written interrogatories. But what petitioners seek goes against the very principles of justice and fair play; they would want that Metrobank provide the very evidence with which to prosecute and build their case from the start. This they may not be allowed to do.

Finally, the Court may not turn a blind eye to the possible consequences of such a move by petitioners. As one of their causes of action in their Complaint, petitioners claim that they were not furnished with specific documents relative to their loan agreement with Metrobank at the time they obtained the loan and while it was outstanding. If Metrobank were to willingly provide petitioners with these documents even before petitioners can present evidence to show that indeed they were never furnished the same, any inferences generated from this would certainly not be useful for Metrobank. One may be that by providing petitioners with these documents, Metrobank would be admitting that indeed, it did not furnish petitioners with these documents prior to the signing of the loan agreement, and while the loan was outstanding, in violation of the law.

2. Specific Powers, Theory of Specific Capacity

a. Power to Extend or Shorten Corporate Term

- Philippine National Bank vs. the Court of First Instance of Rizal, Pasig, et al., G.R. No. 63201, May 27, 1992

PHILIPPINE NATIONAL BANK, *Petitioner –versus-* THE COURT OF FIRST INSTANCE OF RIZAL, PASIG — BRANCH XXI, PRESIDED BY JUDGE GREGORIO G. PINEDA, CHUNG SIONG PEK @ BONIFACIO CHUNG SIONG PEK AND VICTORIA CHING GENG TY @ VICTORIA CHENG GENG TY, and THE REGISTER OF DEEDS OF RIZAL, PASIG, METRO MANILA AND/OR HIS DEPUTIES AND AGENTS, *Respondents*.

G.R. No. L-63201, FIRST DIVISION, May 27, 1992, MEDIALDEA, J.:

FACTS

Private respondents are the registered owners of three parcels of land in Pasig. Private respondents entered into a contract of lease with Philippine Blooming Mills (PBM for brevity) whereby the latter shall lease parcels of land as factory site. PBM was duly organized and incorporated on January 19, 1952 with a corporate term of 25 years. The leasehold right of PBM was duly annotated at the back of the certificates of title.

The contract of lease provides that the term of the lease is for 20 years beginning from the date of the contract and "is extendable for another term of 20 years at the option of the LESSEE should its term of existence be extended in accordance with law." The contract also states that the lessee agrees to "use the property as factory site and for that purpose to construct whatever buildings or improvements may be necessary or convenient and/or for any purpose it may deem fit; and before the termination of the lease to remove all such buildings and improvements."
In accordance with the contract, PBM introduced on the land certain buildings, machineries and other useful improvements. These constructions and improvements were registered with the Registry of Deeds of Rizal and annotated at the back of the respondents' certificates of title.

PBM executed in favor of petitioner PNB a deed of assignment, conveying and transferring all its rights and interests under the contract of lease. The assignment was for and in consideration of the loans granted by PNB to PBM. The deed of assignment was registered and annotated at the back of the private respondents' certificates of title.

On November 6, 1963 and December 23, 1963 respectively, PBM executed in favor of PNB a REM for a loan of P100,000 and an addendum to REM for another loan of P1,590,000 covering all the improvements constructed by PBM on the leased premises. These mortgages were registered and annotated at the back of respondents' certificates.

PBM filed a petition for registration of improvements in the titles of real property owned by private respondents.

Private respondents filed a motion in the same proceedings. The motion sought to cancel the annotations on respondents' certificates of title pertaining to the assignment by PBM to PNB of the former's leasehold rights, inclusion of improvements and the real estate mortgages made by PBM in favor of PNB, on the ground that the contract of lease had already expired by the failure of PBM and/or its assignee to exercise the option to renew the second 20-year lease commencing on March 1, 1974 and also by the failure of PBM to extend its corporate existence in accordance with law. The motion also states that since PBM failed to remove its improvements on the leased premises before the expiration of the contract of lease, such improvements shall accrue to respondents as owners of the land.

Respondent court issued an order directing the cancellation of the inscriptions on respondents' certificates of title. PNB filed a motion for reconsideration but was denied.

Private respondents filed a motion for entry of final judgment and issuance of a writ of execution of the order. The respondent court granted the motion and ordered the Register of Deeds to cancel the entries on respondents' certificates of title stated in the order of April 22, 1982.

PNB filed an omnibus motion to set aside the entry of judgment on the ground that it has no prior notice or knowledge of the order which denied its motion for reconsideration and that while there was a certification from the Bureau of Posts that three registry notices were sent to petitioner's counsel, there was no allegation or certification whatsoever that said notices were actually received by the addressee. The respondent court denied the omnibus motion.

Petitioner submits that the respondent court committed grave abuse of discretion in ordering the cancellation of entries in the certificates of title of respondents on the following grounds:

The motion for cancellation would amount to a collateral attack upon the due incorporation of PBM which cannot be done legally, 2) the contract of lease between PBM as petitioner's assignor and private respondents did not expire since PBM exercised its option to renew the lease with the acquiescence of private respondents, and 3) respondent court's ruling that ownership over the improvements passed from PBM to private respondents upon the expiration of lease violates the law and the contract between the parties.

Private respondent's motion with the respondent court was for the cancellation of the entries on their titles on the ground that the contract of lease executed between them and PBM had expired. This action is civil in nature and is within the jurisdiction of the respondent court. The circumstance that PBM as one of the contracting parties is a corporation whose corporate term had expired and which fact was made the basis for the termination of the lease is not sufficient to confer jurisdiction on the Securities and Exchange Commission over the case. Presidential Decree No. 902-A, as amended, enumerates the cases over which the SEC has exclusive jurisdiction and authority to resolve. The case at bar is not covered by the enumeration.

ISSUE

Whether or not the corporate life of PBM was extended by the continuance of the lease and subsequent registration of the title to the improvements under its name. (NO)

RULING

The respondent court did not act in excess of its jurisdiction in ordering the cancellation of the entries on respondent's certificates of title.

The contract of lease expressly provides that the term of the lease shall be 20 years from the execution of the contract but can be extended for another period of 20 years at the option of the lessee should the corporate term be extended in accordance with law. Clearly, the option of the lessee to extend the lease for another period of 20 years can be exercised only if the lessee as corporation renews or extends its corporate term. Contracts are to be interpreted according to their literal meaning. Thus, in the instant case, the initial term of the contract of lease which commenced on March 1, 1954 ended on March 1, 1974. PBM as lessee continued to occupy the leased premises beyond that date with the acquiescence and consent of the respondents as lessor. Records show however, that PBM as a corporation had a corporate life of only 25 years which ended on January 19, 1977. It should be noted however that PBM allowed its corporate term to expire without complying with the requirements provided by law for the extension of its corporate term of existence.

Section 11 of Corporation Code provides that a corporation shall exist for a period not exceeding 50 years from the date of incorporation unless sooner dissolved or unless said period is extended. Upon the expiration of the period fixed in the articles of incorporation in the absence of compliance with the legal requisites for the extension of the period, the corporation ceases to exist and is dissolved ipso facto. When the period of corporate life expires, the corporation ceases to be a body corporate for the purpose of continuing the business for which it was organized. But it shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its assets (Sec. 122, Corporation Code). There is no need for the institution of a proceeding for quo warranto to determine the time or date of the dissolution of a corporation because the period of corporate existence is provided in the articles of incorporation. When such period expires and without any extension having been made pursuant to law, the corporation is dissolved automatically insofar as the continuation of its business is concerned. The quo warranto proceeding under Rule 66 of the Rules of Court, as amended, may be instituted by the Solicitor General only for the involuntary dissolution of a corporation on the following grounds: a) when the corporation has offended against a provision of an Act for its creation or renewal; b) when it has forfeited its privileges and franchises by non-user; c) when it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges or franchises; d) when it has mis-used a right, privilege or franchise conferred upon it by law, or when it has exercised a right, privilege or franchise in contravention of law. Hence, there is no need for the SEC to make an involuntary dissolution of a corporation whose corporate term had ended because its articles of incorporation had in effect expired by its own limitation.

Considering the foregoing in relation to the contract of lease between the parties herein, when PBM's corporate life ended on January 19, 1977 and its 3-year period for winding up and liquidation expired on January 19, 1980, the option of extending the lease was likewise terminated on January 19, 1977 because PBM failed to renew or extend its corporate life in accordance with law. From then on, the respondents can exercise their right to terminate the lease pursuant to the stipulations in the contract.

b. Power to Increase or Decrease Capital Stock or Incur, Create, Increase Bonded Indebtedness

- Datu Tagoranao Benito vs. Securities & Exchange Commission, 123 SCRA 722 (1983)

DATU TAGORANAO BENITO, *Petitioner –versus-* SECURITIES AND EXCHANGE COMMISSION and JAMIATUL PHILIPPINE-AL ISLAMIA, INC., *Respondents*.
G.R. No. L-56655, FIRST DIVISION, July 25, 1983, RELOVA, J.:

However, the general rule is that pre-emptive right is recognized only with respect to new issue of shares, and not with respect to additional issues of originally authorized shares. This is on the theory that when a corporation at its inception offers its first shares, it is presumed to have offered all of those which it is authorized to issue. An original subscriber is deemed to have taken his shares knowing that they form a definite proportionate part of the whole number of authorized shares. When the shares left unsubscribed are later re-offered, he cannot therefore claim a dilution of interest.

FACTS

On February 6, 1959, the Articles of Incorporation of respondent Jamiatul Philippine-Al Islamia, Inc. (originally Kamilol Islam Institute, Inc.) were filed with the Securities and Exchange Commission (SEC) and were approved on December 14, 1962. The corporation had an authorized capital stock of P200,000.00 divided into 20,000 shares at a par value of P10.00 each. Of the authorized capital stock, 8,058 shares worth P80,580.00 were subscribed and fully paid for. Herein petitioner Datu Tagoranao Benito subscribed to 460 shares worth P4,600.00.

On October 28, 1975, the respondent corporation filed a certificate of increase of its capital stock from P200,000.00 to P1,000,000.00. It was shown in said certificate that P191,560.00 worth of shares were represented in the stockholders' meeting held on November 25, 1975 at which time the increase was approved. Thus, P110,980.00 worth of shares were subsequently issued by the corporation from the unissued portion of the authorized capital stock of P200,000.00. Of the increased capital stock of P1,000,000.00, P160,000.00 worth of shares were subscribed by Mrs. Fatima A. Ramos, Mrs. Tarhata A. Lucman and Mrs. Moki-in Alonto.

Petitioner Datu Tagoranao filed with respondent Securities and Exchange Commission a petition alleging that the additional issue (worth P110,980.00) of previously subscribed shares of the corporation was made in violation of his pre-emptive right to said additional issue and that the increase in the authorized capital stock of the corporation from P200,000.00 to P1,000,000.00 was illegal considering that the stockholders of record were not notified of the meeting wherein the proposed increase was in the agenda. Petitioner prayed that the additional issue of shares of previously authorized capital stock as well as the shares issued from the increase in capital stock of respondent corporation be cancelled; that the secretary of respondent corporation be ordered to register the 2,540 shares acquired by him (petitioner) from Domocao Alonto and Moki-in Alonto; and that the corporation be ordered to render an accounting of funds to the stockholders.

In their answer, respondents denied the material allegations of the petition and, by way of special defense, claimed that petitioner has no cause of action and that the stock certificates covering the shares alleged to have been sold to petitioner were only given to him as collateral for the loan of Domocao Alonto and Moki-in Alonto.

Hearing Officer Ledor E. Macalalag of the Securities and Exchange Commission, after due proceedings, rendered a decision which was affirmed by the Commission En Banc that the issuance by the corporation of its unissued shares was validly made and was not subject to the pre-emptive rights of stockholders.

ISSUE

Whether the issuance of the 11,098 shares is null and void. (NO)

RULING

As aptly stated by the Securities and Exchange Commission in its decision:
xxx xxx xxx

... the questioned issuance of the unsubscribed portion of the capital stock worth P110,980.00 is ' not invalid even if assuming that it was made without notice to the stockholders as claimed by petitioner.

The power to issue shares of stocks in a corporation is lodged in the board of directors and no stockholders' meeting is necessary to consider it because additional issuance of shares of stocks does not need approval of the stockholders. The by-laws of the corporation itself states that 'the Board of Trustees shall, in accordance with law, provide for the issue and transfer of shares of stock of the Institute and shall prescribe the form of the certificate of stock of the Institute. (Art. V, Sec. 1).

Petitioner bewails the fact that in view of the lack of notice to him of such subsequent issuance, he was not able to exercise his right of pre-emption over the unissued shares. However, the general rule is that pre-emptive right is recognized only with respect to new issue of shares, and not with respect to additional issues of originally authorized shares. This is on the theory that when a corporation at its inception offers its first shares, it is presumed to have offered all of those which it is authorized to issue. An original subscriber is deemed to have taken his shares knowing that they form a definite proportionate part of the whole number of authorized shares. When the shares left unsubscribed are later re-offered, he cannot therefore claim a dilution of interest. (Campos and Lopez-Campos Selected Notes and Cases on Corporation Law, p. 855, citing Yasik V. Wachtel 25 Del. Ch. 247,17A. 2d 308 (1941). (pp. 33-34, Rollo)

With respect to the claim that the increase in the authorized capital stock was without the consent, expressed or implied, of the stockholders, it was the finding of the Securities and Exchange Commission that a stockholders' meeting was held on November 25,1975, presided over by Mr. Ahmad Domocao Alonto, Chairman of the Board of Trustees and, among the many items taken up then were the change of name of the corporation from Kamilol Islam Institute Inc. to Jamiatul Philippine-Al Islamia, Inc., the increase of its capital stock from P200,000.00 to P1,000,000.00, and the increase of the number of its Board of Trustees from five to nine. "Despite the insistence of petitioner, this Commission is inclined to believe that there was a stockholders' meeting on November 25, 1975 which approved the increase. The petitioner had not sufficiently overcome the evidence of respondents that such meeting was in fact held. What petitioner successfully proved, however, was the fact that he was not notified of said meeting and that he never attended the same as he was out of the country at the time. The documentary evidence of petitioner conclusively proved that he was attending the Mecca pilgrimage when the meeting was held on November 25, 1975. (Exhs. 'Q', 'Q-14', 'R', 'S' and 'S-l'). While petitioner doubts the authenticity of the alleged minutes of the proceedings (Exh. '4'), the Commission notes with significance that said minutes contain numerous details of various items taken up therein that would negate any claim that it was not authentic. Another thing that petitioner was able to disprove was the allegation in the certificate of increase (Exh. 'E-l') that all stockholders who did not subscribe to the increase of capital stock have waived their pre-emptive right to do so. As far as the petitioner is concerned, he had not waived his pre-emptive right to subscribe as he could not have done so for the reason that he was not present at the meeting and had not executed a waiver, thereof. Not having waived such right and for reasons of equity, he may still be allowed to subscribe to the increased capital stock proportionate to his present shareholdings." (pp. 36-37, Rollo)

- Central Textile Mills, Inc. vs. National Wages and Productivity Commission, et al., G.R. No. 104102, August 7, 1996

CENTRAL TEXTILE MILLS, INC., *Petitioner –versus-* NATIONAL WAGES AND PRODUCTIVITY COMMISSION, REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-NATIONAL CAPITAL REGION, and UNITED CMC TEXTILE WORKERS UNION, *Respondents*.
G.R. No. 104102, SECOND DIVISION, August 7, 1996, ROMERO, J.:

If a certificate of increase has not yet been issued by the SEC, the subscribers to the unauthorized issuance are not to be deemed as stockholders possessed of such legal rights as the rights to vote and dividends.

In the case at hand, petitioner's capital held answerable for the additional wages would include funds it only holds in trust, which to reiterate may not be deemed par of its paid-up capital, the losses of which shall be the basis of the 25% referred to above. To include such funds in the paid-up capital would be prejudicial to the corporation as an employer considering that the records clearly show that it is entitled to exemption, even as the anomaly was brought about by an auditing error.

FACTS

On December 20, 1990, respondent Regional Tripartite Wages and Productivity Board-National Capital Region (the Board) issued Wage Order No. NCR-02 (WO No. NCR-02), which took effect on January 9, 1991. Said wage order mandated a P12.00 increase in the minimum daily wage of all employees and workers in the private sector in the NCR, but exempted from its application distressed employers whose capital has been impaired by at least twenty-five percent (25%) in the preceding year.

By virtue of these provisions, petitioner filed on April 11, 1991 its application for exemption from compliance with WO No. NCR-02 due to financial losses.

In an order dated October 22, 1991, the Board's Vice-Chairman, Ernesto Gorospe, disapproved petitioner's application for exemption after concluding from the documents submitted that petitioner sustained an impairment of only 22.41%.

On February 4, 1992, petitioner's motion for reconsideration was dismissed by the Board for lack of merit. The Board, except for Vice-Chairman Gorospe who took no part in resolving the said motion for reconsideration, opined that according to the audited financial statements submitted by petitioner to them, to the Securities and Exchange Commission and to the Bureau of Internal Revenue, petitioner had a total paid-up capital of P305,767,900.00 as of December 31, 1990, which amount should be the basis for determining the capital impairment of petitioner, instead of the authorized capital stock of P128,000,000.00 which it insists should be the basis of computation.

The Board also noted that petitioner did not file with the SEC the August 15, 1990 resolution of its Board of Directors, concurred in by its stockholders representing at least two-thirds of its outstanding capital stock, approving an increase in petitioner's authorized capital stock from P128,000,000.00 to P640,000,000.00. Neither did it file any petition to amend its Articles of Incorporation brought about by such increase in its capitalization.

Petitioner maintains in the instant action that its authorized capital stock, not its unauthorized paid-up capital, should be used in arriving at its capital impairment for 1990. Citing two SEC Opinions dated August 10, 1971, and July 28, 1978, interpreting Section 38 of the Corporation Code, it claims that "the capital stock of a corporation stand(s) increased or decreased only from and after approval and the issuance of the certificate of filing of increase of capital stock."

ISSUE

Whether petitioner's authorized capital stock, not its unauthorized paid-up capital, should be used in arriving at its capital impairment for 1990. (YES)

RULING

The guidelines on exemption specifically refer to paid-up capital, not authorized capital stock, as the basis of capital impairment for exemption from WO No. NCR-02. The records reveal, however, that petitioner included in its total paid-up capital payments on advance subscriptions, although the proposed increase in its capitalization had not yet been approved by, let alone presented for the approval of, the SEC. As observed by the Board in its order of February 4, 1992, "the aforementioned (r)esolution (of August 15, 1990) has not been filed by the corporation with the SEC, nor was a petition to amend its Articles of Incorporation by reason of the increase in its capitalization filed by the same."

It is undisputed that petitioner incurred a net loss of P68,844,222.49 in 1990, and its authorized capital stock as of that time stood at P128,000,000.00. On August 15, 1990, a Board resolution increasing the capital stock of the corporation was affirmed by the requisite number of stockholders. Although no petition to that effect was ever submitted to the SEC for its approval, petitioner already started receiving subscriptions and payments on the proposed increase, which it allegedly held conditionally, that is, pending approval of the same by the SEC.

In its Memorandum, however, petitioner admitted, without giving any reason thereof, that it indeed "received 'subscriptions' and 'payments' to the said proposed increase in capital stock, even in the absence of SEC approval of the increase as required by the Corporation Code." Thus, by the end of 1990, the corporation had a subscribed capital stock of P482,748,900.00 and, after deducting P176,981,000.00 in subscriptions receivables, a total paid-up capital of P305,767,900.00, P177,767,900.00 of this sum constituted the unauthorized increase in its subscribed capital stock, which are actually payments on future issues of shares.

These payments cannot as yet be deemed part of petitioner's paid-up capital, technically speaking, because its capital stock has not yet been legally increased. Thus, its authorized capital stock in the year when exemption from WO No. NCR-02 was sought stood at P128,000,000.00, which was impaired by losses of nearly 50%. Such payments constitute deposits on future subscriptions, money which the corporation will hold in trust for the subscribers until it files a petition to increase its capitalization and a certificate of filing of increase of capital stock is approved and issued by the SEC. As a trust fund, this money is still withdrawable by any of the subscribers at any time before the issuance of the corresponding shares of stock, unless there is a pre-subscription agreement to the contrary, which apparently is not present in the instant case. Consequently, if a certificate of increase has not yet been issued by the SEC, the subscribers to the unauthorized issuance are not to be deemed as stockholders possessed of such legal rights as the rights to vote and dividends.

The Court observes that the subject wage order exempts from its coverage employers whose capital has been impaired by at least 25% because if impairment is less than this percentage, the employer can still absorb the wage increase. In the case at hand, petitioner's capital held answerable for the additional wages would include funds it only holds in trust, which to reiterate may not be deemed par of its paid-up capital, the losses of which shall be the basis of the 25% referred to above. To include such funds in the paid-up capital would be prejudicial to the corporation as an employer considering that the records clearly show that it is entitled to exemption, even as the anomaly was brought about by an auditing error.

- Majority Stockholders of Ruby Industrial Corporation v. Miguel Lim, in his Personal Capacity as Stockholder of Ruby Industrial Corporation and Representing The Minority Stockholders of Ruby Industrial Corporation and The Management Committee of Ruby Industrial Corporation, G.R. No. 165887, June 6, 2011, J. Villarama, Jr.

MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, *Petitioner –versus-* MIGUEL LIM, in his personal capacity as Stockholder of Ruby Industrial Corporation and representing the MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION and the MANAGEMENT COMMITTEE OF RUBY INDUSTRIAL CORPORATION, *Respondent*.
G.R. No. 165887, THIRD DIVISION, June 6, 2011, VILLARAMA, JR., J.:

A stock corporation is expressly granted the power to issue or sell stocks. The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock do not need approval of the stockholders. What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

In this case, that the payment schedules as embodied in the said Revised plan which gives Benhar undue advantage over the other creditors goes against the very essence of rehabilitation, which requires that no creditor should be preferred over the other. One of the salient features of the Revised Benhar/Ruby Plan is to Call on unissued shares forP11.814 M and if minority will take up their pre-emptive rights and dilute minority shareholdings.

FACTS

Ruby Industrial Corporation (RUBY) is a domestic corporation engaged in glass manufacturing. Reeling from severe liquidity problems beginning in 1980, RUBY filed on December 13, 1983 a petition for suspension of payments with the Securities and Exchange Commission (SEC). On December 20, 1983, the SEC issued an order declaring RUBY under suspension of payments and enjoining the disposition of its properties pending hearing of the petition, except insofar as necessary in its ordinary operations, and making payments outside of the necessary or legitimate expenses of its business.

Subsequently, two (2) rehabilitation plans were submitted to the SEC: the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim (Lim).

Under the BENHAR/RUBY Plan, Benhar International, Inc. (BENHAR) -- a domestic corporation engaged in the importation and sale of vehicle spare parts which is wholly owned by the Yu family and headed by Henry Yu, who is also a director and majority stockholder of RUBY -- shall lend its ₱60 million credit line in China Bank to RUBY, payable within ten (10) years. Moreover, BENHAR shall purchase the credits of RUBY's creditors and mortgage RUBY's properties to obtain credit facilities for RUBY. Upon approval of the rehabilitation plan, BENHAR shall control and manage RUBY's operations. For its service, BENHAR shall receive a management fee equivalent to 7.5% of RUBY's net sales.

The BENHAR/RUBY Plan was opposed by 40% of the stockholders, including Lim, a minority shareholder of RUBY. ALFC, the biggest unsecured creditor of RUBY and chairman of the management committee, also objected to the plan as it would transfer RUBY's assets beyond the reach and to the prejudice of its unsecured creditors.

On the other hand, the Alternative Plan of RUBY's minority stockholders proposed to: (1) pay all RUBY's creditors without securing any bank loan; (2) run and operate RUBY without charging management fees; (3) buy-out the majority shares or sell their shares to the majority stockholders; (4) rehabilitate RUBY's two plants; and (5) secure a loan at 25% interest, as against the 28% interest charged in the loan under the BENHAR/RUBY Plan.

On October 28, 1988, the SEC Hearing Panel approved the BENHAR/RUBY Plan. The minority stockholders thru Lim appealed to the SEC En Banc which, in its November 15, 1988 Order, enjoined the implementation of the BENHAR/RUBY Plan. SEC En Banc granted the writ of preliminary injunction against the enforcement of the BENHAR/RUBY Plan. BENHAR, Henry Yu, RUBY and Yu Kim Giang questioned the issuance of the writ in their petition filed in the Court of Appeals (CA), docketed as CA-G.R. SP No. 16798. The CA denied their appeal. Upon elevation to this Court , we issued a minute resolution dated February 28, 1990 denying the petition and upholding the injunction against the implementation of the BENHAR/RUBY Plan.

Earlier, in 1990, after the SEC En Banc enjoined the implementation of BENHAR/RUBY Plan, RUBY filed with the SEC En Banc an ex parte petition to create a new management committee and to approve its revised rehabilitation plan (Revised BENHAR/RUBY Plan). Under the revised plan, BENHAR shall receive ₱34.068 million of the ₱60.437 Million credit facility to be extended to RUBY, as reimbursement for BENHAR's payment to some of RUBY's creditors. The SEC En Banc directed RUBY to submit its revised rehabilitation plan to its creditors for comment and approval while the petition for the creation of a new management committee was remanded for further proceedings to the SEC Hearing Panel. The Alternative Plan of RUBY's minority stockholders was also forwarded to the hearing panel for evaluation.

On April 26, 1991, over ninety percent (90%) of RUBY's creditors objected to the Revised BENHAR/RUBY Plan and the creation of a new management committee.

Notwithstanding the objections of 90% of RUBY's creditors and three members of the MANCOM, the SEC Hearing Panel approved on September 18, 1991 the Revised BENHAR/RUBY Plan and dissolved the existing management committee. It also created a new management committee and appointed BENHAR as one of its members.

The original management committee (MANCOM), Lim and ALFC appealed to the SEC En Banc which affirmed the approval of the Revised BENHAR/RUBY Plan and the creation of a new management committee on July 30, 1993. To ensure that the management of RUBY will not be controlled by any group, the SEC appointed SEC lawyers Ruben C. Ladia and Teresita R. Siao as additional members of the new management committee. Further, it declared that BENHAR's membership in the new management committee is subject to the condition that BENHAR will extend its credit facilities to RUBY without using the latter's assets as security or collateral.

Lim, ALFC and MANCOM moved for reconsideration while RUBY and BENHAR asked the SEC to reconsider the portion of its Order prohibiting BENHAR from utilizing RUBY's assets as collateral. On October 15, 1993, the SEC denied the motion of Lim, ALFC and the original management committee but granted RUBY and BENHAR's motion and allowed BENHAR to use RUBY's assets as collateral for loans, subject to the approval of the majority of all the members of the new management committee. Lim, ALFC and MANCOM appealed to the CA which by Decision set aside the SEC's approval of the Revised BENHAR/RUBY Plan and remanded the case to the SEC for further proceedings. The CA ruled that the revised plan circumvented its earlier decision (CA-G.R. SP No. 18310) nullifying the deeds of assignment executed by RUBY's creditors in favor of BENHAR. Since under the revised plan, BENHAR was to receive ₱34.068 Million of the ₱60.437 Million credit facility to be extended to RUBY, as settlement for its advance payment to RUBY's seven (7) secured creditors, such payments made by BENHAR under the void Deeds of Assignment, in effect were recognized as payable to BENHAR under the revised plan. The motion for reconsideration filed by BENHAR and RUBY was likewise denied by the CA.

Undaunted, RUBY and BENHAR filed a petition for review in this Court alleging that the CA gravely abused its discretion in substituting its judgment for that of the SEC, and in allowing Lim, ALFC and MANCOM to file separate petitions prepared by lawyers representing themselves as belonging to different firms. We sustained the CA's ruling that the Revised BENHAR/RUBY Plan contained provisions which circumvented its final decision nullifying the deeds of assignment of credits and mortgages executed by RUBY's creditors in favor of BENHAR, as well as this Court's Resolution affirming the said CA's decision.

After the finality of the above decision, the SEC set the case for further proceedings. On March 14, 2000, Bank of the Philippine Islands (BPI), one of RUBY's secured creditors, filed a Motion to Vacate Suspension Order on grounds that there is no existing management committee and that no decision has been rendered in the case for more than 16 years already, which is beyond the period mandated by Sec. 3-8 of the Rules of Procedure on Corporate Recovery. RUBY filed its opposition, asserting that the MANCOM never relinquished its status as the duly appointed management committee as it resisted the orders of the second and third management committees subsequently created, which have been nullified by the CA and later this Court. As to the applicability of the cited rule under the Rules on Corporate Recovery, RUBY pointed out that this case was filed long before the effectivity of said rules. It also pointed out that the undue delay in the approval of the rehabilitation plan being due to the numerous appeals taken by the minority stockholders and MANCOM to the CA and this Court, from the SEC approval of the BENHAR/RUBY Plan. Since there have already been steps taken to finally settle RUBY's obligations with its creditors, it was contended that the application of the mandatory period under the cited provision would cause prejudice and injustice to RUBY.

It appears that even earlier during the pendency of the appeals in the CA, BENHAR and RUBY have performed other acts in pursuance of the BENHAR/RUBY Plan approved by the SEC.

On September 1, 1996, Lim received a Notice of Stockholders' Meeting scheduled on September 3, 1996 signed by a certain Mr. Edgardo M. Magtalas, the "Designated Secretary" of RUBY and stating the matters to be taken up in said meeting, which include the extension of RUBY's corporate term for another twenty-five (25) years and election of Directors. At the scheduled stockholders' meeting of September 3, 1996, Lim together with other minority stockholders, appeared in order to put on record their objections on the validity of holding thereof and the matters to be taken therein.

Specifically, they questioned the percentage of stockholders present in the meeting which the majority claimed stood at 74.75% of the outstanding capital stock of RUBY.

The aforesaid stockholders meeting was the subject of the Motion to Cite For Contempt and Supplement to Motion to Cite For Contempt filed by Lim before the CA where their petitions for review were then pending. Lim argued that the majority stockholders claimed to have increased their shares to 74.75% by subscribing to the unissued shares of the authorized capital stock (ACS). Lim pointed out that such move of the majority was in implementation of the BENHAR/RUBY Plan which calls for capital infusion of ₱11.814 Million representing the unissued and unsubscribed portion of the present ACS of ₱23.7 Million, and the Revised BENHAR/RUBY Plan which proposed an additional subscription of ₱30 Million. Since the implementation of both majority plans have been enjoined by the SEC and CA, the calling of the special stockholders meeting by the majority stockholders clearly violated the said injunction orders.

The aforementioned capital infusion was taken up by RUBY's board of directors in a special meeting held on October 2, 1991 following the issuance by the SEC of its Order dated September 18, 1991 approving the Revised BENHAR/RUBY Plan and creating a new management committee to oversee its implementation. During the said meeting, the board asserted its authority and resolved to take over the management of RUBY's funds, properties and records and to demand an accounting from the MANCOM which was ordered dissolved by the SEC.

The resolution to extend RUBY's corporate term, which was to expire on January 2, 1997, was approved during the September 3, 1996 stockholders meeting, as recommended by the board of directors composed of Henry Yu (Chairman), James Yu, David Yukimteng, Harry L. Yu, Yu Kim Giang, Mary L. Yu and Vivian L. Yu. The board certified that said resolution was approved by stockholders representing two-thirds (2/3) of RUBY's outstanding capital stock. Per Certification dated August 31, 1995 issued by Yu Kim Giang as Executive Vice-President of RUBY, the majority stockholders own 74.75% of RUBY's outstanding capital stock as of October 27, 1991. The Amended Articles of Incorporation was filed with the SEC on September 24, 1996.

On March 17, 2000, Lim filed a Motion informing the SEC of acts being performed by BENHAR and RUBY through directors who were illegally elected, despite the pendency of the appeal before this Court questioning the SEC approval of the BENHAR/RUBY Plan and creation of a new management committee. Lim reiterated that before the matter of extension of corporate life can be passed upon by the stockholders, it is necessary to determine the percentage ownership of the outstanding shares of the corporation. The majority stockholders claimed that they have increased their shareholdings from 59.828% to 74.75% as a result of the illegal and invalid stockholders' meeting on September 3, 1996. The additional subscription of shares cannot be done as it implements the BENHAR/RUBY Plan against which an existing injunction is still effective based on the SEC Order dated January 6, 1989, and which was struck down under the final decision of this Court in G.R. Nos. 124185-87.

Hence, the implementation of the new percentage stockholdings of the majority stockholders and the calling of stockholders' meeting and the subsequent resolution approving the extension of corporate life of RUBY for another twenty-five (25) years, were all done in violation of the decisions of the CA and this Court, and without compliance with the legal requirements under the Corporation Code. There being no valid extension of corporate term, RUBY's corporate life had legally ceased. Consequently, Lim moved that the SEC: (1) declare as null and void the infusion of additional capital made by the majority stockholders and restore the capital structure of RUBY to its original structure prior to the time injunction was issued; and (2) declare as null and void the resolution of the majority stockholders extending the corporate life of RUBY for another twenty-five (25) years.

The MANCOM concurred with Lim and made a similar manifestation/comment regarding the irregular and invalid capital infusion and extension of RUBY's corporate term approved by stockholders representing only 60% of RUBY's outstanding capital stock. It further stated that the foregoing acts were perpetrated by the majority stockholders without even consulting the MANCOM, which technically stepped into the shoes of RUBY's board of directors. Since RUBY was still under a state of suspension of payment at the time the special stockholders' meeting was called, all corporate acts should have been made in consultation and close coordination with the MANCOM.

ISSUE

Whether the additional capital infusion was valid. (NO)

RULING

A stock corporation is expressly granted the power to issue or sell stocks. The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock do not need approval of the stockholders. What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code). But CA found, which the Court affirmed, that the payment schedules as embodied in the said Revised plan which gives Benhar undue advantage over the other creditors goes against the very essence of rehabilitation, which requires that no creditor should be preferred over the other. One of the salient features of the Revised Benhar/Ruby Plan is to Call on unissued shares forP11.814 M and if minority will take up their pre-emptive rights and dilute minority shareholdings.

With the nullification of the Revised BENHAR/RUBY Plan by both CA and SC on January 20, 1998, the legitimate concerns of the minority stockholders and MANCOM who objected to the capital infusion which resulted in the dilution of their shareholdings, the expiration of RUBY's corporate term and the pending incidents on the void deeds of assignment of credit – all these should have been duly considered and acted upon by the SEC when the case was remanded to it for further proceedings. With the final rejection of the courts of the Revised BENHAR/RUBY Plan, it was grave error for the SEC not to act decisively on the motions filed by the minority stockholders who have maintained that the issuance of additional shares did not help improve the situation of RUBY except to stifle the opposition coming from the MANCOM and minority stockholders by diluting the latter's shareholdings. Worse, the SEC ignored the evidence adduced by the minority stockholders indicating that the correct amount of subscription of additional shares was not paid by the majority stockholders and that SEC official records still reflect the 60%-40% percentage of ownership of RUBY.

The SEC remained indifferent to the reliefs sought by the minority stockholders, saying that the issue of the validity of the additional capital infusion was belatedly raised. Even assuming the October 2, 1991 board meeting indeed took place, the SEC did nothing to ascertain whether indeed, as the minority claimed: (1) the minority stockholders were not given notice as required and reasonable time to exercise their pre-emptive rights; and (2) the capital infusion was not for the purpose of rehabilitation but a mere ploy to divest the minority stockholders of their 40.172% shareholding and reduce it to a mere 25.25%.

Pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. The right may be restricted or denied under the articles of incorporation, and subject to certain exceptions and limitations. The stockholder must be given a reasonable time within which to exercise their preemptive rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it.

The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders. Thus, even if the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objectionable if the directors acted in breach of trust and their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest. In this case, the following relevant observations should have signaled greater circumspection on the part of the SEC -- upon the third and last remand to it pursuant to our January 20, 1998 decision -- to demand transparency and accountability from the majority stockholders, in view of the illegal assignments and objectionable features of the Revised BENHAR/RUBY Plan, as found by the CA and as affirmed by this Court:

There can be no gainsaying the well-established rule in corporate practice and procedure that the will of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws not proscribed by law. It is, however, equally true that other stockholders are afforded the right to intervene especially during critical periods in the life of a corporation like reorganization, or in this case, suspension of payments, more so, when the majority seek to impose their will and through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself, as well as the minority stockholders and the unsecured creditors.

c. Power to Deny Pre-Emptive Rights

d. Power to Sell or Dispose of Corporate Assets

- Rosita Peña vs. the Court of Appeals, Spouses Rising T. Yap and Catalina Yap, Pampanga Bus Co., Inc., Jesus Domingo, Joaquin Briones, Salvador Bernardez, Marcelino Enriquez and Edgardo A. Zabat, G.R. No. 91478, February 7, 1991

ROSITA PEÑA, *Petitioner –versus-* . THE COURT OF APPEALS, SPOUSES RISING T. YAP and CATALINA YAP, PAMPANGA BUS CO., INC., JESUS DOMINGO, JOAQUIN BRIONES, SALVADOR BERNARDEZ, MARCELINO ENRIQUEZ and EDGARDO A. ZABAT*, Respondents*.
G.R. No. 91478, FIRST DIVISION, February 7, 1991, GANCAYCO, J.:

FACTS

Pampanga Bus Co. or PAMBUSCO is the original owners of the subject lots. It mortgaged the same to the Development Bank of the Philippines (DBP) This mortgage was foreclosed. In the foreclosure sale, the said properties were awarded to Rosita Peña as highest bidder. A certificate of sale was issued in her favor by the sheriff. Thereafter, the certificate of sale was registered.

Later on, the board of directors of PAMBUSCO, through three (3) out of its five (5) directors, resolved to assign its right of redemption over the aforesaid lots and authorized one of its members, Atty. Joaquin Briones "to execute and sign a Deed of Assignment for and in behalf of PAMBUSCO in favor of any interested party . . ."

Consequently, Briones executed a Deed of Assignment of PAMBUSCO's redemption right over the subject lots in favor of Marcelino Enriquez. The latter then redeemed the said properties and a certificate of redemption was issued in his favour.
A day after the aforesaid certificate was issued, Enriquez executed a deed of absolute sale of the subject properties in favor of plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue.

However, Peña wrote the Sheriff notifying him that the redemption was not valid as it was made under a void deed of assignment. She then requested the recall of the said redemption and a restraint on any registration or transaction regarding the lots in question.

Plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue filed a complaint for recovery of possession against defendants Rosita Peña and Washington Distillery Thereafter, the defendants with prior leave of court filed a third-party complaint third-party defendants PAMBUSCO, Jesus Domingo, Joaquin Briones, Salvador Bernardez (as members of the Board of Directors of PAMBUSCO), Marcelino Enriquez, and Deputy Sheriff Edgardo Zabat of Pampanga. All these third-party defendants, however, were declared as in default for failure to file their answer, except Edgardo Zabat who did file his answer but failed to appear at the pre-trial. After trial, a decision was rendered by the court dismissing the complaint filed by the plaintiffs against the defendants and declaring as null and void the resolution of the Board of Directors of PAMBUSCO approved on November 19, 1974 assigning the PAMBUSCO's right of redemption concerning the parcels involved herein on appeal the decision is reversed. Defendant-appellee Peña is hereby ordered to vacate the lands in question and pay the plaintiffs-appellants the accrued rentals.

ISSUE

Whether or not the Court of Appeals erred in holding that the resolution of respondent, assigning its right of redemption is not void or at the very least legally defective. (YES)

RULING

The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect, written, into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.

Apparently, only three (3) out of five (5) members of the board of directors of respondent PAMBUSCO convened on November 19, 1974 by virtue of a prior notice of a special meeting. There was no quorum to validly transact business since, under Section 4 of the amended by-laws, at least four (4) members must be present to constitute a quorum in a special meeting of the board of directors of respondent PAMBUSCO.

Moreover, the records show that respondent PAMBUSCO ceased to operate as of November 15, 1949 as evidenced by a letter of the SEC to said corporation dated April 17, 1980.[13] Being a dormant corporation for several years, it was highly irregular, if not anomalous, for a group of three (3) individuals representing themselves to be the directors of respondent PAMBUSCO to pass a resolution disposing of the only remaining asset of the corporation in favor of a former corporate officer.

As a matter of fact, the three (3) alleged directors who attended the special meeting on November 19, 1974 were not listed as directors of respondent PAMBUSCO in the latest general information sheet of respondent PAMBUSCO filed with the SEC dated 18 March 1951.[14] Similarly, the latest list of stockholders of respondent PAMBUSCO on file with the SEC does not show that the said alleged directors were among the stockholders of respondent PAMBUSCO.

It is also undisputed that at the time of the passage of the questioned resolution, respondent PAMBUSCO was insolvent and its only remaining asset was its right of redemption over the subject properties. Since the disposition of said redemption right of respondent PAMBUSCO by virtue of the questioned resolution was not approved by the required number of stockholders under the law, the said resolution, as well as the subsequent assignment executed on March 8, 1975 assigning to respondent Enriquez the said right of redemption, should be struck down as null and void.

- Islamic Directorate of the Philippines, Manuel F. Perea and Securities & Exchange Commission,vs. Court of Appeals And Iglesia Ni Cristo, G.R. No. 117897, May 14, 1997

ISLAMIC DIRECTORATE OF THE PHILIPPINES, MANUEL F. PEREA and SECURITIES & EXCHANGE COMMISSION, *Petitioners –versus-* COURT OF APPEALS and IGLESIA NI CRISTO *Respondents*.

G.R. No. 117897, FIRST DIVISION, May 14, 1997, HERMOSISIMA, JR.,

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling squarely within the contemplation of the foregoing section
.

FACTS

Petitioner IDP-Tamano Group alleges that sometime in 1971, Islamic leaders of all Muslim major tribal groups in the Philippines headed by Dean Cesar Adib Majul organized and incorporated the ISLAMIC DIRECTORATE OF THE PHILIPPINES (IDP), the primary purpose of which is to establish an Islamic Center in Quezon City for the construction of a "Mosque (prayer place), Madrasah (Arabic School), and other religious infrastructures" so as to facilitate the effective practice of Islamic faith in the area.

Towards this end, that is, in the same year, the Libyan government donated money to the IDP to purchase land at Culiat, Tandang Sora, Quezon City, to be used as a Center for the Islamic populace.

The land, with an area of 49,652 square meters, was covered by two titles: Transfer Certificate of Title Nos. RT-26520 (176616) 3 and RT-26521 (170567), 4 both registered in the name of IDP.

According to the petitioner, in 1972, after the purchase of the land by the Libyan government in the name of IDP, Martial Law was declared by the late President Ferdinand Marcos. Most of the members of the 1971 Board of Trustees like Senators Mamintal Tamano, Salipada Pendatun, Ahmad Alonto, and Congressman Al-Rashid Lucman flew to the Middle East to escape political persecution.

Thereafter, two Muslim groups sprung, the Carpizo Group, headed by Engineer Farouk Carpizo, and the Abbas Group, led by Mrs. Zorayda Tamano and Atty. Firdaussi Abbas. Both groups claimed to be the legitimate IDP. Significantly, on October 3, 1986, the SEC, in a suit between these two contending groups, came out with a Decision in SEC Case No. 2687 declaring the election of both the Carpizo Group and the Abbas Group as IDP board members to be null and void.

Neither group, however, took the necessary steps prescribed by the SEC in its October 3, 1986 Decision, and, thus, no valid election of the members of the Board of Trustees of IDP was ever called. Although the Carpizo Group 10 attempted to submit a set of by-laws, the SEC found that, aside from Engineer Farouk Carpizo and Atty. Musib Buat, those who prepared and adopted the by-laws were not bona fide members of the IDP, thus rendering the adoption of the by-laws likewise null and void. On April 20, 1989, without having been properly elected as new members of the Board of Trustee of IDP, the Carpizo Group caused to be signed an alleged Board Resolution of the IDP, authorizing the sale of the subject two parcels of land to the private respondent.

Petitioner 1971 IDP Board of Trustees headed by former Senator Mamintal Tamano, or the Tamano Group, filed a petition before the SEC seeking to declare null and void the Deed of Absolute Sale signed by the Carpizo Group and the INC since the group of Engineer Carpizo was not the legitimate Board of Trustees of the IDP.

Meanwhile, private respondent INC, pursuant to the Deed of Absolute Sale executed in its favor, filed an action for Specific Performance with Damages against the vendor, Carpizo Group to compel said group to clear the property of squatters and deliver complete and full physical possession thereof to INC. Likewise, INC filed a motion in the same case to compel one Mrs. Leticia P. Ligon to produce and surrender to the Register of Deeds of Quezon City the owner's duplicate copy of TCT Nos. RT-26521 and RT-26520 covering the aforementioned two parcels of land, so that the sale in INC's favor may be registered and new titles issued in the name of INC. Mrs. Ligon was alleged to be the mortgagee of the two parcels of land executed in her favor by certain Abdulrahman R.T. Linzag and Rowaida Busran-Sampaco claimed to be in behalf of the Carpizo Group.

The IDP-Tamano Group, on June 11, 1991, sought to intervene in the civil case. Private respondent INC opposed the motion arguing, inter alia, that the issue sought to be litigated by way of intervention is an intra-corporate dispute which falls under the jurisdiction of the SEC.

The RTC without waiting for the decision of the SEC denied petitioner's motion to intervene on the ground of lack of juridical personality of the IDP-Tamano Group and that the issues being raised by way of intervention are intra-corporate in nature, jurisdiction thereto properly pertaining to the SEC and ordered IDP-Carpizo Group to comply with its obligation under the Deed of Sale of clearing the subject lots of squatters and of delivering the actual possession thereof to INC.

In the meantime, the SEC, finally came out with a Decision in SEC Case No. 4012 declaring the sale of the two (2) parcels of land in Quezon City covered by the Deed of Absolute Sale entered into by Iglesia ni Kristo and the Islamic Directorate of the Philippines, Inc. null and void.

INC elevated SEC Case No. 4012 to the public respondent Court of Appeals. On October 28, 1994, the court a quo promulgated a Decision granting INC's petition. The portion of the SEC Decision in SEC Case No. 4012 which declared the sale of the two (2) lots in question to INC as void was ordered set aside by the Court of Appeals.

ISSUE

Whether the Court of Appeals commit reversible error in setting aside that portion of the SEC's Decision in SEC Case No. 4012 which declared the sale of two (2) parcels of land in Quezon City between the IDP-Carpizo Group and private respondent INC null and void. (YES)

RULING

The Carpizo Group-INC sale is deemed null and void ab initio because of the Carpizo Group's failure to comply with Section 40 of the Corporation Code pertaining to the disposition of all or substantially all assets of the corporation:

Sec. 40. Sale or other disposition of assets. — Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock; or in case of non-stock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

x x x x x x x x x

The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling squarely within the contemplation of the foregoing section. For the sale to be valid, the majority vote of the legitimate Board of Trustees, concurred in by the vote of at least 2/3 of the bona fide members of the corporation should have been obtained. These twin requirements were not met as the Carpizo Group which voted to sell the Tandang Sora property was a fake Board of Trustees, and those whose names and signatures were affixed by the Carpizo Group together with the sham Board Resolution authorizing the negotiation for the sale were, from all indications, not bona fide members of the IDP as they were made to appear to be. Apparently, there are only fifteen (15) official members of the petitioner corporation including the eight (8) members of the Board of Trustees. All told, the disputed Deed of Absolute Sale executed by the fake Carpizo Board and private respondent INC was intrinsically void ab initio.

- Y-1 Leisure Philippines, Inc. vs. Yu, G.R. No. 207161, September 8, 2015

Y-I LEISURE PHILIPPINES, INC., YATS INTERNATIONAL LTD. AND Y-I CLUBS AND RESORTS, INC.,, *Petitioners –versus-* JAMES YU*, Respondent.*
G.R. No. 207161, ENBANC, September 8, 2015, MENDOZA, JR.,

While the Corporation Code allows the transfer of all or substantially all of the assets of a corporation, the transfer should not prejudice the creditors of the assignor corporation.

Under the business-enterprise transfer, the petitioners have consequently inherited the liabilities of MADCI because they acquired all the assets of the latter corporation. The continuity of MADCI's land developments is now in the hands of the petitioners, with all its assets and liabilities. There is absolutely no certainty that Yu can still claim its refund from MADCI with the latter losing all its assets. To allow an assignor to transfer all its business, properties and assets without the consent of its creditors will place the assignor's assets beyond the reach of its creditors. Thus, the only way for Yu to recover his money would be to assert his claim against the petitioners as transferees of the assets.

FACTS

Mt. Arayat Development Co. Inc. (MADCI) was a real estate development corporation, which was registered before the Security and Exchange Commission (SEC). On the other hand, respondent James Yu (Yu) was a businessman, interested in purchasing golf and country club shares.

Sometime in 1997, MADCI offered for sale shares of a golf and country club located in the vicinity of Mt. Arayat in Arayat, Pampanga, for the price of P550.00 per share. Relying on the representation of MADCI's brokers and sales agents, Yu bought 500 golf and 150 country club shares for a total price of P650,000.00 which he paid by installment with fourteen (14) Far East Bank and Trust Company (FEBTC) checks.

Upon full payment of the shares to MADCI, Yu visited the supposed site of the golf and country club and discovered that it was non-existent. In a letter, dated February 5, 2000, Yu demanded from MADCI that his payment be returned to him.6 MADCI recognized that Yu had an investment of P650,000.00, but the latter had not yet received any refund.

Yu filed with the RTC a complaint for collection of sum of money and damages with prayer for preliminary attachment against MADCI and its president Rogelio Sangil (Sangil) to recover his payment for the purchase of golf and country club shares. In his transactions with MADCI, Yu alleged that he dealt with Sangil, who used MADCI's corporate personality to defraud him.

In his Answer, Sangil alleged that Yu dealt with MADCI as a juridical person and that he did not benefit from the sale of shares. He added that the return of Yu's money was no longer possible because its approval had been blocked by the new set of officers of MADCI, which controlled the majority of its board of directors.

In its Answer, MADCI claimed that it was Sangil who defrauded Yu. It invoked the Memorandum of Agreement (MOA), dated May 29, 1999, entered into by MADCI, Sangil and petitioner Yats International Ltd. (YIL). Under the MOA, Sangil undertook to redeem MADCI proprietary shares sold to third persons or settle in full all their claims for refund of payments.12 Thus, it was MADCI's position that Sangil should be ultimately liable to refund the payment for shares purchased.

After the pre-trial, Yu filed an Amended Complaint, wherein he also impleaded YIL, Y-I Leisure Phils., Inc. (YILPI) and Y-I Club & Resorts, Inc. (YICRI). According to Yu, he discovered in the Registry of Deeds of Pampanga that, substantially, all the assets of MADCI, consisting of one hundred twenty (120) hectares of land located in Magalang, Pampanga, were sold to YIL, YILPI and YICRI. The transfer was done in fraud of MADCI's creditors, and without the required approval of its stockholders and board of directors under Section 40 of the Corporation Code. Yu also alleged that Sangil even filed a case in Pampanga which assailed the said irregular transfers of lands.

In their Answer, YIL, YILPI and YICRI alleged that they only had an interest in MADCI in 1999 when YIL bought some of its corporate shares pursuant to the MOA. This occurred two (2) years after Yu bought his golf and country club shares from MADCI. As a mere stockholder of MADCI, YIL could not be held responsible for the liabilities of the corporation. As to the transfer of properties from MADCI to YILPI and subsequently to YICRI, they averred that it was not undertaken to defraud MADCI's creditors and it was done in accordance with the MOA. In fact, it was stipulated in the MOA that Sangil undertook to settle all claims for refund of third parties.

The president and chief executive officer of YILPI and YICRI, and managing director of YIL, Denny On Yat Wang (Wang), was presented as a witness by YIL. He testified that YIL was an investment company engaged in the development of real estates, projects, leisure, tourism, and related businesses.20 He explained that YIL subscribed to. the shares of MADCI because it was interested in its golf course development project in Pampanga.21 Thus, he signed the MOA on behalf of YIL and he paid P31.5 million to subscribe to MADCI's shares, subject to the fulfilment of Sangil's obligations.

The RTC ruled that because MADCI did not deny its contractual obligation with Yu, it must be liable for the return of his payments. The trial court also ruled that Sangil should be solidarily liable with MADCI because he used the latter as a mere alter ego or business conduit. The RTC, however, exonerated YIL, YILPI and YICRI from liability because they were not part of the transactions between MADCI and Sangil, on one hand and Yu, on the other hand. It opined that YIL, YILPI and YICRI even had the foresight of protecting the creditors of MADCI when they made Sangil responsible for settling the claims of refunds of thirds persons in the proprietary shares.

Upon appeal, the Court of Appeals partly granted the appeals and modified the RTC decision by holding YIL and its companies, YILPI and YICRI, jointly and severally, liable for the satisfaction of Yu's claim.

ISSUE

Whether the Court of Appeals erred in ruling that petitioners Yats Group should be held jointly and severally liable to respondent Yu. (NO)

RULING

The Nell Doctrine states the general rule that the transfer of all the assets of a corporation to another shall not render the latter liable to the liabilities of the transferor. If any of the above-cited exceptions are present, then the transferee corporation shall assume the liabilities of the transferor.

The exception of the Nell doctrine, which finds its legal basis under Section 40, provides that the transferee corporation assumes the debts and liabilities of the transferor corporation because it is merely a continuation of the latter's business. A cursory reading of the exception shows that it does not require the existence of fraud against the creditors before it takes full force and effect. Indeed, under the Nell Doctrine, the transferee corporation may inherit the liabilities of the transferor despite the lack of fraud due to the continuity of the latter's business.

The purpose of the business-enterprise transfer is to protect the creditors of the business by allowing them a remedy against the new owner of the assets and business enterprise. Otherwise, creditors would be left "holding the bag," because they may not be able to recover from the transferor who has "disappeared with the loot," or against the transferee who can claim that he is a purchaser in good faith and for value. Based on the foregoing, as the exception of the Nell doctrine relates to the protection of the creditors of the transferor corporation, and does not depend on any deceit committed by the transferee -corporation, then fraud is certainly not an element of the business enterprise doctrine.

Bearing in mind that fraud is not required to apply the business-enterprise transfer, the next issue to be resolved is whether the petitioners indeed became a continuation of MADCI's business. Synthesizing Section 40 and the previous rulings of this Court, it is apparent that the business-enterprise transfer rule applies when two requisites concur: (a) the transferor corporation sells all or substantially all of its assets to another entity; and (b) the transferee corporation continues the business of the transferor corporation. Both requisites are present in this case.

According to its articles of incorporation, the primary purpose of MADCI was "[t]o acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improved, managed or otherwise disposed of buildings, houses, apartment, and other structures of whatever kind, together with their appurtenance." During the trial before the RTC, Sangil testified that MADCI was a development company which acquired properties in Magalang, Pampanga to be developed into a golf course.

The CA found that MADCI had an entire asset consisting of 120 hectares of land, and that its sale to the petitioners rendered it incapable of continuing its intended golf and country club business. The Court holds that such finding is fully substantiated by the records of the case. The MOA itself stated that MADCI had 120 hectares of agricultural land in Magalang, Pampanga, for the development of a golf course. MADCI had the right of ownership over these properties consisting of 97 land titles, except for the 27 titles previous delivered to YIL. The 120-hectare land, however, was then sold to YILPI, and then transferred to YICRI.

Respondent Yu testified that he verified the landholdings of MADCI with the Register of Deeds in Pamapanga and discovered that all its lands were transferred to YICRI. Because the properties of MADCI were already conveyed, Yu had no other way of collecting his refund.

Based on these factual findings, the Court is convinced that MADCI indeed had assets consisting of 120 hectares of landholdings in Magalang, Pampanga, to be developed into a golf course, pursuant to its primary purpose. Because of its alleged violation of the MOA, however, MADCI was made to transfer all its assets to the petitioners. No evidence existed that MADCI subsequently acquired other lands for its development projects. Thus, MADCI, as a real estate development corporation, was left without any property to develop eventually rendering it incapable of continuing the business or accomplishing the purpose for which it was incorporated.

Consequently, the transfer of the assets of MADCI to the petitioners should have complied with the requirements under Section 40. Nonetheless, the present petition is not concerned with the validity of the transfer; but the respondent's claim of refund of his P650,000.00 payment for golf and country club shares. Both the CA and the RTC ruled that MADCI and Sangil were liable.

On the question of whether the petitioners must also be held solidarily liable to Yu, the Court answers in the affirmative.

While the Corporation Code allows the transfer of all or substantially all of the assets of a corporation, the transfer should not prejudice the creditors of the assignor corporation. Under the business-enterprise transfer, the petitioners have consequently inherited the liabilities of MADCI because they acquired all the assets of the latter corporation. The continuity of MADCI's land developments is now in the hands of the petitioners, with all its assets and liabilities. There is absolutely no certainty that Yu can still claim its refund from MADCI with the latter losing all its assets. To allow an assignor to transfer all its business, properties and assets without the consent of its creditors will place the assignor's assets beyond the reach of its creditors. Thus, the only way for Yu to recover his money would be to assert his claim against the petitioners as transferees of the assets.

e. Power to Acquire Own Shares

- Boman Environmental Development Corporation vs. Hon. Court of Appeals and Nilcar Y. Fajilan, G.R. No. 77860, November 22, 1988

BOMAN ENVIRONMENTAL DEVELOPMENT CORPORATION, *Petitioner –versus-* HON. COURT OF APPEALS and NILCAR Y. FAJILAN, *Respondent.*
G.R. No. 77860, FIRST DIVISION, November 22, 1988, GRINO-AQUINO, J.

Section 5(b) of P.D. No. 902-A, as amended, grants the SEC original and exclusive jurisdiction to hear and decide cases involving—

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; ... (Emphasis supplied.) This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement (Annex C) and the promissory note (Annex D) arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy.

FACTS

On May 7, 1984, respondent Nilcar Y. Fajilan offered in writing to resign as President and Member of the Board of Directors of petitioner, Boman Environmental Development Corporation (BEDECO), and to sell to the company all his shares, rights, and interests therein for P 300,000 plus the transfer to him of the company's Isuzu pick-up truck which he had been using.

At a meeting of the Board of Directors of BEDECO on June 14, 1984, Fajilan's resignation as president was accepted and new officers were elected. Fajilan's offer to sell his shares back to the corporation was approved, the Board promising to pay for them on a staggered basis from July 15, 1984 to December 15, 1984. The resolution of the Board was communicated to Fajilan through a letter-agreement to which he affixed his conformity.

However, BEDECO paid only P50,000 on July 15, 1984 and another P50,000 on August 31, 1984 and defaulted in paying the balance of P200,000.

On April 30, 1985, Fajilan filed a complaint in the Regional Trial Court of Makati for collection of that balance from BEDECO. In an order dated September 9, 1985, the trial court, through Judge Ansberto Paredes, dismissed the complaint for lack of jurisdiction. It ruled that the controversy arose out of intracorporate relations, hence, the Securities and Exchange Commission has original and exclusive jurisdiction to hear and decide it.

His motion for reconsideration of that order having been denied, Fajilan filed a "Petition for Certiorari, and mandamus with Preliminary Attachment" in the Intermediate Appellate Court.

In a decision dated March 2, 1987, the Court of Appeals set aside Judge Paredes' order of dismissal and directed him to take cognizance of the case. BEDECO's motion for reconsideration was denied in a resolution dated March 24, 1987 of the Court of Appeals. The CA ruled that the intra-corporate matter of the resignation of petitioner as Member of the Board of Directors and President of respondent corporation has long been settled without issue.

The Board of Directors of respondent corporation has likewise long settled the sale by petitioner of all his shares, rights and interests in favor of the corporation. No controversy arose out of this transaction. The jurisdiction of the Securities and Exchange Commission therefore need not be invoked on this matter.

ISSUE

Whether or not a suit brought by a withdrawing stockholder against the corporation to enforce payment of the balance due on the consideration (evidenced by a corporate promissory note) for the surrender of his shares of stock and interests in the corporation, involves an intra-corporate dispute. (YES)

RULING

Section 5(b) of P.D. No. 902-A, as amended, grants the SEC original and exclusive jurisdiction to hear and decide cases involving—

b) *Controversies arising out of intra-corporate or partnership relations*, between and among stockholders members, or associates; *between any or all of them and the corporation*, partnership or association of which they are stockholders, members or associates, respectively; ... (Emphasis supplied.)

This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement (Annex C) and the promissory note (Annex D) arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy.

Fajilan's offer to resign as president and director "effective as soon as my shares and interests thereto (sic) are sold and fully paid" (Annex A-1, p. 239, Rollo) implied that he would remain a stockholder until his shares and interests were fully paid for, for one cannot be a director or president of a corporation unless he is also a stockholder thereof. The fact that he was replaced as president of the corporation did not necessaryily mean that he ceased to be a stockholder considering how the corporation failed to complete payment of the consideration for the purchase of his shares of stock and interests in the goodwill of the business. There has been no actual transfer of his shares to the corporation. In the books of the corporation he is still a stockholder.

Fajilan's suit against the corporation to enforce the latter's promissory note or compel the corporation to pay for his shareholdings is cognizable by the SEC alone which shall determine whether such payment will not constitute a distribution of corporate assets to a stockholder in preference over creditors of the corporation. The SEC has exclusive supervision, control and regulatory jurisdiction to investigate whether the corporation has unrestricted retained earnings to cover the payment for the shares, and whether the purchase is for a legitimate corporate purpose as provided in Sections 41 and 122 of the Corporation Code, which reads as follows:

SEC. 41. *Power to acquire own shares*.—A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: *Provided*, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired;

1. To eliminate fractional shares arising out of stock dividends;
2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and
3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code,

Sec. 12. *Corporate liquidation*. ...

xxx xxx xxx
Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities, (77a, 89a, 16a).

These provisions of the Corporation Code should be deemed written into the agreement between the corporation and the stockholders even if there is no express reference to them in the promissory note. The principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties' expressly making reference to it (Lakas ng Manggagawang Makabayan vs. Abiera, 36 SCRA 437).

The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. "Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock ..."(Steinberg vs. Velasco, 52 Phil. 953.)

f. Power to Invest Corporate Funds in another Corporation or Business

- Heirs of Antonio Pael and Andrea Alcantara and CrisantoPael vs. Court of Appeals, Jorge H. Chin and Renato B. Mallari, G.R. No. 133547, February 10, 2000

HEIRS OF ANTONIO PAEL and ANDREA ALCANTARA and CRISANTO PAEL, *Petitioners –versus-* COURT OF APPEALS, JORGE H. CHIN and RENATO B. MALLARI, *Respondents*.
G.R. No. 133547, FIRST DIVISION, February 10, 2000, YNARES-SANTIAGO, J.

A person not included as a party to a case cannot be bound by the decision made by a court.

A person who was not impleaded in the complaint could not be bound by the decision rendered thereon for no man shall be effected by a proceeding to which he is a stranger.

Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger and strangers to a case are not bound by judgment rendered by the court

In this case, the Supreme Court held that the trial-court's decision is not only erroneous but is void from the beginning as the title was given to the Paels despite the fact that they were not parties and have been total strangers to the said case. They were never impleaded nor did they intervene in the case wherein the disputed property was awarded to them.

FACTS

Spouses Maria and Pedro Destura together with private respondents executed a Memorandum of Agreement (MOA) which provided that Chin and Mallari, as first parties; Pedro Destura, as second party; and a certain Jaime B. Lumasag, Jr., as third party, whereby the parties agreed to sell the property subject of this petition to an interested buyer and to share in the proceeds, with Lumasag acting as broker of the sale. However, the prospective buyer of Lumasag backed out and the sale did not materialize. However, Pedro filed for the nullification of the said MOA but was dismissed by the RTC.

Inspite of the decision against her husband, Maria Destura filed a similar action one month after the decision before the Regional Trial Court. The trial court in the Maria case, rendered judgment by default nullifying the MOA and ordering the cancellation of Chin's and Mallari's titles and did not award any affirmative relief to Maria but instead, ordered the reinstatement of TCT in the names of the Paels, who were non-parties in the case.

From the adverse decision and order of the trial court, Chin and Mallari filed a petition for annulment of judgment before the CA and rendered the assailed decision, declaring as null and void both the cancellation of the their titles over the subject property and reinstatement of the title in the names of the Paels.

While the petition for annulment was pending before the CA, or on January 28, 1998, a certain corporation called PFINA Properties, Inc. filed a motion for leave of court to intervene and to admit petition-in-intervention. It alleged that PFINA acquired the property subject of the litigation for substantial and valuable consideration from the Paels, by virtue of a deed of assignment dated January 25, 1983, and that the title was issued in its name by the Paels. This motion was opposed by Chin and Mallari. They cite the fact that the alleged acquisition of the property by PFINA supposedly occurred as early as January 25, 1983, and for fifteen (15) years, inspite of numerous proceedings before different courts and agencies involving the disputed property, both the Paels and PFINA were silent about the alleged change of ownership. No steps to register the sale or secure transfer titles were undertaken during this period.

The new title was obtained by PFINA by the RD despite its knowledge that there was a pending case for annulment before the appellate court.

Atty. Cleofe, the RD of QC who cancelled the TCT in the names of Paels, and issued the new title in the name of PFINA acted in gross and evident bad faith. Not only was the Register a party respondent fully knowledgeable and served with all processes in the annulment case, but the petition before the CA was also annotated at the back of the title of the Paels.

Only after a period of fifteen (15) years did PFINA come forward to present the deed and claim the subject properties. The said deed and the circumstances surrounding its issuance are suspect. The deed may be fabricated and the signatures of the parties and witnesses forged.

The CA gave credence to the objections interposed by private respondents. In its Resolution, it cited badges or indicia of fraud in the alleged acquisition of the property by PFINA as well as the cancellation of the title of the Paels and issuance of a new title in favor of PFINA.

ISSUE

Whether or not PFINA can acquired the property subject of the litigation for substantial and valuable consideration from the Paels by virtue of a deed of assignment, (NO)

HELD

The Court held that the trial-court's decision is not only erroneous but is void from the beginning as the title was given to the Paels despite the fact that they were not parties and have been total strangers to the said case. They were never impleaded nor did they intervene in the case wherein the disputed property was awarded to them.

The Court also upheld the appellate court in ruling that Maria Destura's complaint should have been dismissed on the ground of litis pendentia and res judicata, considering that her husband Pedro Destura had earlier filed a complaint against respondents Chin and Mallari, for, among others, annulment of their titles and annulment of the MOA.

The highly anomalous and deplorable conduct of the Register of Deeds of Quezon City in registering the reinstated title in favor of the Paels who were non-parties to the case, inspite of his being a defendant in the case, resulted in the sale of this vast tract of land by the Paels to anybody right and left, including Letty Sy, PFINA, and presumably others who have not come forward to intervene in this case.

The Paels, having no longer any right over the subject property, had nothing to sell to PFINA. Therefore, the title obtained by PFINA allegedly by virtue of the deed of assignment executed by the Paels in its favor is a nullity. Worse, the Register of Deeds of Quezon City connived and conspired with PFINA when the former registered the deed of assignment on the basis of fake and spurious documents.
The Court of Appeals also found it unbelievable for PFINA to acquire extremely valuable real estate in Quezon City for only P30.00 per square meter. In 1983, PFINA Mining and Exploration, Inc. was a mining company. It changed its corporate name to PFINA Properties, Inc., only on January 22, 1998, six (6) days before filing its petition-in-intervention with the Court of Appeals. In its petition, PFINA claimed to have bought urban real estate in 1983, notwithstanding that at the time it was still a mining company which had no business dabbling in the highly speculative urban real estate trade.

g. Power to Declare Dividends

- Madrigal & Company, Inc. vs. Hon. Ronaldo B. Zamora, et al., G.R. No. L-48237, June 30, 1987

MADRIGAL & COMPANY, INC., ***Petitioner –versus-*** **HON. RONALDO B. ZAMORA, PRESIDENTIAL ASSISTANT FOR LEGAL AFFAIRS, THE HON. SECRETARY OF LABOR, and MADRIGAL CENTRAL OFFICE EMPLOYEES UNION,** ***Respondents*****.**
G.R. No. L-48237, FIRST DIVISION, June 30, 1987, SARMIENTO, J.

"[t]he dividends received by the company are corporate earnings arising from corporate investment." Indeed, as found by the Commission, the petitioner had entered such earnings in its financial statements as profits, which it would not have done if they were not in fact profit.

As such shareholder, the dividends paid to it were its own money, which may then be available for wage increments. It is not a case of a corporation distributing dividends in favor of its stockholders, in which case, such dividends would be the absolute property of the stockholders and hence, out of reach by creditors of the corporation. Here, the petitioner was acting as stockholder itself, and in that case, the right to a share in such dividends, by way of salary increases, may not be denied its employees.

FACTS

Madrigal & Company, Inc., was engaged in the management of Rizal Cement Co., Inc. Admittedly, the petitioner and Rizal Cement Co., Inc. are sister companies. Both are owned by the same or practically the same stockholders. The Madrigal Central Office Employees Union, sought for the renewal of its collective bargaining agreement with the petitioner, proposing a wage increase of P200.00 a month, an allowance of P100.00 a month, and other economic benefits. The petitioner, however, requested for a deferment in the negotiations.

Then, in an alleged board resolution, petitioner reduced its capital stock and its authorized capitalization. It then wrote a letter to the Department of Labor averring that it is incurring losses and so it will enforce a retrenchment program. The letter is however unsupported by documents and so the Department of Labor ignored it. However, MCI went on to dismiss several employees.

The union commenced Case No. LR-5415 with the NLRC on a complaint for unfair labor practice. The labor arbiter granted a general wage increase of P200.00 plus a monthly living allowance of P100.00. The arbiter specifically found that the petitioner had been making substantial profits in its operation since 1972 through 1975. The petitioner appealed.

However, petitioner applied for clearance to terminate 18 employees. The union complained of illegal lockout against the petitioner. The Secretary of Labor found the dismissals to be contrary to law and ordered the petitioner to reinstate some 40 employees, 37 of them with backwages. The petitioner then moved for reconsideration, which the Acting Labor Secretary, Amado Inciong, denied. Thereafter, the petitioner filed an appeal to the Office of the President. MCI insists that it is incurring losses; that as such, it has to reduce its capitalization; that the profits it is earning are cash dividends from RCC; that under the law, dividends are the absolute property of a stockholder like MCI and cannot be compelled to share it with creditors (like the employees).

The respondent, the Presidential Assistant on Legal Affairs, affirmed with modification the Labor Department's decision. Hence the petition (G.R. No. 48237.)

Meanwhile, the NLRC rendered a decision affirming the labor arbiter's judgment in Case No. LR-5415. The petitioner appealed to the Secretary of Labor which dismissed the appeal. Also the other petition (G.R. No. 49023)

h. Power to Enter Into Management Contract

i. Ultra Vires Acts

i. Consequences of Ultra Vires Acts

- Republic of the Philippines vs. Acoje Mining Company, Inc., G.R. No. L-18062, February 28, 1963

REPUBLIC OF THE PHILIPPINES, *Plaintiff-Appellee –ver sus-* ACOJE MINING COMPANY, INC., *Defendant-Appellant.*
G.R. No. L-18062, FIRST DIVISION, February 28, 1963, BAUTISTA ANGELO, J
.

Thus, it has been held that "although not expressly authorized to do so a corporation may become a surety where the particular transaction is reasonably necessary or proper to the conduct of its business," And here it is undisputed that the establishment of the local post office is a reasonable and proper adjunct to the conduct of the business of appellant company. Indeed, such post office is a vital improvement in the living condition of its employees and laborers who came to settle in its mining camp which is far removed from the postal facilities or means of communication accorded to people living in a city or municipality.

FACTS

Acoje Mining Company, Inc. wrote the Director of Posts requesting the opening of a post, telegraph and money order offices at its mining camp at Sta. Cruz, Zambales, to service its employees and their families that were living in said camp. Acting on the request, the Director of Posts wrote in reply stating that if aside from free quarters the company would provide for all essential equipment and assign a responsible employee to perform the duties of a postmaster without compensation from his office until such time as funds therefor may be available he would agree to put up the offices requested. The company in turn replied signifying its willingness to comply with all the requirements outlined in the letter of the Director of Posts requesting at the same time that it be furnished with the necessary forms for the early establishment of a post office branch.

Later, the Director of Posts again wrote a letter to the company stating: "In cases where a post office will be opened under circumstances similar to the present, it is the policy of this office to have the company assume direct responsibility for whatever pecuniary loss may be suffered by the Bureau of Posts by reason of any act of dishonesty, carelessness or negligence on the part of the employee of the company who is assigned to take charge of the post office," thereby suggesting that a resolution be adopted by the board of directors of the company expressing conformity to the above condition relative to the responsibility to be assumed by it in the event a post office branch is opened as requested.

The company informed the Director of Posts of the passage by its board of directors of a resolution of the following tenor: "That the requirement of the Bureau of Posts that the Company should accept full responsibility for all cash received by the Postmaster be complied with, and that a copy of this resolution be forwarded to the Bureau of Posts." The letter further states that the company feels that that resolution fulfills the last condition imposed by the Director of Posts and that, therefore, it would request that an inspector be sent to the camp for the purpose of acquainting the postmaster with the details of the operation of the branch office.

The post office branch was opened at the camp with one Hilario M. Sanchez as postmaster. He is an employee of the company. Later, the postmaster went on a three-day leave but never returned. The company immediately informed the officials of the Manila Post Office and the provincial auditor of Zambales of Sanchez' disappearance with the result that the accounts of the postmaster were checked and a shortage was found in the amount of P13,867.24.

The several demands made upon the company for the payment of the shortage in line with the liability it has assumed having failed, the government commenced the present action on September 10, 1954 before the Court of First Instance of Manila seeking to recover the amount of Pl3,867.24. The company in its answer denied liability for said amount contending that the resolution of the board of directors wherein it assumed responsibility for the act of the postmaster is *ultra vires*, and in any event its liability under said resolution is only that of a guarantor who answers only after the exhaustion of the properties of the principal, aside from the fact that the loss claimed by the plaintiff is not supported by the office record.

After trial, the court *a quo* found that, of the amount claimed by plaintiff totalling P13,867.24, only the sum of P9,515.25 was supported by the evidence, and so it rendered judgment for the plaintiff only for the amount last mentioned. The court rejected the contention that the resolution adopted by the company is ultra vires and that the obligation it has assumed is merely that of a guarantor.
Defendant took the present appeal.

ISSUE

Whether the resolution adopted by the board of directors is ultra vires. (NO)

RULING

The contention that the resolution adopted by the company dated August 31, 1949 is ultra vires in the sense that it has no authority to act on a matter which may render the company liable as a guarantor has no factual or legal basis. In the first place, it should be noted that the opening of a post office branch at the mining camp of appellant corporation was undertaken because of a request submitted by it to promote the convenience and benefit of its employees. The idea did not come from the government, and the Director of Posts was prevailed upon to agree to the request only after studying the necessity for its establishment and after imposing upon the company certain requirements intended to safeguard and protect the interest of the government. Thus, after the company had signified its willingness to comply with the requirement of the government that it furnish free quarters and all the essential equipment that may be necessary for the operation of the office including the assignment of an employee who will perform the duties of a postmaster, the Director of Posts agreed to the opening of the post office stating that the company assume direct responsibility for whatever pecuniary loss may be suffered by the Bureau of Posts by reason of any act of dishonesty, carelessness or negligence on the part of the employee of the company who is assigned to take charge of the post office, and accepting this condition, the company, thru its board of directors, adopted forthwith a resolution of the following tenor: "That the requirement of the Bureau of Posts that the company should accept full responsibility for all cash received by the Postmaster, be complied with, and that a copy of this resolution be forwarded to the Bureau of Posts." On the basis of the foregoing facts, it is evident that the company cannot now be heard to complain that it is not liable for the irregularity committed by its employee upon the technical plea that the resolution approved by its board of directors is *ultra vires*. The least that can be said is that it cannot now go back on its plighted word on the ground of estoppel.

The claim that the resolution adopted by the board of directors of appellant company is an *ultra vires* act cannot also be entertained it appearing that the same covers a subject which concerns the benefit, convenience and welfare of its employees and their families. While as a rule an *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law (19 C.J.S., Section 965, p. 419), there are however certain corporate acts that may be performed outside of the scope of the powers expressly conferred if they are necessary to promote the interest or welfare of the corporation.

Thus, it has been held that "although not expressly authorized to do so a corporation may become a surety where the particular transaction is reasonably necessary or proper to the conduct of its business,"[1] and here it is undisputed that the establishment of the local post office is a reasonable and proper adjunct to the conduct of the business of appellant company. Indeed, such post office is a vital improvement in the living condition of its employees and laborers who came to settle in its mining camp which is far removed from the postal facilities or means of communication accorded to people living in a city or municipality.

Even assuming *arguendo* that the resolution in question constitutes an *ultra vires* act, the same however is not void for it was approved not in contravention of law, customs, public order or public policy. The term *ultra vires* should be distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated.[2] It being merely voidable, an ultra vires act can be enforced or validated if there are equitable grounds for taking such action. Here it is fair that the resolution be upheld at least on the ground of estoppel. On this point, the authorities are overwhelming:

The weight of authority in the state courts is to the effect that a transaction which is merely *ultra vires* and not *malum in se* or *malum prohibitum*, is, if performed by one party, not void as between the parties to all intents and purposes, and that an action may be brought directly on the transaction and relief had according to its terms.

This rule is based on the consideration that as between private corporations, one party cannot receive the benefits which are embraced in total performance of a contract made with it by another party and then set up the invalidity of the transaction as a defense."

The defense of *ultra vires* rests on violation of trust or duty toward stockholders, and should not be entertained where its allowance will do greater wrong to innocent parties dealing with corporation.. The acceptance of benefits arising from the performance by the other party may give rise to an estoppel precluding repudiation of the transaction

The current of modern authorities favors the rule that where the *ultra vires transaction has been executed by the other party and the corporation has receive*d the benefit of it, the law interposes an estoppel, and will not permit the validity of the transaction or contract to be questioned, and this is especially true where there is nothing in the circumstances to put the other party to the transaction on notice that the corporation has exceeded its powers in entering into it and has in so doing overstepped the line of corporate privileges.

Neither can we entertain the claim of appellant that its liability is only that of a guarantor. On this point, we agree with the following comment of the court *a quo*: "A mere reading of the resolution of the Board of Directors dated August 31, 1949, upon which the plaintiff based its claim would show that the responsibility of the defendant company is not just that of a guarantor. Notice that the phraseology and the terms employed are so clear and sweeping and that the defendant assumed *'full responsibility for all cash received by the Postmaster.'* Here the responsibility of the defendant is not just that of a guarantor. It is clearly that of a principal."

ISSUE

WON the dividends in this case, as understood by MCI, cannot be made available to meet its employees' economic demands. (NO)

RULING

According to the Supreme Court, it agreed with the National Labor Relations Commission that "[t]he dividends received by the company are corporate earnings arising from corporate investment." Indeed, as found by the Commission, the petitioner had entered such earnings in its financial statements as profits, which it would not have done if they were not in fact profits.

Moreover, it is incorrect to say that such profits — in the form of dividends — are beyond the reach of the petitioner's creditors since the petitioner had received them as compensation for its management services in favor of the companies it managed as a shareholder thereof. As such shareholder, the dividends paid to it were its own money, which may then be available for wage increments. It is not a case of a corporation distributing dividends in favor of its stockholders, in which case, such dividends would be the absolute property of the stockholders and hence, out of reach by creditors of the corporation. Here, the petitioner was acting as stockholder itself, and in that case, the right to a share in such dividends, by way of salary increases, may not be denied its employees.

Accordingly, the Court was convinced that the petitioner's capital reduction efforts were, to begin with, a subterfuge, a deception as it were, to camouflage the fact that it had been making profits, and consequently, to justify the mass layoff in its employee ranks, especially of union members. They were nothing but a premature and plain distribution of corporate assets to obviate a just sharing to labor of the vast profits obtained by its joint efforts with capital through the years. Surely, the Court can neither countenance nor condone this. It is an unfair labor practice.

- Visayan vs. National Labor Relations Commission, 196 SCRA 410 (1991)

LUZVIMINDA VISAYAN ET.AL., *Petitioner –versus-*NATIONAL LABOR RELATIONS COMMISSION AND FUJIYAMA RESTAURANT AND HOTEL, INC., *Respondents.*
G.R. No. 69999, SECOND DIVISION, April 30, 1991, PARAS, J.

A corporation can act only through its board of directors. The law is settled that contracts between a corporation and third persons must be made by or under the authority of its board of directors and not by its stockholders. Hence, the action of the stockholders in such matters is only advisory and not in any wise binding on the corporation.

Thus, all acts done by Jureidini and Tsuchiya for and in behalf of respondent corporation, having been made without the requisite authority from the board of directors, were not binding upon the said corporation.

FACTS

Fujiyama Hotel & Restaurant, Inc. was formally organized in April, 1978 with Aquilino Rivera holding a majority interest in the corporation. Upon organization in 1978, respondent corporation immediately opened a Japanese establishment, known as Fujiyama Hotel & Restaurant, located at 1413 M. Adriatico St., Ermita, Manila.

In June, 1980, Lourdes Jureidini and Milagros Tsuchiya, allegedly pretending to be stockholders of the corporation, filed a case with the then Court of First Instance of Manila, Branch XXXVI against Rivera and Akasako to wrest control over the establishment. In June, 1981, the said court issued a writ of preliminary mandatory injunction transferring possession of all the assets of the company and the management thereof to Jureidini and Tsuchiya. The stockholders and directors of the corporation were thereby excluded from the management and operation of the restaurant. Upon assuming management, Jureidini and Tsuchiya replaced almost all of the existing employees with new ones.

Meanwhile, Rivera et., al elevated the case to the Supreme Court assailing the issuance of the writ of preliminary mandatory injunction by the CFI. The SC ruled in favor of the original owners and directed Jureidini and Tsuchiya to refrain from managing and/or interfering with the management of the business and assets of petitioner corporation.

When Rivera and Akasako regained control and management of Fujiyama Hotel & Restaurant, Inc., they refused to recognize as employees all persons that were hired by Jureidini and Tsuchiya, instead reinstated the employees previously hired by them.

This gave rise to the filing of the present case by the dismissed employees hired by Jureidini and Tsuchiya (some of whom had allegedly been hired by Rivera and Akasako even before Jureidini and Tsuchiya assumed management of the corporation) against Fujiyama Hotel & Restaurant, Inc. for illegal dismissal, which case was docketed as NLRC-NCR Case No. 6-4110-82. On motion of private respondent corporation, the Labor Arbiter included Jureidini and Tsuchiya as third-party respondents therein. Thereafter, the parties, except Jureidini and Tsuchiya, submitted their respective position papers and affidavits in support of their contentions. On the basis of said position papers and affidavits, the Labor Arbiter rendered a decision on September 21, 1982 ordering respondent company and/or Akasako, Jureidini and Tsuchiya to reinstate all the complainants to their former positions plus backwages and to pay jointly and severally the complainants their unpaid wages plus their share in the service charges. (NLRC Decision, pp. 4-5; Rollo, pp. 25-26).

The dismissed employees hired by Jureidini and Tsuchiya filed case of illegal dismissal against Fujiyama Hotel & Restaurant, Inc. before the Labor Arbiter which on motion of private respondent corporation, included Jureidini and Tsuchiya as third-party respondents.

The LA ordered respondent company and/or Akasako, Jureidini and Tsuchiya to reinstate all the complainants to their former positions plus backwages and to pay jointly and severally the complainants their unpaid wages plus their share in the service charges.

The NLRC denied the appeal of private respondent for having been filed out of time. Subsequently, a motion for reconsideration, the NLRC set aside the LA's decision absolving the corporation but remanded the case to the LA for proceedings to determine who are the complainants hired by said Jureidini and Tsuchiya.

ISSUE

Whether all acts done solely by Jureidini and Tsuchiya allegedly, for and in behalf of private respondent during the 1-year period they took over were binding upon the corporation thus making it liable for the dismissal of the employees. (NO)

RULING

Under the Corporation Code, the corporate powers of all corporations shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. A corporation can act only through its board of directors. The law is settled that contracts between a corporation and third persons must be made by or under the authority of its board of directors and not by its stockholders. Hence, the action of the stockholders in such matters is only advisory and not in any wise binding on the corporation.

In the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.

As alleged by Rivera, et al., Jureidini and Tsuchiya were not even officers of respondent corporation as to be considered its agents, which act prompted the Court to order said persons, under pain of contempt, to turn over the management and assets of respondent corporation to Rivera et al., as shown by the Court's resolution of May 26, 1982.

Thus, all acts done by Jureidini and Tsuchiya for and in behalf of respondent corporation, having been made without the requisite authority from the board of directors, were not binding upon the said corporation. One of these unauthorized acts was the unwarranted termination of the original employees of respondent corporation who were validly hired by its board of directors, vis-a-vis, the hiring of new employees, the petitioners in the case at bar, to replace the said original employees. Since said acts were not binding upon the corporation, no employer-employee existed between the Fujiyama Hotel & Restaurant, Inc. and the herein petitioners.

- Yao Ka Sin Trading vs. Court of Appeals, 209 SCRA 763 (1992)

YAO KA SIN TRADING, OWNED AND OPERATED BY YAO KA SIN*, Petitioner –versus-* HONORABLE COURT OF APPEALS AND PRIME WHITE CEMENT CORPORATION, REPRESENTED BY ITS PRESIDENT-CHAIRMAN, CONSTANCIO B. MAGLANA, *Respondents.*
G.R. No. 53820, THIRD DIVISION, June 15, 1992, DAVIDE, JR., J.

A corporation act only through its officers and agents, "all acts within the powers of said corporation may be performed by agents of its selection; and, except so far as limitations or restrictions may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

While there can be no question that Mr. Maglana was an officer -- the President and Chairman -- of private respondent corporation at the time he signed Exhibit "A", the above provisions of said private respondent's By-Laws do not in any way confer upon the President the authority to enter into contracts for the corporation independently of the Board of Directors. That power is exclusively lodged in the latter.

FACTS

Constancio B. Maglana, President and Chairman of the Board of private respondent Prime White Cement Corporation (PWCC) sent a letter-offer (Exhibit "A") to Yao Ka Sin Trading (YKS) which describes itself as a business concern of single proprietorship, and is represented by its manager, Mr. Henry Yao regarding the delivery of bags of white cement. However, after the signing of the letter-offer, the Board of Directors of PWCC disapproved the same. YKS then filed with the then Court of First Instance of Leyte a complaint for Specific Performance with Damages against PWCC.

PWCC denied under oath the material averments in the complaint and alleged that: (a) YKS "has no legal personality to sue having no legal personality even by fiction to represent itself;" (b) Mr. Maglana, its President and Chairman, was lured into signing Exhibit "A"; (c) such signing was subject to the condition that Exhibit "A" be approved by the Board of Directors of PWCC, as corporate commitments are made through it; (d) the latter disapproved it, hence Exhibit "A" was never consummated and is not enforceable against PWCC; (e) it agreed to sell 10,000 bags of white cement, not under Exhibit "A", but under a separate contract prepared by the Board; (f) the rejection by the Board of Exhibit "A" was made known to YKS through various letters sent to it, copies of which were attached to the Answer as Annexes 1, 2 and 3;[18] (g) YKS knew, per Delivery Order[19] and Official Receipt[20] issued by PWCC, that only 10,000 bags were sold to it, without any terms or conditions, at P24.30 per bag FOB Asturias, Cebu; (h) YKS is solely to blame for the failure to take complete delivery of 10,000 bags for it did not send its boat or truck to PWCC's plant; and (i) YKS has, therefore, no cause of action

The trial court disregarded PWCC's theory. The trial court interpreted the provision of the By-Laws -- granting its Board of Directors the power to enter into an agreement or contract of any kind with any person through the President -- to mean that the latter may enter into such contract or agreement at any time and that the same is not subject to the ratification of the board of directors but "subject only to the declared objects and purpose of the corporation and existing laws

Upon, the Court of Appeals reversed and set aside the RTC decision.

ISSUE

Whether or not the letter-offer, as accepted by YKS, is a contract that binds the PWCC. (NO)

RULING

The respondent Court correctly ruled that Exhibit "A" is not binding upon the private respondent. Mr. Maglana, its President and Chairman, was not empowered to execute it.

Since a corporation, such as the private respondent, can act only through its officers and agents, "all acts within the powers of said corporation may be performed by agents of its selection; and, except so far as limitations or restrictions may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons." Moreover, "x x x a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that 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."

While there can be no question that Mr. Maglana was an officer -- the President and Chairman -- of private respondent corporation at the time he signed Exhibit "A", the above provisions of said private respondent's By-Laws do not in any way confer upon the President the authority to enter into contracts for the corporation independently of the Board of Directors. That power is exclusively lodged in the latter. Nevertheless, to expedite or facilitate the execution of the contract, only the President -- and not all the members of the Board, or so much thereof as are required for the act -- shall sign it for the corporation. This is the import of the words through the president in Exhibit "8-A" and the clear intent of the power of the chairman "to execute and sign for and in behalf of the corporation all contracts and agreements which the corporation may enter into" in Exhibit "I-1". Both powers presuppose a prior act of the corporation exercised through the Board of Directors. No greater power can be implied from such express, but limited, delegated authority. Neither can it be logically claimed that any power greater than that expressly conferred is inherent in Mr. Maglana's position as president and chairman of the corporation.

Although there is authority "that if the president is given general control and supervision over the affairs of the corporation, it will be presumed that he has authority to make contracts and do acts within the course of its ordinary business," We find such inapplicable in this case. We note that the private corporation has a general manager who, under its By-Laws has, inter alia, the following powers: "(a) to have the active and direct management of the business and operation of the corporation, conducting the same according to the order, directives or resolutions of the Board of Directors or of the president." It goes without saying then that Mr. Maglana did not have a direct and active hand in the management of the business and operations of the corporation. Besides, no evidence was adduced to show that Mr. Maglana had, in the past, entered into contracts similar to that of Exhibit "A" either with the petitioner or with other parties.

- Metropolitan Bank & Trust Co. vs. Quilts & All, Inc., 222 SCRA 480 (1993);

METROPOLITAN BANK & TRUST COMPANY, *Petitioner –versus-* QUILTS & ALL, INC, *Respondent.*

G.R. No. 91436, THIRD DIVISION, May 24, 1993, MELO, J.

In the case of Bacolod-Murcia Milling Co., Inc. vs. First Farmers Milling Co., Inc. [103 SCRA 436 (1981)] the Court further stated:

. . . Granting, for the sake of argument, that, indeed, assistance in the 'illegal' act was rendered, the same, however, is not supported by well-pleaded averments of facts. Nowhere is it alleged that defendants-appellees had notice, information or knowledge of any flaw, much less any illegality, in their co-defendants' actuations, assuming that there was such a flaw or illegality. This absence is fatal and buoys up instead the PNB-NIDC's position of lack of cause of action... (at pp. 441-442.)
Although it is averred that the defendants' acts were done in bad faith, the Complaint does not contain any averment of facts showing that the acts were done in the manner alleged. Such a bare statement neither establishes any right or cause of action on the part of the plaintiff-appellant.
On the other hand, Metrobank cannot be faulted for relying on the Secretary's Certificate. It did so in good faith, unaware of any flaw and on the presumption that the ordinary course of business had been followed (Sec. 5-q, Rule 131, Revised Rules of Court) and that the Corporate Secretary had regularly performed her duties.

FACTS

On April 7, 1987, Relita P. de los Santos (de los Santos) then Corporate Secretary issued a Secretary's Certificate which certified that in a special meeting of the Board of Directors of Quilts and All, Inc. (Quilts) its President, Mr. Senen B. Dizon (Dizon) was authorized and empowered to mortgage in favor of Metrobank, a property belonging to Quilts.

On the basis of this Secretary's Certificate, Metrobank restructured Dizon's existing personal loan in the amount of P700,000.00, secured by his house and lot at Angeles City and the property owned by Quilts. Aside from the mortgage lien, the Secretary's Certificate was likewise annotated on TCT No. 74172 on April 10, 1977.

More than a year later, Metrobank received a letter from Atty. Cesar Villanueva, Quilt's counsel offering the amount of P200,000.00 for the cancellation of the mortgage on the property owned by

Quilts because, allegedly, "Mr. & Mrs. Senen Dizon had left the Philippines, leaving several creditors." Metrobank refused the offer since the amount offered did not approximate the appraised value of the mortgage property.

Atty. Ranel L. Trinidad, Quilt's new counsel wrote Metrobank reiterating the mortgage cancellation. In addition, counsel claimed that the alleged April 7, 1987 special meeting could not have taken place for lack of the requisite number of directors present to constitute a quorum since the Chairman and 2 other members of the Board of Directors were abroad on that date.

Quilts then filed a complaint against Metrobank, Dizon and de los Santos for annulment and cancellation of mortgage. Metrobank moved to dismiss the complaint based on 1) lack of jurisdiction and 2) failure to state a cause of action. Judge Reynaldo B. Daway, granted the motion on February 9, 1989. However, , upon Quilt's motion, Judge Daway issued an Order, reconsidering and setting aside the dismissal order because the grounds relied upon by Metrobank "did not appear to be indubitable", and deferred the determination of the motion until the trial.

Upon appeal, The Court of Appeals upheld the jurisdiction of the lower Court only with respect to Metrobank. It dismissed the case against Dizon and de los Santos, since the issue of whether or not these two persons had committed ultra vires acts is an intra-corporate matter which falls within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC) pursuant to Section 5 of Presidential Decree 902-A, as amended. Pending the outcome of the case that would be filed in the SEC, however, the Court of Appeals directed the suspension of the proceedings against Metrobank. The appellate court also stated that paragraph 10 of Quilt's complaint was sufficient basis for Quilt's case against Metrobank.

ISSUE

Whether Quilt's complaint sufficiently states a cause of action against Metrobank. (YES)

RULING

In the case of *Alzua and Armalot vs. Johnson, (21 Phil. 308 [1912])*, the Supreme Court stated:

. . . neither legal conclusions, nor conclusions or inferences of facts from facts not stated, nor incorrect inferences or conclusions from facts stated, being admitted by a demurrer to a complaint, conclusions of this nature in no wise aid the pleading. The ultimate facts upon which such conclusions rest must be alleged, though merely probative or evidential facts may be and should be omitted. (at p. 381.)
The Court agreed with Metrobank that the complaint does not contain allegations that Metrobank had prior knowledge of, or could have known with the exercise of due diligence, that the recitals in the Secretary's Certificate were false. The complaint does not even allege specific overt acts which show that Metrobank acted in conspiracy with its co-defendants to defraud Quilts.

In the case of *Bacolod-Murcia Milling Co., Inc. vs. First Farmers Milling Co., Inc. [103 SCRA 436 (1981)]* the Court further stated:

. . . Granting, for the sake of argument, that, indeed, assistance in the 'illegal' act was rendered, the same, however, is not supported by well-pleaded averments of facts. Nowhere is it alleged that defendants-appellees had notice, information or knowledge of any flaw, much less any illegality, in their co-defendants' actuations, assuming that there was such a flaw or illegality. This absence is fatal and buoys up instead the PNB-NIDC's position of lack of cause of action... (at pp. 441-442.)

Although it is averred that the defendants' acts were done in bad faith, the Complaint does not contain any averment of facts showing that the acts were done in the manner alleged. Such a bare statement neither establishes any right or cause of action on the part of the plaintiff-appellant. It is a mere conclusion of law not sustained by declarations of facts, much less admitted by defendants-appellees. It does not, therefore, aid in any wise the complaint in setting forth a cause of action … (pp. 441-442.) On the other hand, Metrobank cannot be faulted for relying on the Secretary's Certificate. It did so in good faith, unaware of any flaw and on the presumption that the ordinary course of business had been followed (Sec. 5-q, Rule 131, Revised Rules of Court) and that the Corporate Secretary had regularly performed her duties.

- See also Lee vs. Court of Appeals, 345 SCRA 579 (2000)

RAMON C. LEE AND ANTONIO DM. LACDAO*, Petitioners –versus-* THE HON. COURT OF APPEALS, SACOBA MANUFACTURING CORP., PABLO GONZALES, JR. AND THOMAS GONZALES, *Respondents.*

G.R. No. 91436, THIRD DIVISION, February 4, 1992, GUTTIEREZ, JR., J.

FACTS

A complaint for a sum of money was filed by the International Corporate Bank, Inc. against Sacoba Manufacturing Corporation (Sacoba), Pablo Gonzales and Thomas Gonzales (the Gonzalezes) who, in turn, filed a third-party complaint against Alfa Integrated Textile Mills (ALFA) and Ramon Lee (Lee) and Antonio Lacdao (Lacdao). Lee and Lacdao sent a letter to the RTC, claiming the summons for ALFA was erroneously served upon them considering that the management of ALFA had been transferred to the Development Bank of the Philippines (DBP), through a Voting Trust Agreement (VTA). The RTC issued an order requiring the issuance of an *alias* summons upon ALFA through the DBP. In a manifestation, DBP claimed that it was not authorized to receive summons on behalf of ALFA since the DBP had not taken over the company which has a separate and distinct corporate personality and existence. Sacoba and the Gonzalezes filed a Manifestation and Motion for the Declaration of Proper Service of Summons on ALFA through Lee and Lacdao, the president and vice-president, which the trial court granted.

In a Motion for Reconsideration, Lee and Lacdao maintain that with the execution of the VTA between them and the other stockholders of ALFA, as one party, and the DBP, as the other party, the former assigned and transferred all their shares in ALFA to DBP, as trustee. They argue that by virtue to of the VTA, Lee and Lacdao, can no longer be considered directors of ALFA. They ceased to be president and vice-president of ALFA.

Sacoba and the Gonzalezes insist that the VTA between ALFA and the DBP had all the more safeguarded Lee and Lacdao's continuance as officers and directors of ALFA inasmuch as the general object of voting trust is to insure permanency of the tenure of the directors of a corporation.

Initially, The RTC upheld the validity of the service of summons on ALFA through the Lee and Lacdao. However, upon filing of a second motion for reconsideration by Lee and Lacdao, the RTC reversed itself and declared that service upon Lee and Lacdao, who were no longer corporate officers of ALFA, cannot be considered as proper service of summons on ALFA. The CA reversed the RTC Order. Hence, the present petition.

ISSUES

1. Whether the change in the stockholder's status (only holding an equitable title) deprives such stockholder of the right to qualify as a director. (YES)
2. Whether there was proper service of summons on ALFA through Lee and Lacdao. (NO)

RULING

1. The execution of a VTA may create a dichotomy between the equitable or beneficial ownership of the corporate shares of a stockholders, on the one hand, and the legal title thereto on the other hand. Under the 1906 Corporation Code, the eligibility of a director cannot be adversely affected by the simple act of such director being a party to a VTA inasmuch as he remains owner (although beneficial or equitable only) of the shares subject of the VTA pursuant to which a transfer of the stockholder's shares in favor of the trustee is required. No disqualification arises by virtue of the phrase *"in his own right"* provided under the 1906 Corporation Code. With the omission of the phrase *"in his own right"* in the 1980 Corporation Code, the election of trustees and other persons who are not beneficial owners of the shares registered in their names on the books of the corporation becomes formally legalized. Hence, this is a clear indication that, under the 1980 Corporation Code, in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation.

Thus, Lee and Lacdao, by virtue of VTA disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the 1980 Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors. Hence, the transfer of the Lee and Lacdao's shares to the DBP created vacancies in their respective positions as directors of ALFA. Considering that the VTA between ALFA and the DBP transferred legal ownership of the stock covered by the agreement to the DBP as trustee, the latter became the stockholder of record with respect to the said shares of stocks. In the absence of a showing that the DBP had caused to be transferred in their names one share of stock for the purpose of qualifying as directors of ALFA, Lee and Lacdao can no longer be deemed to have retained their status as officers of ALFA which was the case before the execution of the subject VTA. There appears to be no dispute from the records that DBP has taken over full control and management of the firm.

2. Under the Rules of Court, if the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors. Lee and Lacdao do not fall under any of the enumerated officers. The service of summons upon ALFA, through Lee and Lacdao is not valid.

- Atrium Management Corporation vs. Court of Appeals, et al., G.R. No. 109491, February 28, 2001

ATRIUM MANAGEMENT CORPORATION*, Petitioner –versus-* COURT OF APPEALS, E.T. HENRY AND CO., LOURDES VICTORIA M. DE LEON, RAFAEL DE LEON, JR., AND HI-CEMENT CORPORATION, *Respondents.*

G.R. No. 109491, FIRST DIVISION, February 28, 2001, PARDO, J."

An ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law"[16] The term "ultra vires" is "distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated."
The Court finds that there was no sufficient evidence to show that such is the case. Lourdes M. de Leon is the treasurer of the corporation and is authorized to sign checks for the corporation. At the time of the issuance of the checks, there were sufficient funds in the bank to cover payment of the amount of P2 million pesos.

FACTS

On January 3, 1983, Atrium Management Corporation filed with the Regional Trial Court, Manila an action for collection of the proceeds of four postdated checks in the total amount of P2 million. Hi-Cement Corporation through its corporate signatories, petitioner Lourdes M. de Leon, treasurer, and the late Antonio de las Alas, Chairman, issued checks in favor of E.T. Henry and Co. Inc., as payee. E.T. Henry and Co., Inc., in turn, endorsed the four checks to petitioner Atrium Management Corporation for valuable consideration. Upon presentment for payment, the drawee bank dishonored all four checks for the common reason "payment stopped". Atrium, thus, instituted this action after its demand for payment of the value of the checks was denied.

After due proceedings, on July 20, 1989, the trial court rendered a decision ordering Lourdes M. de Leon, her husband Rafael de Leon, E.T. Henry and Co., Inc. and Hi-Cement Corporation to pay petitioner Atrium, jointly and severally, the amount of P2 million corresponding to the value of the four checks, plus interest and attorney's fees.

On appeal, the Court of Appeals promulgated its decision modifying the decision of the trial court, absolving Hi-Cement Corporation from liability and dismissing the complaint as against it. The appellate court ruled that: (1) Lourdes M. de Leon was not authorized to issue the subject checks in favor of E.T. Henry, Inc.; (2) The issuance of the subject checks by Lourdes M. de Leon and the late Antonio de las Alas constituted ultra vires acts; and (3) The subject checks were not issued for valuable consideration.

ISSUE

Whether the issuance of the questioned checks was an ultra vires act. (NO)

RULING

The record revealed that Hi-Cement Corporation issued the four (4) checks to extend financial assistance to E.T. Henry, not as payment of the balance of the P30 million pesos cost of hydro oil delivered by E.T. Henry to Hi-Cement. Why else would petitioner de Leon ask for counterpart checks from E.T. Henry if the checks were in payment for hydro oil delivered by E.T. Henry to Hi-Cement?

Hi-Cement, however, maintains that the checks were not issued for consideration and that Lourdes and E.T. Henry engaged in a "kiting operation" to raise funds for E.T. Henry, who admittedly was in need of financial assistance. The Court finds that there was no sufficient evidence to show that such is the case. Lourdes M. de Leon is the treasurer of the corporation and is authorized to sign checks for the corporation. At the time of the issuance of the checks, there were sufficient funds in the bank to cover payment of the amount of P2 million pesos.

It is, however, our view that there is basis to rule that the act of issuing the checks was well within the ambit of a valid corporate act, for it was for securing a loan to finance the activities of the corporation, hence, not an ultra vires act.

"An ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law"[16] The term "ultra vires" is "distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated."

The next question to determine is whether Lourdes M. de Leon and Antonio de las Alas were personally liable for the checks issued as corporate officers and authorized signatories of the check. "Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when:

"1.He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

"2.He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

"3.He agrees to hold himself personally and solidarily liable with the corporation; or

"4.He is made, by a specific provision of law, to personally answer for his corporate action."

In the case at bar, Lourdes M. de Leon and Antonio de las Alas as treasurer and Chairman of Hi-Cement were authorized to issue the checks. However, Ms. de Leon was negligent when she signed the confirmation letter requested by Mr. Yap of Atrium and Mr. Henry of E.T. Henry for the rediscounting of the crossed checks issued in favor of E.T. Henry. She was aware that the checks were strictly endorsed for deposit only to the payee's account and not to be further negotiated. What is more, the confirmation letter contained a clause that was not true, that is, "that the checks issued to E.T. Henry were in payment of Hydro oil bought by Hi-Cement from E.T. Henry". Her negligence resulted in damage to the corporation. Hence, Ms. de Leon may be held personally liable therefor.

- Atrium Management Corporation vs. Court of Appeals, et al., G.R. No. 109491, February 28, 2001

MARIA CLARA PIROVANA ET AL., *Plaintiffs-Appellees –versus-* THE DE LA RAMA STEAMSHIP CO., *Defendant-Appellant.*

G.R. No. L-5377, EN BANC, December 29, 1954, BAUTISTA ANGELO, J."

Strictly speaking, an act of a corporation outside of its character powers is just as such ultra vires where all the stockholders consent thereto as in a case where none of the stockholders expressly or cannot be ratified so as to make it valid, even though all the stockholders consent thereto; but inasmuch as the stockholders in reality constitute the corporation, it should , it would seem, be estopped to allege ultra vires, and it is generally so held where there are no creditors, or the creditors are not injured thereby, and where the rights of the state or the public are not involved, unless the act is not only ultra vires but in addition illegal and void. of course, such consent of all the stockholders cannot adversely affect creditors of the corporation nor preclude a proper attack by the state because of such ultra vires act. (7 Fletcher Corp., Sec. 3432, p. 585)

Since it is not contended that the donation under consideration is illegal, or contrary to any of the express provision of the articles of incorporation, nor prejudicial to the creditors of the defendant corporation, we cannot but logically conclude, on the strength of the authorities we have quoted above, that said donation, even if ultra vires in the supposition we have adverted to, is not void, and if voidable its infirmity has been cured by ratification and subsequent acts of the defendant corporation. The defendant corporation, therefore, is now prevented or estopped from contesting the validity of the donation.

FACTS

Plaintiffs herein are the minor children of the late Enrico Pirovano represented by their mother and judicial guardian Estefania R. Pirovano. They seek to enforce certain resolutions adopted by the Board of Directors and stockholders of the defendant company giving to said minor children of the proceeds of the insurance policies taken on the life of their deceased father Enrico Pirovano with the company as beneficiary. Defendant's main defense is: that said resolutions and the contract executed pursuant thereto are ultra vires, and, if valid, the obligation to pay the amount given is not yet due and demandable.

Defendant is a corporation duly organized in accordance with law. Enrico Pirovano became the president of the defendant company and under his management the company grew and progressed until it became a multi-million corporation by the time Pirovano was executed by the Japanese during the occupation.

In the meantime, Don Esteban de la Rama, who practically owned and controlled the stock of the defendant corporation, distributed his shareholding among his five daughters, namely, Leonor, Estefania, Lourdes, Lolita and Conchita and his wife Natividad Aguilar. The other stockholders , namely, Eliseo Hervas, Tomas Concepcion, Antonio Juanco, and Jose Aguilar, who were merely employees of Don Esteban, were given 40 shares each, while Pio Pedrosa, Marcial P. Lichauco and Rafael Roces, one share each, because they merely represented the National Development Company. NDC was given representation in the Board Of Directors of the corporation because at that time the latter had an outstanding bonded indebted incurred in the amount of P7,500.00 with NDC. Upon arrangement made with the National Development Company, the outstanding bonded indebtedness was converted into non-voting preferred shares of stock of the De la Rama company under the express condition that they would bear affixed cumulative dividend of 6 per cent per annum and would be redeemable within 15 years.

The first resolution granting to the Pirovano children the proceeds of the insurance policies taken on his life by the defendant company was adopted by the Board of Directors which was submitted to the stockholders of the De la Rama company at a meeting properly convened, and on that same date, July 10, 1946, the same was duly approved.

It appears that, although Don Esteban and the Members of his family were agreeable to giving to the Pirovano children the amount of P400,000 out of the proceeds of the insurance policies taken on the life of Enrico Pirovano, they did not realize that when they provided in the above referred two resolutions that said Amount should be paid in the form of shares of stock, they would be actually giving to the Pirovano children more than what they intended to give.

However, the form of the donation to the Pirovano children was changed from a donation of 4,000 shares of stock as originally planned into a renunciation in favor of the children of all the company's "right, title, and interest as beneficiary in and to the proceeds of the abovementioned life insurance policies.

The trial court resolved all the issues raised by the parties in favor of the plaintiffs and, after considering the evidence, both oral and documentary, arrived at the conclusion that said contract or donation is not ultra vires, but an act executed within the powers of the defendant corporation in accordance with its articles of incorporation and by laws, sanctioned and approved by its Board of Directors and stockholders; and subsequently ratified by other subsequent acts of the defendant company.

ISSUE

Whether the contract or donation is not ultra vires. (YES)

RULING

After a careful perusal of the provisions on the purposes of the formed corporation, the Supreme Court found that the corporation was given broad and almost unlimited powers to carry out the purposes for which it was organized among them, (1) "To invest and deal with the moneys of the company not immediately required, in such manner as from time to time may be determined" and, (2) "to aid in any other manner any person, association, or corporation of which any obligation or in which any interest is held by this corporation or in the affairs or prosperity of which this corporation has a lawful interest." The world deal is broad enough to include any manner of disposition, and refers to moneys not immediately required by the corporation, and such disposition may be made in such manner as from time to time may be determined by the corporations. The donation in question undoubtedly comes within the scope of this broad power for it is a fact appearing in the evidence that the insurance proceeds were not immediately required when they were given away.

In fact, the evidence shows that the corporation declared a 100 per cent cash dividend, or P2,000,000, and later on another 30 per cent cash dividend. This is clear proof of the solvency of the corporation. It may be that, as insinuated, Don Esteban wanted to make use of the insurance money to rehabilitate the central owned by a sister corporation, known as Hijos de I. de la Rama and Co., Inc., situated in

Bago, Negros Occidental, but this, far from reflecting against the solvency of the De la Rama company, only shows that the funds were not needed by the corporation.

The Court did not see much distinction between the acts of generosity or benevolence extended to some employees of the corporation, and even to some in whom the corporation was merely interested because of certain moral or political considerations, and the donation which the corporation has seen fit to give to the children of the late Enrico Pirovano from the point of view of the power of the corporation as expressed in its articles of incorporation. And if the former had been sanctioned and had been considered valid and intra vires, we see no plausible reasons why the latter should now be deemed ultra vires. It may perhaps be argued that the donation given to the children of the late Enrico Pirovano is so large and disproportionate that it can hardly be considered a pension of gratuity that can be placed on a par with the instances above mentioned, but this argument overlooks one consideration: the gratuity here given was not merely motivated by pure liberality or act of generosity, but by a deep sense of recognition of the valuable services rendered by the late Enrico Pirovano which had immensely contributed to the growth of the corporation to the extent that from its humble capitalization it blossomed into a multi-million corporation that it is today. In other words of the very resolutions granting the donation or gratuity, said donation was given not only because the company was so indebted to him that it saw fit and proper to make provisions for his children, but it did so out of a sense of gratitude. Another factor that we should bear in mind is that Enrico Pirovano was not only a high official of the company but was at the same time a member of the De la Rama family, and the recipient of the donation are the grandchildren of Don Esteban de la Rama. This we, may say, is the motivating root cause behind the grant of this bounty.

But although business corporations cannot contribute to charity or benevolence, yet they are not required always to insist on the full extent of their legal rights. They are not forbidden for the recognizing moral obligation of which strict law takes no cognizance. They are not prohibited from establishing a reputation for board, liberal, equitable dealing which may stand them in good stead in competition with less fair rivals. Thus, an incorporated fire insurance company which policies except losses from explosions may nevertheless pay a loss from that cause when other companies are accustomed to do so, such liberal dealing being deemed conducive to the prosperity of the corporation." (Modern Law of Corporations, Machen, Vol. 1, p. 81).

Strictly speaking, an ultra vires act is one outside the scope of the power conferred by the legislature, and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority of particular officers or agents (19 C. J. S. 419).

Corporate transactions which are illegal because prohibited by statute or against public policy are ordinarily void and unenforceable regardless of the part performance, ratification, or estoppel; but general prohibitions against exceeding corporate powers and prohibitions intended to protect a particular class or specifying the consequences of violation may not preclude enforcement of the transaction and an action may be had for the part unaffected by the illegality or for equitable restitution. (19 C.J.S. 421.)

Generally, a transaction within corporate powers but executed in an irregular or unauthorized manner is voidable only, and may become enforceable by reason of ratification or express or implied assent by the stockholders or by reason of estoppel of the corporation or the other party to the transaction to raise the objection, particularly where the benefits are retained.

As appears in paragraphs 960-964 supra, the general rule is that a corporation must act in the manner and with the formalities, if any, prescribed by its character or by the general law. However, a corporation transaction or contract which is within the corporation powers, which is neither wrong in itself nor against public policy, but which is defective from a failure to observe in its execution a requirement of law enacted for the benefit or protection of a certain class, is voidable and is valid until avoided, not void until validated; the parties for whose benefit the requirement was enacted may ratify it or be estoppel to assert its invalidity, and third persons acting in good faith are not usually affected by an irregularity on the part of the corporation in the exercise of its granted powers. (19 C.J.S., 423-24.)

It is true that there are authorities which told that ultra vires acts, or those performed beyond the powers conferred upon the corporation either by law or by its articles of incorporation, are not only voidable, but wholly void and of no legal effect, and that such acts cannot be validated by ratification or be the basis of any action in court; but such ruling does not constitute the weight of authority, the reason being that they fail to make the important distinction we have above adverted to. Because rule has been rejected by most of the state courts and even by the modern treaties or corporations (7 Flethcer, Cyc. Corps., 563-564). And now it can be said that the majority of the cases hold that acts which are merely ultra vires, or acts which are not illegal, may be ratified by the stockholders of a corporation (Brooklyn Heights R. Co. vs. Brooklyn City R. Co., 135 N.Y. Supp. 1001).

Strictly speaking, an act of a corporation outside of its character powers is just as such ultra vires where all the stockholders consent thereto as in a case where none of the stockholders expressly or cannot be ratified so as to make it valid, even though all the stockholders consent thereto; but inasmuch as the stockholders in reality constitute the corporation, it should , it would seem, be estopped to allege ultra vires, and it is generally so held where there are no creditors, or the creditors are not injured thereby, and where the rights of the state or the public are not involved, unless the act is not only ultra vires but in addition illegal and void. of course, such consent of all the stockholders cannot adversely affect creditors of the corporation nor preclude a proper attack by the state because of such ultra vires act. (7 Fletcher Corp., Sec. 3432, p. 585)

Since it is not contended that the donation under consideration is illegal, or contrary to any of the express provision of the articles of incorporation, nor prejudicial to the creditors of the defendant corporation, we cannot but logically conclude, on the strength of the authorities we have quoted above, that said donation, even if ultra vires in the supposition we have adverted to, is not void, and if voidable its infirmity has been cured by ratification and subsequent acts of the defendant corporation. The defendant corporation, therefore, is now prevented or estopped from contesting the validity of the donation. This is specially so in this case when the very directors who conceived the idea of granting said donation are practically the stockholders themselves, with few nominal exception. This applies to the new stockholder Jose Cojuangco who acquired his interest after the donation has been made because of the rule that a "purchaser of shares of stock cannot avoid ultra vires acts of the corporation authorized by its vendor, except those done after the purchase" (7 Fletcher, Cyc. Corps. section 3456, p. 603; Pascual vs. Del Saz Orozco, 19 Phil., 82.) Indeed, how can the stockholders now pretend to revoke the donation which has been partly consummated? How can the corporation now set at naught the transfer made to Mrs. Pirovano of the property in New York, U.S.A., the price of which was paid by her but of the proceeds of the insurance policies given as donation. To allow the corporation to undo what it has done would only be most unfair but would contravene the well-settled doctrine that the defense of ultra vires cannot be set up or availed of in completed transactions (7 Fletcher, Cyc. Corps. Section 3497, p. 652; 19 C.J.S., 431).

- UNIVERSITY OF MINDANAO, INC., Petitioner, v. BANGKO SENTRAL PILIPINAS, ET AL.,Respondents. (G.R. No. 194964-65, January 11, 2016, LEONEN,J.)

UNIVERSITY OF MINDANAO, INC., *Petitioner–versus-* BANGKO SENTRAL NG PILIPINAS, ET AL., *Respondents*.

G.R. No. 194964-65, SECOND DIVISION, January 11, 2016, LEONEN, J.

Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are ultra vires. The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation.

Securing FISLAI's loans by mortgaging petitioner's properties does not appear to have even the remotest connection to the operations of petitioner as an educational institution. Securing loans is not an adjunct of the educational institution's conduct of business. It does not appear that securing third-party loans was necessary to maintain petitioner's business of providing instruction to individuals.

FACTS

University of Mindanao is an educational institution. Its Board of Trustees was chaired by Guillermo B. Torres. His wife, Dolores P. Torres, sat as University of Mindanao's Assistant Treasurer.

Before 1982, Guillermo B. Torres and Dolores P. Torres incorporated and operated two (2) thrift banks: (1) First Iligan Savings & Loan Association, Inc. (FISLAI); and (2) Davao Savings and Loan Association, Inc. (DSLAI). Guillermo B. Torres chaired both thrift banks. He acted as FISLAI's President, while his wife, Dolores P. Torres, acted as DSLAI's President and FISLAI's Treasurer.

Upon Guillermo B. Torres' request, Bangko Sentral ng Pilipinas issued a P1.9 million standby emergency credit to FISLAI. The release of standby emergency credit was evidenced by three (3) promissory notes in the amounts of P500,000.00, P600,000.00, and P800,000.00, respectively. All these promissory notes were signed by Guillermo B. Torres, and were co-signed by either his wife, Dolores P. Torres, or FISLAI's Special Assistant to the President, Edmundo G. Ramos, Jr.

On May 25, 1982, University of Mindanao's Vice President for Finance, Saturnino Petalcorin, executed a deed of real estate mortgage over University of Mindanao's property in Cagayan de Oro City in favor of Bangko Sentral ng Pilipinas. It was allegedly executed on University of Mindanao's behalf.

As proof of his authority to execute a real estate mortgage for University of Mindanao, Saturnino Petalcorin showed a Secretary's Certificate signed by University of Mindanao's Corporate Secretary, Aurora de Leon.

The Secretary's Certificate was supported by an excerpt from the minutes of the January 19, 1982 alleged meeting of University of Mindanao's Board of Trustees.

On October 21, 1982, Bangko Sentral ng Pilipinas granted FISLAI an additional loan of P620,700.00. Guillermo B. Torres and Edmundo Ramos executed a promissory note to cover that amount.

On November 5, 1982, Saturnino Petalcorin executed another deed of real estate mortgage, allegedly on behalf of University of Mindanao, over its two properties in Iligan City. This mortgage served as additional security for FISLAI's loans.

On January 17, 1983, Bangko Sentral ng Pilipinas' mortgage lien over the Iligan City properties and Aurora de Leon's certification were annotated and mortgage lien over the Iligan City properties was also annotated on the tax declarations covering the Iligan City properties.

On January 11, 1985, FISLAI, DSLAI, and Land Bank of the Philippines entered into a Memorandum of Agreement intended to rehabilitate the thrift banks, which had been suffering from their depositors' heavy withdrawals. Among the terms of the agreement was the merger of FISLAI and DSLAI, with DSLAI as the surviving corporation. DSLAI later became known as Mindanao Savings and Loan Association, Inc. (MSLAI).

Guillermo B. Torres died on March 2, 1989.
MSLAI failed to recover from its losses and was liquidated on May 24, 1991.

On June 18, 1999, Bangko Sentral ng Pilipinas sent a letter to University of Mindanao, informing it that the bank would foreclose its properties if MSLAI's total outstanding obligation of P12,534,907.73 remained unpaid.

University of Mindanao, through its Vice President for Accounting, Gloria E. Detoya, denied that University of Mindanao's properties were mortgaged. It also denied having received any loan proceeds from Bangko Sentral ng Pilipinas.

On July 16, 1999, University of Mindanao filed two Complaints for nullification and cancellation of mortgage. One Complaint was filed before the Regional Trial Court of Cagayan de Oro City, and the other Complaint was filed before the Regional Trial Court of Iligan City.

University of Mindanao alleged in its Complaints that it did not obtain any loan from Bangko Sentral ng Pilipinas. It also did not receive any loan proceeds from the bank.

University of Mindanao also alleged that Aurora de Leon's certification was anomalous. It never authorized Saturnino Petalcorin to execute real estate mortgage contracts involving its properties to secure FISLAI's debts. It never ratified the execution of the mortgage contracts. Moreover, as an educational institution, it cannot mortgage its properties to secure another person's debts.
On November 23, 2001, the Regional Trial Court of Cagayan de Oro City rendered a Decision in favor of University of Mindanao,

The Regional Trial Court of Cagayan de Oro City found that there was no board resolution giving Saturnino Petalcorin authority to execute mortgage contracts on behalf of University of Mindanao. The Cagayan de Oro City trial court gave weight to Aurora de Leon's testimony that University of Mindanao's Board of Trustees did not issue a board resolution that would support the Secretary's Certificate she issued. She testified that she signed the Secretary's Certificate only upon Guillermo B. Torres' orders.

Saturnino Petalcorin testified that he had no authority to execute a mortgage contract on University of Mindanao's behalf. He merely executed the contract because of Guillermo B. Torres' request. Bangko Sentral ng Pilipinas' witness Daciano Pagui, Jr. also admitted that there was no board resolution giving Saturnino Petalcorin authority to execute mortgage contracts on behalf of University of Mindanao.

The Regional Trial Court of Cagayan de Oro City ruled that Saturnino Petalcorin was not authorized to execute mortgage contracts for University of Mindanao. Hence, the mortgage of University of Mindanao's Cagayan de Oro City property was unenforceable. Saturnino Petalcorin's unauthorized acts should be annulled.

Similarly, the Regional Trial Court of Iligan City rendered a Decision on December 7, 2001 in favor of University of Mindanao.

The Iligan City trial court found that the Secretary's Certificate issued by Aurora de Leon was fictitious37 and irregular for being unnumbered.38 It also did not specify the identity, description, or location of the mortgaged properties.

The Iligan City trial court gave credence to Aurora de Leon's testimony that the University of Mindanao's Board of Trustees did not take up the documents in its meetings. Saturnino Petalcorin corroborated her testimony.

The Iligan City trial court ruled that the lack of a board resolution authorizing Saturnino Petalcorin to execute documents of mortgage on behalf of University of Mindanao made the real estate mortgage contract unenforceable under Article 140341 of the Civil Code.42 The mortgage contract and the subsequent acts of foreclosure and auction sale were void because the mortgage contract was executed without University of Mindanao's authority.

The Iligan City trial court also ruled that the annotations on the titles of University of Mindanao's properties do not operate as notice to the University because annotations only bind third parties and not owners. Further, Bangko Sentral ng Pilipinas' right to foreclose the University of Mindanao's properties had already prescribed.

Bangko Sentral ng Pilipinas separately appealed the Decisions of both the Cagayan de Oro City and the Iligan City trial courts.

After consolidating both cases, the Court of Appeals issued a Decision on December 17, 2009 in favor of Bangko Sentral ng Pilipinas.

ISSUE

Whether petitioner is bound by the real estate mortgage secured by Saturnino. (NO)

RULING

Petitioner argues that the execution of the mortgage contract was ultra vires. As an educational institution, it may not secure the loans of third persons. Securing loans of third persons is not among the purposes for which petitioner was established.

Petitioner is correct.

Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers. Third persons dealing with corporations cannot assume that corporations have powers. It is up to those persons dealing with corporations to determine their competence as expressly defined by the law and their articles of incorporation.

A corporation may exercise its powers only within those definitions. Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are ultra vires.

The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation. This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code

As an educational institution, petitioner serves:

a. To establish, conduct and operate a college or colleges, and/or university;
b. To acquire properties, real and/or personal, in connection with the establishment and operation of such college or colleges;
c. To do and perform the various and sundry acts and things permitted by the laws of the Philippines unto corporations like classes and kinds;
d. To engage in agricultural, industrial, and/or commercial pursuits in line with educational program of the corporation and to acquire all properties, real and personal[,] necessary for the purposes[;]
e. To establish, operate, and/or acquire broadcasting and television stations also in line with the educational program of the corporation and for such other purposes as the Board of Trustees may determine from time to time;
f. To undertake housing projects of faculty members and employees, and to acquire real estates for this purpose;
g. To establish, conduct and operate and/or invest in educational foundations; [As amended on December 15, 1965][;]
h. To establish, conduct and operate housing and dental schools, medical facilities and other related undertakings;
i. To invest in other corporations. [As amended on December 9, 1998]. [Amended Articles of Incorporation of the University of Mindanao, Inc. – the Petitioner].
j. Petitioner does not have the power to mortgage its properties in order to secure loans of other persons. As an educational institution, it is limited to developing human capital through formal instruction. It is not a corporation engaged in the business of securing loans of others.
k. Hiring professors, instructors, and personnel; acquiring equipment and real estate; establishing housing facilities for personnel and students; hiring a concessionaire; and other

activities that can be directly connected to the operations and conduct of the education business may constitute the necessary and incidental acts of an educational institution.

l. Securing FISLAI's loans by mortgaging petitioner's properties does not appear to have even the remotest connection to the operations of petitioner as an educational institution. Securing loans is not an adjunct of the educational institution's conduct of business. It does not appear that securing third-party loans was necessary to maintain petitioner's business of providing instruction to individuals.

This court ruled that a contract executed by a corporation shall be presumed valid if on its face its execution was not beyond the powers of the corporation to do. Thus:
When a contract is not on its face necessarily beyond the scope of the power of the corporation by which it was made, it will, in the absence of proof to the contrary, be presumed to be valid. Corporations are presumed to contract within their powers. The doctrine of ultra vires, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong.
However, this should not be interpreted to mean that such presumption applies to all cases, even when the act in question is on its face beyond the corporation's power to do or when the evidence contradicts the presumption.

Presumptions are "inference[s] as to the existence of a fact not actually known, arising from its usual connection with another which is known, or a conjecture based on past experience as to what course human affairs ordinarily take." Presumptions embody values and revealed behavioral expectations under a given set of circumstances.

Presumptions may be conclusive or disputable.

Conclusive presumptions are presumptions that may not be overturned by evidence, however strong the evidence is. They are made conclusive not because there is an established uniformity in behavior whenever identified circumstances arise. They are conclusive because they are declared as such under the law or the rules. Rule 131, Section 2 of the Rules of Court identifies two (2) conclusive presumptions:

SEC. 2. Conclusive presumptions.— The following are instances of conclusive presumptions:
(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it;

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

On the other hand, disputable presumptions are presumptions that may be overcome by contrary evidence. They are disputable in recognition of the variability of human behavior. Presumptions are not always true. They may be wrong under certain circumstances, and courts are expected to apply them, keeping in mind the nuances of every experience that may render the expectations wrong.
Thus, the application of disputable presumptions on a given circumstance must be based on the existence of certain facts on which they are meant to operate. "[P]resumptions are not allegations, nor do they supply their absence[.]" Presumptions are conclusions. They do not apply when there are no facts or allegations to support them.

In this case, the presumption that the execution of mortgage contracts was within petitioner's corporate powers does not apply. Securing third-party loans is not connected to petitioner's purposes as an educational institution.

- OFFICE of the OMBUDSMAN v. ANTONIO Z. DE GUZMAN, G.R. No. 197886, October 4, 2017, Third Division, LEONEN, J.

OFFICE OF THE OMBUDSMAN, *Petitioner–versus-* ANTONIO Z. DE GUZMAN, *Respondent.*
G.R. No. 197886, THIRD DIVISION, October 4, 2017, LEONEN, J.

A contract entered into by corporate officers who exceed their authority generally does not bind the corporation except when the contract is ratified by the Board of Director .
There was no evidence presented that the Board of Directors repudiated the contract dated May 7, 2004 with Aboitiz One. The contract remained effective until January 31, 2006. Considering that the Board of Directors remained silent and the Postmaster Generals continued to approve the payments to Aboitiz One, they are presumed to have substantially ratified respondent's unauthorized acts. Therefore, respondent's action is not considered ultra vires.

FACTS

Sometime in 2001, the Philippine Postal Corporation entered into a contract with Aboitiz Air Transport Corporation (Aboitiz Air) for the carriage of mail at a rate of P5.00 per kilogram.5 This contract would expire on December 31, 2002. After the expiry of its contract with Aboitiz Air, the Philippine Postal Corporation purchased 40 vehicles for mail deliveries in Luzon. It also hired 25 drivers for these vehicles on a contractual basis. All of these drivers' contracts would expire on March 31, 2004, except that of a certain Oliver A. Cruz.

The Central Mail Exchange Center of the Philippine Postal Corporation conducted a post study of the delivery system and submitted a recommendation that the Philippine Postal Corporation would save P6,110,152.44 per annum if deliveries were outsourced instead at the cost of P8.00 per kilogram. The Board of Directors of the Philippine Postal Corporation held a Special Board Meeting where De Guzman, the Officer-in-Charge, endorsed for approval the Central Mail Exchange Center's recommendation to outsource mail delivery in Luzon. However, De Guzman sent a letter to Aboitiz Air, now Aboitiz One, Inc. (Aboitiz One), to re-assume to undertake the carriage of mail from and to Regions 1, 2, 5, & CAR starting 11 May 2004 until further notice. Aboitiz One accepted the proposal and commenced its delivery operations in Luzon on May 20, 2004. When Postmaster General Diomedo P. Villanueva (Postmaster General Villanueva) resumed work, the Aboitiz One contract had already been fully implemented. Thus, the Postmaster General approved payments made to Aboitiz One for services rendered.

Atty. Sim Oresca Mata, Jr. filed an administrative complaint with the Office of the Ombudsman against De Guzman. He alleged that the Aboitiz One contract renewal was done without public bidding and that the rate per kilogram was unilaterally increased without the Philippine Postal Corporation Board of Directors' approval.

In his Counter-Affidavit, De Guzman alleged that the Office of the Ombudsman no longer had jurisdiction over the case since it was filed one (1) year and five (5) months after the commission of the act complained of, or after he sent his May 7, 2004 letter to Aboitiz. He also alleged that the contract renewal was approved by the Board of Directors in the April 29, 2004 Special Meeting. He maintained that the expiration of the employment contracts of the drivers caused a delay in the delivery of mail, which justified the approval of the outsourcing of deliveries.

The Office of the Ombudsman rendered its Decision finding De Guzman guilty of grave misconduct and dishonesty. De Guzman filed his Motion for Reconsideration but it was denied. Thus, he filed a Petition for Review with the Court of Appeals, insisting that the outsourcing of mail deliveries in Luzon was approved by the Philippine Postal Corporation Board of Directors and that the lack of bidding was justified by the delivery delays due to the expiration of the mail delivery drivers' employment contracts. The Court of Appeals rendered its Decision annulling the Decision and Order of the Office of the Ombudsman and setting aside the Complaint against De Guzman for lack of merit.22 The Court of Appeals found that according to the Minutes of the April 29, 2004 Special Board Meeting, the engagement of Aboitiz's services was approved by the Board of Directors and likewise found that the rate increase per kilogram from P5.00 to P8.00 was approved by the Board of Directors in the April 29, 2004 Special Board Meeting after considering and deliberating on the Central Mail Exchange Center's study on the rates of Aboitiz One's competitors.

ISSUE

Whether the act of De Guzman in procuring Aboitiz One's services in outsourcing mail deliveries in Luzon considered ultra vires. (NO)

RULING

Respondent was designated Officer-in-Charge when the contract between the Philippine Postal Corporation and Aboitiz One was effected, since the Postmaster General had taken a leave of absence. Thus, he is considered to have been exercising the functions of the Postmaster General during this period. Under Republic Act No. 7354,40 the powers of the Philippine Postal Corporation are exercised by the Board of Directors, with the President appointing all seven (7) members and "with the Postmaster General as one of the members to represent the government shareholdings."

The Postmaster General manages the Philippine Postal Corporation and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board [of Directors]." Valid corporate acts are those that have "the vote of at least a majority of the members present at a meeting at which there is a quorum."

There is no board resolution authorizing respondent to enter into a contract with Aboitiz One for the outsourcing of mail deliveries in Luzon. Likewise, there are no Minutes of the April 29, 2004 Special Board Meeting. Thus, respondent relies on the transcript of stenographic notes taken during the April 29, 2004 Special Board Meeting46 to prove that he had the Board of Directors' approval to enter into the contract.

While the minutes of a board meeting are not equivalent to a board resolution, they may be examined to determine what actually took place during the meeting. In Brias v. Hord:

The minutes of the transactions of a board such as the present, prepared by its secretary or some person named or appointed for the purpose of keeping a record of the proceedings, are generally accepted, once approved by the board, as prima facie evidence of what actually took place during that meeting.

Ideally, there would have been minutes taken after the conduct of the board meeting. In its absence, as in this case, the transcript may be resorted to in order to determine the Board of Directors' action on a particular measure, For a corporate act of the Philippine Postal Corporation to be valid, it must have the vote of at least a majority of the members in a meeting where there is a quorum. In this instance, six (6) out of seven (7) members were present during the April 29, 2004 Special Board Meeting.

However, the Board of Directors never actually took a vote on whether or not it should renew its contract with Aboitiz One for the outsourcing of its mail deliveries. A "no comment" from two (2) of the directors present cannot be considered as a unanimous approval. One (1) of the directors even required the presentation of the draft contract before its approval. There was also no board resolution issued after approving it. As there was no majority vote or a board resolution, respondent was not authorized to enter into the contract51 dated May 7, 2004.

A contract entered into by corporate officers who exceed their authority generally does not bind the corporation except when the contract is ratified by the Board of Director .

There was no evidence presented that the Board of Directors repudiated the contract dated May 7, 2004 with Aboitiz One. The contract remained effective until January 31, 2006. While the transcript of the April 29, 2004 Special Board meeting does not mention the proposal to increase the cost of delivery from P5.00 to P8.00 per kilogram, the Central Mail Exchange Center's cost-benefit analysis and recommendation for price increase was sent to the Board of Directors on April 20, 2004. This memorandum was the reason for the April 29, 2004 Special Board Meeting. Therefore, the Board of Directors was informed that the renewal of the Aboitiz One contract would include an increase in costs.

Considering that the Board of Directors remained silent and the Postmaster Generals continued to approve the payments to Aboitiz One, they are presumed to have substantially ratified respondent's unauthorized acts. Therefore, respondent's action is not considered ultra vires.

- Development Bank of the Philippines v. Commission on Audit, G.R. No. 210838, [July 3, 2018]

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner–versus-* COMMISSION ON AUDIT, *Respondent.*
G.R. No. 210838, EN BANC, July 3, 2018, TIJAM, J.

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

All told, the grant of GFPA was indeed an ultra vires act or beyond the authority of DBP's BOD.

FACTS

DBP, a government financial institution created and operating under its own charter, was faced with labor unrest in 2003 due to its employees' insistence that they be paid their benefits. After a series of conferences referred to as a governance forum, the employees' group and DBP arrived at an agreement to put an end to the division causing disruptions in bank operations. The DBP Board of Directors (BOD) adopted Board Resolution No. 01336, approving a one-time grant called the Governance Forum Productivity Award (GFPA) to DBP's officers and employees. The total amount distributed was PhP170,893,689.00.

An audit team was subsequently constituted to look into the legality of the GFPA pursuant to Office Order No. 2003-078 of the COA Legal and Adjudication Office. As a result, Audit Observation Memorandum (AOM) No. 0018 dated January 7, 2005 found the grant of the GFPA without legal basis and recommended its refund.

Meanwhile, the Executive Committee (Execom) of the DBP adopted Resolution No. 015110 dated November 16, 2005, which granted the payment of Amelioration Allowance (AA) to bank employees. The amount due as AA for individual employees was offset against the GFPA already received by them.

DBP received Notice of Disallowance (ND) disallowing the grant of the GFPA. According to COA's Legal and Adjudication Team, industrial peace may not be used as a legal and sufficient basis in granting monetary awards. Furthermore, the GFPA partakes the nature of a compromise agreement and circumvents the rule that only a settled claim may be a subject of compromise.

In its Motion for Reconsideration, DBP assailed the ND by arguing that payment of the GFPA was made pursuant to the power of its Board of Directors (BOD) to enter into a compromise agreement for settlement of employees' claims; that industrial peace is a valid consideration for a compromise agreement; and that the GFPA was superseded and rendered inexistent by the grant of the AA to DBP's employees.

COA's Fraud Audit and Investigation Office (FAIO) treated DBP's Motion for Reconsideration (MR) as an appeal and upheld the disallowance thru the Decision No. 2010-005. The FAIO ruled that the power of DBP's Board to fix the remuneration and emoluments of its officials and employees is not absolute and is subject to Sections 5 and 6 of Presidential Decree (PD) No. 159717 and Section 3 of Memorandum Order (MO) No. 20 of the Office of the President dated June 25, 2001 requiring prior presidential approval. It held that the power of DBP's BOD to enter into a compromise agreement has no basis in law. Furthermore, the subsequent payment of the AA was a separate matter that does not render the disallowance of the GFPA moot and academic.

ISSUE

Whether the Board of Directors (BOD) of DBP has the power to enter into compromise agreement for settlement of employees' claims. (NO)

RULING

There is no quibbling over the fact that labor unrest impelled the DBP, in the interest of industrial peace, to grant the GFPA to its employees. In the COA's view, it was not within the board's powers to grant a monetary award or benefit as a result of labor negotiations. The DBP, on the other hand, points to Section 9 of its charter in arguing that its BOD was authorized to compromise claims against it, pertinently:

Sec. 9. Powers and Duties of the Board of Directors. The Board of Directors shall have, among others, the following duties, powers and authority:

x x x x

(e)
To compromise or release, in whole or in part, any claim of or settled liability to the Bank regardless of the amount involved, under such terms and conditions it may impose to protect the interests of the Bank. This authority to compromise shall extend to claims against the Bank. xxx (Emphasis supplied)

Emphasizing further that its charter grants it a free hand in the fixing of compensation and allowances of its officers and employees, DBP cites Section 13 thereof:

Sec. 13. Other Officers and Employees. -The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended). (Emphasis supplied.)

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

The policy requiring prior Presidential approval upon recommendation from the Secretary of Budget as provided in PD 1597, with respect to the grant of allowances and benefits, was re-affirmed by the Congress in 2009 through Joint Resolution No. 4, also known as the Salary Standardization Law III which provides that the "coverage, conditions for the grant, including the rates of allowances, benefits, and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the Department of Budget and

Management." This policy mirrors MO No. 20 issued earlier in 2001, which directed the heads of government-owned and controlled corporations, government financial institutions (GFIs), and subsidiaries exempted from the SSL to implement pay rationalization in all senior officer positions. What made the GFPA granted by the DBP to its officers and employees in 2003 unique was that it was the product of a compromise arrived at after negotiations between DBP employees and management referred to as a governance forum. The COA considered the process undertaken as labor negotiations. It appears that DBP misconstrued its authority to compromise. Sec. 9 (e) of its charter authorizes its BOD to compromise or release any claim or settled liability to or against the bank. To interpret the provision as including contested benefits that are demanded by employees of a chartered GFI such as the DBP is a wide stretch. To reiterate, its officers and employees' remunerations may only be granted in the manner provided under Sec. 13 of its charter and conformably with the SSL.

The COA's insistence that industrial peace is not a determining factor under the principles of the SSL in fixing the compensation of DBP's employees, is correct. The grant of a wider latitude to DBP's BOD in fixing remunerations and emoluments does not include an abrogation of the principle that employees in the civil service "cannot use the same weapons employed by the workers in the private sector to secure concessions from their employees." While employees of chartered GFIs enjoy the constitutional right to bargain collectively, they may only do so for non- economic benefits and those not fixed by law, and may not resort to acts amounting to work stoppages or interruptions. There is no other way to view the GFPA, other than as a monetary benefit collectively wrung by DBP's employees under threat of disruption to the bank's smooth operations. We held in Dulce M. Abanilla v. Commission On Audit, reiterating Alliance of Government Workers v. Minister of Labor and Employment:

Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.

All told, the grant of GFPA was indeed an ultra vires act or beyond the authority of DBP's BOD. There was no grave abuse of discretion on the part of COA when it disallowed the GFPA on the basis of a compromise agreement to settle a labor dispute. We thus, sustain the disallowance.

3. How Exercised

a. By the Shareholders

- Citibank, N.A. vs. Chua, G.R. No. 102300, March 17, 1993

CITIBANK, N.A., *Petitioner,* -versus – HON. SEGUNDINO G. CHUA, SANTIAGO M. KAPUNAN and LUIS L. VICTOR, ASSOCIATE JUSTICES OF THE HON. COURT OF APPEALS, THIRD DIVISION, MANILA, HON. LEONARDO B. CANARES, Judge of Regional Trial Court of Cebu, Branch 10, and SPOUSES CRESENCIO AND ZENAIDA VELEZ, *Respondents.*

G.R. No. 102300, SECOND DIVISION, March 17, 2019, CAMPOS, JR., *J.*

A corporation can submit its by-laws, prior to incorporation, or within one month after receipt of official notice of the issuance of its certificate of incorporation by the SEC. When the third paragraph of the above provision mentions "in all cases", it can only refer to these two options; i.e., whether adopted prior to incorporation or within one month after incorporation, the by-laws shall be effective only upon the approval of the SEC. But even more important, said provision starts with the phrase "Every corporation formed under this Code", which can only refer to corporations incorporated in the Philippines. Hence, Section 46, in so far as it refers to the effectivity of corporate by-laws, applies only to domestic corporations and not to foreign corporations.

FACTS:

Petitioner is a foreign commercial banking corporation duly licensed to do business in the Philippines. Private respondents, spouses Cresencio and Zenaida Velez, were good clients of petitioner bank until they filed a complaint for specific performance and damages against it.
Private respondents alleged in their complaint that the petitioner bank extended to them credit lines sufficiently secured with real estate and chattel mortgages on equipment. They claim that petitioner Citibank offered them special additional accommodation of Five Million.

This arrangement started on September 4, 1985 until March 11, 1986, when private respondents tried to exchange with petitioner bank six checks amounting to P3,095,000.00 but petitioner bank allegedly refused to continue with the arrangement even after repeated demands. Instead, petitioner bank suggested to private respondents that the total amount covered by the "arrangement be restructured to 30 months with prevailing interest rate on the diminishing balance". 2 Private respondents agreed to such a proposal. Then as a sign of good faith, they issued and delivered a check for P75,000.00 in favor of petitioner bank which was refused by the latter demanding instead full payment of the entire amount.

For the failure of petitioner bank to comply with this restructuring agreement private respondents sued for specific performance and damages. Subsequently, petitioner bank filed a criminal complaint against private respondents for violation of Batas Pambansa Blg. 22 and six counts of estafa.
On the date of the pre-trial conference, counsel for petitioner bank appeared, presenting a special power of attorney executed by Citibank officer Florencia Tarriela in favor of petitioner bank's counsel, the J.P. Garcia & Associates, to represent and bind petitioner bank at the pre-trial conference of the case at bar.

Inspite of this SPA, counsel for private respondents orally moved to declare petitioner bank as in default on the ground that the SPA was not executed by the BOD of Citibank. Petitioner bank was then required to file a written opposition to this oral motion to declare it as in default.

In said opposition petitioner bank attached another SPA made by William W. Ferguson, Vice President and highest ranking officer of Citibank, Philippines, constituting and appointing the J.P. Garcia & Associates to represent and bind the BANK at the pre-trial conference and/or trial.

Respondent judge denied private respondents' oral motion to declare petitioner bank as in default. On the scheduled pre-trial conference, private respondents reiterated, by way of asking for reconsideration, their oral motion to declare petitioner bank as in default for its failure to appear through an authorized agent and that the documents presented are not in accordance with the requirements of the law. Petitioner bank again filed its opposition thereto stating that in order to avoid further arguments on the matter, Citibank will secure another power of attorney from Mr. William W. Ferguson who will represent the defendant Citibank in the pre-trial conferences."

Petitioner bank filed a manifestation attaching therewith a SPA executed by William W. Ferguson in favor of Citibank employees to represent and bind Citibank on the pre-trial conference of the case at bar.

Respondent judge issued an order declaring petitioner bank as in default. This order, received by petitioner bank on September 27, 1990, cited the following as reason for the declaration of default: "The exercise by the Board of Directors of corporate powers could only be valid if it bears the approval of the majority of the Board (Sec. 25, par. 2, Corporation Code). The records does not show the requisite document. The alleged authority (SPA) executed by Mr. William W. Ferguson in favor of the alleged Citibank employees to represent the defendant in the pre-trial conference, made no mention of J.P. Garcia & Associates as one of the employees of the defendant. It stands to reason therefore, that the defendant-bank has no proper representation during the pre-trial conference.
Petitioner bank filed a motion for reconsideration of the above order but it was denied.Petitioner bank then filed a petition for certiorari, prohibition and mandamus with preliminary injunction and/or temporary restraining order with the Court of Appeals. The Court of Appeals dismissed the petition on the following grounds:

"In the first place, petitioner admitted that it did not and could not present a Board resolution from the bank's Board of Directors appointing its counsel, Atty. Julius Z. Neri, as its attorney-in-fact to represent and bind it during the pre-trial conference of this case. This admission is contained on pages 12 and 13 of the instant petition.

In the second place, the "By-Laws" of petitioner which on its face authorizes (sic) the appointment of an attorney-in-fact to represent it in any litigation, has not been approved by the Securities and Exchange Commission, as required by Section 46 of the Corporation Code of the Philippines. Apparently, the "By-Laws" in question was (sic) approved under the laws of the United States, but there is no showing that the same was given the required imprimatur by the Securities and Exchange Commission. Since petitioner is a foreign corporation doing business in the Philippines, it is bound by all laws, rules and regulations applicable to domestic corporations (Sec. 129, Corporation Code).
In the third place, no SPA was presented authorizing petitioner's counsel of record, Atty. Julius Neri and/or J.P. Garcia Associates, to appear for and in behalf of petitioner during the pre-trial.

What petitioner exhibited to the court a quo was a general power of attorney given to one William W. Ferguson who in turn executed a power of attorney in favor of five (5) (sic) Citibank employees to act as attorney-in-fact in Civil Case No. CEB-4751. Yet, during the pre-trial not one of said employees appeared, except counsel who is not even a bank employee.

Furthermore, even assuming the validity of the power of attorney issued by petitioner in favor of Ferguson as well as the power of attorney he issued to five (5) (sic) Citibank employees, said power of attorney has not been shown to be a SPA precisely intended not only to represent the bank at the pre-trial of the case on a certain date but also to enter into any compromise as required in paragraph 3, Article 1878 of the Civil Code and Section 1 (a), Rule 20, Rules of Court." Hence, this instant petition.
Petitioner bank contends that no board resolution was necessary for its legal counsel, Atty. Julius Z. Neri, or Citibank employees to act as its attorney-in-fact in the case at bar because petitioner bank's by-laws grant to its Executing Officer and Secretary Pro-Tem the power to delegate to a Citibank

officer, in this case William W. Ferguson, the authority to represent and defend the bank and its interests.
Furthermore, it contends that the CA erred in holding that the by-laws of petitioner bank cannot be given effect because it did not have the imprimatur of the SEC as required by Section 46 of the Corporation Code.

Private respondents refute both contentions. They assail the authority of petitioner bank's legal counsel to appear at the pre-trial conference on two grounds, namely: first, that the authority did not come from the Board of Directors which has the exclusive right to exercise corporate powers; and second, that the authority granted to the Executing Officer in the by-laws was ineffective because the same were not submitted to, nor approved by, the SEC.

ISSUE

Whether a resolution of the board of directors of a corporation is always necessary for granting authority to an agent to represent the corporation in court cases. (NO)

RULING

On the basis of Sec. 23 of the Corporation Code (the board of directors or trustees), although as a general rule, all corporate powers are to be exercised by the board of directors, exceptions are made where the Code provides otherwise.

Section 25 of said Code provides that directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. Furthermore, Section 47 of the same Code enumerates what may be contained in the by-laws, among which is a provision for the "qualifications, duties and compensation of directors or trustees, officers and employees".

Taking all the above provisions of law together, it is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the BOD of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, the Executing Officer and the Secretary Pro-Tem, ** to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs.

Since paragraph XXI of the by-laws specifically allows Ferguson to delegate his powers in whole or in part, there can be no doubt that the special power of attorney in favor, first, of J.P. Garcia & Associates and later, of the bank's employees, constitutes a valid delegation of Ferguson's express power (under paragraph XVII) to represent petitioner bank in the pre-trial conference in the lower court.

b. By the Board of Directors

- Lopez Realty, Inc., and Asuncion Lopez Gonzales vs. Florentina Fontecha, et al., and the National Labor Relations Commission, G.R. No. 76801 August 11, 1995

LOPEZ REALTY, INC., AND ASUNCION LOPEZ GONZALES, *Petitioners–versus-* FLORENTINA FONTECHA, ET AL., AND THE NATIONAL LABOR RELATIONS COMMISSION, *Respondents.*
G.R. No.76801 , SECOND DIVISION, August 11, 1995, PUNO, J.

Be that as it may, jurisprudence tells us that an action of the board of directors during a meeting, which was illegal for lack of notice, may be ratified either expressly, by the action of the directors in subsequent legal meeting, or impliedly, by the corporation's subsequent course of conduct.

In the case at bench, it was established that petitioner corporation did not issue any resolution revoking nor nullifying the board resolutions granting gratuity pay to private respondents. Instead, they paid the gratuity pay, particularly, the first two (2) installments thereof, of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista.

FACTS

Lopez Realty, Inc., is a corporation engaged in real estate business, while petitioner Asuncion Lopez Gonzales is one of its majority shareholders. Except for Arturo F. Lopez, the rest of the shareholders also sit as members of the Board of Directors.

Sometime in 1978, Arturo Lopez submitted a proposal relative to the distribution of certain assets of petitioner corporation among its three (3) main shareholders. The proposal had three (3) aspects, viz: (1) the sale of assets of the company to pay for its obligations; (2) the transfer of certain assets of the company to its three (3) main shareholders, while some other assets shall remain with the company; and (3) the reduction of employees with provision for their gratuity pay. The proposal was deliberated upon and approved in a special meeting of the board of directors held on April 17, 1978.

It appears that petitioner corporation approved two (2) resolutions providing for the gratuity pay of its employees. Meanwhile, board member and majority stockholder Teresita Lopez Marquez died. On August 17, 1981, except for Asuncion Lopez Gonzales who was then abroad, the remaining members of the Board of Directors, namely: Rosendo de Leon, Benjamin Bernardino, and Leo Rivera, convened a special meeting and passed a resolution on the manner of giving the gratuity pay for employees that will be laid off and those who will be retained.

Private respondents were the retained employees of petitioner corporation. In a letter, private respondents requested for the full payment of their gratuity pay. Their request was granted in a special meeting held on September 1, 1981. At that, time, however, petitioner Asuncion Lopez Gonzales was still abroad. Allegedly, while she was still out of the country, she sent a cablegram to the corporation, objecting to certain matters taken up by the board in her absence, such as the sale of some of the assets of the corporation. Upon her return, she flied a derivative suit with the Securities and Exchange Commission (SEC) against majority shareholder Arturo F. Lopez.

Notwithstanding the "corporate squabble" between petitioner Asuncion Lopez Gonzales and Arturo Lopez, the first two (2) installments of the gratuity pay of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista were paid by petitioner corporation.

Also, petitioner corporation had prepared the cash vouchers and checks for the third installments of gratuity pay of said private respondents (Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista). For some reason, said vouchers were cancelled by petitioner Asuncion Lopez Gonzales.

Likewise, the first, second and third installments of gratuity pay of the rest of private respondents, particularly, Edward Mamaril, Marissa Pascual and Allan Pimentel, were prepared but cancelled by petitioner Asuncion Lopez Gonzales. Despite private respondents' repeated demands for their gratuity pay, corporation refused to pay the same.

Labor Arbiter Raymundo R. Valenzuela rendered judgment in favor of private respondents. Petitioners appealed the adverse ruling of the Labor arbiter to public respondent National Labor Relations Commission. The appeal focused on the alleged non-ratification and non-approval of the assailed Board Resolutions on the payment of the gratuity to some of the private respondents. That such was a mere "mistake" on the part of petitioner corporation since, pursuant to Resolution No. 6, and Resolution No. 10 , said gratuity pay should be given only upon the employees' retirement.

Upon appeal, public respondent, through its Second Division, dismissed the appeal for lack of merit

ISSUE

Whether or not public respondent acted with grave abuse of discretion in holding that private respondents are entitled to receive their gratuity pay under the assailed board resolutions. (NO)

RULING

The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by any objecting director or shareholder.

Be that as it may, jurisprudence tells us that an action of the board of directors during a meeting, which was illegal for lack of notice, may be ratified either expressly, by the action of the directors in subsequent legal meeting, or impliedly, by the corporation's subsequent course of conduct. Thus, in one case, it was held:

. . . In 2 Fletcher, Cyclopedia of the Law of Private Corporations (Perm. Ed.) sec. 429, at page 290, it is stated:

Thus, acts of directors at a meeting which was illegal because of want of notice may be ratified by the directors at a subsequent legal meeting, or by the corporations course of conduct
. . .
Fletcher, supra, further states in sec. 762, at page 1073-1074:

Ratification by directors may be by an express resolution or vote to that effect, or it may be implied from adoption of the act, acceptance or acquiescence. Ratification may be effected by a resolution or vote of the board of directors expressly ratifying previous acts either of corporate officers or agents; but it is not necessary, ordinarily, to show a meeting and formal action by the board of directors in order to establish a ratification.

In American Casualty Co., v. Dakota Tractor and Equipment Co., 234 F. Supp. 606, 611 (D.N.D. 1964), the court stated:

Moreover, the unauthorized acts of an officer of a corporation may be ratified by the corporation by conduct implying approval and adoption of the act in question. Such ratification may be express or may be inferred from silence and inaction.

In the case at bench, it was established that petitioner corporation did not issue any resolution revoking nor nullifying the board resolutions granting gratuity pay to private respondents. Instead, they paid the gratuity pay, particularly, the first two (2) installments thereof, of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista.

Despite the alleged lack of notice to petitioner Asuncion Lopez Gonzales at that time the assailed resolutions were passed, we can glean from the records that she was aware of the corporation's obligation under the said resolutions. More importantly, she acquiesced thereto. As pointed out by private respondents, petitioner Asuncion Lopez Gonzales affixed her signature on Cash Voucher Nos. 81-10-510 and 81-10-506, both dated October 15, 1981, evidencing the 2nd installment of the gratuity pay of private respondents Mila Refuerzo and Florentina Fontecha.

We hold, therefore, that the conduct of petitioners after the passage of resolutions dated August, 17, 1951 and September 1, 1981, had estopped them from assailing the validity of said board resolutions. Assuming, arguendo, that there was no notice given to Asuncion Lopez Gonzalez during the special meetings held on August 17, 1981 and September 1, 1981, it is erroneous to state that the resolutions passed by the board during the said meetings were ultra vires. In legal parlance, "ultra vires" act refers to one which is not within the corporate powers conferred by the Corporation Code or articles of incorporation or not necessary or incidental in the exercise of the powers so conferred.

The assailed resolutions before us cover a subject which concerns the benefit and welfare of the company's employees. To stress, providing gratuity pay for its employees is one of the express powers of the corporation under the Corporation Code, hence, petitioners cannot invoke the doctrine of ultra vires to avoid any liability arising from the issuance the subject resolutions.

We reject petitioners' allegation that private respondents, namely, Mila Refuerzo, Marissa Pascual and Edward Mamaril who resigned from petitioner corporation after the filing of the case, are precluded from receiving their gratuity pay. Pursuant to board resolutions dated August 17, 1981 and September 1, 1981, respectively, petitioner corporation obliged itself to give the gratuity pay of its retained employees in four (4) installments: on September 1, 1981; October 15, 1981; November, 1981; and January 1, 1982. Hence, at the time the aforenamed private respondents tendered their resignation, the aforementioned private respondents were already entitled to receive their gratuity pay.

Petitioners try to convince us that the subject resolutions had no force and effect in view of the non-approval thereof during the Annual Stockholders' Meeting held on March 1, 1982. To strengthen their position, petitioners cite section 28 1/2 of the Corporation Law (Section 40 of the Corporation Code). We are not persuaded.

The cited provision is not applicable to the case at bench as it refers to the sale, lease, exchange or disposition of all or substantially all of the corporation's assets, including its goodwill. In such a case, the action taken by the board of directors requires the authorization of the stockholders on record. It will be observed that, except far Arturo Lopez, the stockholders of petitioner corporation also sit as members of the board of directors. Under the circumstances in field, it will be illogical and superfluous to require the stockholders' approval of the subject resolutions. Thus, even without the stockholders' approval of the subject resolutions, petitioners are still liable to pay private respondents' gratuity pay.

- Premium Marble Resources, Inc. vs. Court of Appeals, G.R. No. 96551, November 4, 1996

PREMIUM MARBLE RESOURCES, INC, *Petitioner–versus-* FLORENTINA FONTECHA, ET AL., AND THE NATIONAL LABOR RELATIONS COMMISSIO THE COURT OF APPEALS and INTERNATIONAL CORPORATE BANK N, *Respondents.*
G.R. No.96551 , SECOND DIVISION, November 4, 1996, TORRES, J.

By the express mandate of the Corporation Code (Section 26), all corporations duly organized pursuant thereto are required to submit within the period therein stated (30 days) to the Securities and Exchange Commission the names, nationalities and residences of the directors, trustees and officers elected.

The claim, therefore, of petitioners as represented by Atty. Dumadag, that Zaballa, et al., are the incumbent officers of Premium has not been fully substantiated. In the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.

FACTS

Premium Marble Resources, Inc. (Premium for brevity), assisted by Atty. Arnulfo Dumadag as counsel, filed an action for damages against International Corporate Bank. The complaint states:
3. Sometime in August to October 1982, Ayala Investment and Development Corporation issued three (3) checks [Nos. 097088, 097414 & 27884] in the aggregate amount of P31,663.88 payable to the plaintiff and drawn against Citibank;

xxx xxx xxx
5. On or about August to October 1982, former officers of the plaintiff corporation headed by Saturnino G. Belen, Jr., without any authority whatsoever from the plaintiff deposited the above-mentioned checks to the current account of his conduit corporation, Intervest Merchant Finance (Intervest, for brevity) which the latter maintained with the defendant bank under account No. 0200-02027-8;

6. Although the checks were clearly payable to the plaintiff corporation and crossed on their face and for payee's account only, defendant bank accepted the checks to be deposited to the current account of Intervest and thereafter presented the same for collection from the drawee bank which

subsequently cleared the same thus allowing Intervest to make use of the funds to the prejudice of the plaintiff;
xxx xxx xxx

14. The plaintiff has demanded upon the defendant to restitute the amount representing the value of the checks but defendant refused and continue to refuse to honor plaintiff's demands up to the present;

15. As a result of the illegal and irregular acts perpetrated by the defendant bank, the plaintiff was damaged to the extent of the amount of P31,663.88;

Premium prayed that judgment be rendered ordering defendant bank to pay the amount of P31,663.88 representing the value of the checks plus interest, P100,000.00 as exemplary damages; and P30,000.00 as attorney's fees.

In its Answer International Corporate Bank alleged, *inter alia*, that Premium has no capacity/personality/authority to sue in this instance and the complaint should, therefore, be dismissed for failure to state a cause of action.
A few days after Premium filed the said case, Printline Corporation, a sister company of Premium also filed an action for damages against International Corporate Bank. Thereafter, both civil cases were consolidated.

Meantime, the same corporation, *i.e.*, Premium, but this time represented by Siguion Reyna, Montecillio and Ongsiako Law Office as counsel, filed a motion to dismiss on the ground that the filing of the case was without authority from its duly constituted board of directors as shown by the excerpt of the minutes of the Premium's board of directors' meeting.

In its opposition to the motion to dismiss, Premium thru Atty. Dumadag contended that the persons who signed the board resolution namely Belen, Jr., Nograles & Reyes, are not directors of the corporation and were allegedly former officers and stockholders of Premium who were dismissed for various irregularities and fraudulent acts; that Siguion Reyna Law office is the lawyer of Belen and Nograles and not of Premium and that the Articles of Incorporation of Premium shows that Belen, Nograles and Reyes are not majority stockholders.

On the other hand, Siguion Reyna Law firm as counsel of Premium in a rejoinder, asserted that it is the general information sheet filed with the Securities and Exchange Commission, among others, that is the best evidence that would show who are the stockholders of a corporation and not the Articles of Incorporation since the latter does not keep track of the many changes that take place after new stockholders subscribe to corporate shares of stocks.
In the *interim*, defendant bank filed a manifestation that it is adopting *in toto* Premium's motion to dismiss and, therefore, joins it in the praying for the dismissal of the present case on the ground that Premium lacks authority from its duly constituted board of directors to institute the action.

In its Order, the lower court dismissed the consolidated cases and concluded that:

Considering that the officers (directors) of plaintiff corporation enumerated in the Articles of Incorporation, filed on November 9, 1979, were "to serve until their successors are elected and qualified" and considering further that as of March 4, 1981, the officers of the plaintiff corporation were Alberto Nograles, Fernando Hilario, Augusto Galace, Jose L.R. Reyes, Pido Aguilar and Saturnino Belen, Jr., who presumably are the officers represented by the Siguion Reyna Law Firm, and that together with the defendants, they are moving for the dismissal of the above-entitled case, the Court finds that the officers represented by Atty. Dumadag do not as yet have the legal capacity to sue for and in behalf of the plaintiff corporation and/or the filing of the present action (Civil Case 14413) by them before Case No. 2688 of the SEC could be decided is a premature exercise of authority or assumption of legal capacity for and in behalf of plaintiff corporation.

The issues raised in Civil Case No. 14444 are similar to those raised in Civil Case No. 14413. This Court is of the opinion that before SEC Case No. 2688 could be decided, neither the set of officers represented by Atty. Dumadag nor that set represented by the Siguion Reyna, Montecillo and Ongsiako Law Office, may prosecute cases in the name of the plaintiff corporation.

It is clear from the pleadings filed by the parties in these two cases that the existence of a cause of action against the defendants is dependent upon the resolution of the case involving intra-corporate controversy still pending before the SEC.

On appeal, the Court of Appeals affirmed the trial court's Order [4] which dismissed the consolidated cases. Hence, this petition.

ISSUE

Whether the filing of the case for damages against private respondent was authorized by a duly constituted Board of Directors of the petitioner corporation. (NO)

RULING

Petitioner, through the first set of officers, *viz*., Mario Zavalla, Oscar Gan, Lionel Pengson, Jose Ma. Silva, Aderito Yujuico and Rodolfo Millare, presented the Minutes [5] of the meeting of its Board of Directors held on April 1, 1982, as proof that the filing of the case against private respondent was authorized by the Board. On the other hand, the second set of officers, *viz*., Saturnino G. Belen, Jr., Alberto C. Nograles and Jose L.R. Reyes, presented a Resolution [6] dated July 30, 1986, to show that Premium did not authorize the filing in its behalf of any suit against the private respondent International Corporate Bank.

Later on, petitioner submitted its Articles of Incorporation [7] dated November 6, 1979 with the following as Directors: Mario C. Zavalla, Pedro C. Celso, Oscar B. Gan, Lionel Pengson, and Jose Ma. Silva.
However, it appears from the general information sheet and the Certification issued by the SEC on August 19, 1986 that as of March 4, 1981, the officers and members of the board of directors of the Premium Marble Resources, Inc. were:
Alberto C. Nograles — President/Director
Fernando D. Hilario — Vice President/Director
Augusto I. Galace — Treasurer
Jose L.R. Reyes — Secretary/Director
Pido E. Aquilar — Director
Saturnino G. Belen, Jr. — Chairman of the Board.

While the Minutes of the Meeting of the Board on April 1, 1982 states that the newly elected officers for the year 1982 were Oscar Gan, Mario Zavalla, Aderito Yujuico and Rodolfo Millare, petitioner failed to show proof that this election was reported to the SEC. In fact, the last entry in their General Information Sheet with the SEC, as of 1986 appears to be the set of officers elected in March 1981. We agree with the finding of public respondent Court of Appeals, that "in the absence of /any board resolution from its board of directors the [*sic*] authority to act for and in behalf of the corporation, the present action must necessarily fail. The power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. Thus, the issue of authority and the invalidity of plaintiff-appellant 's subscription which is still pending, is a matter that is also addressed, considering the premises, to the sound judgment of the Securities & Exchange Commission."

By the express mandate of the Corporation Code (Section 26), all corporations duly organized pursuant thereto are required to submit within the period therein stated (30 days) to the Securities and Exchange Commission the names, nationalities and residences of the directors, trustees and officers elected.

Sec. 26 of the Corporation Code provides, thus:
Sec. 26. *Report of election of directors, trustees and officers*. — Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees and officers elected. . . .

Evidently, the objective sought to be achieved by Section 26 is to give the public information, under sanction of oath of responsible officers, of the nature of business, financial condition and operational status of the company together with information on its key officers or managers so that those dealing with it and those who intend to do business with it may know or have the means of knowing facts concerning the corporation's financial resources and business responsibility.

The claim, therefore, of petitioners as represented by Atty. Dumadag, that Zaballa, et al., are the incumbent officers of Premium has not been fully substantiated. In the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.

- Tam Wing Tak vs. Hon. Ramon P. Makasiar, G.R. No. 122452, January 29, 2001

TAM WING TAK, *Petitioner–versus-* HON. RAMON P. MAKASIAR (in his Capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 35) and ZENON DE GUIA (in his capacity as Chief State Prosecutor), *Respondents.*

G.R. No.122452 , SECOND DIVISION, January 29, 2001, QUISUMBING, J.

Under Section 36 of the Corporation Code18, read in relation to Section 23, it is clear that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees.

Note that petitioner failed to show any proof that he was authorized or deputized or granted specific powers by Concord's board of director to sue Victor And Siong for and on behalf of the firm. Clearly, petitioner as a minority stockholder and member of the board of directors had no such power or authority to sue on Concord's behalf.

FACTS

Petitioner, in his capacity as director of Concord-World Properties, Inc., (Concord for brevity), a domestic corporation, filed an affidavit-complaint with the Quezon City Prosecutor's Office, charging Vic Ang Siong with violation of B.P. Blg. 22. Docketed by the Prosecutor as I.S. No. 93-15886, the complaint alleged that a check for the amount of P83,550,000.00, issued by Vic Ang Siong in favor of Concord, was dishonored when presented for encashment.

Vic Ang Siong sought the dismissal of the case on two grounds: First, that petitioner had no authority to file the case on behalf of Concord, the payee of the dishonored check, since the firm's board of directors had not empowered him to act on its behalf. Second, he and Concord had already agreed to amicably settle the issue after he made a partial payment of P19,000,000.00 on the dishonored check. The City Prosecutor dismissed I.S. No. 93-15886 on the following grounds: (1) that petitioner lacked the requisite authority to initiate the criminal complaint for and on Concord's behalf; and (2) that Concord and Vic Ang Siong had already agreed upon the payment of the latter's balance on the dishonored check.

Petitioner then filed Civil Case No. 95-74394 for mandamus with the Regional Trial Court of Quezon City to compel the Chief State Prosecutor to file or cause the filing of an information charging Vic Ang Siong with violation of B.P. Blg. 22 but was dismissed by the trial court and the reconsideration.

ISSUE

Whether mandamus will lie to compel the City Prosecutor to file the necessary information in court. (NO)

In general, mandamus may be resorted to only where one's right is founded clearly in law and not when it is doubtful. The exception is to be found in criminal cases where mandamus is available to compel the performance by the public prosecutor of an ostensibly discretionary function, where by reason of grave abuse of discretion on his part, he willfully refuses to perform a duty mandated by law.16 Thus, mandamus may issue to compel a prosecutor to file an information when he refused to do so in spite of the prima facie evidence of guilt.

Petitioner takes the stance that it was grave abuse for discretion on the part of respondent Chief State Prosecutor to sustain the dismissal of I.S. No. 93-15886 on the grounds that: (1) Vic Ang Siong's obligation which gave rise to the bounced check had already been extinguished by partial payment and agreement to amicably settle balance, and (2) petitioner had no standing to file the criminal complaint since he was neither the payee nor holder of the bad check. Petitioner opines that neither ground justifies dismissal of his complaint.

Petitioner's stand is unavailing. Respondent Chief State Prosecutor in refusing to order the filing of an information for violation of B.P. Blg. 22 against Vic Ang Siong did not act without or in excess of jurisdiction or with grave abuse of discretion.

First, with respect to the agreement between Concord and Victor Ang Siong to amicably settle their difference, we find this resort to an alternative dispute settlement mechanism as not contrary to law, public policy, or public order. Efforts of parties to solve their disputes outside of the courts are looked on with favor, in view of the clogged dockets of the judiciary.

Second, it is not disputed in the instant case that Concord, a domestic corporation, was the payee of the bum check, not petitioner. Therefore, it is Concord, as payee of the bounced check, which is the injured party. Since petitioner was neither a payee nor a holder of the bad check, he had neither the personality to sue nor a cause of action against Vic Ang Siong.

Under Section 36 of the Corporation Code18, read in relation to Section 23, it is clear that where a corporation is an injured party, its power to sue is lodged with its board of directors or turstees. Note that petitioner failed to show any proof that he was authorized or deputized or granted specific powers by Concord's board of director to sue Victor And Siong for and on behalf of the firm.

Clearly, petitioner as a minority stockholder and member of the board of directors had no such power or authority to sue on Concord's behalf. Nor can we uphold his act as a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. There is no showing that petitioner has complied with the foregoing requisites. It is obvious that petitioner has not shown any clear legal right which would warrant the overturning of the decision of public respondents to dismiss the complaint against Vic Ang Siong. A public prosecutor, by the nature of his office, is under no compulsion to file a criminal information where no clear legal justification has been shown, and no sufficient evidence of guilt nor prima facie case has been presented by the petitioner. No reversible error may be attributed to the court a quo when it dismissed petitioner's special civil action for mandamus.

c. By the Officers

- The Board of Liquidators, representing the Government of the Republic of the Philippines vs. Heirs of Maximo M. Kalaw, Juan Bocar, Estate of the deceased Casimiro Garcia, and Leonor Moll, G.R. No. L-18805, August 14, 1967

THE BOARD OF LIQUIDATORS representing THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, *Plaintiff-Appellant –versus-* HEIRS OF MAXIMO M. KALAW, JUAN BOCAR, ESTATE OF THE DECEASED CASIMIRO GARCIA,3 and LEONOR MOLL, *Defendants-Appellees.*
G.R. No.L-18805 , EN BANC, August 14, 1967, SANCHEZ, J.

Settled jurisprudence has it that where similar acts have been approved by the directors as a matter of general practice, custom, and policy, the general manager may bind the company without formal authorization of the board of directors. In varying language, existence of such authority is established, by proof of the course of business, the usage and practices of the company and by the knowledge which the board of directors has, or must be presumed to have, of acts and doings of its subordinates in and about the affairs of the corporation.

In the case at bar, the practice of the corporation has been to allow its general manager to negotiate and execute contracts in its copra trading activities for and in NACOCO's behalf without prior board approval. If the by-laws were to be literally followed, the board should give its stamp of prior approval on all corporate contracts. But that board itself, by its acts and through acquiescence, practically laid aside the by-law requirement of prior approval. Under the given circumstances, the Kalaw contracts are valid corporate acts.

FACTS

The National Coconut Corporation (NACOCO, for short) was chartered as a non-profit governmental organization by Commonwealth Act 518 avowedly for the protection, preservation and development of the coconut industry in the Philippines. On August 1, 1946, NACOCO's charter was amended [Republic Act 5] to grant that corporation the express power "to buy, sell, barter, export, and in any other manner deal in, coconut, copra, and dessicated coconut, as well as their by-products, and to act as agent, broker or commission merchant of the producers, dealers or merchants" thereof. The charter amendment was enacted to stabilize copra prices, to serve coconut producers by securing advantageous prices for them, to cut down to a minimum, if not altogether eliminate, the margin of middlemen, mostly aliens.

General manager and board chairman was Maximo M. Kalaw; defendants Juan Bocar and Casimiro Garcia were members of the Board; defendant Leonor Moll became director only on December 22, 1947.

NACOCO, after the passage of Republic Act 5, embarked on copra trading activities. Amongst the scores of contracts executed by general manager Kalaw are the disputed contracts, for the delivery of copra.

An unhappy chain of events conspired to deter NACOCO from fulfilling these contracts. Nature supervened. Four devastating typhoons visited the Philippines: the first in October, the second and third in November, and the fourth in December, 1947. Coconut trees throughout the country suffered extensive damage. Copra production decreased. Prices spiralled. Warehouses were destroyed. Cash requirements doubled. Deprivation of export facilities increased the time necessary to accumulate shiploads of copra. Quick turnovers became impossible, financing a problem.

When it became clear that the contracts would be unprofitable, Kalaw submitted them to the board for approval. It was not until December 22, 1947 when the membership was completed. Defendant Moll took her oath on that date. A meeting was then held. Kalaw made a full disclosure of the situation, apprised the board of the impending heavy losses. No action was taken on the contracts. Neither did the board vote thereon at the meeting of January 7, 1948 following. Then, on January 11, 1948, President Roxas made a statement that the NACOCO head did his best to avert the losses, emphasized that government concerns faced the same risks that confronted private companies, that NACOCO was recouping its losses, and that Kalaw was to remain in his post. Not long thereafter, that is, on January 30, 1948, the board met again with Kalaw, Bocar, Garcia and Moll in attendance. They unanimously approved the contracts hereinbefore enumerated.

As was to be expected, NACOCO but partially performed the contracts.

The buyers threatened damage suits. Some of the claims were settled, viz: Pacific Vegetable Oil Co., in copra delivered by NACOCO, P539,000.00; Franklin Baker Corporation, P78,210.00; Spencer Kellog & Sons, P159,040.00.

But one buyer, Louis Dreyfus & Go. (Overseas) Ltd., did in fact sue before the Court of First Instance of Manila, upon claims for undelivered copra and for the balance on another contract. These cases culminated in an out-of-court amicable settlement when the Kalaw management was already out.

The corporation thereunder paid Dreyfus P567,024.52 representing 70% of the total claims. With particular reference to the Dreyfus claims, NACOCO put up the defenses that: (1) the contracts were void because Louis Dreyfus & Co. (Overseas) Ltd. did not have license to do business here; and (2) failure to deliver was due to force majeure, the typhoons. All the settlements sum up to P1,343,274.52.

NACOCO seeks to recover the above sum of P1,343,274.52 from general manager and board chairman Maximo M. Kalaw, and directors Juan Bocar, Casimiro Garcia and Leonor Moll. It charges Kalaw with negligence under Article 1902 of the old Civil Code (now Article 2176, new Civil Code); and defendant board members, including Kalaw, with bad faith and/or breach of trust for having approved the contracts.

The lower court came out with a judgment dismissing the complaint without costs as well as defendants' counterclaims, except that plaintiff was ordered to pay the heirs of Maximo Kalaw the sum of P2,601.94 for unpaid salaries and cash deposit due the deceased Kalaw from NACOCO.

ISSUE

Whether the case at bar is to be taken out of the general concept of the powers of a general manager, given the cited provision of the NACOCO by-laws requiring prior directorate approval of NACOCO contracts. (NO)

RULING

Settled jurisprudence has it that where similar acts have been approved by the directors as a matter of general practice, custom, and policy, the general manager may bind the company without formal authorization of the board of directors. In varying language, existence of such authority is established, by proof of the course of business, the usage and practices of the company and by the knowledge which the board of directors has, or must be presumed to have, of acts and doings of its subordinates in and about the affairs of the corporation. So also,

x x x authority to act for and bind a corporation may be presumed from acts of recognition in other instances where the power was in fact exercised.

x x x Thus, when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business.

In the case at bar, the practice of the corporation has been to allow its general manager to negotiate and execute contracts in its copra trading activities for and in NACOCO's behalf without prior board approval. If the by-laws were to be literally followed, the board should give its stamp of prior approval on all corporate contracts. But that board itself, by its acts and through acquiescence, practically laid aside the by-law requirement of prior approval.

Under the given circumstances, the Kalaw contracts are valid corporate acts.

But if more were required, we need but turn to the board's ratification of the contracts in dispute on January 30, 1948, though it is our (and the lower court's) belief that ratification here is nothing more than a mere formality.

Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;" and that " [t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." 30 The language of one case is expressive: "The adoption or ratification of a contract by a corporation is nothing more or less than the making of an original contract. The theory of corporate ratification is predicated on the right of a corporation to contract, and any ratification or adoption is equivalent to a grant of prior authority."

Indeed, our law pronounces that "[r]atification cleanses the contract from all its defects from the moment it was constituted." By corporate confirmation, the contracts executed by Kalaw are thus purged of whatever vice or defect they may have.

In sum, a case is here presented whereunder, even in the face of an express by-law requirement of prior approval, the law on corporations is not to be held so rigid and inflexible as to fail to recognize equitable considerations. And, the conclusion inevitably is that the embattled contracts remain valid.

- Rural Bank Of Milaor (Camarines Sur) vs. Francisca Ocfemia, Rowena Barrogo, Marife O. Niño, Felicisimo Ocfemia, Renato Ocfemia Jr., and Winston Ocfemia, G.R. No. 137686, February 8, 2000

RURAL BANK OF MILAOR (CAMARINES SUR), ***Petitioner–versus-*** **FRANCISCA OCFEMIA, ROWENA BARROGO, MARIFE O. NIÑO, FELICISIMO OCFEMIA, RENATO OCFEMIA JR, and WINSTON OCFEMIA,** ***Respondents.***
G.R. No. 137686 , THIRD DIVISION, February 8, 2000, PANGANIBAN, J.

It is settled that when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business.

Notwithstanding the putative authority of the manager to bind the bank in the Deed of Sale, petitioner has failed to file an answer to the Petition below within the reglementary period, let alone present evidence controverting such authority. Indeed, when one of herein respondents, Marife S. Nino, went to the bank to ask for the board resolution, she was merely told to bring the receipts. The bank failed to categorically declare that Tena had no authority.

FACTS

Marife O. Niño, one of the [respondents] in this case, show[s] that she is the daughter of Francisca Ocfemia, a co-[respondent] in this case, and the late Renato Ocfemia who died on July 23, 1994. The parents of her father, Renato Ocfemia, were Juanita Arellano Ocfemia and Felicisimo Ocfemia. Her other co-[respondents] Rowena O. Barrogo, Felicisimo Ocfemia, Renato Ocfemia, Jr. and Winston Ocfemia are her brothers and sisters.

Marife O. Niño knows the five (5) parcels of land subject of this case which are located in Bombon, Camarines Sur and that they are the ones possessing them which were originally owned by her grandparents, Juanita Arellano Ocfemia and Felicisimo Ocfemia. During the lifetime of her grandparents, [respondents] mortgaged the said five (5) parcels of land and two (2) others to the [petitioner] Rural Bank of Milaor.

The spouses Felicisimo Ocfemia and Juanita Arellano Ocfemia were not able to redeem the mortgaged properties consisting of seven (7) parcels of land and so the mortgage was foreclosed and thereafter ownership thereof was transferred to the [petitioner] bank. Out of the seven (7) parcels that were foreclosed, five (5) of them are in the possession of the [respondents] because these five (5) parcels of land described in paragraph 6 of the petition were sold by the [petitioner] bank to the parents of Marife O. Niño.

The aforementioned five (5) parcels of land subject of the deed of sale, have not been, however transferred in the name of the parents of Merife O. Niño after they were sold to her parents by the [petitioner] bank because according to the Assessor's Office the five (5) parcels of land, subject of the sale, cannot be transferred in the name of the buyers as there is a need to have the document of sale registered with the Register of Deeds of Camarines Sur.

In view of the foregoing, Marife O. Niño went to the Register of Deeds of Camarines Sur with the Deed of Sale in order to have the same registered. The Register of Deeds, however, informed her that the document of sale cannot be registered without a board resolution of the [petitioner] Bank. Marife Niño then went to the bank, showed to if the Deed of Sale, the tax declaration and receipt of tax payments and requested the [petitioner] for a board resolution so that the property can be transferred to the name of Renato Ocfemia the husband of petitioner Francisca Ocfemia and the father of the other [respondents] having died already.

The [petitioner] bank refused her request for a board resolution and made many alibi[s]. She was told that the [petitioner] bank ha[d] a new manager and it had no record of the sale. She was asked and she complied with the request of the [petitioner] for a copy of the deed of sale and receipt of payment. The president of the [petitioner] bank told her to get an authority from her parents and other [respondents] and receipts evidencing payment of the consideration appearing in the deed of sale. She complied with said requirements and after she gave all these documents, Marife O. Niño was again told to wait for two (2) weeks because the [petitioner] bank would still study the matter.

After two (2) weeks, Marife O. Niño returned to the [petitioner] bank and she was told that the resolution of the board would not be released because the [petitioner] bank ha[d] no records from the old manager. Because of this, Marife O. Niño brought the matter to her lawyer and the latter wrote a letter on December 22, 1995 to the [petitioner] bank inquiring why no action was taken by the board of the request for the issuance of the resolution considering that the bank was already fully paid [for] the consideration of the sale since January 1988 as shown by the deed of sale itself.

On January 15, 1996 the [petitioner] bank answered [respondents'] lawyer's letter informing the latter that the request for board resolution ha[d] already been referred to the board of directors of the [petitioner] bank with another request that the latter should be furnished with a certified machine copy of the receipt of payment covering the sale between the [respondents] and the [petitioner]. This request of the [petitioner] bank was already complied [with] by Marife O. Niño even before she brought the matter to her lawyer.

After several days from receipt of the letter when Marife O. Niño went to the [petitioner] again and reiterated her request, the manager of the [petitioner] bank told her that they could not issue the required board resolution as the [petitioner] bank ha[d] no records of the sale. Because of this Merife O. Niño already went to their lawyer and ha[d] this petition filed.

ISSUE

Whether or not the board of directors of a rural banking corporation be compelled to confirm a deed of absolute sale of real property owned by the corporation which deed of sale was executed by the bank manager without prior authority of the board of directors of the rural banking corporation. (YES)

RULING

Respondents based their action before the trial court on the Deed of Sale, the substance of which was alleged in and a copy thereof was attached to the Petition for *Mandamus*. The Deed named Fe S. Tena as the representative of the bank. Petitioner, however, failed to specifically deny under oath the allegations in that contract. In fact, it filed no answer at all, for which reason it was declared in default.

In failing to file its answer specifically denying under oath the Deed of Sale, the bank admitted the due execution of the said contract. Such admission means that it acknowledged that Tena was authorized to sign the Deed of Sale on its behalf. [13] Thus, defenses that are inconsistent with the due execution and the genuineness of the written instrument are cut off by an admission implied from a failure to make a verified specific denial.

In any event, the bank acknowledged, by its own acts or failure to act, the authority of Fe S. Tena to enter into binding contracts. After the execution of the Deed of Sale, respondents occupied the properties in dispute and paid the real estate taxes due thereon. If the bank management believed that it had title to the property, it should have taken some measures to prevent the infringement or invasion of its title thereto and possession thereof.

Likewise, Tena had previously transacted business on behalf of the bank, and the latter had acknowledged her authority. A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like Manager Tena, even though such agent is abusing her authority. Clearly, persons dealing with her could not be blamed for believing that she was authorized to transact business for and on behalf of the bank.

It is settled that when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business.

Notwithstanding the putative authority of the manager to bind the bank in the Deed of Sale, petitioner has failed to file an answer to the Petition below within the reglementary period, let alone present evidence controverting such authority. Indeed, when one of herein respondents, Marife S. Nino, went to the bank to ask for the board resolution, she was merely told to bring the receipts. The bank failed to categorically declare that Tena had no authority.

In this light, the bank is estopped from questioning the authority of the bank manager to enter into the contract of sale. If a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds the agent out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

Unquestionably, petitioner has authorized Tena to enter into the Deed of Sale. Accordingly, it has a clear legal duty to issue the board resolution sought by respondent's. Having authorized her to sell the property, it behooves the bank to confirm the Deed of Sale so that the buyers may enjoy its full use.

The board resolution is, in fact, mere paper work. Nonetheless, it is paper work necessary in the orderly operations of the register of deeds and the full enjoyment of respondents' rights. Petitioner-bank persistently and unjustifiably refused to perform its legal duty. Worse, it was less than candid in dealing with respondents regarding this matter. In this light, the Court finds it proper to assess the bank treble costs, in addition to the award of damages.

- Westmont Bank (formerly Associated Citizens Bank and now United Overseas Bank, Phils.) And The Provincial Sheriff of Rizal vs. Inland Construction and Development Corp., G.R. No. 123650, March 23, 2009

WESTMONT BANK (formerly ASSOCIATED CITIZENS BANK and now UNITED OVERSEAS BANK, PHILS.) AND THE PROVINCIAL SHERIFF OF RIZAL*, Petitioners–versus-* INLAND CONSTRUCTION AND DEVELOPMENT CORP, *Respondent.*
G.R. No. 123650 , SECOND DIVISION, March 23, 2009, CARPIO MORALES, J.

FACTS

Inland Construction and Development Corp. (Inland) obtained various loans and other credit accommodations from petitioner, then known as Associated Citizens Bank ([the bank] which later became United Overseas Bank, Phils., and still later Westmost Bank) in 1977.

To secure the payment of its obligations, Inland executed real estate mortgages over three real properties in Pasig City. Inland likewise issued promissory notes in favor of the bank.

When the first and second promissory notes fell due, Inland defaulted in its payments. It, however, authorized the bank to debit ₱350,000 from its savings account to partially satisfy its obligations.

It appears that by a Deed of Assignment, Conveyance and Release, Felix Aranda, President of Inland, assigned and conveyed all his rights and interests at Hanil-Gonzales Construction & Development (Phils.) Corporation (Hanil-Gonzales Corporation) in favor of Horacio Abrantes (Abrantes), Executive Vice-President and General Manager of Hanil-Gonzales Corporation. Under the same Deed of Assignment, it appears that Abrantes assumed, among other obligations of Inland and Aranda, Promissory Note No. BD-2884-77 in the amount of ₱800,000 as shown in the May 26, 1978 Deed of

Assignment of Obligation in which Aranda and Inland, on one hand, and Abrantes and Hanil-Gonzales Corporation, on the other, forged. The bank's Account Officer, Lionel Calo Jr. (Calo), signed for its conformity to the deed.

Inland was served a Notice of Sheriff's Sale foreclosing the real estate mortgages over its real properties, prompting it to file a complaint for injunction against the bank and the Provincial Sheriff of Rizal at the Regional Trial Court (RTC) of Pasig City. This complaint was later amended. Answering the amended complaint, the bank underscored that it "had no knowledge, much less did it give its conformity to the alleged assignment of the obligation.

The trial court found that the bank ratified the act of its account officer Calo, thus: Culled from the evidence on record, the Court finds that the defendant Bank ratified the act of Calo when its Executive Committee failed to repudiate the assignment within a reasonable time and even approved the request for a restructuring of Liberty Const. & Dev. Corp./Hanil-Gonzales Construction & Development Corp.'s obligations, which included the ₱880,000.00 loan (Exhibit "U" to "X", and its submarkings). Clearly, the assumption of the loan was very well known to the defendant Bank and the latter posed no objection to it. In fact, the positive act on the part of the defendant in restructuring the loan of the assignee attest to its consent in the said transaction.

The evidence on record conveys the fact that the Hanil-Gonzales Const. and Development Corp. assumed the obligation of the plaintiff on the SECOND NOTE. Later, it asked the defendant for a restructuring of its loan, including the ₱880,000.00 loan. Thereafter, payments were made by the assignee to the defendant Bank. The preponderance of evidence tilts heavily in favor of the plaintiff claiming that a case of delegacion occurs.

RTC accordingly rendered judgment in favor of Inland. The bank appealed the trial court's decision to the Court of Appeals. CA modified RTC's decision, the decision appealed from is AFFIRMED only insofar as it finds appellant Associated Bank to have ratified the Deed of Assignment (Exhibit "O"), but REVERSED in all other respects, and judgment is accordingly rendered ordering the plaintiff-appellee Inland Construction and Development Corporation to pay defendant-appellant Associated Bank the sum of One Hundred Eighty Six Thousand Two Hundred Forty One Pesos and Eighty Six Centavos (₱186,241.86) with legal interest thereon computed from December 21, 1979 until the same is fully paid.

In the instant case, both the assignors (Aranda and Inland) and assignees (Abrantes and Hanil-Gonzales) in the subject deed of assignment have been major clients of Associated Bank for several years with accounts amounting to millions of pesos. For several years, Associated Bank had, either intentionally or negligently, been habitually clothing Calo with the apparent powers to perform acts in behalf of the bank.

Calo signed the subject deed of assignment on or about May 26, 1978. The principal obligation covered by the deed involved a hefty sum of eight hundred eighty thousand pesos (P880,000.00). Despite the enormity of the amount involved, Associated Bank never made any attempt to repudiate the act of Calo until almost seven (7) years later, when Mitos C. Olivares, Manager of the Cash Department of Associatd Bank, issued an INTER-OFFICE MEMORANDUM dated May 20, 1985 which pertinently reads:

"2) Conforme of Associated Bank signed by Lionel Calo Jr. has no bearing since he has no authority to sign for the bank as he was only an account officer with no signing authority

The abovequoted inter-office memorandum is addressed internally to the other offices within Associated Bank. It is not addressed to Inland or any outsider for that matter. Worse, it was not even offered in evidence by Associated Bank to give Inland the opportunity to object to or comment on the said document, but was merely attached as one of the annexes to the bank's MEMORANDUM FOR DEFENDANTS.

The bank moved for partial reconsideration of the appellate court's decision on the aspect of its ratification of the Deed of Assignment but the same was denied by Resolution of January 24, 1996. The bank, via two different counsels, filed before this Court separate petitions for review, G.R. No. 123650, Associated Citizens Bank, et al. v. Court of Appeals, et al; and G.R. No. 123822, Westmont Bank (formerly Associated Bank) v. Inland Construction & Development Corp., assailing the same appellate court's decision.

ISSUE

Whether or not Court of Appeals erred in affirming the finding of the trial court that petitioner have ratified the deed of assignment. (NO)

RULING

The bank, which had, as reflected early on, become known as Westmont Bank (petitioner), maintains that Calo had no authority to bind it in the Deed of Assignment and that a single, isolated unauthorized act of its agent is not sufficient to establish that it clothed him with apparent authority. Petitioner adds that the records fail to disclose evidence of similar acts of Calo executed either in its favor or in favor of other parties.[19] Moreover, petitioner reasserts that the unauthorized act of Calo never came to its knowledge, hence, it is not estopped from repudiating the Deed of Assignment. The petitions fail.

The general rule remains that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. If a corporation, however, consciously lets one of its officers, or any other agent, to act within the scope of an apparent authority, it will be estopped from denying such officer's authority.

The records show that Calo was the one assigned to transact on petitioner's behalf respecting the loan transactions and arrangements of Inland as well as those of Hanil-Gonzales and Abrantes. Since it conducted business through Calo, who is an Account Officer, it is presumed that he had authority to sign for the bank in the Deed of Assignment.

Petitioner cannot feign ignorance of the May 26, 1978 Deed of Assignment, the pertinent portion of which was quoted above. Notably, assignee Abrantes notified petitioner about his assumption of Inland's obligation. Thus, in his July 26, 1979 letter to petitioner, he wrote:

This refers to the accounts of Liberty Construction and Development Corporation (LCDC) and our sister-company, Hanil-Gonzalez Construction & Development Corporation (HGCDC) which as of July

31, 1979 was computed at ₱1,814,442.40, inclusive of interest, penalties and fees, net of marginal deposits. This includes the account of Inland Construction & Development Corporation which had been assumed by HGCDC.

That petitioner sent the following reply-letter, dated November 29, 1982, to the above-quoted letter to it of assignee Abrantes indicates that it had full and complete knowledge of the assumption by Abrantes of Inland's obligation: We are pleased to advise you that our Executive Committee in its meeting last November 25, 1982, has approved your request for the restructuring of your outstanding obligations x x x x.

Respecting this reply-letter of the bank granting Hanil-Gonzales' request to restructure its loans, petitioner, as a banking institution, is expected to have exercised the highest degree of diligence and meticulousness in the conduct of its business. When it received the loan restructuring request, with specific mention of Inland's Promissory Note No. BD-2884-77, petitioner-bank was under obligation to fastidiously scrutinize such loan account. And since it clearly approved the request for restructuring, any "uncertainty" that its reply-letter approving such request may not thus work to prejudice Hanil-Gonzales or Inland.

In the present petitions, petitioner-bank failed to discharge its primary burden of proving that Calo was notauthorized to bind it, as it did not present proof that Calo was unauthorized. It did not present, much less cite, any Resolution from its Board of Directors or its Charter or By-laws from which the Court could reasonably infer that he indeed had no authority to sign in its behalf or bind it in the Deed of Assignment. The May 20, 1985 inter-office memorandum[28] stating that Calo had "no signing authority" remains self-serving as it does not even form part of petitioner's body of evidence. Thus, the assertion that the petitioner cannot be faulted for its delay in repudiating the apparent authority of Calo is similarly flawed, there being no evidence on record that it had actually repudiated such apparent authority. It should be noted that it was the bank which pleaded that defense in the first place. What is extant in the records is a reasonable certainty that the bank had ratified the Deed of Assignment.

- Associated Bank vs. Spouses Rafael and Monaliza Pronstroller, G.R. No. 148444, July 14, 2008

ASSOCIATED BANK (now UNITED OVERSEAS BANK [PHILS.]), *Petitioner–versus-* SPOUSES RAFAEL and MONALIZA PRONSTROLLER, *Respondent.*
G.R. No. 148444, THIRD DIVISION, July 14, 2008, NACHURA, J.

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. The doctrine of "apparent authority," with special reference to banks, had long been recognized in this jurisdiction. Apparent authority is derived not merely from practice. Its existence may be ascertained through 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Hence, petitioner may not impute negligence on the part of the respondents in failing to find out the scope of Atty. Soluta's authority. Indeed, the public has the right to rely on the trustworthiness of bank officers and their acts.

FACTS

Spouses Eduardo and Ma. Pilar Vaca (spouses Vaca) executed a Real Estate Mortgage (REM) in favor of the petitioner over their parcel of residential land and the house constructed thereon, located at No. 18, Lovebird Street, Green Meadows Subdivision 1, Quezon City (herein referred to as the subject property). For failure of the spouses Vaca to pay their obligation, the subject property was sold at public auction with the petitioner as the highest bidder. Transfer Certificate of Title (TCT) in the name of spouses Vaca was cancelled and a new one was issued in the name of the petitioner.

The spouses Vaca, however, commenced an action for the nullification of the real estate mortgage and the foreclosure sale. Petitioner, on the other hand, filed a petition for the issuance of a writ of possession which was denied by the RTC. Petitioner, thereafter, obtained a favorable judgment when the CA granted its petition but the spouses Vaca questioned the CA decision before this Court.

During the pendency of the aforesaid cases, petitioner advertised the subject property for sale to interested buyers for ₱9,700,000.00. Respondents Rafael and Monaliza Pronstroller offered to purchase the property for ₱7,500,000.00. Said offer was made through Atty. Jose Soluta, Jr. (Atty. Soluta), petitioner's Vice-President, Corporate Secretary and a member of its Board of Directors. Petitioner accepted respondents' offer of ₱7.5 million. Consequently, respondents paid petitioner ₱750,000.00 as down payment.

Atty. Soluta, and respondents, executed a Letter-Agreement setting forth therein the terms and conditions of the sale: Selling price shall be at ₱7,500,000.00 payable within ninety (90) days from date hereof. Any interest earned on the aforesaid investment shall be for the buyer's account. However, the 10% deposit is non-interest earning.

Prior to the expiration of the 90-day period, in view of the pendency of the case between the spouses Vaca and petitioner involving the subject property, respondents requested that the balance of the purchase price be made payable only upon service on them of a final decision or resolution of this Court affirming petitioner's right to possess the subject property. Atty. Soluta referred respondents' proposal to petitioner's Asset Recovery and Remedial Management Committee (ARRMC) but the latter deferred action thereon.

On July 14, 1993, a month after they made the request and after the payment deadline had lapsed, respondents and Atty. Soluta, acting for the petitioner, executed another Letter-Agreement allowing the former to pay the balance of the purchase price upon receipt of a final order from this Court (in the Vaca case) and/or the delivery of the property to them free from occupants.

Towards the end of 1993, or in early 1994, petitioner reorganized its management. Atty. Braulio Dayday (Atty. Dayday) became petitioner's Assistant Vice-President and Head of the Documentation Section, while Atty. Soluta was relieved of his responsibilities. Atty. Dayday reviewed petitioner's records of its outstanding accounts and discovered that respondents failed to deposit the balance of the purchase price of the subject property.

He, likewise, found that respondents requested for an extension of time within which to pay. The matter was then resubmitted to the ARRMC during its meeting on March 4, 1994, and it was disapproved. ARRMC, thus, referred the matter to petitioner's Legal Department for rescission or cancellation of the contract due to respondents' breach thereof.

Atty. Dayday informed respondents that their request for extension was disapproved by ARRMC and, in view of their breach of the contract, petitioner was rescinding the same and forfeiting their deposit. Petitioner added that if respondents were still interested in buying the subject property, they had to submit their new proposal. Respondents went to the petitioner's office, talked to Atty. Dayday and gave him the Letter-Agreement of July 14, 1993 to show that they were granted an extension. However, Atty. Dayday claimed that the letter was a mistake and that Atty. Soluta was not authorized to give such extension.

On June 6, 1994, respondents proposed to pay the balance of the purchase price as follows: ₱3,000,000.00 upon the approval of their proposal and the balance after six (6) months. However, the proposal was disapproved by the petitioner's President.

In a letter dated June 9, 1994, petitioner advised respondents that the former would accept the latter's proposal only if they would pay interest at the rate of 24.5% per annum on the unpaid balance. Petitioner also allowed respondents a refund of their deposit of ₱750,000.00 if they would not agree to petitioner's new proposal.
For failure of the parties to reach an agreement, respondents, through their counsel, informed petitioner that they would be enforcing their agreement dated July 14, 1993. Petitioner countered that it was not aware of the existence of the July 14 agreement and that Atty. Soluta was not authorized to sign for and on behalf of the bank. It, likewise, reiterated the rescission of their previous agreement because of the breach committed by respondents.

On July 14, 1994, in the Vaca case, this Court upheld petitioner's right to possess the subject property. On July 28, 1994, respondents commenced the instant suit by filing a Complaint for Specific Performance before the RTC of Antipolo, Rizal. Respondents prayed that petitioner be ordered to sell the subject property to them in accordance with their letter-agreement of July 14, 1993. They, likewise, caused the annotation of a notice of lis pendens at the dorsal portion of TCT of the subject property.

For its part, petitioner contended that their contract had already been rescinded because of respondents' failure to deposit in escrow the balance of the purchase price within the stipulated period.

During the pendency of the case, petitioner sold the subject property to the spouses Vaca, who eventually registered the sale; and on the basis thereof, TCT No. 52593 was cancelled and TCT No. 158082 was issued in their names. As new owners, the spouses Vaca started demolishing the house on the subject property which, however, was not completed by virtue of the writ of preliminary injunction issued by the court.

The trial court finally resolved the matter in favor of respondents finding the defendant's rescission of the Agreement to Sell to be null and void for being contrary to law and public policy. ACCORDINGLY, defendant bank is hereby ordered to accept plaintiffs' payment of the balance of the purchase price and to deliver the title and possession to subject property, free from all liens and encumbrances upon receipt of said payment.

Applying the rule of "apparent authority," the court upheld the validity of the July 14, 1993 Letter-Agreement where the respondents were given an extension within which to make payment. Consequently, respondents did not incur in delay, and thus, the court concluded that the rescission of the contract was without basis and contrary to law.

On appeal, the CA affirmed the RTC decision and upheld Atty. Soluta's authority to represent the petitioner. It further ruled that petitioner had no right to unilaterally rescind the contract; otherwise, it would give the bank officers license to continuously review and eventually rescind contracts entered into by previous officers.

As to whether respondents were estopped from enforcing the July 14, 1993 Letter-Agreement, the appellate court ruled in the negative. It found, instead, that petitioners were estopped from questioning the efficacy of the July 14 agreement because of its failure to repudiate the same for a period of one year. CA ordered Westmont Bank to execute a <u>"Deed of Absolute Sale"</u> in favor of the Appellees over the property and ordered Register of Deeds is hereby ordered to cancel Transfer Certificate of Title under the names of the Spouses Vaca and to issue another under the names of the Appellees.

Petitioner's motion for reconsideration was denied. Hence, this petition.

ISSUE

Whether or not petitioner bound by the July 14, 1993 Letter-Agreement signed by Atty. Soluta under the doctrine of apparent authority. (YES)

RULING

The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. The power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board of directors. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board may validly delegate some of its functions and powers to officers, committees and agents. The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly, by habit, custom, or acquiescence, in the general course of business.

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. The doctrine of "apparent authority," with special reference to banks, had long been recognized in this jurisdiction. Apparent authority is derived not merely from practice. Its existence may be ascertained through 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances, wherein the power was exercised without any objection from its board or shareholders. Undoubtedly, petitioner had previously allowed Atty. Soluta to enter into the first agreement without a board resolution expressly authorizing him; thus, it had clothed him with apparent authority to modify the same via the second letter-agreement. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.

Naturally, the third person has little or no information as to what occurs in corporate meetings; and he must necessarily rely upon the external manifestations of corporate consent. The integrity of commercial transactions can only be maintained by holding the corporation strictly to the liability fixed upon it by its agents in accordance with law. What transpires in the corporate board room is entirely an internal matter. Hence, petitioner may not impute negligence on the part of the respondents in failing to find out the scope of Atty. Soluta's authority. Indeed, the public has the right to rely on the trustworthiness of bank officers and their acts.

As early as June 1993, or prior to the 90-day period within which to make the full payment, respondents already requested a modification of the earlier agreement such that the full payment should be made upon receipt of this Court's decision confirming petitioner's right to the subject property. The matter was brought to the petitioner's attention and was in fact discussed by the members of the Board. Instead of acting on said request (considering that the 90-day period was about to expire), the board deferred action on the request. It was only after one year and after the bank's reorganization that the board rejected respondents' request.

We cannot therefore blame the respondents in relying on the July 14, 1993 Letter-Agreement. Petitioner's inaction, coupled with the apparent authority of Atty. Soluta to act on behalf of the corporation, validates the July 14 agreement and thus binds the corporation. All these taken together, lead to no other conclusion than that the petitioner attempted to defraud the respondents. This is bolstered by the fact that it forged another contract involving the same property, with another buyer, the spouses Vaca, notwithstanding the pendency of the instant case.

We would like to emphasize that if a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be estopped from denying such authority.

- Banate vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc., G.R. No. 163825, July 13, 2010

VIOLETA TUDTUD BANATE, MARY MELGRID M. CORTEL, BONIFACIO CORTEL, ROSENDO MAGLASANG, and PATROCINIA MONILAR, *Petitioners–versus-* PHILIPPINE COUNTRYSIDE RURAL BANK (LILOAN, CEBU), INC. and TEOFILO SOON, JR*, Respondents.*

G.R. No. 163825, THIRD DIVISION, July 13, 2010, BRION, J.

Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principals' liability, however, is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent.

In the present case, the decision of the trial court was utterly silent on the manner by which PCRB, as supposed principal, has clothed or held out its branch manager as having the power to enter into an agreement, as claimed by petitioners. No proof of the course of business, usages and practices of the bank about, or knowledge that the board had or is presumed to have of, its responsible officers' acts regarding bank branch affairs, was ever adduced to establish the branch managers apparentauthority to verbally alter the terms of mortgage contracts. Neither was there any allegation, much less proof, that PCRB ratified Mondigos act or is estopped to make a contrary claim.

FACTS

On July 22, 1997, petitioner spouses Rosendo Maglasang and Patrocinia Monilar (*spouses Maglasang*) obtained a loan (*subject loan*) from PCRB for ₱1,070,000.00. The subject loan was evidenced by a promissory note and was payable on January 18, 1998. To secure the payment of the subject loan, the spouses Maglasang executed, in favor of PCRB a real estate mortgage over their property, including the house constructed thereon (collectively referred to as *subject properties*), owned by petitioners Mary Melgrid and Bonifacio Cortel (*spouses Cortel*), the spouses Maglasangs daughter and son-in-law, respectively. Aside from the subject loan, the spouses Maglasang obtained two other loans from PCRB which were covered by separate promissory notes and secured by mortgages on their other properties.

Sometime in November 1997 (before the subject loan became due), the spouses Maglasang and the spouses Cortel asked PCRBs permission to sell the subject properties. They likewise requested that the subject properties be released from the mortgage since the two other loans were adequately secured by the other mortgages. The spouses Maglasang and the spouses Cortel claimed that the PCRB, acting through its Branch Manager, Pancrasio Mondigo, verbally agreed to their request but required first the full payment of the subject loan. The spouses Maglasang and the spouses Cortel thereafter sold to petitioner Violeta Banate the subject properties for ₱1,750,000.00. The spouses Magsalang and the spouses Cortel used the amount to pay the subject loan with PCRB. After settling the subject loan, PCRB gave the owners duplicate certificate of title of to Banate, who was able to secure a new title in her name. The title, however, carried the mortgage lien in favor of PCRB, prompting the petitioners to request from PCRB a Deed of Release of Mortgage. As PCRB refused to comply with the petitioners' request, the petitioners instituted an action for specific performance before the RTC to compel PCRB to execute the release deed.

The petitioners additionally sought payment of damages from PCRB, which, they claimed, caused the publication of a news report stating that they surreptitiously caused the transfer of ownership of the subject property. The petitioners considered the news report false and malicious, as PCRB knew of the sale of the subject properties and, in fact, consented thereto.

PCRB countered the petitioners' allegations by invoking the cross-collateral stipulation in the mortgage deed. Accordingly, PCRB claimed that full payment of the three loans, obtained by the spouses Maglasang, was necessary before any of the mortgages could be released; the settlement of the subject loan merely constituted partial payment of the total obligation. Thus, the payment does not authorize the release of the subject properties from the mortgage lien.

PCRB considered Banate as a buyer in bad faith as she was fully aware of the existing mortgage in its favor when she purchased the subject properties from the spouses Maglasang and the spouses Cortel. It explained that it allowed the release of the owners duplicate certificate of title to Banate only to enable her to annotate the sale. PCRB claimed that the release of the title should not indicate the corresponding release of the subject properties from the mortgage constituted thereon.

After trial, the RTC ruled in favor of the petitioners. It noted that the petitioners, as necessitous men, could not have bargained on equal footing with PCRB in executing the mortgage, and concluded that it was a contract of adhesion. Therefore, any obscurity in the mortgage contract should not benefit PCRB.

Since the subject loan had been fully paid, the RTC considered the petitioners as rightfully entitled to a deed of release of mortgage, pursuant to the verbal agreement that the petitioners made with PCRBs branch manager, Mondigo. Thus, the RTC ordered PCRB to execute a deed of release of mortgage over the subject properties, and to pay the petitioners moral damages and attorneys fees. On appeal, the CA reversed the RTCs decision. The CA did not consider as valid the petitioners' new agreement with Mondigo, which would novate the original mortgage contract containing the cross-collateral stipulation. It ruled that Mondigo cannot orally amend the mortgage contract between PCRB, and the spouses Maglasang and the spouses Cortel; therefore, the claimed commitment allowing the release of the mortgage on the subject properties cannot bind PCRB. Since the cross-collateral stipulation in the mortgage contract (requiring full settlement of all three loans before the release of any of the mortgages) is clear, the parties must faithfully comply with its terms.

Dismayed with the reversal by the CA of the RTCs ruling, the petitioners filed the present appeal by *certiorari*, claiming that the CA ruling is not in accord with established jurisprudence.

ISSUES

1. Whether the purported agreement between the petitioners and Mondigo novated the mortgage contract over the subject properties and is thus binding upon PCRB. (NO)
2. Whether the doctrine of apparent authority apply. (NO)
3. If the first issue is resolved negatively, whether Banate can demand restitution of the amount paid for the subject properties on the theory that the new agreement with Mondigo is deemed rescinded. (NO)

RULING

1. Before we resolve the issues directly posed, we first dwell on the determination of the nature of the cross-collateral stipulation in the mortgage contract. As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if, from the four corners of the instrument, the *intent to secure future and other indebtedness* can be gathered. This stipulation is *valid and binding* between the parties and is known as the *blanket mortgage clause* (also known as the dragnet clause).

In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for *such other loans or advances already obtained, or still to be obtained*. The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. After agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well.

The petitioners, however, claim that their agreement with Mondigo must be deemed to have novated the mortgage contract. They posit that the full payment of the subject loan extinguished their obligation arising from the mortgage contract, including the stipulated cross-collateral provision. Consequently, consistent with their theory of a novated agreement, the petitioners maintain that it devolves upon PCRB to execute the corresponding Deed of Release of Mortgage.

We find the petitioners argument unpersuasive. Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have **dual functions** one to extinguish an existing obligation, the other to substitute a new one in its place requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) *an agreement of all parties concerned to a new contract*; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.

The second requisite is lacking in this case. Novation presupposes not only the extinguishment or modification of an existing obligation but, more importantly, the creation of a valid new obligation. For the consequent creation of a new contractual obligation, consent of both parties is, thus, required. As a general rule, no form of words or writing is necessary to give effect to a novation. Nevertheless, where either or both parties involved are juridical entities, proof that the second contract was executed by persons with the proper authority to bind their respective principals is necessary.

2. Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

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 its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is either express or implied. The extent of an agents express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of apparent authority, on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:

1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or

2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principals' liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent. There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third partys detriment.

In the present case, the decision of the trial court was utterly silent on the manner by which PCRB, as supposed principal, has clothed or held out its branch manager as having the power to enter into an agreement, as claimed by petitioners. No proof of the course of business, usages and practices of the bank about, or knowledge that the board had or is presumed to have of, its responsible officers' acts regarding bank branch affairs, was ever adduced to establish the branch managers apparentauthority to verbally alter the terms of mortgage contracts. Neither was there any allegation, much less proof, that PCRB ratified Mondigos act or is estopped to make a contrary claim.

Further, we would be unduly stretching the doctrine of apparent authority were we to consider the power to undo or nullify solemn agreements validly entered into as within the doctrines ambit. Although a branch manager, within his field and as to third persons, is 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, yet the power to modify or nullify corporate contracts remains generally in the board of directors. Being a mere branch manager *alone* is insufficient to support the conclusion that Mondigo has been clothed with apparent authority to verbally alter terms of written contracts, especially when viewed against the telling circumstances of this case: the unequivocal provision in the mortgage contract; PCRBs vigorous denial that any agreement to release the mortgage was ever entered into by it; and, the fact that the purported agreement was not even reduced into writing considering its legal effects on the parties interests. To put it simply, the burden of proving the authority of Mondigo to alter or novate the mortgage contract has not been established.

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agents authority, and in case either is controverted, the burden of proof is upon them to establish it. As parties to the mortgage contract, the petitioners are expected to abide by its terms. The subsequent purported agreement is of no moment, and cannot prejudice PCRB, as it is beyond Mondigos actual or apparent authority, as above discussed.

3. We agree with PCRB. Even if we were to assume that the purported agreement has been sufficiently established, since it is not binding on the bank for lack of authority of PCRBs branch manager, then the prayer for restitution of the amount paid would have no legal basis. Of course, it will be asked:

what then is the legal significance of the payment made by Banate? Article 2154 of the Civil Code reads:

Art 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Notwithstanding the payment made by Banate, she is not entitled to recover anything *from PCRB* under Article 2154. There could not have been any payment by mistake *to PCRB*, as the check which Banate issued as payment was to her co-petitioner Mary Melgrid Cortel (the payee), and not to PCRB. The same check was simply endorsed by the payee to PCRB in payment of the subject loan that the Maglasangs owed PCRB.

The mistake, if any, was in the perception of the authority of Mondigo, as branch manager, to verbally alter the mortgage contract, and not as to whether the Cortels, as sellers, were entitled to payment. This mistake (on Mondigos lack of authority to alter the mortgage) did not affect the validity of the payment made to the bank as the existence of the loan was never disputed. The dispute was merely on the effect of the payment on the security given.

Consequently, no right to recover accrues in Banates favor as PCRB never dealt with her. The borrowers-mortgagors, on the other hand, merely paid what was really owed. Parenthetically, the subject loan was due on January 18, 1998, but was paid sometime in November 1997. It appears, however, that at the time the complaint was filed, the subject loan had already matured. Consequently, recovery of the amount paid, even under a claim of premature payment, will not prosper.

- Megan Sugar Corporation vs. RTC of Ilo-ilo Br. 68, G.R. no. 170352, June 1, 2011

MEGAN SUGAR CORPORATION, *Petitioners–versus-* REGIONAL TRIAL COURT of ILOILO, Branch 68, Dumangas, Iloilo; New Frontier Sugar Corporation and EQUITABLE PCI BANK, *Respondents.*

G.R. No. 170352, SECOND DIVISION, June 1, 2011, PERALTA, J.

One of the instances of estoppel is when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority.

With the case of MEGAN, it had all the opportunity to repudiate the authority of Atty. Sabig since all motions, pleadings and court orders were sent to MEGAN's office. However, MEGAN never questioned the acts of Atty. Sabig and even took time and effort to forward all the court documents to him.

FACTS

New Frontier Sugar Corporation (NFSC) obtained a loan from respondent Equitable PCI Bank (EPCIB). Said loan was secured by a real estate mortgage over NFSC's land consisting of ninety-two (92) hectares located in Passi City, Iloilo, and a chattel mortgage over NFSC's sugar mill. Due to liquidity problems and continued indebtedness to EPCIB, NFSC entered into a Memorandum of Agreement (MOA) with Central Iloilo Milling Corporation (CIMICO), whereby the latter agreed to take-over the operation and management of the NFSC raw sugar factory and facilities for the period covering crop years 2000 to 2003.

On April 19, 2002, NFSC filed a complaint for specific performance and collection against CIMICO for the latter's failure to pay its obligations under the MOA.

EPCIB instituted extra-judicial foreclosure proceedings over NFSC's land and sugar mill because of NFSC's failure to pay its debt. During public auction, EPCIB was the sole bidder and was thus able to buy the entire property and consolidate the titles in its name. EPCIB then employed the services of Philippine Industrial Security Agency (PISA) to help it in its effort to secure the land and the sugar mill.

CIMICO and petitioner Megan Sugar Corporation (MEGAN) entered into a MOA whereby MEGAN assumed CIMICO's rights, interests and obligations over the property. As a result of the foregoing undertaking, MEGAN started operating the sugar mill.
On November 29, 2002, during the hearing on the motion for intervention, Atty. Reuben Mikhail Sabig (Atty. Sabig) appeared before the RTC and entered his appearance as counsel for MEGAN. Several counsels objected to Atty. Sabig's appearance since MEGAN was not a party to the proceedings; however, Atty. Sabig explained to the court that MEGAN had purchased the interest of CIMICO and manifested that his statements would bind MEGAN.

ISSUE

Whether petitioner is estopped from questioning the assailed orders because of the acts of Atty. Reuben Mikhail Sabig. (YES)

RULING

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.

Based on the events and circumstances surrounding the issuance of the assailed orders, this Court rules that MEGAN is estopped from assailing both the authority of Atty. Sabig and the jurisdiction of the RTC. While it is true, as claimed by MEGAN, that Atty. Sabig said in court that he was only appearing for the hearing of Passi Sugar's motion for intervention and not for the case itself, his subsequent acts, coupled with MEGAN's inaction and negligence to repudiate his authority, effectively bars MEGAN from assailing the validity of the RTC proceedings under the principle of estoppel.

In the first place, Atty. Sabig is not a complete stranger to MEGAN. As a matter of fact, as manifested by EPCIB, Atty. Sabig and his law firm SABIG SABIG & VINGCO Law Office has represented MEGAN in other cases where the opposing parties involved were also CIMICO and EPCIB. As such, contrary to MEGAN's claim, such manifestation is neither immaterial nor irrelevant, because at the very least, such fact shows that MEGAN knew Atty. Sabig.

MEGAN can no longer deny the authority of Atty. Sabig as they have already clothed him with apparent authority to act in their behalf. It must be remembered that when Atty. Sabig entered his appearance, he was accompanied by Concha, MEGAN's director and general manager. Concha himself attended several court hearings, and on December 17, 2002, even sent a letter to the RTC asking for the status of the case. A corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority.

Atty. Sabig may not have been armed with a board resolution, but the appearance of Concha made the parties assume that MEGAN had knowledge of Atty. Sabig's actions and, thus, clothed Atty. Sabig with apparent authority such that the parties were made to believe that the proper person and entity to address was Atty. Sabig. Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, not as the result of the reality of a contractual relationship, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists.

Like the CA, this Court notes that MEGAN never repudiated the authority of Atty. Sabig when all the motions, pleadings and court orders were sent not to the office of Atty. Sabig but to the office of MEGAN, who in turn, would forward all of the same to Atty. Sabig, to wit:

x x x All the motions, pleadings and other notices in the civil case were mailed to Atty. Reuben Mikhail P. Sabig, Counsel for Megan Sugar, NFSC Compound, Barangay Man-it, Passi, Iloilo City which is the address of the Sugar Central being operated by Megan Sugar. The said address is not the real office address of Atty. Sabig. As pointed out by private respondent Equitable PCI Bank, the office address of Atty. Sabig is in Bacolod City. All orders, pleadings or motions filed in Civil Case 02-243 were received in the sugar central being operated by Megan Central and later forwarded by Megan Sugar to Atty. Sabig who is based in Bacolod City. We find it incredible that, granting that there was no authority given to said counsel, the record shows that it was received in the sugar mill operated by Megan and passed on to Atty. Sabig. At any stage, petitioner could have repudiated Atty. Sabig when it received the court pleadings addressed to Atty. Sabig as their counsel.

One of the instances of estoppel is when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. With the case of MEGAN, it had all the opportunity to repudiate the authority of Atty. Sabig since all motions, pleadings and court orders were sent to MEGAN's office. However, MEGAN never questioned the acts of Atty. Sabig and even took time and effort to forward all the court documents to him.

To this Court's mind, MEGAN cannot feign knowledge of the acts of Atty. Sabig, as MEGAN was aware from the very beginning that CIMICO was involved in an on-going litigation. Such fact is clearly spelled out in MEGAN's MOA with CIMICO, to wit:

- Advance Paper Corporation vs. Arma Traders Corporation, G.R. No 176897, December 11, 2013.

ADVANCE PAPER CORPORATION and GEORGE HAW, in his capacity as President of Advance Paper Corporation, *Petitioners–versus-* ARMA TRADERS CORPORATION, MANUEL TING, CHENG GUI and BENJAMIN NG, *Respondents.*

G.R. No. 176897, SECOND DIVISION, December 11, 2013, BRION, J.

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 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 person dealing with the officer or agent to believe that it has conferred.

In the present petition, we do not agree with the CA's findings that Arma Traders is not liable to pay the loans due to the lack of board resolution authorizing Tan and Uy to obtain the loans. To begin with, Arma Traders' Articles of Incorporation provides that the corporation may borrow or raise money to meet the financial requirements of its business by the issuance of bonds, promissory notes and other evidence of indebtedness.

FACTS

Petitioner Advance Paper is a domestic corporation engaged in the business of producing, printing, manufacturing, distributing and selling of various paper products. Petitioner George Haw (Haw) is the President while his wife, Connie Haw, is the General Manager.

Respondent Arma Traders is also a domestic corporation engaged in the wholesale and distribution of school and office supplies, and novelty products.6 Respondent Antonio Tan (Tan) was formerly the President while respondent Uy Seng Kee Willy (Uy) is the Treasurer of Arma Traders.7 They represented Arma Traders when dealing with its supplier, Advance Paper, for about 14 years.

On the other hand, respondents Manuel Ting, Cheng Gui and Benjamin Ng worked for Arma Traders as Vice-President, General Manager and Corporate Secretary, respectively.

Arma Traders, on various dates, purchased on credit notebooks and other paper products amounting to ₱7,533,001.49 from Advance Paper. As payment for the purchases on credit and the loan transactions, Arma Traders issued 82 postdated checks payable to cash or to Advance Paper. Advance Paper presented the checks to the drawee bank but these were dishonored either for "insufficiency of funds" or "account closed." Despite repeated demands, however, Arma Traders failed to settle its account with Advance Paper. Petitioners then filed a complaint for collection of sum of money with application for preliminary attachment against Arma Traders, Tan, Uy, Ting, Gui, and Ng.

The petitioners claimed that the respondents fraudulently issued the postdated checks as payment for the purchases and loan transactions knowing that they did not have sufficient funds with the drawee banks.

The respondents however, argued that the purchases on credit were spurious, simulated and fraudulent since there was no delivery of the ₱7,000,000.00 worth of notebooks and other paper products.

As to the loan transactions, the respondents countered that these were the personal obligations of Tan and Uy to Advance Paper. These loans were never intended to benefit the respondents.

The respondents also claimed that the loan transactions were ultra vires because the board of directors of Arma Traders did not issue a board resolution authorizing Tan and Uy to obtain the loans from Advance Paper. They claimed that the borrowing of money must be done only with the prior approval of the board of directors because without the approval, the corporate officers are acting in excess of their authority or ultra vires. When the acts of the corporate officers are ultra vires, the corporation is not liable for whatever acts that these officers committed in excess of their authority. Further, the respondents claimed that Advance Paper failed to verify Tan and Uy's authority to transact business with them. Hence, Advance Paper should suffer the consequences.

The respondents accused Tan and Uy for conspiring with the petitioners to defraud Arma Traders through a series of transactions known as rediscounting of postdated checks. In rediscounting, the respondents explained that Tan and Uy would issue Arma Traders' postdated checks to the petitioners in exchange for cash, discounted by as much as 7% to 10% depending on how long were the terms of repayment. The rediscounted percentage represented the interest or profit earned by the petitioners in these transactions.

Tan did not file his Answer and was eventually declared in default.

On the other hand, Uy filed his Answer but was subsequently declared in default upon his failure to appear during the pre-trial. In his Answer, he admitted that Arma Traders together with its corporate officers have been transacting business with Advance Paper. He claimed that he and Tan have been authorized by the board of directors for the past 13 years to issue checks in behalf of Arma Traders to pay its obligations with Advance Paper. Furthermore, he admitted that Arma Traders' checks were issued to pay its contractual obligations with Advance Paper. However, according to him, Advance Paper was informed beforehand that Arma Traders' checks were funded out of the ₱20,000,000.00 worth of collectibles coming from the provinces. Unfortunately, the expected collectibles did not materialize for unknown reasons.

Ng filed his Answer and claimed that the management of Arma Traders was left entirely to Tan and Uy. Thus, he never participated in the company's daily transactions.

The RTC ruled that the purchases on credit and loans were sufficiently proven by the petitioners. Hence, the RTC ordered Arma Traders to pay Advance Paper the sum of ₱15,321,798.25 with interest, and ₱1,500,000.00 for attorney's fees, plus the cost of the suit.

Upon appeal, the CA reversed the trial court's decision.

ISSUE

Whether Arma Traders is liable to pay the loans applying the doctrine of apparent authority. (YES)

RULING

The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.76 The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.

In *Inter-Asia Investment Industries v. Court of Appeals,* we explained:

Under this provision [referring to Sec. 23 of the Corporation Code], the power and 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, bylaws, or relevant provisions of law. However, just as a natural person who 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. The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, viz.:

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 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 person dealing with the officer or agent to believe that it has conferred.

[A]pparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation. [emphases and underscores ours]

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals,* we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation.

"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."80 "In the absence of a charter or bylaw 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 the present petition, we do not agree with the CA's findings that Arma Traders is not liable to pay the loans due to the lack of board resolution authorizing Tan and Uy to obtain the loans. To begin with, Arma Traders' Articles of Incorporation provides that the corporation may borrow or raise money to meet the financial requirements of its business by the issuance of bonds, promissory notes and other evidence of indebtedness. Likewise, it states that Tan and Uy are not just ordinary corporate officers and authorized bank signatories because they are also Arma Traders' incorporators along with respondents Ng and Ting, and Pedro Chao. Furthermore, the respondents, through Ng who is Arma Traders' corporate secretary, incorporator, stockholder and director, testified that the sole management of Arma Traders was left to Tan and Uy and that he and the other officers never dealt with the business and management of Arma Traders for 14 years. He also confirmed that since 1984 up to the filing of the complaint against Arma Traders, its stockholders and board of directors never had its meeting.

Thus, Arma Traders bestowed upon Tan and Uy broad powers by allowing them to transact with third persons without the necessary written authority from its non-performing board of directors. Arma Traders failed to take precautions to prevent its own corporate officers from abusing their powers. Because of its own laxity in its business dealings, Arma Traders is now estopped from denying Tan and Uy's authority to obtain loan from Advance Paper.

We also reject the respondents' claim that Advance Paper, through Haw, connived with Tan and Uy. The records do not contain any evidence to prove that the loan transactions were personal to Tan and Uy. A different conclusion might have been inferred had the cashier's checks been issued in favor of Tan and Uy, and had the postdated checks in favor of Advance Paper been either Tan and/or Uy's, or had the respondents presented convincing evidence to show how Tan and Uy conspired with the petitioners to defraud Arma Traders.84 We note that the respondents initially intended to present Sharow Ong, the secretary of Tan and Uy, to testify on how Advance Paper connived with Tan and Uy. As mentioned, the respondents failed to present her on the witness stand.

4. Trust Fund Doctrine

- Ong Yong, et al. vs. David S. Tiu, et al., G.R. No. 144476 & G.R. No. 144629, April 8, 2003

ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, and JULIE ONG ALONZO, *Petitioners–versus-* DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, INTRALAND RESOURCES DEVELOPMENT CORP., MASAGANA TELAMART, INC., REGISTER OF DEEDS OF PASAY CITY, and the SECURITIES AND EXCHANGE COMMISSION, *Respondents.*
G.R. No. 144476, SPECIAL SECOND DIVISION, April 8, 2003, CORONA, J.

The Trust Fund Doctrine, first enunciated by this Court in the 1923 case of Philippine Trust Co. vs. Rivera, provides that subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims.

In the instant case, the rescission of the Pre-Subscription Agreement will effectively result in the unauthorized distribution of the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine and the Corporation Code, since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

FACTS

In 1994, the construction of the Masagana Citimall in Pasay City was threatened with stoppage and incompletion when its owner, the First Landlink Asia Development Corporation (FLADC), which was owned by David S. Tiu, Cely Y. Tiu, Moly Yu Gow, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (the Tius), encountered dire financial difficulties. It was heavily indebted to the Philippine National Bank (PNB) for P190 million. To stave off foreclosure of the mortgage on the two lots where the mall was being built, the Tius invited Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julia Ong Alonzo (the Ongs), to invest in FLADC. Under the Pre-Subscription Agreement they entered into, the Ongs and the Tius agreed to maintain equal shareholdings in FLADC: the Ongs were to subscribe to 1,000,000 shares at a par value of P100.00 each while the Tius were to subscribe to an additional 549,800 shares at P100.00 each in addition to their already existing subscription of 450,200 shares. Furthermore, they agreed that the Tius were entitled to nominate the Vice-President and the Treasurer plus 5 directors while the Ongs were entitled to nominate the President, the Secretary and 6 directors (including the chairman) to the board of directors of FLADC. Moreover, the Ongs were given the right to manage and operate the mall.

Accordingly, the Ongs paid P100 million in cash for their subscription to 1,000,000 shares of stock while the Tius committed to contribute to FLADC a four-storey building and two parcels of land respectively valued at P20 million (for 200,000 shares), P30 million (for 300,000 shares) and P49.8 million (for 49,800 shares) to cover their additional 549,800 stock subscription therein. The Ongs paid in another P70 million 3 to FLADC and P20 million to the Tius over and above their P100 million investment, the total sum of which (P190 million) was used to settle the P190 million mortgage indebtedness of FLADC to PNB

The business harmony between the Ongs and the Tius in FLADC, however, was shortlived because the Tius, on 23 February 1996, rescinded the Pre-Subscription Agreement. The Tius accused the Ongs of (1) refusing to credit to them the FLADC shares covering their real property contributions; (2) preventing David S. Tiu and Cely Y. Tiu from assuming the positions of and performing their duties as Vice-President and Treasurer, respectively, and (3) refusing to give them the office spaces agreed upon. The controversy finally came to a head when the case was commenced by the Tius on 27 February 1996 at the Securities and Exchange Commission (SEC), seeking confirmation of their rescission of the Pre-Subscription Agreement.

After hearing, the SEC, through then Hearing Officer Rolando G. Andaya, Jr., issued a decision confirming the rescission sought by the Tius. On motion of both parties, the above decision was partially reconsidered but only insofar as the Ongs' P70 million was declared not as a premium on capital stock but an advance (loan) by the Ongs to FLADC and that the imposition of interest on it was correct. Both parties appealed to the SEC en banc which rendered a decision on 11 September 1998, affirming the 19 May 1997 decision of the Hearing Officer. The SEC en banc confirmed the rescission of the Pre-Subscription Agreement but reverted to classifying the P70 million paid by the Ongs as premium on capital and not as a loan or advance to FLADC, hence, not entitled to earn interest. On appeal, the Court of Appeals rendered a decision modifying the SEC order of 11 September 1998.

Their motions for reconsideration having been denied, both parties filed separate petitions for review before the Supreme Court. On 1 February 2002, the Supreme Court promulgated its Decision, affirming the assailed decision of the Court of Appeals but with the modifications that the P20 million loan extended by the Ongs to the Tius shall earn interest at 12% per annum to be computed from the time of judicial demand which is from 23 April 1996; that the P70 million advanced by the Ongs to the FLADC shall earn interest at 10% per annum to be computed from the date of the FLADC Board Resolution which is 19 June 1996; and that the Tius shall be credited with 49,800 shares in FLADC for their property contribution, specifically, the 151 sq. m. parcel of land. The Court affirmed the fact that both the Ongs and the Tius violated their respective obligations under the Pre-Subscription Agreement.

On 15 March 2002, the Tius filed before the Court a Motion for Issuance of a Writ of Execution. Aside from their opposition to the Tius' Motion for Issuance of Writ of Execution, the Ongs filed their own "Motion for Reconsideration; Alternatively, Motion for Modification (of the February 1, 2002 Decision)" on 15 March 2002. Willie Ong filed a separate "Motion for Partial Reconsideration" dated 8 March 2002, pointing out that there was no violation of the Pre-Subscription Agreement on the part of the Ongs, among others. On 29 January 2003, the Special Second Division of this Court held oral arguments on the respective positions of the parties. On 27 February 2003, Dr. Willie Ong and the rest of the movants Ong filed their respective memoranda. On 28 February 2003, the Tius submitted their memorandum.

ISSUES

1. Whether the pre-Subscription Agreement executed by the Ongs is actually a subscription contract. (YES)
2. Whether the rescission of Pre-Subscription Agreement would result in unauthorized liquidation. (YES)

RULINGS

1. FLADC was originally incorporated with an authorized capital stock of 500,000 shares with the Tius owning 450,200 shares representing the paid-up capital. When the Tius invited the Ongs to invest in FLADC as stockholders, an increase of the authorized capital stock became necessary to give each group equal (50-50) shareholdings as agreed upon in the Pre-Subscription Agreement. The authorized capital stock was thus increased from 500,000 shares to 2,000,000 shares with a par value of P100 each, with the Ongs subscribing to 1,000,000 shares and the Tius to 549,800 more shares in addition to their 450,200 shares to complete 1,000,000 shares. Thus, the subject matter of the contract was the 1,000,000 unissued shares of FLADC stock allocated to the Ongs. Since these were unissued shares, the parties' Pre-Subscription Agreement was in fact a subscription contract as defined under Section 60, Title VII of the Corporation Code.

A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is property owned by the corporation — its shares of stock. Thus, the subscription contract (denominated by the parties as a Pre-Subscription Agreement) whereby the Ongs invested P100 million for 1,000,000 shares of stock was, from the viewpoint of the law, one between the Ongs and FLADC, not between the Ongs and the Tius. Otherwise stated, the Tius did not contract in their personal capacities with the Ongs since they were not selling any of their own shares to them. It was FLADC that did. Considering therefore that the real contracting parties to the subscription agreement were FLADC and the Ongs alone, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC (and certainly not the Tius) had the legal personality to file suit rescinding the subscription agreement with the Ongs inasmuch as it was the real party in interest therein. Article 1311 of the Civil Code provides that "contracts take effect only between the parties, their assigns and heirs. . ." Therefore, a party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.

2. The Trust Fund Doctrine, first enunciated by this Court in the 1923 case of *Philippine Trust Co. vs. Rivera*, provides that subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims. This doctrine is the underlying principle in the procedure for the distribution of capital assets, embodied in the Corporation Code, which allows the distribution of corporate capital only in three instances: (1) amendment of the Articles of Incorporation to reduce the authorized capital stock, (2) purchase of redeemable shares by the corporation, regardless of the existence of unrestricted retained earnings, and (3) dissolution and eventual liquidation of the corporation. Furthermore, the doctrine is articulated in Section 41 on the power of a corporation to acquire its own shares and in Section 122 on the prohibition against the distribution of corporate assets and property unless the stringent requirements therefor are complied with.

The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers or directors of the corporation, or even, for that matter, on the earnest desire of the court a quo "to prevent further squabbles and future litigations" unless the indispensable conditions and procedures for the protection of corporate creditors are followed. Otherwise, the "corporate peace" laudably hoped for by the court will remain nothing but a dream because this time, it will be the creditors' turn to engage in "squabbles and litigations" should the court order an unlawful distribution in blatant disregard of the Trust Fund Doctrine.

In the instant case, the rescission of the Pre-Subscription Agreement will effectively result in the unauthorized distribution of the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine and the Corporation Code, since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

Contrary to the Tius' allegation, rescission will, in the final analysis, result in the premature liquidation of the corporation without the benefit of prior dissolution in accordance with Sections 117, 118, 119 and 120 of the Corporation Code. The Tius maintain that rescinding the subscription contract is not synonymous to corporate liquidation because all rescission will entail would be the simple restoration of the status quo ante and a return to the two groups of their cash and property contributions. We wish it were that simple. Very noticeable is the fact that the Tius do not explain why rescission in the instant case will not effectively result in liquidation. The Tius merely refer in cavalier fashion to the end-result of rescission (which incidentally is 100% favorable to them) but turn a blind eye to its unfair, inequitable and disastrous effect on the corporation, its creditors and the Ongs.

In their Memorandum dated February 28, 2003, the Tius claim that rescission of the agreement will not result in an unauthorized liquidation of the corporation because their case is actually a petition to decrease capital stock pursuant to Section 38 of the Corporation Code. Section 122 of the law provides that "(e)xcept by decrease of capital stock, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities." The Tius claim that their case for rescission, being a petition to decrease capital stock, does not violate the liquidation procedures under our laws. All that needs to be done, according to them, is for this Court to order (1) FLADC to file with the SEC a petition to issue a certificate of decrease of capital stock and (2) the SEC to approve said decrease. This new argument has no merit.

The Tius' case for rescission cannot validly be deemed a petition to decrease capital stock because such action never complied with the formal requirements for decrease of capital stock under Section

33 of the Corporation Code. No majority vote of the board of directors was ever taken. Neither was there any stockholders meeting at which the approval of stockholders owning at least two-thirds of the outstanding capital stock was secured. There was no revised treasurer's affidavit and no proof that said decrease will not prejudice the creditors' rights. On the contrary, all their pleadings contained were alleged acts of violations by the Ongs to justify an order of rescission.

- Ryuichi Yamamoto vs. Nishino Leather Industries, Inc. and Ikuo Nishino, G.R. No. 150283, April 16, 2008

RYUICHI YAMAMOTO, *Petitioner–versus-* INDUSTRIES, INC. and IKUO NISHINO*, Respondents.*
G.R. No. 150283, SECOND DIVISION, April 16, 2008, CARPIO MORALES, J.

It is settled that the property of a corporation is not the property of its stockholders or members. Under the trust fund doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

The machineries and equipment, which comprised Yamamoto's investment in NLII, thus remained part of the capital property of the corporation.

FACTS

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents. In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO. Eventually, Nishino and his brother Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%, less than 10% according to Nishino. The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII. Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishinos counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

"Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29th, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you. Machinery and Equipment:

The following machinery/equipment have been contributed by you to the company:
Splitting machine - 1 unit
Samming machine - 1 unit
Forklift - 1 unit
Drums - 4 units
Toggling machine - 2 units

Regarding the above machines, you may take them out with you (for your own use and sale) if you want, provided, the value of such machines is deducted from your and Wakos capital contributions, which will be paid to you.

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation, but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint against them for replevin.

RTC of Makati issued a writ of replevin after Yamamoto filed a bond. In their Answer with Counterclaim, respondents claimed that the machineries and equipment subject of replevin form part of Yamamoto's capital contributions in consideration of his equity in NLII and should thus be treated as corporate property; and that the above-said letter of Atty. Doce to Yamamoto was merely a proposal, conditioned on Yamamoto's sell-out to Nishino of his entire equity, which proposal was yet to be authorized by the stockholders and Board of Directors of NLII. RTC ruled in favor of Yamamoto and declared him as the rightful owner and possessor of the machineries and made the writ of replevin permanent.

On appeal, the Court of Appeals held in favor of herein respondents and accordingly reversed the RTC decision and dismissed the complaint. In so holding, the appellate court found that the machineries and equipment claimed by Yamamoto are corporate property of NLII and may not thus be retrieved without the authority of the NLII Board of Directors; and that petitioners argument that Nishino and Yamamoto cannot hide behind the shield of corporate fiction does not lie, nor does petitioners invocation of the doctrine of promissory estoppel.

ISSUE

Whether based on the letter of Nishino's counsel, Yamamoto may retrieve the machineries and equipment, which admittedly was part of his investment, bound the corporation. (NO)

RULING

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter. Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors. Contrary to the allegation of Yamamoto, the company is not a mere alter ego of Ikou and Yoshinubo Nishino. While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality.

Yamamoto argues, in another vein, that promissory estoppel lies against respondents, thus:
Under the doctrine of promissory estoppel, estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. It bears noting, however, that the aforementioned paragraph 12 of the letter is followed by a request for Yamamoto to give his comments on all the above, soonest. What was thus proffered to Yamamoto was not a promise, but a mere offer, subject to his acceptance. Without acceptance, a mere offer produces no obligation. Thus, under Article 1181 of the Civil Code,

[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. In the case at bar, there is no showing of compliance with the condition for allowing Yamamoto to take the machineries and equipment, namely, his agreement to the deduction of their value from his capital contribution due him in the buy-out of his interests in NLII. Yamamoto's allegation that he agreed to the condition remained just that, no proof thereof having been presented.

The machineries and equipment, which comprised Yamamoto's investment in NLII, thus remained part of the capital property of the corporation. It is settled that the property of a corporation is not the property of its stockholders or members. Under the trust fund doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

- DONNINA C. HALLEY v. PRINTWELL, INC., G.R. No. 157549, May 30, 2011, J. Bersamin

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

G. Board of Directors and Trustees

2. Doctrine of Centralized Management

- Bitong vs. Court of Appeals, 292 SCRA 503 (1998)

NORA A. BITONG, petitioner, vs. **COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, AND ADORACION G. NUYDA,** respondents.
NORA A. BITONG, petitioner, vs. **COURT OF APPEALS (FIFTH DIVISION) and EDGARDO B. ESPIRITU,** respondents.
G.R. No. 123553, (CA-G.R. No. 33291), FIRST DIVISION, July 13, 1998, BELLOSILLO,J.

For a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation. At most, in the instant case, petitioner has satisfied only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the bona fide ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.

FACTS

These twin cases originated from a derivative suit [1] **filed by petitioner Nora A. Bitong before the *Securities and Exchange Commission* (SEC hereafter) allegedly for the benefit of private respondent *Mr. & Ms. Publishing Co., Inc.* (Mr. & Ms. hereafter), among others, to hold respondent spouses Eugenia D. Apostol and Jose A. Apostol liable for fraud, misrepresentation, disloyalty, evident bad faith, conflict of interest and mismanagement in directing the affairs of Mr. & Ms. to the damage and prejudice of Mr. & Ms. and its stockholders, including petitioner.**

Petitioner Bitong allegedly acting for the benefit of Mr. & Ms. Co. filed a derivative suit before the SEC against respondent spouses Apostol, who were officers in said corporation, to hold them liable for fraud and mismanagement in directing its affairs. Respondent spouses moved to dismiss on the ground that petitioner had no legal standing to bring the suit as she was merely a holder-in-trust of shares of JAKA Investments which continued to be the true stockholder of Mr. & Ms. Petitioner contends that she was a holder of proper stock certificates and that the transfer was recorded. She further contends that even in the absence of the actual certificate, mere recording will suffice for her to exercise all stockholder rights, including the right to file a derivative suit in the name of the corporation. The SEC Hearing Panel dismissed the suit. On appeal, the SEC En Banc found for petitioner. CA reversed the SEC En Banc decision.

ISSUE

Whether or not petitioner is the true holder of stock certificates to be able institute a derivative suit.

RULING:

NO. Sec. 63 of *The Corporation Code* expressly provides —

Sec. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer however shall be valid except as between the parties until the transfer is recorded in the books of the corporation 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 . . . .

This provision above quoted envisions a formal certificate of stock which can be issued only upon compliance with certain requisites. *First*, the certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock. *Second*, delivery of the certificate is an essential element of its issuance. Hence, there is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company. *Third*, the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. *Fourth*, the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is at least *prima facie* evidence that it was legally issued in the absence of evidence to the contrary. However, this presumption may be rebutted. Aside from petitioner's own admissions, several corporate documents disclose that the true party-in-interest is not petitioner but JAKA. It should be emphasized that JAKA executed, a deed of sale over 1,000 Mr. & Ms. shares in favor of respondent Eugenio D. Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of 1,000 Mr. & Ms. shares covered by a Certificate of Stock. And, there is nothing in the records which shows that JAKA had revoked the trust it reposed on respondent Eugenia D. Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to petitioner. In fine, the records are unclear on how petitioner allegedly acquired the shares of stock of JAKA.

Thus, for a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation. At most, in the instant case, petitioner has satisfied only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown.

Considering that the requirements provided under Sec. 63 of *The Corporation Code* should be mandatorily complied with, the rule on presumption of regularity cannot apply. The regularity and validity of the transfer must be proved. As it is, even the credibility of the stock and transfer book and the entries thereon relied upon by petitioner to show compliance with the third requisite to prove that she was a stockholder since 1983 is highly doubtful.

The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the bona fide ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.

- Citibank, N.A. vs. Chua, 220 SCRA 75 (1993)

CITIBANK, N.A., *Petitioner,* -versus- HON. SEGUNDINO G. CHUA, SANTIAGO M. KAPUNAN and LUIS L. VICTOR, ASSOCIATE JUSTICES OF THE HON. COURT OF APPEALS, THIRD DIVISION, MANILA, HON. LEONARDO B. CANARES, Judge of Regional, Trial Court of Cebu, Branch 10, and SPOUSES CRESENCIO AND ZENAIDA VELEZ, *Respondents*

G.R. No. 102300, SECOND DIVISION, March 17, 1993, CAMPOS JR., *J.*

It is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs.

FACTS:

Private respondents alleged in their complaint that the petitioner bank extended to them credit lines sufficiently secured with real estate and chattel mortgages on equipment. They claim that petitioner offered them special additional accommodation of Five Million Pesos (P5,000,000.00).

For the failure of petitioner bank to comply with this restructuring agreement private respondents sued for specific performance and damages. Petitioner bank submitted its answer to the complaint filed by private respondents.

On the date of the pre-trial conference, counsel for petitioner bank appeared, presenting a special power of attorney executed by Citibank officer Florencia Tarriela in favor of petitioner bank's counsel, the J.P. Garcia & Associates, to represent and bind petitioner bank at the pre-trial conference of the case at bar.

Inspite of this special power of attorney, counsel for private respondents orally moved to declare petitioner bank as in default on the ground that the special power of attorney was not executed by the Board of Directors of Citibank. Petitioner bank was then required to file a written opposition to this oral motion to declare it as in default.

In its opposition, petitioner bank attached another special power of attorney made by William W. Ferguson, Vice President and highest ranking officer of Citibank, Philippines, constituting and appointing the J.P. Garcia & Associates to represent and bind the BANK at the pre-trial conference and/or trial of the case of "Cresencio Velez, et al. vs. Citibank, N.A.". 4 In an Order dated April 23, 1990, respondent judge denied private respondents' oral motion to declare petitioner bank as in default and set the continuation of the pre-trial conference for May 2, 1990.

On the scheduled pre-trial conference, private respondents reiterated, by way of asking for reconsideration, their oral motion to declare petitioner bank as in default for its failure to appear through an authorized agent and that the documents presented are not in accordance with the requirements of the law.

Respondent judge issued an order declaring petitioner bank as in default. This order, received by petitioner bank cited the following as reason for the declaration of default:

"Defendant-bank, although a foreign corporation, is bound by Philippine laws when doing and conducting business in the Philippines (Sec. 129, B.P. Blg. 68), and its corporate powers could only be exercised by its Board of Directors (Sec. 23, B.P. Blg. 68). The exercise by the Board of Directors of such power could only be valid if it bears the approval of the majority of the Board (Sec. 25, par. 2, Corporation Code). The records does not show the requisite document. The alleged authority (Special Power of Attorney, Annex "A") executed by Mr. William W. Ferguson in favor of the alleged Citibank employees, assuming the same to be a delegable authority, to represent the defendant in the pre-trial conference, made no mention of J.P. Garcia & Associates as one of the employees of the defendant.

It stands to reason therefore, that the defendant-bank has no proper representation during the pre-trial conference. CA affirmed.

Petitioner bank contends that no board resolution was necessary for its legal counsel, Atty. Julius Z. Neri, or Citibank employees to act as its attorney-in-fact in the case at bar because petitioner bank's by-laws grant to its Executing Officer and Secretary Pro-Tem the power to delegate to a Citibank officer, in this case William W. Ferguson, the authority to represent and defend the bank and its interests.

Furthermore, it contends that the Court of Appeals erred in holding that the by-laws of petitioner bank cannot be given effect because it did not have the imprimatur of the Securities and Exchange Commission (SEC) as required by Section 46 of the Corporation Code of the Philippines.

ISSUES:

(1) Whether a resolution of the board of directors of a corporation is always necessary for granting authority to an agent to represent the corporation in court cases (NO)
(2) Whether by-laws of the petitioner foreign corporation which has previously been granted a license to do business in the Philippines, are effective in this jurisdiction (YES)

RULING:

(1)
In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.

Thus, although as a general rule, all corporate powers are to be exercised by the board of directors, exceptions are made where the Code provides otherwise.

Section 25 of said Code provides that the directors of the corporation shall elect its corporate officers, and further provides as follows:

> "SEC. 25. Corporate officers; quorum. — . . . The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation . . ."

Furthermore, Section 47 of the same Code enumerates what may be contained in the by-laws, among which is a provision for the "qualifications, duties and compensation of directors or trustees, officers and employees"

Taking all the above provisions of law together, it is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, the Executing Officer and the Secretary Pro-Tem, to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs. The relevant provision in the general power of attorney granted to him are as follows:

"A. That the Executing Officer and the Secretary Pro-Tem are of full age, competent to act in the premises, to me personally known, and that they are authorized to execute this instrument by virtue of the powers granted to them pursuant to the By-Laws of the Bank and the laws of the United States of America, and that the Executing Officer said that he, on the one hand, hereby revokes and cancels any instrument of power of attorney previously executed on behalf of the Bank for use in the PHILIPPINES, in favor of WILLIAM W. FERGUSON (hereinafter referred to as the "Attorney-in-fact"), of legal age, a Banker, and now residing in the PHILIPPINES, and that he (the Executing Officer), on the other hand, does hereby authorize and empower the Attorney-in-fact, acting in the name or on behalf of the Bank, or any of its Branches, or any interest it or they may have or represent, said revocation and authorization to be effective as of this date as follows:

xxx xxx xxx

XVII. To represent and defend the Bank and its interest before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceeding in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever . . .

xxx xxx xxx

XXI. To substitute or delegate this Power of Attorney in whole or in part in favor of such one or more employees of the Bank, as he may deem advisable, but without divesting himself of any of the powers granted to him by this Power of Attorney; and to grant and execute in favor of any one or more such employees, powers of attorney containing all or such authorizations, as he may deem advisable. . . "

Since paragraph XXI above specifically allows Ferguson to delegate his powers in whole or in part, there can be no doubt that the special power of attorney in favor, first, of J.P. Garcia & Associates and later, of the bank's employees, constitutes a valid delegation of Ferguson's express power (under paragraph XVII above) to represent petitioner bank in the pre-trial conference in the lower court.

(2)
The Court of Appeals relied on Section 46 of the Corporation Code to support its conclusion that the by-laws in question are without effect because they were not approved by the SEC. Said section reads as follows:

"SEC. 46. Adoption of by-laws. — Every corporation formed under this Code must, within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the members in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours; and a copy thereof, duly certified to by a majority of the directors or trustees and countersigned by the secretary of the corporation, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation.

Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code."

A careful reading of the above provision would show that a corporation can submit its by-laws, prior to incorporation, or within one month after receipt of official notice of the issuance of its certificate of incorporation by the SEC. When the third paragraph of the above provision mentions "in all cases", it can only refer to these two options; i.e., whether adopted prior to incorporation or within one month after incorporation, the by-laws shall be effective only upon the approval of the SEC. But even more important, said provision starts with the phrase "Every corporation formed under this Code", which can only refer to corporations incorporated in the Philippines. Hence, Section 46, in so far as it refers to the effectivity of corporate by-laws, applies only to domestic corporations and not to foreign corporations.

On the other hand, Section 125 of the same Code requires that a foreign corporation applying for a license to transact business in the Philippines must submit, among other documents, to the SEC, a copy of its articles of incorporation and by-laws, certified in accordance with law. Unless these documents are submitted, the application cannot be acted upon by the SEC. In the following section, the Code specifies when the SEC can grant the license applied for. Section 126 provides in part:

"SEC. 126. Issuance of a license. — If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license . . ."

Since the SEC will grant a license only when the foreign corporation has complied with all the requirements of law, it follows that when it decides to issue such license, it is satisfied that the applicant's by-laws, among the other documents, meet the legal requirements. This, in effect, is an approval of the foreign corporations by-laws. It may not have been made in express terms, still it is clearly an approval. Therefore, petitioner bank's by-laws, though originating from a foreign jurisdiction, are valid and effective in the Philippines.

In pursuance of the authority granted to him by petitioner bank's by-laws, its Executing Officer appointed William W. Ferguson, a resident of the Philippines, as its Attorney-in-Fact empowering the latter, among other things, to represent petitioner bank in court cases. In turn, William W. Ferguson executed a power of attorney in favor of J.P. Garcia & Associates (petitioner bank's counsel) to represent petitioner bank in the pre-trial conference before the lower court. This act of delegation is explicity authorized by paragraph XXI of his own appointment, which we have previously cited.

- Colegio Medico-Farmaceutico De Filipinas, Inc. v. Lim, G.R. No. 212034, [July 2, 2018]

COLEGIO MEDICO-FARMACEUTICO DE FILIPINAS, INC. V. LIM
G.R. No. 212034, FIRST DIVISION, July 2, 2018, Del Castillo, J.

The authority to act for and to bind a corporation may be presumed from acts of recognition in other instances, wherein the power was in fact exercised without any objection from its board or shareholders.

In filing a suit, jurisprudence has allowed the president of a corporation to sign the verification and the certification of non-forum shopping even without a board resolution as said officer is presumed to have sufficient knowledge to swear to the truth of the allegations stated in the complaint or petition.

FACTS:

Petitioner Colegio Medico Farmaceutico de Filipinas, Inc. entered into a Contract of Lease with respondent Lily Lim, then President of St. John Berchman School of Manila Foundation (St. John) for the latter's use of the building of the petitioner. When the lease period agreed upon expired, petitioner, represented by its then President Del Castillo, sent another contract of lease to the respondent but the same was never returned to the petitioner despite several follow-ups. Consequently, petitioner informed the respondent of the decision of the Board not to renew the Contract of Lease. On March 5, 2008, Del Castillo wrote a letter to respondent demanding the payment of her back rentals and utility bills with request to vacate the subject property but respondent refused to comply with the demand, prompting petitioner to file a Complaint for Ejectment with Damages.

The MeTC ruled in favor of the respondent and dismissed the Complaint for lack of a valid demand letter, the same being a jurisdictional requirement. On appeal, RTC reversed the MeTC's decision and ruled that the issuance of the demand letter was done by Del Castillo in the usual course of business and that the issuance of the same was ratified by the petitioner when it passed the Board Resolution authorizing Del Castillo to file a case against the respondent. When the case reached CA, it rendered a decision in favor of the respondent and opined that petitioner's failure to attach a copy of the Board Resolution.

ISSUES:

a) Whether or not a valid demand was made.
b) Whether or not the failure of petitioner to attach a copy of the Board Resolution to the Complaint was a fatal defect.

RULING:

a) Yes. 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. 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. Hence, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances, wherein the power was in fact exercised without any objection from its board or shareholders.

In this case, petitioner had previously allowed its president to enter into the First Contract with private respondent without a board resolution expressly authorizing him; thus, it had clothed its president with apparent authority to execute the subject contract.

b) No. In filing a suit, jurisprudence has allowed the president of a corporation to sign the verification and the certification of non-forum shopping even without a board resolution as said officer is presumed to have sufficient knowledge to swear to the truth of the allegations stated in the complaint or petition. In view of this, the Complaint is not dismissible on the mere failure of petitioner to present a copy of the Board Resolution. With or without the said Board Resolution, Del Castillo, as the President of petitioner, was authorized to sign the verification and the certification of non-forum shopping

2. **Business Judgment Rule**

- Sales vs. Securities and Exchange Commission, 169 SCRA 109 (1989)

JULIO E. T. SALES AND GEORGE V. AGONIAS, IN THEIR OWN BEHALF, AND IN BEHALF OF SIPALAY MINING EXPLORATION CORPORATION, AS MINORITY STOCKHOLDERS THEREOF, AND SIPALAY MINING EXPLORATION CORPORATION VERSUS SECURITIES AND EXCHANGE COMMISSION, STATE INVESTMENT HOUSE REPRESENTED BY ITS PRESIDENT ANSELMO TRINIDAD; ANSELMO TRINIDAD CO., INC., REPRESENTED BY ITS PRESIDENT ANSELMO TRINIDAD; AND VULCAN INDUSTRIAL AND MINING CORP., REPRESENTED BY ITS PRESIDENTWALTERN W. BROWN, MANUEL C. DIAZ, AND AUGUSTO B. SUNICO,

G.R. NO. L-54330, JANUARY 13, 1989, J. CORTEZ

The Court finds that the order of the SEC creating the committee is fully supported by P.D. No. 902-A that the Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines (1) controversies arising out of intra-corporate or partnership relations, between and among stockholders members, or associates; 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 it concerns their individual franchise or right to exist as such entity and (2) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

FACTS:

State Investment House, Inc.. entered into a sales agreement with Sipalay Mining whereby the latter sold to the former 200,000,000 common shares of its capital stock in the amount of P2,600,000.00. The sales agreement between Sipalay Mining and State Investment contained terms and conditions. One of which is that the stockbroker shall not sell more than 1,000,000 shares per buyer. Subsequently, the restriction on the sale of the shares was modified, allowing sale in blocks of 5,000,000 shares per buyer.

Thereafter, State Investment sold the 200,000,000 shares to Anselmo Trinidad & Co., Inc. Then, some two and a half years later, ATCO in turn sold 198,500,000 of the shares to respondent VULCAN. Sipalay Mining was requested by ATCO to transfer the 198,500,000 shares to the name of VULCAN. By resolution of the Board of Directors of Sipalay Mining, its President was directed to sign the certificate of stock that would effect the transfer

Eight days prior to the scheduled annual stockholders' meeting of Sipalay Mining, petitioners filed before the SEC a petition to nullify the sale of the shares to VULCAN, with a prayer for the issuance of a writ of preliminary injunction to enjoin VULCAN from voting the shares. SEC temporarily restrained VULCAN from voting its 198,500,000 shares at the 1979 annual stockholders' meeting.

On March 1980, a Notice of Call was published, calling for the payment of (20%) of unpaid subscriptions in Sipalay Mining on or before April 15, 1980. VULCAN immediately petitioned the SEC to issue a writ of injunction. SEC issued a TRO suspending the effects and implementation of the call.

SEC issued the first of the questioned orders, denying the application for the issuance of the writ of preliminary injunction, ordered the Board of Directors and officers of the corporation are directed to call and hold said regular meeting and a Committee composed of one representative of the Securities and Exchange Commission, as Chairman, and one representatives each from the respondents and the petitioners, as members, is hereby formed to supervise and control the conduct of the proceedings and perform the functions of the Corporate Secretary.

When SEC lifted its TRO dated April 1980, it issued the second questioned order cancelling the stockholders' meeting set by Sipalay Mining Exploration Corporation for July 18, 1980 and the Committee created under the Order dated June 13, 1980 be constituted. Hence, the petition

ISSUE

Whether or not SEC acted arbitrarily and with grave abuse of discretion, tantamount to lack of jurisdiction, when it ordered the creation of the committee composed of the SEC representative, as Chairman, and one representative each from petitioners and private respondents, as members, to supervise and control the conduct of the proceedings and perform the functions of the Corporate Secretary, in relation to the regular annual stockholders' meeting of Sipalay Mining

RULING

NO. The Court finds that the order of the SEC creating the committee is fully supported by P.D. No. 902-A that the Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines (1) controversies arising out of intra-corporate or partnership relations, between and among stockholders members, or associates; 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 it concerns their individual franchise or right to exist as such entity and (2) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

As correctly pointed out by the Solicitor General, the case before the SEC involves a controversy regarding the election of directors of a corporation. It is apparent from the foregoing that a controversy in the election of directors of Sipalay Mining came about because it was petitioners themselves who had asked the Commission not to allow the disputed 198,500,000 shares to be voted on at the July 18, 1979 annual stockholders' meeting of the corporation. Since said 198,500,000 shares of stock were not allowed to vote due to the restraining order of the Commission, petitioners were able to elect candidates from their group. It is this election of members of the board of directors on July 18, 1979, which is being questioned by respondent Vulcan in its answer in SEC Case No. 1751 wherein it prays that the stockholders' meeting on the aforementioned date be declared null and void. The controversy regarding the election of directors in Sipalay Mining was, thus, a natural consequence of the relief sought by petitioners themselves that the shares of stocks of Vulcan aforementioned be barred from voting.

Respondent Commission had to address itself to the controversy by issuing its questioned order dated June 13, 1980, directing the holding of the annual stockholders' meeting of Sipalay Mining for the year 1980 as mandated in its by-laws, and creating a committee to supervise and control the conduct of the proceedings to insure an orderly stockholders meeting and forestall possible controversy in the sending of notices, processing and validation of proxies and closing of the stock and transfer book. Certainly, the Commission cannot be faulted, much less can it be said that it exceeded its jurisdiction, for having taken all proper measures to insure that an orderly meeting and election are held in Sipalay Mining in the light of the issues raised in SEC Case No. 1751 pending before the Commission.

Under Section 5 of P.D. No. 902-A, the SEC had original and exclusive jurisdiction over the controversy. It was "in order to effectively exercise such jurisdiction", to borrow the language of P.D. No. 902-A, that the SEC ordered the creation of the committee, in the exercise of its broad powers of control and supervision over corporations and its more specific power to compel the officers of a corporation to call meetings of stockholders under its supervision.

The Court finds the functions delegated to the committee to be in accordance with the SEC's mandate. The powers delegated to the committee were all confined to the holding of the stockholders' meeting and the conduct of the election of directors in connection This displays the circumspect and cautious manner in which the SEC exercised its broad powers under P.D. No. 902-A.

The Court, therefore, finds no basis to sustain petitioners' contention that the SEC acted arbitrarily and gravely abused its discretion when it ordered the creation of a committee to supervise the stockholders' meeting and election of directors

- Filipinas Port Services, Inc., represented by stockholders, Eliodoro C. Cruz and Mindanao Terminal and Brokerage Services, Inc. vs. Victoriano S. Go, et al., G.R. No. 161886, March 16, 2007

FILIPINAS PORT SERVICES, INC., represented by stockholders, ELIODORO C. CRUZ and MINDANAO TERMINAL AND BROKERAGE SERVICES, INC., Petitioners, vs. VICTORIANO S. GO, ARSENIO LOPEZ CHUA, EDGAR C. TRINIDAD, HERMENEGILDO M. TRINIDAD, JESUS SYBICO, MARY JEAN D. CO, HENRY CHUA, JOSELITO S. JAYME, ERNESTO S. JAYME, and ELIEZER B. DE JESUS, Respondents.
G.R. No. 161886, FIRST DIVISION, March 16, 2007, GARCIA, J.

The raison d'etre behind the conferment of corporate powers on the board of directors is not lost on the Court. Indeed, the concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.

FACTS

Eliodoro C. Cruz (Cruz) was president of Filipinas Port Services, Inc. (Filport) since 1968. He lost his bid for re-election in 1991. A year thereafter, Cruz wrote a letter to the corporation's Board of Directors questioning the creation of six (6) positions and the election of certain members of the board thereto.

It would seem that Cruz was unhappy with the Board's action or actions on the matter, for a year later he filed a petition with the (SEC), joined by (MinTerBro) as co-petitioner, what he calls a "derivative suit" supposedly in representation of Filport and its stockholders. It is Cruz's contention that the creation of an executive committee is not provided for in the bylaws and the increase in the emoluments of several members of the board is greatly disproportionate to the volume and character of work of said directors. Further, he questions the re-creation of the positions of Assistant Vice President for corporate planning, operations, finance and administration and additional positions where those holding said offices are not doing any work but earning compensation. These acts of mismanagement according to Cruz are detrimental to the corporation and its stockholders and so the board must account for the amounts incurred in creating these positions and made to pay damages.

The derivative suit hibernated with the SEC for a long period of time. With the enactment of R.A. No. 8799, the case was first turned over to the RTC of Manila, sitting as a corporate court. Upon motion of the parties, it was transferred to RTC Davao. Though the RTC found that Filport's Board of

Directors had the power to create positions not provided for in the by-laws and the increases in salaries are reasonable, nevertheless it ordered the directors holding the positions of Assistant Vice President for Corporate Planning, Special Assistant to the President and Special Assistant to the Board Chairman to refund to the corporation the salaries they have received as such officers "considering that Filipinas Port Services is not a big corporation requiring multiple executive positions" and that said positions "were just created for accommodation."

Upon appeal to the Court of Appeals (CA), the RTC decision was reversed and set aside and thus the so called derivative suit was dismissed.

ISSUE

Whether the creation of an executive committee and other offices in the corporation with corresponding remunerations are within the powers of the Board of Directors?

RULING

The governing body of a corporation is its board of directors. Section 23 of the Corporation Code explicitly provides that unless otherwise provided therein, the corporate powers of all corporations formed under the Code shall be exercised, all business conducted and all property of the corporation shall be controlled and held by a board of directors. Thus, with the exception only of some powers expressly granted by law to stockholders, the board of directors has the sole authority to determine policies, enter into contracts, and conduct the ordinary business of the corporation within the scope of its charter.

The raison d'etre behind the conferment of corporate powers on the board of directors is not lost on the Court. Indeed, the concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.

In the present case, the board's creation of the positions of Assistant Vice Presidents for Corporate Planning, Operations, Finance and Administration, and those of the Special Assistants to the President and the Board Chairman, was in accordance with the regular business operations of Filport as it is authorized to do so by the corporation's by-laws, pursuant to the Corporation Code. Likewise, the fixing of the corresponding remuneration for the positions in question is provided for in the same by-laws of the corporation, viz:

xxx The Board of Directors shall fix the compensation of the officers and agents of the corporation.

Unfortunately, the bylaws of the corporation are silent as to the creation by its board of directors of an executive committee. Under Section 3515 of the Corporation Code, the creation of an executive committee must be provided for in the bylaws of the corporation. Notwithstanding the silence of Filport's bylaws on the matter, we cannot rule that the creation of the executive committee by the board of directors is illegal or unlawful. One reason is the absence of a showing as to the true nature and functions of said executive committee considering that the "executive committee," referred to in

Section 35 of the Corporation Code which is as powerful as the board of directors and in effect acting for the board itself, should be distinguished from other committees which are within the competency of the board to create at anytime and whose actions require ratification and confirmation by the board. Another reason is that, ratiocinated by both the two (2) courts below, the Board of Directors has the power to create positions not provided for in Filport's bylaws since the board is the corporation's governing body, clearly upholding the power of its board to exercise its prerogatives in managing the business affairs of the corporation.

- Matling Industrial and Commercial Corporation, et al. vs. Ricardo R. Coros, G.R. No. 157802, October 13, 2010

MATLING INDUSTRIAL AND COMMERCIAL CORPORATION, RICHARD K. SPENCER, CATHERINE SPENCER, AND ALEX MANCILLA VERSUS RICARDO R. COROS

G.R. NO. 157802, OCTOBER 13, 2010, J. BERSAMIN

This interpretation is the correct application of Section 25 of the Corporation Code, which plainly states that the corporate officers are the President, Secretary, Treasurer and such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation's By-Laws.

FACTS

After his dismissal by Matling as its Vice President for Finance and Administration, the respondent filed on August 10, 2000 a complaint for illegal suspension and illegal dismissal against Matling and some of its corporate officers (petitioners) in the NLRC.

The petitioners moved to dismiss the complaint, raising the ground, among others, that the complaint pertained to the jurisdiction of the Securities and Exchange Commission (SEC) due to the controversy being intra-corporate inasmuch as the respondent was a member of Matlings Board of Directors aside from being its Vice-President for Finance and Administration prior to his termination.

The respondent opposed the petitioners motion to dismiss, insisting that his status as a member of Matlings Board of Directors was doubtful, considering that he had not been formally elected as such; that he did not own a single share of stock in Matling, considering that he had been made to sign in blank an undated indorsement of the certificate of stock he had been given in 1992; that Matling had taken back and retained the certificate of stock in its custody; and that even assuming that he had been a Director of Matling, he had been removed as the Vice President for Finance and Administration, not as a Director, a fact that the notice of his termination dated April 10, 2000 showed. On October 16, 2000, the LA granted the petitioners motion to dismiss, ruling that the respondent was a corporate officer because he was occupying the position of Vice President for Finance and Administration and at the same time was a Member of the Board of Directors of Matling; and that, consequently, his removal was a corporate act of Matling and the controversy resulting from such removal was under the jurisdiction of the SEC, pursuant to Section 5, paragraph (c) of Presidential Decree No. 902. The NLRC set aside the dismissal case. On appeal to the CA, the case was also dismissed.

ISSUE

Whether the respondent was a corporate officer of Matling

RULING

No. Section 25 of the Corporation Code provides:
Section 25. Corporate officers, quorum.--Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings. Conformably with Section 25, 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. Guerrea v. Lezama, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in Easycall Communications Phils., Inc. v. King: 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 occupies no office and generally is employed not by the 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.

In this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner''s general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was an employee, not a "corporate officer." The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC).

This interpretation is the correct application of Section 25 of the Corporation Code, which plainly states that the corporate officers are the President, Secretary, Treasurer and such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation's By-Laws.

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position. It is relevant to state in this connection that the SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993,21 to wit:

Thus, pursuant to the above provision (Section 25 of the Corporation Code), whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.

Moreover, the Board of Directors of Matling could not validly delegate the power to create a corporate office to the President, in light of Section 25 of the Corporation Code requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the corporate officers was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents. The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office.

To emphasize, the power to create new offices and the power to appoint the officers to occupy them vested by By-Law No. V merely allowed Matling's President to create non-corporate offices to be occupied by ordinary employees of Matling. Such powers were incidental to the President's duties as the executive head of Matling to assist him in the daily operations of the business. The petitioners' reliance on Tabang, supra, is misplaced. The statement in Tabang, to the effect that offices not expressly mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly obiter dictum due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction.

In Nacpil v. Intercontinental Broadcasting Corporation,23 which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the obiter dictum in Tabang.

Considering that the observations earlier made herein show that the soundness of their dicta is not unassailable, Tabang and Nacpil should no longer be controlling

3. Tenure, Qualifications and Disqualifications of Directors or Trustees

- **GRACE CHRISTIAN HIGH SCHOOL, *Petitioners* –versus- COURT OF APPEALS, GRACE VILLAGE ASSOCIATION, INC., ALEJANDRO G. BELTRAN, and ERNESTO L. GO, *Respondents*** G.R. No. 108905, SECOND DIVISION, October 23, 1997, MENDOZA,J.

The provisions of the former and present corporation law leave no room for doubt as to their meaning: the board of directors of corporations must be elected from among the stockholders or members. Since the provision in question is contrary to law, the fact that for fifteen years it has not been questioned or challenged but, on the contrary, appears to have been implemented by the members of the association cannot forestall a later challenge to its validity. Neither can it attain validity through acquiescence because it is contrary to law.

FACTS:

Petitioner Grace Christian High School is an educational institution at the Grace Village in Quezon City. Private respondent Grace Village Association, Inc., on the other hand, is an organization of lot and/or building owners, lessees and residents at Grace Village, while private respondents Alejandro G. Beltran and Ernesto L. Go were its president and chairman of the committee on election, respectively, in 1990, when this suit was brought. As adopted in 1968, the by-laws of the association provided in Article IV, as follows: The annual meeting of the members of the Association shall be held on the first Sunday of January in each calendar year at the principal office of the Association at 2:00 P.M. where they shall elect by plurality vote and by secret balloting, the Board of Directors, composed of eleven (11) members to serve for one (1) year until their successors are duly elected and have qualified. It appears, that on December 20, 1975, a committee of the board of directors prepared a draft of an amendment to the by-laws, reading as follows:

"The Annual Meeting of the members of the Association shall be held on the second Thursday of January of each year. Each Charter or Associate Member of the Association is entitled to vote. He shall be entitled to as many votes as he has acquired thru his monthly membership fees only computed on a ratio of TEN (P10.00) PESOS for one vote. The Charter and Associate Members shall elect the Directors of the Association. The candidates receiving the first fourteen (14) highest number of votes shall be declared and proclaimed elected until their successors are elected and qualified. GRACE CHRISTIAN HIGH SCHOOL representative is a permanent Director of the ASSOCIATION."

This draft was never presented to the general membership for approval. Nevertheless, from 1975 - 1990, petitioner was given a permanent seat in the board of directors of the association. However, in 1990, the association's committee on election in a letter informed James Tan, principal of the school, that "it was the sentiment that all directors should be elected by members of the association" because "to make a person or entity a permanent Director would deprive the right of voters to vote for fifteen (15) members of the Board," and "it is undemocratic for a person or entity to hold office in perpetuity." Thereafter, notices were sent to the members of the association that the provision on election of directors of the 1968 by-laws would be observed. As the association denied its request, the school brought suit for mandamus in the Home Insurance and Guaranty Corporation to compel the board of directors of the association to recognize its right to a permanent seat in the board.

SEC replied in the query by the association that the practice of allowing unelected members in the board was contrary to the existing by-laws of the association and to Section 92 of the Corporation Code. Petitioner maintained that the "amended by-laws" is valid and binding and that the association was estopped from questioning the by-laws.

The school brought suit for mandamus in the Home Insurance and Guaranty Corporation which the hearing officer of HIGC dismissed petitioner's action holding that the 1975 by-laws was a mere proposal and was declared null and void by the board of directors in a meeting held in 1990. Also, it rejected the claim that the petitioner's acquired a vested right to a permanent seat in the board of directors. The appeals board of the HIGC affirmed the decision. Petitioner appealed the case to the CA which also affirmed the decision of HIGC holding that there was no valid amendment because of failure to comply with the affirmative vote of the majority of the members.

ISSUE:

Whether or not the petitioners have a right to sit in the board of directors of respondent association as a permanent member thereof. (NO)

RULING:

The proposed amendment to the by-laws was never approved by the majority of the members of the association as required by these provisions of the law and by-laws. More so, it is actually Section 28 and 29 of the Corporation Law which require members of the board of directors of corporations to be elected. The present Corporation Code (B.P. Blg. 68), which took effect on May 1, 1980, similarly provides:

§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 to be electedfrom among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

These provisions of the former and present corporation law leave no room for doubt as to their meaning: the board of directors of corporations must be elected from among the stockholders or members.

Since the provision in question is contrary to law, the fact that for fifteen years it has not been questioned or challenged but, on the contrary, appears to have been implemented by the members of the association cannot forestall a later challenge to its validity. Neither can it attain validity through acquiescence because, if it is contrary to law, it is beyond the power of the members of the association to waive its invalidity. For that matter the members of the association may have formally adopted the provision in question, but their action would be of no avail because no provision of the by-laws can be adopted if it is contrary to law.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

RAMON C. LEE AND ANTONIO DM. LACDAO, *Petitioners* –versus- THE HON. COURT OF APPEALS, SACOBA MANUFACTURING CORP., PABLO GONZALES, JR. AND THOMAS GONZALES, *Respondents*

G.R. No. 93695, THIRD DIVISION February 4, 1992, GUTIERREZ, JR.,J.

Under the 1980 Corporation Code, in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation. Thus, Lee and Lacdao, by virtue of VTA disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names *on the books of ALFA as required under Section 23 of the 1980 Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors.*

FACTS

A complaint for a sum of money was filed by the International Corporate Bank, Inc. against Sacoba Manufacturing Corporation (Sacoba), Pablo Gonzales and Thomas Gonzales (the Gonzalezes) who, in turn, filed a third-party complaint against Alfa Integrated Textile Mills (ALFA) and Ramon Lee (Lee) and Antonio Lacdao (Lacdao). Lee and Lacdao sent a letter to the RTC, claiming the summons for ALFA was erroneously served upon them considering that the management of ALFA had been transferred to the Development Bank of the Philippines (DBP), through a Voting Trust Agreement (VTA). The RTC issued an order requiring the issuance of an alias summons upon ALFA through the DBP. In a manifestation, DBP claimed that it was not authorized to receive summons on behalf of ALFA since the DBP had not taken over the company which has a separate and distinct corporate personality and existence. Sacoba and the Gonzalezes filed a Manifestation and Motion for the Declaration of Proper Service of Summons on ALFA through Lee and Lacdao, the president and vice-president, which the trial court granted. In a Motion for Reconsideration, Lee and Lacdao maintain that with the execution of the VTA between them and the other stockholders of ALFA, as one party, and the DBP, as the other party, the former assigned and transferred all their shares in ALFA to DBP, as trustee. They argue that by virtue to of the VTA, Lee and Lacdao, can no longer be considered directors of ALFA. They ceased to be president and vice-president of ALFA. Sacoba and the Gonzalezes insist that the VTA between ALFA and the DBP had all the more safeguarded Lee and Lacdao's continuance as officers and directors of ALFA inasmuch as the general object of voting trust is to insure permanency of the tenure of the directors of a corporation.

Initially, The RTC upheld the validity of the service of summons on ALFA through the Lee and Lacdao. However, upon filing of a second motion for reconsideration by Lee and Lacdao, the RTC reversed itself and declared that service upon Lee and Lacdao, who were no longer corporate officers of ALFA, cannot be considered as proper service of summons on ALFA. The CA reversed the RTC Order. Hence, the present petition.

ISSUES

1. Whether the change in the stockholder's status (only holding an equitable title) deprives such stockholder of the right to qualify as a director. (YES)
2. Whether there was proper service of summons on ALFA through Lee and Lacdao. (NO)

RULING

1. YES. The execution of a VTA may create a dichotomy between the equitable or beneficial of the corporate shares of a stockholders, on the one hand, and the legal title thereto on the other hand. Under the 1906 Corporation Code, the eligibility of a director cannot be adversely affected by the simple act of such director being a party to a VTA inasmuch as he remains owner (although beneficial or equitable only) of the shares subject of the VTA pursuant to which a transfer of the stockholder's shares in favor of the trustee is required. No disqualification arises by virtue of the phrase "in his own right" provided under the 1906 Corporation Code. With the omission of the phrase "in his own right" in the 1980 Corporation Code, the election of trustees and other persons who are not beneficial owners of the shares registered in their names on the books of the corporation becomes formally

legalized. Hence, this is a clear indication that, under the 1980 Corporation Code, in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation.

Thus, Lee and Lacdao, by virtue of VTA disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the 1980 Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors. Hence, the transfer of the Lee and Lacdao's shares to the DBP created vacancies in their respective positions as directors of ALFA. Considering that the VTA between ALFA and the DBP transferred legal ownership of the stock covered by the agreement to the DBP as trustee, the latter became the stockholder of record with respect to the said shares of stocks. In the absence of a showing that the DBP had caused to be transferred in their names one share of stock for the purpose of qualifying as directors of ALFA, Lee and Lacdao can no longer be deemed to have retained their status as officers of ALFA which was the case before the execution of the subject VTA. There appears to be no dispute from the records that DBP has taken over full control and management of the firm.

2. NO. Under the Rules of Court, if the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors. Lee and Lacdao do not fall under any of the enumerated officers. The service of summons upon ALFA, through Lee and Lacdao is not valid.

WHEREFORE, premises considered, the petition is hereby GRANTED. The appealed decision dated March 19, 1990 and the Court of Appeals' resolution of May 10, 1990 are SET ASIDE and the Orders dated April 25, 1989 and October 17, 1989 issued by the Regional Trial Court of Makati, Branch 58 are REINSTATED.

4. Elections

PAUL LEE TAN, ANDREW LIUSON, ESTHER WONG, STEPHEN CO, JAMES TAN, JUDITH TAN, ERNESTO TANCHI JR., EDWIN NGO, VIRGINIA KHOO, SABINO PADILLA JR., EDUARDO P. LIZARES and GRACE CHRISTIAN HIGH SCHOOL, *Petitioners* –versus- PAUL SYCIP AND MERRITTO LIM, *Respondents*

G.R. No. 153468, FIRST DIVISION, August 17, 2006, PANGANIBAN,CJ.

For stock corporations, the "quorum" referred to in Section 52 of the Corporation Code is based on the number of outstanding voting stocks. For nonstock corporations, only those who are actual, living members with voting rights shall be counted in determining the existence of a quorum during members' meetings. Dead members shall not be counted.

Applying Section 91 to the present case, we hold that dead members who are dropped from the membership roster in the manner and for the cause provided for in the By-Laws of GCHS are not to be counted in determining the requisite vote in corporate matters or the requisite quorum for the annual members' meeting. With 11 remaining members, the quorum in the present case should be 6. Therefore, there being a quorum, the annual members' meeting, conducted with six members present, was valid

FACTS

Petitioner Grace Christian High School (GCHS) is a nonstock, non-profit educational corporation with fifteen (15) regular members, who also constitute the board of trustees. During the annual members' meeting held on April 6, 1998, there were only eleven (11) living member-trustees, as four (4) had already died. Out of the eleven, seven (7) attended the meeting through their respective proxies. The meeting was convened and chaired by Atty. Sabino Padilla Jr. over the objection of Atty. Antonio C. Pacis, who argued that there was no quorum. In the meeting, Petitioners Ernesto Tanchi, Edwin Ngo, Virginia Khoo, and Judith Tan were voted to replace the four deceased member-trustees.

When the controversy reached the Securities and Exchange Commission (SEC), petitioners maintained that the deceased member-trustees should not be counted in the computation of the quorum because, upon their death, members automatically lost all their rights (including the right to vote) and interests in the corporation.

SEC Hearing Officer Malthie G. Militar declared the April 6, 1998 meeting null and void for lack of quorum. She held that the basis for determining the quorum in a meeting of members should be their number as specified in the articles of incorporation, not simply the number of living members. She explained that the qualifying phrase "entitled to vote" in Section 24 of the Corporation Code, which provided the basis for determining a quorum for the election of directors or trustees, should be read together with Section 89.

The hearing officer also opined that Article III (2) of the By-Laws of GCHS, insofar as it prescribed the mode of filling vacancies in the board of trustees, must be interpreted in conjunction with Section 29 of the Corporation Code. The SEC en banc denied the appeal of petitioners and affirmed the Decision of the hearing officer in toto. It found to be untenable their contention that the word "members," as used in Section 52 of the Corporation Code, referred only to the living members of a nonstock corporation.

As earlier stated, the CA dismissed the appeal of petitioners, because the Verification and Certification of Non-Forum Shopping had been signed only by Atty. Sabino Padilla Jr. No Special Power of Attorney had been attached to show his authority to sign for the rest of the petitioners.

ISSUE

Whether dead members should still be counted in the determination of the quorum, for purposes of conducting the annual members' meeting. (NO)

RULING

The quorum in a members' meeting is to be reckoned as the actual number of members of the corporation, the next question to resolve is what happens in the event of the death of one of them.
In stock corporations, shareholders may generally transfer their shares. Thus, on the death of a shareholder, the executor or administrator duly appointed by the Court is vested with the legal title to the stock and entitled to vote it. Until a settlement and division of the estate is effected, the stocks of the decedent are held by the administrator or executor.

On the other hand, membership in and all rights arising from a nonstock corporation are personal and non-transferable, unless the articles of incorporation or the bylaws of the corporation provide otherwise. **In other words, the determination of whether or not "dead members" are entitled to exercise their voting rights (through their executor or administrator), depends on those articles of incorporation or bylaws.**

Under the By-Laws of GCHS, membership in the corporation shall, among others, be terminated by the death of the member. Section 91 of the Corporation Code further provides that termination extinguishes all the rights of a member of the corporation, unless otherwise provided in the articles of incorporation or the bylaws.

Applying Section 91 to the present case, **we hold that dead members who are dropped from the membership roster in the manner and for the cause provided for in the By-Laws of GCHS are not to be counted in determining the requisite vote in corporate matters or the requisite quorum for the annual members' meeting**. With 11 remaining members, the quorum in the present case should be 6. Therefore, there being a quorum, the annual members' meeting, conducted with six members present, was valid.

As regards the filling of vacancies in the board of trustees, Section 29 of the Corporation Code provides:

"SECTION 29. *Vacancies in the office of director or trustee*. -- Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a *quorum*; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office."

Undoubtedly, trustees may fill vacancies in the board, provided that those remaining still constitute a quorum. The phrase "may be filled" in Section 29 shows that the filling of vacancies in the board by the remaining directors or trustees constituting a quorum is merely permissive, not mandatory. Corporations, therefore, may choose how vacancies in their respective boards may be filled up -- either by the remaining directors constituting a quorum, or by the stockholders or members in a regular or special meeting called for the purpose.

The By-Laws of GCHS prescribed the *specific* mode of filling up existing vacancies in its board of directors; that is, by a majority vote of the remaining members of the board.

While a majority of the remaining corporate members were present, however, the "election" of the four trustees cannot be legally upheld for the obvious reason that it was held in an annual meeting of the members, not of the board of trustees. We are not unmindful of the fact that the members of GCHS themselves also constitute the trustees, but we cannot ignore the GCHS bylaw provision, which specifically prescribes that vacancies in the board must be filled up by the remaining trustees. In other words, these remaining member-trustees *must sit as a board* in order to validly elect the new ones.

Indeed, there is a well-defined distinction between a corporate act to be done by the board and that by the constituent members of the corporation. The board of trustees must act, not individually or separately, but as a body in a lawful meeting. On the other hand, in their annual meeting, the members may be represented by their respective proxies, as in the contested annual members' meeting of GCHS.

ESTATE OF DR. JUVENCIO P. ORTAÑEZ, REPRESENTED BY DIVINA ORTAÑEZ-ENDERES, LIGAYA NOVICIO, AND CESAR ORTAÑEZ, *Petitioners* –versus- JOSE C. LEE, BENJAMIN C. LEE, CARMENCITA TAN, ANGEL ONG, MA. PAZ CASAL-LEE, JOHN OLIVER PASCUAL, CONRADO CRUZ, JR., BRENDA ORTAÑEZ, AND JULIE ANN PARADO AND JOHN DOES, *Respondents*.
G.R. No. 184251, THIRD DIVISION, March 09, 2016, PEREZ, J.

The SC ruled that in the absence of evidence to the contrary, the presumption is that the respondents were duly elected as directors/officers of Philinterlife during the aforesaid annual stockholders' meeting.

FACTS

On 6 July 1956, Dr. Ortañez organized and founded the Philippine International Life Insurance Company, Inc. (Philinterlife). At the time of its incorporation, Dr. Ortañez owned ninety percent (90%) of the subscribed capital stock of Philinterlife.

Upon his death on 21 July 1980, Dr. Ortañez left behind an estate consisting of, among others, 2,029 shares of stock in Philinterlife, then representing at least 50.725% of the outstanding capital stock of Philinterlife which was at 4,000 shares valued at P4,000,000.00.

On 30 March 2006, petitioners filed a Complaint for Election Contest before the RTC of Quezon City. The complaint challenged the lawfulness and validity of the meeting and election conducted by the group of Jose C. Lee (respondents) et. al. on 15 March 2006. During the assailed meeting, Jose C. Lee (Lee) et. al. were elected as members of the Board of Directors of Philinterlife.

Petitioners claimed that before the contested election, they formally informed the respondents that without the participation of the Estate, no quorum would be constituted in the scheduled annual stockholders' meeting. Petitioners averred that in spite of their formal announcement and notice that they were not participating in the session, the respondents continued, in bad faith, with the illegal meeting. Further, respondents allegedly elected themselves as directors of Philinterlife and proceeded to elect their own set of officers.

Petitioners, who insisted that they represented at least 51% of the outstanding capital stock of 5,000 shares of Philinterlife, conducted on the same day and in the same venue but in a different room, their own annual stockholders' meeting and proceeded to elect their own set of directors. According to the petitioners, the sale of the shares of the estate to the respondents through the Filipino Loan Assistance Group (FLAG), as well as the increases in the authorized capital stock of the corporation, was declared null and void by the court, which decision was affirmed by no longer than the Supreme Court. They further submitted that the exercise of pre-emptive right of the Estate to acquire 51% of the additional 1,000 paid up shares of stock, raising the total outstanding capital stock to 5,000 shares, was recognized by the RTC of Quezon City.

Respondents, for their part, categorically denied the material allegations of the complaint and raised the defense that the stockholders' meeting they conducted on 15 March 2006 was valid as it was allegedly attended by stockholders representing 98.76% of the 50,000 shares representing the authorized and issued capital stock of Philinterlife.

The RTC ruled in favor of the respondents on the ground that the petitioners failed to present the required preponderance of evidence to substantiate their claim that they were the owners of at least 51% of the outstanding capital stock of Philinterlife. The ruling of the RTC was affirmed by the CA; hence, this petition.

ISSUE

Whether the respondents were validly elected as directors of Philinterlife. (YES)

Held

Yes. The Court agreed with the lower courts that the petitioners failed to present credible and convincing evidence that Philinterlife's outstanding capital stock during the 15 March 2006 annual stockholders' meeting was 5,000 and that they own more than 2,550 shares or 51% thereof. The unrebutted presumption is that respondents, were duly elected as directors-officers of Philinterlife. In the absence of evidence to the contrary, the presumption is that the respondents were duly elected as directors/officers of Philinterlife during the aforesaid annual stockholders' meeting. Petitioners cannot, in the instant election contest case, question the increases in the capital stocks of the corporation.

a. Cumulative Voting/Straight Voting

- SEC-OGC Opinion No. 14-10, Re: Cumulative Voting in Condominium Corporation, June 2, 2014

b. Quorum

- **JESUS V. LANUZA, MAGADYA REYES, BAYANI REYES AND ARIEL REYES, *Petitioners* –versus- COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, DOLORES ONRUBIA, ELENITA NOLASCO, JUAN O. NOLASCO III, ESTATE OF FAUSTINA M. ONRUBIA, PHILIPPINE MERCHANT MARINE SCHOOL, INC.,***Respondents* G.R. No. 131394, SECOND DIVISION, March 28, 2005, TINGA, J.

According to Sec. 52 of the Corp Code, "a quorum shall consist of the stockholders representing a majority of the outstanding capital stock." As such, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares. To base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares.

The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book.

FACTS

In 1952, the Philippine Merchant Marine School, Inc. (PMMSI) was incorporated, with seven hundred (700) founders' shares and seventy-six (76) common shares as its initial capital stock subscription reflected in the articles of incorporation. However, private respondents and their predecessors who were in control of PMMSI registered the company's stock and transfer book for the first time in 1978, recording thirty-three (33) common shares as the only issued and outstanding shares of PMMSI. Sometime in 1979, a special stockholders' meeting was called and held on the basis of what was considered as a quorum of twenty-seven (27) common shares, representing more than two-thirds (2/3) of the common shares issued and outstanding.

In 1982, the heirs of one of the original incorporators, Juan Acayan, filed a petition with the (SEC) for the registration of their property rights over one hundred (120) founders' shares and twelve (12) common shares owned by their father. The SEC hearing officer held that the heirs of Acayan were entitled to the claimed shares and called for a special stockholders' meeting to elect a new set of officers. The SEC En Banc affirmed the decision. As a result, the shares of Acayan were recorded in the stock and transfer book.

On 06 May 1992, a special stockholders' meeting was held to elect a new set of directors. Private respondents thereafter filed a petition with the SEC questioning the validity of the 06 May 1992 stockholders' meeting, alleging that the quorum for the said meeting should not be based on the 165 issued and outstanding shares as per the stock and transfer book, but on the initial subscribed capital stock of seven hundred seventy-six (776) shares, as reflected in the 1952 Articles of Incorporation. The petition was dismissed. Appeal was made to the SEC En Banc, which granted said appeal, holding that the shares of the deceased incorporators should be duly represented by their respective administrators or heirs concerned. The SEC directed the parties to call for a stockholders meeting on the basis of the stockholdings reflected in the articles of incorporation for the purpose of electing a new set of officers for the corporation.

Petitioners, who are PMMSI stockholders, filed a petition for review with the Court of Appeals.Rebecca Acayan, Jayne O. Abuid, Willie O. Abuid and Renato Cervantes, stockholders and directors of PMMSI, earlier filed another petition for review of the same SEC En Banc's orders. The petitions were thereafter consolidated. The consolidated petitions essentially raised the following issues, viz: (a) whether the basis the outstanding capital stock and accordingly also for determining the quorum at stockholders' meetings it should be the 1978 stock and transfer book or if it should be the 1952 articles of incorporation; and (b) whether the Court of Appeals "gravely erred in applying the Espejo Decision to the benefit of respondents.The "Espejo Decision" is the decision of the SEC en banc which ordered the recording of the shares of Jose Acayan in the stock and transfer book.

The Court of Appeals held that for purposes of transacting business, the quorum should be based on the outstanding capital stock as found in the articles of incorporation. As to the second issue, the Court of Appeals held that the ruling in the Acayan case would ipso facto benefit the private respondents, since to require a separate judicial declaration to recognize the shares of the original incorporators would entail unnecessary delay and expense. Besides, the Court of Appeals added, the incorporators have already proved their stockholdings through the provisions of the articles of incorporation.

In the instant petition, petitioners claim that the 1992 stockholders' meeting was valid and legal. They submit that reliance on the 1952 articles of incorporation for determining the quorum negates the existence and validity of the stock and transfer book which private respondents themselves prepared. In addition, they posit that private respondents cannot avail of the benefits secured by the heirs of Acayan, as private respondents must show and prove entitlement to the founders and common shares in a separate and independent action/proceeding.

In private respondents' Memorandum[11] dated 08 March 2000, they point out that the instant petition raises the same facts and issues as those raised in G.R. No. 131315[12], which was denied by the First Division of this Court on 18 January 1999 for failure to show that the Court of Appeals committed any reversible error. They add that as a logical consequence, the instant petition should be dismissed on the ground of res judicata. Furthermore, private respondents claim that in view of the applicability of the rule on res judicata, petitioners' counsel should be cited for contempt for violating the rule against forum-shopping.

For their part, petitioners claim that the principle of res judicata does not apply to the instant case. They argue that the instant petition is separate and distinct from G.R. No. 131315, there being no identity of parties, and more importantly, the parties in the two petitions have their own distinct rights and interests in relation to the subject matter in litigation. For the same reasons, they claim that counsel for petitioners cannot be found guilty of forum-shopping.

In their Manifestation and Motion[15] dated 22 September 2004, private respondents moved for the dismissal of the instant petition in view of the dismissal of G.R. No. 131315. Attached to the said manifestation is a copy of the Entry of Judgment[issued by the First Division dated 01 December 1999.

The petition must be denied, not on res judicata, but on the ground that like the petition in G.R. No. 131315 it fails to impute reversible error to the challenged Court of Appeals' Decision. The petition in this case involves the same facts and substantially the same issues and arguments as those in G.R. No. 131315 which the First Division has long denied with finality. The First Division found the petition before it inadequate in failing to raise any reversible error on the part of the Court of Appeals. We reach a similar conclusion as regards the present petition.

ISSUE

Whether or not the basis of quorum for a stockholders' meeting is the outstanding capital stock as indicated in the articles of incorporation or that contained in the company's stock and transfer book

RULING

Articles of Incorporation- defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders.The contents are binding, not only on the corporation, but also on its shareholders.

Stock and transfer book- book which records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made; and such other entries as may be prescribed by law. It is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. It is not public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein In this case, the articles of incorporation indicate that at the time of incorporation, the incorporators were bona fide stockholders of 700 founders' shares and 76 common shares. Hence, at that time, the corporation had 776 issued and outstanding shares.

According to Sec. 52 of the Corp Code, "a quorum shall consist of the stockholders representing a majority of the outstanding capital stock." As such, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares. To base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares.

The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book.

One who is actually a stockholder cannot be denied his right to vote by the corporation merely because the corporate officers failed to keep its records accurately. A corporation's records are not the only evidence of the ownership of stock in a corporation. It is no less than the articles of incorporation that declare the incorporators to have in their name the founders and several common shares. Thus, to disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist and accordingly to allow great injustice to be caused to the incorporators and their heirs.

WHEREFORE, the petition is DENIED and the assailed Decision is AFFIRMED. Costs against petitioners

5. Removal

NECTARINA S. RANIEL and MA. VICTORIA R. PAG-ONG, *Petitioners*
-versus- PAUL JOCHICO, JOHN STEFFENS and SURYA VIRIYA, *Respondents*
G.R. No. 153413, THIRD DIVISION, March 1, 2007, AUSTRIA-MARTINEZ,J.

Only stockholders or members have the power to remove the directors or trustees elected by them, as laid down in Section 28 of the Corporation Code. In this case, petitioner Raniel was removed as a corporate officer through the resolution of Nephro's Board of Directors adopted in a special meeting. Petitioners' removal was a valid exercise of the powers of Nephro's Board of Directors.

FACTS

Petitioners, together with respondents Paul Jochico (Jochico), John Steffens and Surya Viriya, were incorporators and directors of Nephro, with Raniel acting as Corporate Secretary and Administrator. The conflict started when petitioners questioned respondents' plan to enter into a joint venture with the Butuan Doctors' Hospital and College, Inc. sometime in December 1997. Because of this, petitioners claim that respondents tried to compel them to waive and assign their shares with Nephro but they refused. Thereafter, Raniel sought an indefinite leave of absence due to stress, but this was denied by Jochico, as Nephro President. Raniel, nevertheless, did not report for work, causing Jochico to demand an explanation from her why she should not be removed as Administrator and Corporate Secretary. Raniel replied, expressing her sentiments over the disapproval of her request for leave and respondents' decision with regard to the Butuan venture.

On January 30, 1998, Jochico issued a Notice of Special Board Meeting on February 2, 1998. Despite receipt of the notice, petitioners did not attend the board meeting. In said meeting, the Board passed several resolutions ratifying the disapproval of Raniel's request for leave, dismissing her as Administrator of Nephro, declaring the position of Corporate Secretary vacant, appointing Otelio Jochico as the new Corporate Secretary and authorizing the call of a Special Stockholders' Meeting on February 16, 1998 for the purpose of the removal of petitioners as directors of Nephro.

Otelio Jochico issued the corresponding notices for the Special Stockholders' Meeting to be held on February 16, 1998 which were received by petitioners on February 2, 1998. Again, they did not attend the meeting. The stockholders who were present removed the petitioners as directors of Nephro. Thus, petitioners filed SEC Case No. 02-98-5902.
the SEC rendered its Decision holding that the corporation acting thru its Board of Directors can validly remove its corporate officers, particularly complainant Nectarina S. Raniel as corporate secretary, treasurer and administrator of the Dialysis Clinic.

Dissatisfied, petitioners filed a petition for review with the CA.

On April 30, 2002, the CA rendered the assailed Decision which AFFIRMED the SEC's decision with the MODIFICATION that the renewal of petitioners as directors of Nephro is declared valid.

Respondents filed a Manifestation and Motion to Correct Typographical Error, stating that the term "renewal" as provided in the CA Decision should be "removal."Petitioners, on the other hand, filed the present petition for review on *certiorari*.

ISSUE

Whether Pag-ong's and Raniel's removal as directors and officer of Nephro were valid. (YES)

RULING

A corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts.

Based on Section 23 of the Corporation Code which provides:

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.

a corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all property of the corporation. Its members have been characterized as trustees or directors clothed with a fiduciary character. Moreover, the directors may appoint officers and agents and **as incident to this power of appointment, they may discharge those appointed**.

In this case, petitioner Raniel was removed as a corporate officer through the resolution of Nephro's Board of Directors adopted in a special meeting on February 2, 1998. **As correctly ruled by the SEC, petitioners' removal was a valid exercise of the powers of Nephro's Board of Directors**, *viz.*:

"Raniel's letter of January 26, 1998 speaks for itself. Her request for an indefinite leave, immediately effective yet without prior notice, reveals a disregard of the critical responsibilities pertaining to the sensitive positions she held in the corporation. Prior to her hasty departure, Raniel did not make a proper turn-over of her duties and had to be expressly requested to hand over documents and records, including keys to the office and the cabinets.

Since Raniel occupied all three positions in Nephro, it is not difficult to foresee the disruption that her immediate and indefinite absence can inflict on the operations of the company. By leaving abruptly, Raniel abandoned the positions she is now trying to reclaim. Raniel's actuation has been sufficiently proven to warrant loss of the Board's confidence.

The SEC also correctly concluded that petitioner Raniel was removed as an officer of Nephro in compliance with established procedure, thus:

The resolutions of the Board dismissing complainant Raniel from her various positions in Nephro are valid. Notwithstanding the absence of complainants from the meeting, a quorum was validly constituted.

Based on its articles of incorporation, Nephro has five directors – two of the positions were occupied by complainants and the remaining three are held by respondents. This being the case, the presence of all three respondents in the Special Meeting of the Board on February 2, 1998 established a quorum for the conduct of business. The unanimous resolutions carried by the Board during such meeting are therefore valid and binding against complainants.

It bears emphasis that Raniel was given sufficient opportunity to be heard. Jochico's letters of January 26, 1998 and January 27, 1998, albeit adversarial, recognized her right to explain herself and gave her the chance to do so. In fact, Raniel did respond to Jochico's letter on January 28, 1998 and took the occasion to voice her opinions about Jochico's alleged "practice of using others for your own benefit, without cost." .Moreover, the Special Meeting of the Board could have been the appropriate venue for Raniel to air her side. Had Raniel decided to grace the meeting with her presence, she could have explained herself before the board and tried to convince them to allow her to keep her posts."
Petitioners Raniel and Pag-ong's removal as members of Nephro's Board of Directors was likewise valid.

Only stockholders or members have the power to remove the directors or trustees elected by them, as laid down in *Section 28 of the Corporation Code*, which provides in part:

SEC. 28. *Removal of directors or trustees*. -- **Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock**, or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: *Provided*, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. x x x Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed in this Code. x x x **Removal may be with or without cause:** *Provided, T*hat removal without cause may not be used to deprive minority stockholders or members of the right of representation to which they may be entitled under Section 24 of this Code.

Petitioners do not dispute that the stockholders' meeting was held in accordance with Nephro's By-Laws. The ownership of Nephro's outstanding capital stock is distributed as follows: Jochico - 200 shares; Steffens - 100 shares; Viriya - 100 shares; Raniel - 75 shares; and Pag-ong - 25 shares, or a total of 500 shares. A two-thirds vote of Nephro's outstanding capital stock would be 333.33 shares, and during the Stockholders' Special Meeting held on February 16, 1998, 400 shares voted for petitioners' removal. Said number of votes is more than enough to oust petitioners from their respective positions as members of the board, with or without cause.

6. Filling of Vacancies

VALLE VERDE COUNTRY CLUB, INC., ERNESTO VILLALUNA, RAY GAMBOA, AMADO M. SANTIAGO, JR., FORTUNATO DEE, AUGUSTO SUNICO, VICTOR SALTA, FRANCISCO ORTIGAS III, ERIC ROXAS, in their capacities as members of the Board of Directors of Valle Verde Country Club, Inc., and JOSE RAMIREZ, *Petitioners* -versus- VICTOR AFRICA, *Respondent*
G.R. No. 151969, SSECOND DIVISION, September 4, 2009, BRION, J.

The holdover period that time from the lapse of one year from a members election to the Board and until his successors election and qualification is not part of the directors original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term. After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintals term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term.

FACTS

On February 27, 1996, during the Annual Stockholders Meeting of petitioner Valle Verde Country Club, Inc. (VVCC), the following were elected as members of the VVCC Board of Directors: Ernesto Villaluna, Jaime C. Dinglasan (Dinglasan), Eduardo Makalintal (Makalintal), Francisco Ortigas III, Victor Salta, Amado M. Santiago, Jr., Fortunato Dee, Augusto Sunico, and Ray Gamboa. In the years 1997, 1998, 1999, 2000, and 2001, however, the requisite quorum for the holding of the stockholders meeting could not be obtained. Consequently, the above-named directors continued to serve in the VVCC Board in a hold-over capacity.

On September 1, 1998, Dinglasan resigned from his position as member of the VVCC Board. In a meeting held on October 6, 1998, the remaining directors, still constituting a quorum of VVCCs nine-member board, elected Eric Roxas (Roxas) to fill in the vacancy created by the resignation of Dinglasan. A year later, or on November 10, 1998, Makalintal also resigned as member of the VVCC Board. He was replaced by Jose Ramirez (Ramirez), who was elected by the remaining members of the VVCC Board on March 6, 2001.

Respondent Africa (Africa), a member of VVCC, questioned the election of Roxas and Ramirez as members of the VVCC Board with the Securities and Exchange Commission (SEC) and the Regional Trial Court (RTC), respectively. Africa alleged that the election of Roxas was contrary to Section 29, in relation to Section 23, of the Corporation Code of the Philippines. Africa claimed that a year after Makalintals election as member of the VVCC Board in 1996, his [Makalintals] term as well as those of the other members of the VVCC Board should be considered to have already expired. Thus, according to Africa, the resulting vacancy should have been filled by the stockholders in a regular or special meeting called for that purpose, and not by the remaining members of the VVCC Board, as was done in this case. Africa additionally contends that for the members to exercise the authority to fill in vacancies in the board of directors, Section 29 requires, among others, that there should be an unexpired term during which the successor-member shall serve. Since Makalintals term had already expired with the lapse of the one-year term provided in Section 23, there is no more unexpired term during which Ramirez could serve.

Through a partial decision promulgated on January 23, 2002, the RTC ruled in favor of Africa and declared the election of Ramirez, as Makalintals replacement, to the VVCC Board as null and void. Incidentally, the SEC issued a similar ruling on June 3, 2003, nullifying the election of Roxas as member of the VVCC Board, vice hold-over director Dinglasan. While VVCC manifested its intent to appeal from the SECs ruling, no petition was actually filed with the Court of Appeals; thus, the appellate court considered the case closed and terminated and the SECs ruling final and executory.

ISSUE

Whether or not the remaining directors of a corporations Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director?

RULING

No. The word term has acquired a definite meaning in jurisprudence. In several cases, we have defined term as the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The term of office is not affected by the holdover. The term is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify. Term is distinguished from tenure in that an officers tenure represents the term during which the incumbent actually holds office. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent. Based on the above discussion, when Section 23 of the Corporation Code declares that the board of directors shall hold office for one (1) year until their successors are elected and qualified, we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office.

The holdover period that time from the lapse of one year from a members election to the Board and until his successors election and qualification is not part of the directors original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term. After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintals term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintals term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired. With the expiration of Makalintals term of office, a vacancy resulted which, by the terms of Section 29 of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. To assume as VVCC does that the vacancy is caused by Makalintals resignation in 1998, not by the expiration of his term in 1997, is both illogical and unreasonable. His resignation as a holdover director did not change the nature of the vacancy; the vacancy due to the expiration of Makalintals term had been created long before his resignation.

WHEREFORE, we DENY the petitioners petition for review on certiorari, and AFFIRM the partial decision of the Regional Trial Court.

JOSE A. BERNAS, CECILE H. CHENG, VICTOR AFRICA, JESUS B. MARAMARA, JOSE T. FRONDOSO, IGNACIO T. MACROHON, JR., AND PAULINO T. LIM, ACTING IN THEIR CAP A CITY AS INDIVIDUAL DIRECTORS OF MAKATI SPORTS CLUB, INC., AND ON BEHALF OF THE BOARD OF DIRECTORS OF MAKATI SPORTS CLUB, *Petitioners*
-versus- **JOVENCIO F. CINCO, VICENTE R. AYLLON, RICARDO G. LIBREA, SAMUEL L. ESGUERRA, ROLANDO P. DELA CUESTA, RUBEN L. TORRES, ALEX Y. PARDO, MA. CRISTINA SIM, ROGER T. AGUILING, JOSE B. QUIMSON, CELESTINO L. ANG, ELISEO V. VILLAMOR, FELIPE L. GOZON, CLAUDIO B. ALTURA, ROGELIO G. VILLAROSA, MANUEL R. SANTIAGO, BENJAMIN A. CARANDANG, REGINA DE LEON-HERLIHY, CARLOS Y. RAMOS, JR., ALEJANDRO Z. BARIN, EFRENILO M. CAYANGA AND JOHN DOES,** *Respondents.*
G.R. No. 163356, FIRST DIVISION, July 21, 2015, PEREZ, J.

A corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all the property of the corporation. Its members have been characterized as trustees or directors clothed with fiduciary character. It is ineluctably clear that the fiduciary relation is between the stockholders and the board of directors and who are vested with the power to manage the affairs of the corporation. The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders.

FACTS

Makati Sports Club (MSC) is a domestic corporation duly organized and existing under Philippine laws for the primary purpose of establishing, maintaining, and providing social, cultural, recreational and athletic activities among its members.

Alarmed with the rumored anomalies in handling the corporate funds, the MSC Oversight Committee (MSCOC), composed of the past presidents of the club, demanded from the Bernas Group, who were then incumbent officers of the corporation, to resign from their respective positions to pave the way for the election of new set of officers. Resonating this clamor were the stockholders of the corporation representing at least 100 shares who sought the assistance of the MSCOC to call for a special stockholders meeting for the purpose of removing the sitting officers and electing new ones. Pursuant to such request, the MSCOC called a Special Stockholders' Meeting and sent out notices to all stockholders and members stating therein the time, place and purpose of the meeting. For failure of the Bernas Group to secure an injunction before the Securities Commission (SEC), the meeting proceeded wherein Jose A. Bernas, Cecile H. Cheng, Victor Africa, Jesus Maramara, Jose T. Frondoso, Ignacio T. Macrohon, Jr. and Paulino T. Lim were removed from office and, in their place and stead, Jovencio F. Cinco, Ricardo G. Librea, Alex Y. Pardo, Roger T. Aguiling, Rogelio G. Villarosa, Armando David, Norberto Maronilla, Regina de Leon---‐Herlihy and Claudio B. Altura, were elected. Aggrieved by the turn of events, the Bernas Group initiated an action before the Securities Investigation and Clearing Department (SICD) of the SEC docketed as SEC Case No. 5840 seeking for the nullification of the December 1997 Special Stockholders Meeting on the ground that it was improperly called. Citing Section 28 of the Corporation Code, the Bernas Group argued that the authority to call a meeting lies with the Corporate Secretary and not with the MSCOC which functions merely as an oversight body and is not vested with the power to call corporate meetings. For their part, the Cinco Group insisted that the 17 December 1997 Special Stockholders' Meeting is sanctioned by the Corporation Code and the MSC by---‐laws. In justifying the call effected by the MSCOC, they reasoned that Section 25 of the MSC by---‐laws merely authorized the Corporate Secretary to issue notices of meetings and nowhere does it state that such authority solely belongs to him.

Prior to the resolution of SEC Case No. 5840, an Annual Stockholders' Meeting was held on 20 April 1998 pursuant to Section 8 of the MSC bylaws. During the said meeting, which was attended by 1,017 stockholders representing 2/3 of the outstanding shares, the majority resolved to approve, confirm and ratify, among others, the calling and holding of 17 December 1997 Special Stockholders' Meeting, the acts and resolutions adopted therein including the removal of Bernas Group from the Board and the election of their replacements. The conduct of the 17 December 1997 Special Stockholders' Meeting was likewise ratified by the stockholders during the 2000 Annual Stockholders' Meeting which was held on 17 April 2000.

On 9 May 2000, the SICD rendered a Decision 17 in SEC Case No. 12---‐97---‐5840 finding, among others, that the 17 December 1997 Special Stockholders' Meeting and the Annual Stockholders' Meeting conducted on 20 April 1998 and 19 April 1999 are invalid. The SICD likewise nullified the expulsion of Bernas from the corporation and the sale of his share at the public auction:

(a) The supposed Special Stockholders' Meeting of December 17, 1997 was prematurely or invalidly called by the [the Cinco Group]. It therefore failed to produce any legal effects
(b) The April 20, 1998 meeting was not attended by a sufficient number of valid proxies. No quorum could have been present at the said meeting. No corporate business could have been validly completed and/or transacted during the said meeting. Further, it was not called by the validly elected Corporate Secretary Victor Africa nor presided over by the validly elected president Jose A. Bernas.

On appeal, the SEC En Banc, in its 12 December 2000 Decision reversed the findings of the SICD and validated the holding of the 17 December 1997 Special Stockholders' Meeting as well as the Annual Stockholders' Meeting held on 20 April 1998 and 19 April 1999. On 28 April 2003, the Court of Appeals rendered a Decision declaring the 17 December 1997 Special Stockholders' Meeting invalid for being improperly called but affirmed the actions taken during the Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000.

ISSUE

Was the meeting indeed invalid? (NO)

HELD

No. The Corporation Code laid down the rules on the removal of the Directors of the corporation by providing, inter alia, the persons authorized to call the meeting and the number of votes required for the purpose of removal in Sec. 28 of the Corporation Code. Corollarily, the pertinent provisions of MSC by---‐laws which govern the manner of calling and sending of notices of the annual stockholders' meeting and the special stockholders' meeting provide:

SEC. 8. Annual Meetings. — The annual meeting of stockholders shall be held at the Clubhouse on the third Monday of April of every year unless such day be a holiday in which case the annual meeting shall be held on the next succeeding business day

SEC. 10. Special Meetings. — Special meetings of stockholders shall be held at the Clubhouse when called by the President or by the Board of Directors or upon written request of the stockholders representing not less than one hundred (100) shares.

SEC. 25. Secretary. — The Secretary shall keep the stock and transfer book and the corporate seal, which he shall stamp on all documents requiring such seal, fill and sign together with the President, all the certificates of stocks issued, give or caused to be given all notices required by law of these By---‐ laws as well as notices of all meeting of the Board and of the stockholders; shall certify as to quorum at meetings; shall approve and sign all correspondence pertaining to the Office of the Secretary.

Textually, only the President and the Board of Directors are authorized by the by---‐laws to call a special meeting. In cases where the person authorized to call a meeting refuses, fails or neglects to call a meeting, then the stockholders representing at least 100 shares, upon written request, may file a petition to call a special stockholder's meeting. In the instant case, there is no dispute that the 17 December 1997 Special Stockholders' Meeting was called neither by the President nor by the Board of Directors but by the MSCOC. While the MSCOC, as its name suggests, is created for the purpose of overseeing the affairs of the corporation, nowhere in the by---‐laws does it state that it is authorized to exercise corporate powers, such as the power to call a special meeting, solely vested by law and the MSC by---‐laws on the President or the Board of Directors. A corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all the property of the corporation. Its members have been characterized as trustees or directors clothed with fiduciary character. It is ineluctably clear that the fiduciary relation is between the stockholders and the board of directors and who are vested with the power to manage the affairs of the corporation. The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders.

Relative to the powers of the Board of Directors, nowhere in the Corporation Code or in the MSC by---laws can it be gathered that the Oversight Committee is authorized to step in wherever there is breach of fiduciary duty and call a special meeting for the purpose of removing the existing officers and electing their replacements even if such call was made upon the request of shareholders. Needless to say, the MSCOC is neither empowered by law nor the MSC by---laws to call a meeting and the subsequent ratification made by the stockholders did not cure the substantive infirmity, the defect having set in at the time the void act was done. The defect goes into the very authority of the persons who made the call for the meeting. It is apt to recall that illegal acts of a corporation which contemplate the doing of an act which is contrary to law, morals or public order, or contravenes some rules of public policy or public duty, are, like similar transactions between individuals, void. They cannot serve as basis for a court action, nor acquire validity by performance, ratification or estoppel. Consequently, such Special Stockholders' Meeting called by the Oversight Committee cannot have any legal effect. The removal of the Bernas Group, as well as the election of the Cinco Group, effected by the assembly in that improperly called meeting is void, and since the Cinco Group has no legal right to sit in the board, their subsequent acts of expelling Bernas from the club and the selling of his shares at the public auction, are likewise invalid. The Cinco Group cannot invoke the application of de facto officership doctrine to justify the actions taken after the invalid election since the operation of the principle is limited to third persons who were originally not part of the corporation but became such by reason of voting of government---sequestered shares.

The case would have been different if the petitioning stockholders went directly to the SEC and sought its assistance to call a special stockholders' meeting citing the previous refusal of the Corporate Secretary to call a meeting. Where there is an officer authorized to call a meeting and that officer refuses, fails, or neglects to call a meeting, the SEC can assume jurisdiction and issue an order to the petitioning stockholder to call a meeting pursuant to its regulatory and administrative powers to implement the Corporation Code. Given the broad administrative and regulatory powers of the SEC outlined under Section 50 of the Corporation Code and Section 6 of Presidential Decree (PD) No. 902---A, the Cinco Group cannot claim that if was left without recourse after the Corporate Secretary previously refused to heed its demand to call a special stockholders' meeting. If it be true that the Corporate Secretary refused to call a meeting despite fervent demand from the MSCOC, the remedy of the stockholders would have been to file a petition to the SEC to direct him to call a meeting by giving proper notice required under the Code

7. Compensation

WESTERN INSTITUTE OF TECHNOLOGY, INC., HOMERO L. VILLASIS, DIMAS ENRIQUEZ, PRESTON F. VILLASIS & REGINALD F. VILLASIS, *Petitioner*
-versus- **RICARDO T. SALAS, SALVADOR T. SALAS, SOLEDAD SALAS-TUBILLEJA, ANTONIO S. SALAS, RICHARD S. SALAS & HON. JUDGE PORFIRIO PARIAN,** *Respondents* G.R. No. 113032, FIRST DIVISION, August 21, 1997, HERMOSISIMA, Jr., J.

Directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. The prohibition with respect to granting compensation to corporate directors/trustees as such under Section 30 is not violated in this case and does not likewise find application in this case since the compensation is being given to private respondents in their capacity as officers of WIT and not as board members

FACTS

Private respondents, belonging to the same family, are the majority and controlling members of the Board of Trustees of Western Institute of Technology, Inc. (WIT), a stock corporation engaged in the operation, among others, of an educational institution. While the petitioners are the minority stockholders of WIT. Sometime in June, in the principal office of WIT at La Paz, Iloilo City, a Special Board Meeting was held. In attendance were other members of the Board including one of the petitioners Reginald Villasis. Prior to the Special Board Meeting, copies of notice which providesfor the date and purpose of the meeting were distributed to all Board Members. In the said meeting,the Board of Trustees passed a resolution granting monthly compensation to the private respondents as corporate officers retroactive June 1, 1985.

Petitioners filed an affidavit-complaint against private respondents before the Office of the City Prosecutor of Iloilo and as a result of which two (2) separate criminal information, one for falsification of a public document and the other for estafa, were filed. The charge for falsification of public document was anchored on the private respondents' submission of WIT's income statement for the fiscal year 1985-1986 with the Securities and Exchange Commission (SEC) reflecting therein the disbursement of corporate funds for the compensation of private respondents based on Resolution No. 4, series of 1986, making it appear that the same was passed by the board on March 30, 1986, when in truth, the same was actually passed on June 1, 1986, a date not covered by the corporation's fiscal year 1985-1986. Thereafter, trial for the two criminal cases, docketed as Criminal Cases Nos. 37097 and 37098, was consolidated. After a full-blown hearing, Judge Porfirio Parian handed down a verdict of acquittal on both counts without imposing any civil liability against the accused therein. Petitioners filed a Motion for Reconsideration of the civil aspect of the RTC Decision which was, however, denied. Petitioners would like to hold private respondents civilly liable despite their acquittal in Criminal and alleged the illegal issuance by private respondents of Resolution No. 48, series of 1986 ordering the disbursement of corporate funds representing retroactive compensation and for the subsequent collective salaries They maintain that the grant of compensation to private respondents is proscribed under Section 30 of the Corporation Code thus obliging the private respondents to return the amounts they received with interest. Motion for Intervention was filed by WIT disowning its inclusion in the petition and submitting that Atty. Tranquilino R. Gale, counsel for the other petitioners, had no authority whatsoever to represent the corporation in filing the petition. It also prayed for the dismissal of the petition for being utterly without merit. The Motion for Intervention was granted.

ISSUES

1. Whether or not the grant of compensation to Salas, et. al. is proscribed under Section 30 of the Corporation Code. (NO)
2. Whether or not the instant case is a derivative suit. (NO)

RULING

1. No. the grant of compensation to the private respondents is not proscribed under Section 30 of the Corporation Code. Directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. This rule is founded upon a presumption that directors/trustees render service gratuitously, and that the return upon their shares adequately furnishes the motives for service, without compensation. Under section 30, there are only two (2) ways by which members of the board can be granted compensation apart from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them. The prohibition with respect to granting compensation to corporate directors/trustees as such under Section 30 is not violated in this case and does not likewise find application in this case since the compensation is being given to private respondents in their capacity as officers of WIT and not as board members.

2. No, the case is not a derivative suit but is merely an appeal on the civil aspect of criminal cases filed with the RTC of Iloilo for estafa and falsification of public document. A derivative suit is an action brought by minority shareholders in the name of the corporation to redress wrongs committed against it, for which the directors refuse to sue. It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority. Among the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join. Such is necessary to vest jurisdiction upon the tribunal in with the rule that it is the allegations in the complaint that vests jurisdiction upon the court or quasi-judicial body concerned over the subject matter and nature of the action. Such requirement was not complied with by the petitioners in their complaint which merely states that "this is a petition for review on certiorari on pure questions of law to set aside a portion of the RTC decision in Criminal Cases since the trial court's judgment of acquittal failed to impose any civil liability against the private respondents". By no amount of equity considerations, if at all deserved, can a mere appeal on the civil aspect of a criminal case be treated as a derivative suit.

WHEREFORE, the instant petition is hereby DENIED with costs against petitioners.

8. Fiduciary Duties and Liability Rules

BENGUET ELECTRIC COOPERATIVE, INC., *Petitioner* –versus- NATIONAL RELATIONS COMMISSION, PETER COSALAN and BOARD OF DIRECTORS OF BENGUET ELECTRIC COOPERATIVE, INC, *Respondent*

GR No. 89070, THIRD DIVISION, May 18,1992, FELICIANO, J.

The applicable general rule is clear enough. The Board members and officers of a corporation who purport to act for and in behalf of the corporation, keep within the lawful scope of their authority in so acting, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their acts, Those acts, when they are such a nature and are done under such circumstances, are properly attributed to the corporation alone and no personal liability is incurred by such officers and Board members.

FACTS

Private respondent Peter Cosalan was the General Manager of Petitioner Benguet Electric Cooperative, Inc. ("Beneco"), having been elected as such by the Board of Directors of Beneco, with the approval of the National Electrification Administrator, Mr. Pedro Dumol.

Respondent Cosalan received Audit Memorandum No. 1 issued by the Commission on Audit ("COA"). This Memorandum noted that cash advances received by officers and employees of petitioner Beneco in the amount of P129,618.48 had been virtually written off in the books of Beneco. In the Audit Memorandum, the COA directed petitioner Beneco to secure the approval of the National Electrification Administration ("NEA") before writing off or condoning those cash advances, and recommended the adoption of remedial measures.

COA issued another Memorandum — Audit Memorandum No. 2 –– addressed to respondent Peter Cosalan, inviting attention to the fact that the audit of *per diems* and allowances received by officials and members of the Board of Directors of Beneco showed substantial inconsistencies with the directives of the NEA. The Audit Memorandum once again directed the taking of immediate action in conformity with existing NEA regulations.

Petitioner Beneco received the COA Audit Report on the financial status and operations of Beneco. This Audit Report noted and enumerated irregularities in the utilization of funds amounting to P37 Million released by NEA to Beneco, and recommended that appropriate remedial action be taken.

Having been made aware of the serious financial condition of Beneco and what appeared to be mismanagement, respondent Cosalan initiated implementation of the remedial measures recommended by the COA. The respondent members of the Board of Beneco reacted by adopting a series of resolutions. These Board Resolutions abolished the housing allowance of respondent Cosalan; reduced his salary and his representation and commutable allowances; directed him to hold in abeyance all pending personnel disciplinary actions; and struck his name out as a principal signatory to transactions of petitioner Beneco.

The respondent Beneco Board members adopted another series of resolutions which resulted in the ouster of respondent Cosalan as General Manager of Beneco and his exclusion from performance of his regular duties as such, as well as the withholding of his salary and allowances.

Respondent Cosalan nevertheless continued to work as General Manager of Beneco, in the belief that he could be suspended or removed only by duly authorized officials of NEA, in accordance with provisions of P.D. No, 269, as amended by P.D. No. 1645 (the statute creating the NEA, providing for its capitalization, powers and functions and organization), the loan agreement between NEA and petitioner Beneco . Accordingly, respondent Cosalan requested petitioner Beneco to release the compensation due him. Beneco, acting through respondent Board members, denied the written request of respondent Cosalan.

Respondent Cosalan then filed a complaint with the National Labor Relations Commission ("NLRC") against respondent members of the Beneco Board, challenging the legality of the Board resolutions which ordered his suspension and termination from the service and demanding payment of his salaries and allowances. Cosalan amended his complaint to implead petitioner Beneco and respondent Board members, the latter in their respective dual capacities as Directors and as private individuals.

the Labor Arbiter rendered a decision (a) confirming Cosalan's reinstatement; (b) ordering payment to Cosalan of his backwages and allowances by petitioner Beneco and respondent Board members, jointly and severally, for a period of three (3) years without deduction or qualification, amounting to P344,000.00; and (3) ordering the individual Board members to pay, jointly and severally, to Cosalan moral damages of P50,000.00 plus attorney's fees of ten percent (10%) of the wages and allowances awarded him.

Respondent Board members appealed to the NLRC,

Public respondent NLRC modified the award rendered by the Labor Arbiter by declaring that petitioner Beneco *alone,* and not respondent Board members, was liable for respondent Cosalan's backwages and allowances, and by ruling that there was no legal basis for the award of moral damages and attorney's fees made by the Labor Arbiter.

ISSUE

W/N the NLRC had acted with grave abuse of discretion amounting to lack of jurisdiction in holding petitioner alone liable for payment of the backwages and allowances due to Cosalan and releasing respondent Board members from liability therefor. (YES)

RULING

The applicable general rule is clear enough. The Board members and officers of a corporation who purport to act for and in behalf of the corporation, keep within the lawful scope of their authority in so acting, and act in good faith, do *not* become liable, whether civilly or otherwise, for the consequences of their acts, Those acts, when they are such a nature and are done under such circumstances, are properly attributed to the corporation alone and no personal liability is incurred by such officers and Board members.

The major difficulty with the conclusion reached by the NLRC is that the NLRC clearly overlooked or disregarded the circumstances under which respondent Board members had in fact acted in the instant case. As noted earlier, the respondent Board members responded to the efforts of Cosalan to take seriously and implement the Audit Memoranda issued by the COA explicitly addressed to the petitioner Beneco, first by stripping Cosalan of the privileges and perquisites attached to his position as General Manager, then by suspending indefinitely and finally dismissing Cosalan from such position. As also noted earlier, respondent Board members offered no suggestion at all of any just or lawful cause that could sustain the suspension and dismissal of Cosalan. They obviously wanted to get rid of Cosalan and so acted, in the words of the NLRC itself, "with indecent haste" in removing him from his position and denying him substantive and procedural due process. Thus, the record showed strong indications that respondent Board members had illegally suspended and dismissed Cosalan precisely because he was trying to remedy the financial irregularities and violations of NEA regulations which the COA had brought to the attention of Beneco. The conclusion reached by the NLRC that "the records do not disclose that the individual Board members were motivated by malice or bad faith" flew in the face of the evidence of record. At the very least, a strong presumption had arisen, which it was incumbent upon respondent Board members to disprove, that they had acted in reprisal against respondent Cosalan and in an effort to suppress knowledge about and remedial measures against the financial irregularities the COA Audits had unearthed. That burden respondent Board members did not discharge.

The Solicitor General has urged that respondent Board members may be held liable for damages under the foregoing circumstance under Section 31 of the Corporation Code which reads as follows:

Sec. 31. *Liability of directors, trustees or officer*s. — *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 jointly liable and severally for all damages resulting therefrom suffered by the corporation*, its stockholders or members and other persons.

We agree with the Solicitor General, that respondent Board members were guilty of "gross negligence or bad faith in directing the affairs of the corporation" in enacting the series of resolutions noted earlier indefinitely suspending and dismissing respondent Cosalan from the position of General Manager of Beneco. Respondent Board members, in doing so, acted belong the scope of their authority as such Board members. The dismissal of an officer or employee in bad faith, without lawful cause and without procedural due process, is an act that is *contra legem*. It cannot be supposed that members of boards of directors derive any authority to violate the express mandates of law or the clear legal rights of their officers and employees by simply purporting to act for the corporation they control.

We believe and so hold, further, that not only are Beneco and respondent Board members properly held solidarily liable for the awards made by the Labor Arbiter, but also that petitioner Beneco which was controlled by and which could act only through respondent Board members, has a right to be reimbursed for any amounts that Beneco may be compelled to pay to respondent Cosalan. Such right of reimbursement is essential if the innocent members of Beneco are not to be penalized for the acts of respondent Board members which were both done in bad faith and *ultra vires*. The liability-generating acts here are the personal and individual acts of respondent Board members, and are not properly attributed to Beneco itself.

CEBU COUNTRY CLUB, INC., SABINO R. DAPAT, RUBEN D. ALMENDRAS, JULIUS Z. NERI, DOUGLAS L. LUYM, CESAR T. LIBI, RAMONTITO* E. GARCIA and JOSE B. SALA, *Petitioners* -versus- RICARDO F. ELIZAGAQUE, *Respondent*

GR No. 160273, FIRST DIVISION, January 18, 2008, SANDOVAL-GUTIERREZ, *J.*

Obviously, the CCCI Board of Directors, under its Articles of Incorporation, has the right to approve or disapprove an application for proprietary membership. But such right should not be exercised arbitrarily. In rejecting respondent's application for proprietary membership, we find that petitioners violated the rules governing human relations, the basic principles to be observed for the rightful relationship between human beings and for the stability of social order.

FACTS

Cebu Country Club, Inc. (CCCI), petitioner, is a domestic corporation operating as a non-profit and non-stock private membership club, having its principal place of business in Banilad, Cebu City. Petitioners herein are members of its Board of Directors

Sometime in 1987, San Miguel Corporation, a special company proprietary member of CCCI, designated respondent Ricardo F. Elizagaque, its Senior Vice President and Operations Manager for the Visayas and Mindanao, as a special non-proprietary member. The designation was thereafter approved by the CCCI's Board of Directors.

In 1996, respondent filed with CCCI an application for proprietary membership. The application was indorsed by CCCI's two (2) proprietary members, namely: Edmundo T. Misa and Silvano Ludo.
As the price of a proprietary share was around the ₱5 million range, Benito Unchuan, then president of CCCI, offered to sell respondent a share for only ₱3.5 million. Respondent, however, purchased the share of a certain Dr. Butalid for only ₱3 million. Consequently, on September 6, 1996, CCCI issued Proprietary Ownership Certificate No. 1446 to respondent.

During the meetings dated April 4, 1997 and May 30, 1997 of the CCCI Board of Directors, action on respondent's application for proprietary membership was deferred. In another Board meeting held on July 30, 1997, respondent's application was voted upon. Subsequently, or on August 1, 1997, respondent received a letter from Julius Z. Neri, CCCI's corporate secretary, informing him that the Board disapproved his application for proprietary membership.

On August 6, 1997, Edmundo T. Misa, on behalf of respondent, wrote CCCI a letter of reconsideration. As CCCI did not answer, respondent, on October 7, 1997, wrote another letter of reconsideration. Still, CCCI kept silent. On November 5, 1997, respondent again sent CCCI a letter inquiring whether any member of the Board objected to his application. Again, CCCI did not reply.

Consequently, on December 23, 1998, respondent filed with the Regional Trial Court (RTC), Branch 71, Pasig City a complaint for damages against petitioners.

ISSUE

Whether in disapproving respondent's application for proprietary membership with CCCI, petitioners are liable to respondent for damages, and if so, whether their liability is joint and several. (YES)

RULING
Obviously, the CCCI Board of Directors, under its Articles of Incorporation, has the right to approve or disapprove an application for proprietary membership. But such right should not be exercised arbitrarily. Articles 19 and 21 of the Civil Code on the Chapter on Human Relations provide restrictions, thus:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In rejecting respondent's application for proprietary membership, we find that petitioners violated the rules governing human relations, the basic principles to be observed for the rightful relationship between human beings and for the stability of social order. The trial court and the Court of Appeals aptly held that petitioners committed fraud and evident bad faith in disapproving respondent's applications. This is contrary to morals, good custom or public policy. Hence, petitioners are liable for damages pursuant to Article 19 in relation to Article 21 of the same Code.

It bears stressing that the amendment to Section 3(c) of CCCI's Amended By-Laws requiring the unanimous vote of the directors present at a special or regular meeting was not printed on the application form respondent filled and submitted to CCCI. What was printed thereon was the original provision of Section 3(c) which was silent on the required number of votes needed for admission of an applicant as a proprietary member.

Petitioners explained that the amendment was not printed on the application form due to economic reasons. We find this excuse flimsy and unconvincing. Such amendment, aside from being extremely significant, was introduced way back in 1978 or almost twenty (20) years before respondent filed his application. We cannot fathom why such a prestigious and exclusive golf country club, like the CCCI, whose members are all affluent, did not have enough money to cause the printing of an updated application form.

It is thus clear that respondent was left groping in the dark wondering why his application was disapproved. He was not even informed that a unanimous vote of the Board members was required. When he sent a letter for reconsideration and an inquiry whether there was an objection to his application, petitioners apparently ignored him. Certainly, respondent did not deserve this kind of treatment. Having been designated by San Miguel Corporation as a special non-proprietary member of CCCI, he should have been treated by petitioners with courtesy and civility. At the very least, they should have informed him why his application was disapproved.

The exercise of a right, though legal by itself, must nonetheless be in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible. It bears reiterating that the trial court and the Court of Appeals held that petitioners' disapproval of respondent's application is characterized by bad faith.

As to petitioners' reliance on the principle of *damnum absque injuria* or damage without injury, suffice it to state that the same is misplaced. In *Amonoy v. Gutierrez*, we held that this principle does not apply when **there is an abuse of a person's right**, as in this case.

Lastly, petitioners' argument that they could not be held jointly and severally liable for damages because only one (1) voted for the disapproval of respondent's application lacks merit.
Section 31 of the Corporation Code provides:

> 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.

HEIRS OF FE TAN UY, REPRESENTED BY HER HEIR, MAULING UY LIM, *Petitioner* -versus- INTERNATIONAL EXCHANGE BANK, *Respondent*

G.R. No. 166282 & 83, THIRD DIVISION, February 13, 2013, MENDOZA, J.

At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. The shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence.

FACTS

On several occasions, International Exchange Bank (iBank), granted loans to Hammer Garments Corporation (Hammer), covered by promissory notes and deeds of assignment. These were made pursuant to the Letter-Agreement between iBank and Hammer, represented by its President and General Manager, (Chua) a.k.a. Manuel Chua Uy Po Tiong, granting Hammer a P 25 Million-Peso Omnibus Line. The loans were secured by a P 9 Million-Peso Real Estate Mortgage executed by Goldkey Development Corporation (Goldkey) over several of its properties and a P 25 Million-Peso Surety Agreement7 signed by Chua and his wife, Fe Tan Uy (Uy), Hammer had an outstanding obligation of ₱25,420,177.62 to iBank. Hammer defaulted in the payment of its loans, prompting iBank to foreclose on Goldkey's third-party Real Estate Mortgage. The mortgaged properties were sold for P 12 million during the foreclosure sale, leaving an unpaid balance of P 13,420,177.62. For failure of Hammer to pay the deficiency, iBank filed a Complaint for sum of money against Hammer, Chua, Uy, and Goldkey before the Regional Trial Court, Makati City Despite service of summons, Chua and Hammer did not file their respective answers and were declared in default. In her separate answer, Uy claimed that she was not liable to iBank because she never executed a surety agreement in favor of iBank. Goldkey, on the other hand, also denies liability, averring that it acted only as a third-party mortgagor and that it was a corporation separate and distinct from Hammer.

Meanwhile, iBank applied for the issuance of a writ of preliminary attachment which was granted by the RTC. The Notice of Levy on Attachment of Real Properties covering the properties under the name of Goldkey, was sent by the sheriff to the Registry of Deeds of Quezon City. The RTC, ruled in favor of iBank. It came to the conclusion, however, that Goldkey and Hammer were one and the same entity for the following reasons: (1) both were family corporations of Chua and Uy, with Chua as the President and Chief Operating Officer; (2) both corporations shared the same office and transacted business from the same place, (3) the assets of Hammer and Goldkey were co-mingled; and (4) when Chua absconded, both Hammer and Goldkey ceased to operate. As such, the piercing of the veil of corporate fiction was warranted. Uy, as an officer and stockholder of Hammer and Goldkey, was found liable to iBank together with Chua, Hammer and Goldkey for the deficiency of ₱13,420,177.62.

Aggrieved, the heirs of Uy and Goldkey (petitioners) elevated the case to the CA. CA promulgated its decision affirming the findings of the RTC. The CA found that iBank was not negligent in evaluating the financial stability of Hammer. According to the appellate court, iBank was induced to grant the loan because petitioners, with intent to defraud the bank, submitted a falsified Financial Report for 1996 which incorrectly declared the assets and cashflow of Hammer. Because petitioners acted maliciously and in bad faith and used the corporate fiction to defraud iBank, they should be treated as one and the same as Hammer.

ISSUES

1. Whether or not Uy can be held liable to iBank for the loan obligation of Hammer as an officer and stockholder of the said corporation. (NO)
2. Whether or not Goldkey can be held liable for the obligation of Hammer for being a mere alter ego of the latter.

RULING

1. Uy is not liable; The piercing of the veil of corporate fiction is not justified. Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

In this case, petitioners are correct to argue that it was not alleged, much less proven, that Uy committed an act as an officer of Hammer that would permit the piercing of the corporate veil. A reading of the complaint reveals that with regard to Uy, iBank did not demand that she be held liable for the obligations of Hammer because she was a corporate officer who committed bad faith or gross negligence in the performance of her duties such that the lifting of the corporate mask would be merited. What the complaint simply stated is that she, together with her errant husband Chua, acted as surety of Hammer, as evidenced by her signature on the Surety Agreement which was later found by the RTC to have been forged.

Considering that the only basis for holding Uy liable for the payment of the loan was proven to be a falsified document, there was no sufficient justification for the RTC to have ruled that Uy should be held jointly and severally liable to iBank for the unpaid loan of Hammer. The Court cannot give credence to the simplistic declaration of the RTC that liability would attach directly to Uy for the sole reason that she was an officer and stockholder of Hammer.

At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. Furthermore, if it was true, as petitioners claim, that she no longer performed the functions of a treasurer, then she should have formally resigned as treasurer to isolate herself from any liability that could result from her being an officer of the corporation. Nonetheless, these shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence. Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

2. Goldkey is a mere alter ego of Hammer

To the Court's mind, Goldkey's argument, that iBank is barred from pursuing Goldkey for the satisfaction of the unpaid obligation of Hammer because it had already limited its liability to the real estate mortgage, is completely absurd. Goldkey needs to be reminded that it is being sued not as a consequence of the real estate mortgage, but rather, because it acted as an alter ego of Hammer.

Accordingly, they must be treated as one and the same entity, making Goldkey accountable for the debts of Hammer.

Under a variation of the doctrine of piercing the veil of corporate fiction, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same.

These factors are unquestionably present in the case of Goldkey and Hammer:

1. Stock ownership by one or common ownership of both corporations; - Both corporations are family corporations of defendants Manuel Chua and his wife Fe Tan Uy.
2. Identity of directors and officers; - Hammer Garments and Goldkey share the same office and practically transact their business from the same place.
3. The manner of keeping corporate books and records, - Defendant Manuel Chua is the President and Chief Operating Officer of both corporations. All business transactions of Goldkey and Hammer are done at the instance of defendant Manuel Chua who is authorized to do so by the corporations.
4. Methods of conducting the business - The assets of Goldkey and Hammer are co-mingled. The real properties of Goldkey are mortgaged to secure Hammer's obligation with creditor banks.
5. When defendant Manuel Chua "disappeared", the defendant Goldkey ceased to operate despite the claim that the other "officers" and stockholders are still around and may be able to continue the business of Goldkey, if it were different or distinct from Hammer which suffered financial set back.42 Goldkey was merely an adjunct of Hammer and, as such, the legal fiction that it has a separate personality from that of Hammer should be brushed aside as they are, undeniably, one and the same.

WHEREFORE, the petition is PARTLY GRANTED. The August 16, 2004 Decision and the December 2, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 69817, are hereby MODIFIED. Fe Tan Uy is released from any liability arising from the debts incurred by Hammer from iBank. Hammer Garments Corporation, Manuel Chua Uy Po Tiong and Goldkey Development Corporation are jointly and severally liable to pay International Exchange Bank the sum of ₱13,420,177.62 representing the unpaid loan obligation of Hammer as of December 12, 1997 plus interest. No costs.

ANTONIO C. CARAG, *Petitioner* -versus- NATIONAL LABOR RELATIONS COMMISSION, ISABEL G. PANGANIBAN-ORTIGUERRA, as Executive Labor Arbiter, NAFLU, and MARIVELES APPAREL CORPORATION LABOR UNION, *Respondents*

G.R. No. 147590, EN BANC, April 2, 2007, CARPIO, J.

Section 31 of the Corporation Code lays down the exceptions to the rule, as follows: Liability of directors, trustees or officers. - Directors or trustees who wilfully 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. Section 31 makes a director personally liable for corporate debts if he wilfully and knowingly votes for or assents to patently unlawful acts of the corporation.

FACTS

National Federation of Labor Unions (NAFLU) and Mariveles Apparel Corporation Labor Union (MACLU) (collectively, complainants), on behalf of all of MAC's rank and file employees, filed a complaint against MAC for illegal dismissal brought about by its illegal closure of business. Upon receipt of the records of the case, Arbiter Ortiguerra summoned the parties to explore options for possible settlement. The non-appearance of respondents prompted Arbiter Ortiguerra to declare the case submitted for resolution "based on the extant pleadings." United Coconut Planters Bank vs. Planters Products, Inc., Janet Layson and Gregory Grey, G.R. No. 179015, June 13, 2012

In their position paper dated 3 January 1994, complainants moved to implead Carag and David, as follows:

In the present case, it is unfortunate for respondents that the records and evidence clearly demonstrate that the individual complainants are entitled to the reliefs prayed for in their complaint. However, any favorable judgment the Honorable Labor Arbiter may render in favor of herein complainants will go to naught should the Office fails to appreciate the glaring fact that the respondents corporation is no longer existing as it suddenly stopped business operation since 8 July 1993. Under this given circumstance, the complainants have no option left but to implead Atty. ANTONIO CARAG, in his official capacity as Chairman of the Board along with MR. ARMANDO DAVID as President. Both are also owners of the respondent corporation .This inclusion of individual respondents as party respondents in the present case is to guarantee the satisfaction of any judgment award on the basis of Article 212(c) of the Philippine Labor Code. Where the employer-corporation, AS IN THE PRESENT CASE, is no longer existing and unable to satisfy the judgment in favor of the employee, the officer should be held liable for acting on behalf of the corporation.

If no definite proof exists as to who is the responsible officer, the president of the corporation who can be deemed to be its chief operation officer shall be presumed to be the responsible officer. In Republic Act 602, for example, criminal responsibility is with the "manager" or in his default, the person acting as such.

Without any further proceedings, Arbiter Ortiguerra rendered her Decision dated 17 June 1994 granting the motion to implead Carag and David. In the same Decision, Arbiter Ortiguerra declared Carag and David solidarily liable with MAC to complainants.

LA: respondents jointly and severally guilty of illegal closure. MAC, Carag, and David, through Atty. Pastores, filed their Memorandum before the NLRC on 26 August 1994. Carag, through a separate counsel, filed an appeal dated 30 August 1994 before the NLRC. Carag reiterated the arguments in respondents' position paper filed before Arbiter Ortiguerra, stating that:

2.1 While Atty. Antonio C. Carag is the Chairman of the Board of MAC and Mr. Armando David is the President, they are not the owners of MAC; 2.2 MAC is owned by a consortium of banks, as stockholders, and Atty. Antonio C. Carag and Mr. Armando David are only minority stockholders of the corporation, owning only qualifying shares; 2.3 MAC is not a family -owned corporation, that in case of a close [sic] corporation, piercing the corporate veil its possible to hold the stockholders liable for the corporation's liabilities; 2.4 MAC is a corporation with a distinct and separate personality from that of the stockholders; piercing the corporate veil to hold the stockholders liable for corporate liabilities is only true for close corporations (family corporations); this is not the prevailing situation in MAC; 2.5 Atty. Antonio Carag and Mr. Armando David are professional managers and the extension of shares to them is just qualifying shares to enable them to occupy subject position.

Respondents filed separate petitions for certiorari before this Court under Rule 65 of the 1964 Rules of Court. Carag filed his petition, docketed as G.R. No. 118820, on 13 February 1995. In the meantime, we granted MAC's prayer for the issuance of a temporary restraining order to enjoin the NLRC from enforcing Arbiter Ortiguerra's Decision. On 31 May 1995, we granted complainants' motion for consolidation of G.R. No. 118820 with G.R. No. 118839 (MAC v. NLRC, et al.) and G.R. No. 118880 (David v. Arbiter Ortiguerra, et al.). On 12 July 1999, after all the parties had filed their memoranda, we referred the consolidated cases to the appellate court in accordance with our decision in St. Martin Funeral Home v. NLRC.

Respondents filed separate petitions before the appellate court. CA: appellate court held that the absence of a formal hearing before the Labor Arbiter is not a cause for Carag and David to impute grave abuse of discretion. The appellate court found that Carag and David, as the most ranking officers of MAC, had a direct hand at the time in the illegal dismissal of MAC's employees. The failure of Carag and David to observe the notice requirement in closing the company shows malice and bad faith, which justifies their solidary liability with MAC. The appellate court also found that the circumstances of the present case do not warrant a reduction of the appeal bond.

ISSUE

Whether or not Carag and David are personally liable for over ₱50 million of the corporation's liability, merely as board chairman and President? (NO)

RULING

Carag cannot be held personally liable for the separation pay owed by MAC to complainants based alone on Article 212(e) of the Labor Code. Article 212(e) does not state that corporate officers are personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code.

Section 31 of the Corporation Code lays down the exceptions to the rule, as follows: Liability of directors, trustees or officers. Directors or trustees who wilfully 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. Section 31 makes a director personally liable for corporate debts if he wilfully and knowingly votes for or assents to patently unlawful acts of the corporation.

Section 31 also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation. Complainants did not allege in their complaint that Carag wilfully and knowingly voted for or assented to any patently unlawful act of MAC. Complainants did not present any evidence showing that Carag wilfully and knowingly voted for or assented to any patently unlawful act of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Complainants did not also allege that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Complainants did not present any evidence showing that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision. Arbiter Ortiguerra stated in her Decision that: In instances where corporate officers dismissed employees in bad faith or wantonly violate labor standard laws or when the company had already ceased operations and there is no way by which a judgment in favor of employees could be satisfied, corporate officers can be held jointly and severally liable with the company.

After stating what she believed is the law on the matter, Arbiter Ortiguerra stopped there and did not make any finding that Carag is guilty of bad faith or of wanton violation of labor standard laws. Arbiter Ortiguerra did not specify what act of bad faith Carag committed, or what particular labor standard laws he violated.

To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud.

In Businessday Information Systems and Services, Inc. v. NLRC, we held: A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. Neither does bad faith arise automatically just because a corporation fails to comply with the notice requirement of labor laws on company closure or dismissal of employees. The failure to give notice is not an unlawful act because the law does not define such failure as unlawful. Such failure to give notice is a violation of procedural due process but does not amount to an unlawful or criminal act. Such procedural defect is called illegal dismissal because it fails to comply with mandatory procedural requirements, but it is not illegal in the sense that it constitutes an unlawful or criminal act.

For a wrongdoing to make a director personally liable for debts of the corporation, the wrongdoing approved or assented to by the director must be a patently unlawful act. Mere failure to comply with the notice requirement of labor laws on company closure or dismissal of employees does not amount to a patently unlawful act. Patently unlawful acts are those declared unlawful by law which imposes penalties for commission of such unlawful acts. There must be a law declaring the act unlawful and penalizing the act.

In this case, Article 283 of the Labor Code, requiring a one-month prior notice to employees and the Department of Labor and Employment before any permanent closure of a company, does not state that non-compliance with the notice is an unlawful act punishable under the Code. There is no provision in any other Article of the Labor Code declaring failure to give such notice an unlawful act and providing for its penalty.

Complainants did not allege or prove, and Arbiter Ortiguerra did not make any finding, that Carag approved or assented to any patently unlawful act to which the law attaches a penalty for its commission. On this score alone, Carag cannot be held personally liable for the separation pay of complainants.

This leaves us with Arbiter Ortiguerra's assertion that "when the company had already ceased operations and there is no way by which a judgment in favor of employees could be satisfied, corporate officers can be held jointly and severally liable with the company." This assertion echoes the complainants' claim that Carag is personally liable for MAC's debts to complainants "on the basis of Article 212(e) of the Labor Code, as amended," which says: 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

Indeed, complainants seek to hold Carag personally liable for the debts of MAC based solely on Article 212(e) of the Labor Code. This is the specific legal ground cited by complainants, and used by Arbiter Ortiguerra, in holding Carag personally liable for the debts of MAC. We have already ruled in McLeod v. NLRC and Spouses Santos v. NLRC that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. Thus, we explained in McLeod:

Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action. A review of the above exceptional cases would readily disclose the attendance of facts and circumstances that could rightly sanction personal liability on the part of the company officer. In A.C. Ransom, the corporate entity was a family corporation and execution against it could not be implemented because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations. The doctrine of "piercing the veil of corporate fiction" was thus clearly appropriate. Chua likewise involved another family corporation, and this time the conflict was between two brothers occupying the highest ranking positions in the company. There were incontrovertible facts which pointed to extreme personal animosity that resulted, evidently in bad faith, in the easing out from the company of one of the brothers by the other.

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212[e] nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation.

Thus, it was error for Arbiter Ortiguerra, the NLRC, and the Court of Appeals to hold Carag personally liable for the separation pay owed by MAC to complainants based alone on Article 212(e) of the Labor Code. Article 212(e) does not state that corporate officers are personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code.

MERCY VDA. DE ROXAS, represented by ARLENE C. ROXAS-CRUZ, in her capacity as substitute appellant-petitioner, *Petitioner* -versus- **OUR LADY'S FOUNDATION, INC.,** *Respondent*
G.R. No. 182378, FIRST DIVION, March 6, 2013, SERENO, CJ.

A corporation is a juridical entity with a legal personality separate and distinct from those acting for and on its behalf and, in general, of the people comprising it. The obligations incurred by the corporation, acting through its officers, are its sole liabilities.

To hold corporate officers personally liable alone for the debts of the corporation and thus pierce the veil of corporate fiction, it is required that the bad faith of the officer be established clearly and convincingly. A court should be mindful of the milieu where piercing of the veil should be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights.

FACTS

Salve Dealca Latosa filed before the RTC a Complaint for the recovery of ownership of a portion of her residential land located at Our Lady's Village, Bibincahan, Sorsogon, Sorsogon. According to her, Atty. Henry Amado Roxas (Roxas), represented by petitioner herein, encroached on a quarter of her property by arbitrarily extending his concrete fence beyond the correct limits. In his Answer, Roxas imputed the blame to respondent Our Lady's Village Foundation, Inc., now Our Lady's Foundation, Inc. (OLFI). He then filed a Third-Party Complaint against respondent which was admitted by the trial court.

The trial court ruled in favor of Latosa. It found that Roxas occupied a total of 112 square meters of Latosa's lots, and that, in turn, OLFI trimmed his property by 92 square meters. Subsequently, Roxas appealed to the CA, which later denied the appeal. Since the Decision had become final, the RTC issued a Writ of Execution to implement the ruling ordering OLFI to reimburse Roxas for the value of the 92-square-meter property plus legal interest at a rate of P1800 per square meter to be reckoned from the time the amount was paid to the third-party defendant.

To collect the aforementioned amount, Notices of Garnishment were then issued by the sheriff to the managers of the Development Bank of the Philippines and the United Coconut Planters Bank for them to garnish the account of Bishop Robert Arcilla-Maullon (Arcilla-Maullon), OLFI's general manager. Refusing to pay Roxas, OLFI filed a Rule 65 Petition before the CA. The CA nullified the Notices of Garnishment. It noted that since the general manager of OLFI was not impleaded in the proceedings, he could not be held personally liable for the obligation of the corporation. Hence this petition.

ISSUE

Whether or not the issuance of Notices of Garnishment against the bank accounts of Arcilla-Maullon as OLFI's general manager justifiable.

RULING

The Supreme Court affirmed the decision of the Court of Appeals. The appellate court appreciated that in the main case for the recovery of ownership before the court of origin, only OLFI was named as respondent corporation, and that its general manager was never impleaded in the proceedings a quo.

Given this finding, the Court held that since OLFI's general manager was not a party to the case, the CA correctly ruled that Arcilla-Maullon cannot be held personally liable for the obligation of the corporation. The Court relied in the case of Santos vs. NLRC where the doctrine of separate personality was discussed.

To hold the general manager of OLFI liable, petitioner claims that it is a mere business conduit of Arcilla-Maullon, hence, the corporation does not maintain a bank account separate and distinct from the bank accounts of its members. In support of this claim, petitioner submits that because OLFI did not rebut the attack on its legal personality, as alleged in petitioner's Opposition and Comments on the Motion to Quash Notice/Writ of Garnishment respondent effectively admitted by its silence that it was a mere dummy corporation.

The argument did not persuade the Court, for any piercing of the corporate veil has to be done with caution. Save for its rhetoric, petitioner failed to adduce any evidence that would prove OLFI's status as a dummy corporation.

A court should be mindful of the milieu where piercing of the veil should be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

To hold Arcilla-Maullon personally liable alone for the debts of the corporation and thus pierce the veil of corporate fiction, it is required that the bad faith of the officer be established clearly and convincingly. Petitioner, however, has failed to include any submission pertaining to any wrongdoing of the general manager. Necessarily, it would be unjust to hold the latter personally liable.
Therefore, the execution of a corporate judgment debt against the general manager of the corporation has no basis.

ROLANDO DS.TORRES, *Petitioner* -versus-RURAL BANK OF SAN JUAN, INC., ANDRES CANO CHUA, JOBEL GO CHUA, JESUS CANO CHUA, MEINRADO DALISAY, JOSE MANALANSAN III, OFELIA GINA BE and NATY ASTRERO, *Respondents*

G.R. No. 184520, FIRST DIVISION, March 13, 2013, REYES, J.

A corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Hence, absent any evidence that they have exceeded their authority, corporate officers are not personally liable for their official acts. Corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith.
Further, the law mandates that before validity can be accorded to a dismissal premised on loss of trust and confidence, two requisites must concur, viz: (1) the employee concerned must be holding a position of trust; and (2) the loss of trust must be based on willful breach of trust founded on clearly established facts.

FACTS

The petitioner was initially hired by RBSJI as Personnel and Marketing Manager in 1991 wherein after a six month probationary period, he was given a permanent status. In June 1996, the petitioner was offered the position of Vice-President for RBSJI's newly created department to which he accepted. The petitioner was temporarily assigned as the manager of RBSJI's N. Domingo branch in view of the resignation of Jacinto Figueroa (Jacinto). On September 27, 1996, Jacinto requested the petitioner to sign a standard employment clearance pertaining to his accountabilities with RBSJI. At first he declined but to pacify Jacinto, the petitioner bargained to issue a clearance but only for Jacinto's paid cash advances and salary loan.

About seven months later, respondent Jesus issued a memorandum to the petitioner requiring him to explain why no administrative action should be imposed on him for his unauthorized issuance of a clearance to Jacinto whose accountabilities were yet to be audited. Jacinto was later found to have unliquidated cash advances and was responsible for a questionable transaction involving P11 million for which RBSJI is being sued. The memorandum stressed that the clearance petitioner issued effectively barred RBSJI from running after Jacinto.

The petitioner submitted his explanation clarifying that the clearance was limited only to Jacinto's paid cash advances and salary loan based on the receipts presented by Lily Aguilar (Lily), the cashier of N. Domingo branch. He emphasized that he had no foreknowledge nor was he forewarned of Jacinto's unliquidated cash advances and questionable transactions and that the clearance did not extend to those matters.

RBSJI's Board of Directors adopted a Resolution terminating the petitioner from. Feeling aggrieved, the petitioner filed the herein complaint for illegal dismissal. The petitioner averred that the supposed loss of trust and confidence on him was a sham as it is in fact the calculated result of the respondents' dubious plot to conveniently oust him from RBSJI. The LA and the NLRC ruled in favor of petitioner. However the CA reversed it. Hence, this petition.

ISSUES

(1) Whether or not the petitioner was dismissed for just cause
(2) Whether or not the individual respondents as corporate officers should be held solidarily liable

RULING

The petition is granted.

The respondents failed to prove that the petitioner was dismissed for a just cause. The law mandates that before validity can be accorded to a dismissal premised on loss of trust and confidence, two requisites must concur, viz: (1) the employee concerned must be holding a position of trust; and (2) the loss of trust must be based on willful breach of trust founded on clearly established facts. The presence of the first requisite is certain since the petitioner was part of the upper echelons of RBSJI's management from whom greater fidelity to trust is expected. At the time when he committed the act which allegedly led to the loss of RBSJI's trust and confidence in him, he was the Acting Manager of N. Domingo branch. Anent the second requisite, the Court finds that the respondents failed to meet their burden of proving that the petitioner's dismissal was for a just cause. As correctly argued by the petitioner, the onus of submitting a copy of the clearance allegedly exonerating Jacinto from all his accountabilities fell on the respondents. It was the single and absolute evidence of the petitioner's act that purportedly kindled the respondents' loss of trust. Without it, the respondents' allegation of loss of trust and confidence has no leg to stand on and must thus be rejected. Moreover, one can reasonably expect that a copy of the clearance, an essential personnel document, is with the respondents. Their failure to present it and the lack of explanation for such failure or the document's unavailability props up the presumption that its contents are unfavorable to the respondents' assertions. Further, RBSJI also failed to substantiate its claim that the petitioner's act estopped them from pursuing Jacinto for his standing obligations. There is no proof that RBSJI attempted or at least considered to demand from Jacinto the payment of his unpaid cash advances. Neither was RBSJI able to show that it filed a civil or criminal suit against Jacinto to make him responsible for the alleged fraud. There is thus no factual basis for RBSJI's allegation that it incurred damages or was financially prejudiced by the clearance issued by the petitioner. More importantly, the complained act of the petitioner did not evince intentional breach of the respondents' trust and confidence. Neither was the petitioner grossly negligent or unjustified in pursuing the course of action he took.

However as to the solidary liability of individual respondents as corporate officers, it must be recalled. Corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith. As discussed above, the acts imputed to the respondents do not support a finding of bad faith. In addition, the lack of a valid cause for the dismissal of an employee does not ipso facto mean that the corporate officers acted with malice or bad faith. There must be an independent proof of malice or bad faith, which is absent in the case at bar

POLYMER RUBBER CORPORATION and JOSEPH ANG, *Petitioners*
-versus- BAYOLO SALAMUDING, *Respondent*
G.R. No. 185160, FIRST DIVISION, July 24, 2013, REYES, J.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

FACTS

Bayolo Salamuding (Salamuding), Mariano Gulanan and Rodolfo Raif (referred to as the complainants) were employees of petitioner Polymer Rubber Corporation (Polymer), who were dismissed after allegedly committing certain irregularities against Polymer. The three employees filed a complaint against Polymer and Ang (petitioners) for unfair labor practice and illegal dismissal with prayer for reinstatement and payment of back wages, attorney's fees, moral and exemplary damages.

The Labor Arbiter (LA) rendered a decision, dismissing the complaint for unfair labor practice but directing the respondent to reinstate complainants and pay them labor standard benefits. As a consequence of such decision, a writ of execution was issued. The petitioners appealed to the NLRC but the latter affirmed the LA's decision with modification. The case was subsequently elevated to the Supreme Court (SC) on a petition for certiorari which affirmed the NLRC.

On September 30, 1993, Polymer ceased its operations. However, upon a motion the LA issued a writ of execution based on the SC resolution. Since the writ of execution was returned unsatisfied, another alias writ of execution was issued. Since the alias writ was also not implemented, the LA issued a 5th Alias Writ of Execution and in the implementation of this alias writ of execution the shares of stocks of Ang at USA Resources Corporation were levied.

The petitioners moved to quash the 5th alias writ of execution, and to lift the notice of garnishment alleging that Ang should not be held jointly and severally liable with Polymer since it was only the latter which was held liable in the decision of the LA, NLRC and the Supreme Court. The LA granted the motion but the NLRC and CA reversed.

ISSUE

Whether or not Ang as an officer of the corporation (Polymers) can be held personally liable to pay the liability of the corporation

RULING

The petition is meritorious.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

In the instant case, the CA imputed bad faith on the part of the petitioners when Polymer ceased its operations the day after the promulgation of the SC resolution in 1993 which was allegedly meant to evade liability. The CA found it necessary to pierce the corporate fiction and pointed at Ang as the responsible person to pay for Salamuding's money claims. Except for this assertion, there is nothing in the records that show that Ang was responsible for the acts complained of. At any rate, the Court finds that it will require a great stretch of imagination to conclude that a corporation would cease its operations if only to evade the payment of the adjudged monetary awards in favor of three (3) of its employees.

Further, the dispositive portion of the LA Decision dated November 21, 1990 which Salamuding attempts to enforce does not mention that Ang is jointly and severally liable with Polymer. Ang is merely one of the incorporators of Polymer and to single him out and require him to personally answer for the liabilities of Polymer is without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the CA to hold him responsible.

To hold Ang personally liable at this stage is quite unfair. The judgment of the LA, as affirmed by the NLRC and later by the SC had already long become final and executory. It has been held that a final and executory judgment can no longer be altered. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. Since the alias writ of execution did not conform, is different from and thus went beyond or varied the tenor of the judgment which gave it life, it is a nullity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.

ELIZABETH M. GAGUI, *Petitioner* –versus- SIMEON DEJEROAND TEODORO PERMEJO, *Respondents*

G.R. No. 196036, FIRST DIVISION, October 23, 2013, SERENO, CJ.

Although joint and solidary liability for money claims and damages against a corporation attaches to its corporate directors and officers under R.A. 8042, it is not automatic. To make them jointly and solidarily liable, there must be a finding that they were remiss in directing the affairs of the corporation, resulting in the conduct of illegal activities. Absent any findings regarding the same, the corporate directors and officers cannot be held liable for the obligation of the corporation against the judgment debtor.

Furthermore, an order impleading a corporate officer for the purpose of execution is tantamount to modifying a decision that had long become final and executory. Holding a corporate officer liable despite not being ordained as such by the decision contravenes with the doctrine on immutability of judgments and is, therefore, null and void for lack of jurisdiction, including the entire proceedings held for that purpose.

FACTS

Respondents Dejero and Permejo filed separate Complaints for illegal dismissal, non-payment of salaries and overtime pay, refund of transportation expenses, damages and attorney's fees against PRO Agency Manila, Inc. and Abdul Rahman Al Mahwes.

After due proceedings, on 7 May 1997, the Labor Arbiter rendered decision orderingPRO Agency Manila, Inc. and Abdul Rahman Al Mahwes to jointly and severally pay complainants. Pursuant to this Decision, a Writ of Execution was issued. When the writ was returned unsatisfied, an Alias Writ of Execution was issued, but was also returned unsatisfied. Subsequently, respondents filed a Motion to Implead Pro Agency Manila's Corporate Officers and Directors as Judgment Debtors.

Later on, the Labor Arbiter issued an Order granting the motion to implead. As a result, Merlita Lapuz and Elizabeth Gagui were held liable to pay the complainants jointly and solidarily. A 2nd Alias Writ of Execution was issued, which resulted in the garnishment of petitioner's bank deposit. However, since the judgment remained unsatisfied, respondents sought the issuance of a 3rd alias writ of execution, which was granted by the Labor Arbiter. This resulted in the levying of two parcels of lot owned by the petitioner.

Subsequently, the petitioner filed a Motion to Quash 3rd Alias Writ of Execution and a Supplemental Motion to Quash Alias Writ of Execution. In these motions, petitioner alleged that apart from not being made aware that she was impleaded as one of the parties to the case, the dispositive portion of the 1997 Decision did not hold her liable in any form whatsoever. More importantly, impleading her for the purpose of execution was tantamount to modifying a decision that had long become final and executory.

On June 26, 2006, the Executive Labor Arbiter denied the petitioner's motions. Aggrieved, petitioner appealed to the NLRC, which later on rendered a decision denying the appeal for lack of merit. Upon appellate review, the CA affirmed the NLRC Decision and stated that there was "no need for the petitioner to be impleaded because by express provision of the law, she is made solidarily liable with Pro Agency Manila, Inc., for any and all money claims filed by private respondents. The CA further said that the same is not a case in which the liability of the corporate officer must be established because an allegation of malice must be proven. The general rule is that corporate officers, directors and stockholders are not liable, except when they are made liable for their corporate act by a specific provision of law, such as R.A. 8042.

The petitioner filed two Motions for Reconsideration, but both were denied. Hence, the petition for review.

ISSUES

1) Whether or not the corporate officers and directors may be held liable jointly and severally liable with the corporation in accordance with Section 10 of R.A. 8042, despite not having been impleaded in the Complaint and named in the Decision.
2) Whether or not impleading and holding a corporate officer or director for the purpose of execution, despite not being ordained as such by the decision, is proper.

RULING

Petition Granted.

1) In Sto. Tomas v. Salac, the Court had the opportunity to pass upon the constitutionality of this provision. The Court have thus maintained:

The key issue that Gumabay, et al. present is whether or not the 2nd paragraph of Section 10, R.A. 8042, which holds the corporate directors, officers, and partners of recruitment and placement agencies jointly and solidarily liable for money claims and damages that may be adjudged against the latter agencies, is unconstitutional.

x x x x

But the Court has already held, pending adjudication of this case, that the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities. In the case of Becmen and White Falcon, while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that intervenors Gumabay, et al., Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case.

Hence, for petitioner to be found jointly and solidarily liable, there must be a separate finding that she was remiss in directing the affairs of the agency, resulting in the illegal dismissal of respondents. Examination of the records would reveal that there was no finding of neglect on the part of the petitioner in directing the affairs of the agency. In fact, respondents made no mention of any instance when petitioner allegedly failed to manage the agency in accordance with law, thereby contributing to their illegal dismissal.

2) The petitioner is correct in saying that impleading her for the purpose of execution is tantamount to modifying a decision that had long become final and executory. The fallo of the 1997 Decision by the NLRC only held "respondents Pro Agency Manila Inc., and Abdul Rahman Al Mahwes to jointly and severally pay complainants x x x." By holding her liable despite not being ordained as such by the decision, both the CA and NLRC violated the doctrine on immutability of judgments.

Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.

While labor laws should be construed liberally in favor of labor, we must be able to balance this with the equally important right of petitioner to due process. Because the 1997 Decision of Labor Arbiter was not appealed, it became final and executory and was therefore removed from his jurisdiction. Modifying the tenor of the judgment via a motion impleading petitioner and filed only in 2002 runs contrary to settled jurisprudence, rendering such action a nullity.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ***Petitioner –versus-*** **HON. MA. MERCEDITAS GUTIERREZ, IN HER CAPACITY AS OMBUDSMAN, RENATO D. TAYAG, ISMAEL REINOSO, JUAN TRIVINO, JUAN PONCE ENRILE, MARIO ORTIZ, GENEROSO TANSECO, FAUSTINO SY CHANGCO, VICENTE ABAD SANTOS, EUSEBIO VILLATUYA, MANUEL MORALES, JOSE ROÑO, TROADIO T. QUIAZON, RUBEN ANCHETA, FERNANDO MARAMAG, JR., GERONIMO VELASCO, EDGARDO L. TORDESILLAS, JAIME C. LAYA, GERARDO P. SICAT, ARTURO R. TANCO, JR., PLACIDO L. MAPA, JR., PANFILO DOMINGO, VICTORINO L. OJEDA, TEODORO DE VERA, ALEJANDRO LUKBAN, JR., ROMEO TAN, LUIS RECATO, BENITO S. DYCHIAO, ELPIDIO M. BORJA**, ***Respondents***

G.R. No. 189800, SECOND DIVISION, 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.

FACTS

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.

---

9. Responsibility for Crimes and Damages

EDWARD C. ONG, *Petitioner* –versus- THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, *Respondents*

G.R. No. 119858, FIRST DIVISION, April 29, 2003, CARPIO, J.

When petitioner signed the trust receipts, he claimed he was representing ARMAGRI. The corporation obviously acts only through its human agents and it is the conduct of such agents which the law must deter. The existence of the corporate entity does not shield from prosecution the agent who knowingly and intentionally commits a crime at the instance of a corporation. 2) As for the civil liability arising from the criminal offense, the question is whether as the signatory for ARMAGRI, petitioner is personally liable pursuant to the provision of Section 13 of the Trust Receipts Law.

It is clear that if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense.

FACTS

Petitioner, representing ARMAGRI International Corporation ("ARMAGRI"), applied for a letter of credit for P2,532,500.00 with SOLIDBANK Corporation ("Bank") to finance the purchase of differential assemblies from Metropole Industrial Sales.

Petitioner, representing ARMAGRI, executed a trust receipt acknowledging receipt from the Bank of the goods valued at P2,532,500.00. Petitioner and Benito Ong, representing ARMAGRI, applied for another letter of credit for P2,050,000.00 to finance the purchase of merchandise from Fertiphil Corporation. The Bank approved the application and paid to Fertiphil Corporation the amount of P2,050,000.00. Petitioner, signing for ARMAGRI, executed another trust receipt in favor of the Bank acknowledging receipt of the merchandise.

Both trust receipts contained the same stipulations. Under the trust receipts, ARMAGRI undertook to account for the goods held in trust for the Bank, or if the goods are sold, to turn over the proceeds to the Bank. ARMAGRI also undertook the obligation to keep the proceeds in the form of money, bills or receivables as the separate property of the Bank or to return the goods upon demand by the Bank, if not sold. In addition, petitioner executed the following additional undertaking stamped on the dorsal portion of both trust receipts:

I/We jointly and severally agreed to any increase or decrease in the interest rate which may occur after July 1, 1981, when the Central Bank floated the interest rates, and to pay additionally the penalty of 1% per month until the amount/s or installment/s due and unpaid under the trust receipt on the reverse side hereof is/are fully paid. Petitioner signed alone the foregoing additional undertaking in the Trust Receipt for P2,253,500.00, while both petitioner and Benito Ong signed the additional undertaking in the Trust Receipt for P2,050,000.00. When the trust receipts became due and demandable, ARMAGRI failed to pay or deliver the goods to the Bank despite several demand letters. Consequently, the unpaid account under the first trust receipt amounted to P1,527,180.66, while the unpaid account under the second trust receipt amounted to P1,449,395.71.

Petitioner and Benito Ong were charged with two counts of estafa under separate Informations. Petitioner and Benito Ong, through counsel, manifested in open court that they were waiving their right to present evidence. The trial court then considered the case submitted for decision.

RTC held Edward Ong guilty of Estafa while Benito was acquitted and ordered Benito Ong to pay, jointly and severally with Edward C. Ong, the private complainant the legal interest and the penalty of 1% per month due and accruing on the unpaid amount of P1,449,395.71, still owing to the private offended under the trust receipt, computed from July 15, 1991, until the said unpaid obligation is fully paid. Petitioner appealed his conviction to the Court of Appeals. CA affirmed the trial court's decision in toto. Petitioner filed a motion for reconsideration but the same was denied.

The Court of Appeals held that although petitioner is neither a director nor an officer of ARMAGRI, he certainly comes within the term "employees or other x x x persons therein responsible for the offense" in Section 13 of the Trust Receipts Law. The Court of Appeals explained as follows: It is not disputed that appellant transacted with the Solid Bank on behalf of ARMAGRI. This is because the Corporation cannot by itself transact business or sign documents it being an artificial person. It has to accomplish these through its agents. A corporation has a personality distinct and separate from those acting on its behalf. In the fulfillment of its purpose, the corporation by necessity has to employ persons to act on its behalf.

Being a mere artificial person, the law (Section 13, P.D. 115) recognizes the impossibility of imposing the penalty of imprisonment on the corporation itself. For this reason, it is the officers or employees or other persons whom the law holds responsible.

Court of Appeals ruled that what made petitioner liable was his failure to account to the entruster Bank what he undertook to perform under the trust receipts. Court of Appeals also ruled that the prosecution need not prove that petitioner is occupying a position in ARMAGRI in the nature of an officer or similar position to hold him the "person(s) therein responsible for the offense." The Court of Appeals held that petitioner's admission that his participation was merely incidental still makes him fall within the purview of the law as one of the corporation's "employees or other officials or persons therein responsible for the offense." Incidental or not, petitioner was then acting on behalf of ARMAGRI, carrying out the corporation's decision when he signed the trust receipts. The Court of Appeals further ruled that the prosecution need not prove that petitioner personally received and misappropriated the goods subject of the trust receipts. Evidence of misappropriation is not required under the Trust Receipts Law. To establish the crime of estafa, it is sufficient to show failure by the entrustee to turn over the goods or the proceeds of the sale of the goods covered by a trust receipt.

ISSUE:

Whether or not Court of Appeals erred in ruling that, by the mere circumstance that petitioner acted as agent and signed for the entrustee corporation, petitioner was necessarily the one responsible for the offense. (NO)

RULING:

NO. We hold that petitioner is a person responsible for violation of the Trust Receipts Law.

1) Section 13 of the Trust Receipts Law which provides: If the violation is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the offense. The Trust Receipts Law is violated whenever the entrustee fails to: (1) turn over the proceeds of the sale of the goods, or (2) return the goods covered by the trust receipts if the goods are not sold.

The mere failure to account or return gives rise to the crime which is malum prohibitum. There is no requirement to prove intent to defraud. The Trust Receipts Law recognizes the impossibility of imposing the penalty of imprisonment on a corporation. Hence, if the entrustee is a corporation, the law makes the officers or employees or other persons responsible for the offense liable to suffer the penalty of imprisonment. The reason is obvious: corporations, partnerships, associations and other juridical entities cannot be put to jail. Hence, the criminal liability falls on the human agent responsible for the violation of the Trust Receipts Law.

It is a well-settled doctrine long before the enactment of the Trust Receipts Law, that the failure to account, upon demand, for funds or property held in trust is evidence of conversion or misappropriation. Under the law, mere failure by the entrustee to account for the goods received in trust constitutes estafa. The Trust Receipts Law punishes dishonesty and abuse of confidence in the handling of money or goods to the prejudice of public order.The mere failure to deliver the proceeds of the sale or the goods if not sold constitutes a criminal offense that causes prejudice not only to the creditor, but also to the public interest. Evidently, the Bank suffered prejudice for neither money nor the goods were turned over to the Bank.

In the instant case, petitioner signed the two trust receipts on behalf of ARMAGRI as the latter could only act through its agents. When petitioner signed the trust receipts, he acknowledged receipt of the goods covered by the trust receipts. In addition, petitioner was fully aware of the terms and conditions stated in the trust receipts, including the obligation to turn over the proceeds of the sale or return the goods to the Bank.

When petitioner signed the trust receipts, he claimed he was representing ARMAGRI. The corporation obviously acts only through its human agents and it is the conduct of such agents which the law must deter. The existence of the corporate entity does not shield from prosecution the agent who knowingly and intentionally commits a crime at the instance of a corporation. 2) As for the civil liability arising from the criminal offense, the question is whether as the signatory for ARMAGRI, petitioner is personally liable pursuant to the provision of Section 13 of the Trust Receipts Law.

It is clear that if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense. The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the Revised Penal Code. The reason for this is obvious: corporation, partnership, association or other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liabilities arising from the criminal offense. This is the import of the clause 'without prejudice to the civil liabilities arising from the criminal offense'.

In Prudential Bank, the Court ruled that the person signing the trust receipt for the corporation is not solidarily liable with the entrustee-corporation for the civil liability arising from the criminal offense. He may, however, be personally liable if he bound himself to pay the debt of the corporation under a separate contract of surety or guaranty.

In the instant case, petitioner did not sign in his personal capacity the solidary guarantee clause found on the dorsal portion of the trust receipts. Petitioner placed his signature after the typewritten words "ARMCO INDUSTRIAL CORPORATION" found at the end of the solidary guarantee clause. Evidently, petitioner did not undertake to guaranty personally the payment of the principal and interest of ARMAGRI's debt under the two trust receipts. In contrast, petitioner signed the stamped additional undertaking without any indication he was signing for ARMAGRI. Petitioner merely placed his signature after the additional undertaking. Clearly, what petitioner signed in his personal capacity was the stamped additional undertaking to pay a monthly penalty of 1% of the total obligation in case of ARMAGRI's default. In the additional undertaking, petitioner bound himself to pay "jointly and severally" a monthly penalty of 1% in case of ARMAGRI's default. Thus, petitioner is liable to the Bank for the stipulated monthly penalty of 1% on the outstanding amount of each trust receipt. The penalty shall be computed from 15 July 1991, when petitioner received the demand letter, until the debt is fully paid.

ALFREDO CHING, *Petitioner*
-versus- THE SECRETARY OF JUSTICE, ASST. CITY PROSECUTOR ECILYN BURGOS-VILLAVERT, JUDGE EDGARDO SUDIAM of the Regional Trial Court, Manila, Branch 52; RIZAL COMMERCIAL BANKING CORP. and THE PEOPLE OF THE PHILIPPINES, *Respondents*
GR. No. 164317, FIRST DIVISION, February 6, 2006, CALLEJO, Sr., J.

Since a corporation CANNOT be proceeded against criminally because it CANNOT commit crime in which personal violence or malicious intent is required, criminal action is limited to the corporate agents guilty of an act amounting to a crime and never against the corporation itself.

Execution by Ching of receipts is enough to indict him as the official responsible for violation of PD 115.

FACTS

Sept-Oct 1980: PBMI, through Ching, Senior VP of Philippine Blooming Mills, Inc. (PBMI), applied with the Rizal Commercial Banking Corporation (RCBC) for the issuance of commercial letters of credit to finance its importation of assorted goods.

RCBC approved the application, and irrevocable letters of credit were issued in favor of Ching. The goods were purchased and delivered in trust to PBMI. Ching signed 13 trust receipts as surety, acknowledging delivery of the goods. Under the receipts, Ching agreed to hold the goods in trust for RCBC, with authority to sell but not by way of conditional sale, pledge or otherwise. In case such goods were sold, to turn over the proceeds thereof as soon as received, to apply against the relative acceptances and payment of other indebtedness to respondent bank. In case the goods remained unsold within the specified period, the goods were to be returned to RCBC without any need of demand.

Goods, manufactured products or proceeds thereof, whether in the form of money or bills, receivables, or accounts separate and capable of identification - RCBC's property

When the trust receipts matured, Ching failed to return the goods to RCBC, or to return their value amounting toP6,940,280.66 despite demands. RCBC filed a criminal complaint for estafa against petitioner in the Office of the City Prosecutor of Manila.

December 8, 1995: no probable cause to charge petitioner with violating P.D. No. 115, as petitioner's liability was only civil, not criminal, having signed the trust receipts as surety. RCBC appealed the resolution to the Department of Justice (DOJ) via petition for review. On July 13, 1999: reversed the assailed resolution of the City Prosecutor. Execution of said receipts is enough to indict the Ching as the official responsible for violation of P.D. No. 115. April 22, 2004: CA dismissed the petition for lack of merit and on procedural grounds. Ching filed a petition for certiorari, prohibition and mandamus with the CA.

ISSUE

W/N Ching should be held criminally liable. (YES)

HELD

YES. DENIED for lack of merit. There is no dispute that it was the Ching executed the 13 trust receipts. The law points to him as the official responsible for the offense.

Since a corporation CANNOT be proceeded against criminally because it CANNOT commit crime in which personal violence or malicious intent is required, criminal action is limited to the corporate agents guilty of an act amounting to a crime and never against the corporation itself.

Execution by Ching of receipts is enough to indict him as the official responsible for violation of PD 115. RCBC is estopped to still contend that PD 115 covers only goods which are ultimately destined for sale and not goods, like those imported by PBM, for use in manufacture. Moreover, PD 115 explicitly allows the prosecution of corporate officers 'without prejudice to the civil liabilities arising from the criminal offense' thus, the civil liability imposed on respondent in RCBC vs. Court of Appeals case is clearly separate and distinct from his criminal liability under PD 115.

Ching's being a Senior Vice-President of the Philippine Blooming Mills does not exculpate him from any liability. The crime defined in P.D. No. 115 is malum prohibitum but is classified as estafa under paragraph 1(b), Article 315 of the Revised Penal Code, or estafa with abuse of confidence. It may be committed by a corporation or other juridical entity or by natural persons. However, the penalty for the crime is imprisonment for the periods provided in said Article 315.

The law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense. Rationale: officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.

When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime. The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Benefit is not an operative fact.

FEDERATED LPG DEALERS ASSOCIATION, *Petitioner*, -versus- MA. CRISTINA L. DEL ROSARIO, CELSO E. ESCOBIDO U, SHIELA M. ESCOBIDO, and RESTY P. CAPILI, *Respondents*.
G.R. No. 202639, November 9, 2016, SECOND DIVISION, DEL CASTILLO, J.

In the case of Ty v. NBI Supervising Agent De Jemil, the Court ruled that a member of the Board of Directors of a corporation, cannot, by mere reason of such membership, be held liable for the corporation's probable violation of BP 33.

FACTS

Respondent Antonio is the General Manager of ACCS Ideal Gas Corporation (ACCS) while the other respondents are members of the Board of Directors.

Atty. Adarlo wrote the CIDG-AFCCD informing the latter that ACCS, which allegedly has been refilling branded LPG cylinders in its refilling plant, has no authority to refill per certifications from gas companies owning the branded LPG cylinders.

Having reasonable grounds to believe that ACCS was in violation of BP 33, P/Supt. Esguerra filed with the Regional Trial Court (RTC) of Manila applications for search warrant against the officers of ACCS. This resulted in the seizure of an electric motor, a hose with filling head, scales, v-belt, vapor compressor, booklets of various receipts, and 73 LPG cylinders of various brands and sizes, four of which were filled, *i.e.,* two Superkalan 3.7 kg. LPG cylinders, one Shellane 11 kg. LPG cylinder, and one Totalgaz 11 kg. cylinder. Inspection and evaluation of the said filled LPG cylinders showed that they were underfilled by 0.5 kg. to 0.9 kg.

Complaint-Affidavits were filed before the Department of Justice (DOJ) against Antonio and respondents for illegal trading of petroleum products and for underfilling of LPG cylinders under Section 2(a) and 2(c), respectively, of BP 33, as amended. Secretary of Justice approved the finding of probable cause albeit **only against Antonio**. P/Supt. Esguerra and petitioner elevated the matter to the CA through a *certiorari* petition. They contended that the Secretary of Justice acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dropping of other respondents from the complaints. CA, however, sustatined the Secretary of Justice.

ISSUE

Can respondents, as members of the Board of Directors of ACCS, be criminally prosecuted for the latter's alleged violation/s of BP 33 as amended?

RULING

Respondents cannot be prosecuted for ACCS' alleged violations of BP 33. They were thus correctly dropped as respondents in the complaints.

The CA ratiocinated that by the election or designation of Antonio as General Manager of ACCS, the daily business operations of the corporation were vested in his hands and had ceased to be the responsibility of respondents as members of the Board of Directors. Respondents, therefore, were not officers charged with the management of the business affairs who could be held liable pursuant to paragraph 3, Section 4 of BP 33, as amended, which states that:

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable. xxx

In the case of *Ty v. NBI Supervising Agent De Jemil,* the Court ruled that a member of the Board of Directors of a corporation, cannot, by mere reason of such membership, be held liable for the corporation's probable violation of BP 33. If one is not the President, General Manager or Managing Partner, it is imperative that it first be shown that he/she falls under the catch-all ''such other officer charged with the management of the business affairs," before he/she can be prosecuted. However, it must be stressed, that the matter of being an officer charged with the management of the business affairs is a factual issue which must be alleged and supposed by evidence. Here, there is no dispute that neither of the respondents was the President, General Manager, or Managing Partner of ACCS. Hence, it becomes incumbent upon petitioner to show that respondents were officers charged with the management of the business affairs. However, the Complaint-Affidavit attached to the records merely states that respondents were members of the Board of Directors based on the AOI of ACCS. There is no allegation whatsoever that they were in-charge of the management of the corporation's business affairs.

At any rate, the Court has gone through the By-Laws of ACCS and found nothing therein which would suggest that respondents were directly involved in the day-to-day operations of the corporation. The By-laws contains a general statement that the corporate powers of ACCS shall be exercised, all business conducted, and all property of the corporation controlled and held by the Board of Directors. Notably, however, the bylaws likewise significantly vests the Board with specific powers that were generally concerned with policy making from which it can reasonably be deduced that the Board only concerns itself in the business affairs by setting administrative and operational policies.

Clearly, therefore, it is only Antonio, who undisputedly was the General Manager - a position among those expressly mentioned as criminally liable under paragraph 4, Section 3 of BP 33, as amended - can be prosecuted for ACCS' perceived violations of the said law. Respondents who were mere members of the Board of Directors and not shown to be charged with the management of the business affairs were thus correctly dropped *as* respondents in the complaints.

A transfer of corporate property to the corporation's President as compensation for his "outstanding service" cannot be considered valid if it does not comply with Section 32 of the Corporation Code. Here, we note that Javonillo, as a director, signed the Board Resolutions confirming the transfer of the corporate properties to himself, and to Armentano (the Corporate Secretary). The transfer is not valid even if there was a Resolution by the general membership of ALRAI confirming the transfer. First, Section 32 requires that the contract should be ratified by a vote representing at least two-thirds of the members in a meeting called for the purpose. Records of this case do not show whether the Resolution was indeed voted by the required percentage of membership. In fact, respondents take exception to the credibility of the signatures of the persons who voted in the Resolution. Second, there is also no showing that there was full disclosure of the adverse interest of the directors involved when the Resolution was approved. Third, Section 32 requires that the contract be fair and reasonable under the circumstances. As previously discussed, we find that the transfer of the corporate properties to the individual petitioners is not fair and reasonable for (1) want of (proof of) legitimate corporate purpose because there was no basis by which it could have been determined whether the transfer of properties to Javonillo and Armentano was reasonable under the circumstances at that time and for (2) the breach of the fiduciary nature of the positions held by Javonillo and Armentano. Lacking any of these (full disclosure and a showing that the contract is fair and reasonable), ratification by the two-thirds vote would be of no avail.

10. Inside Information

11. Contracts

a. By Self-Dealing Directors with the Corporation

b. Between Corporations with Interlocking Directors

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner –versus-* HONORABLE COURT OF APPEALS AND REMINGTON INDUSTRIAL SALES CORPORATION, *Respondents*
G.R. No. 126200, FIRST DIVISION, August 16, 2001, KAPUNAN, J.

We do not find any fraud on the part of Marinduque Mining and its transferees to warrant the piercing of the corporate veil. It bears stressing that PNB and DBP are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than 20% of the total outstanding obligation. Thus, PNB and DBP did not only have a right, but the duty under said law, to foreclose upon the subject properties. The banks had no choice but to obey the statutory command.

FACTS

Marinduque Mining-Industrial Corporation (Marinduque Mining), a corporation engaged in the manufacture of pure and refined nickel, nickel and cobalt in mixed sulfides; copper ore/concentrates, cement and pyrite conc., obtained from the Philippine National Bank (PNB) various loan accommodations. To secure the loans, Marinduque Mining executed on October 9, 1978 a Deed of Real Estate Mortgage and Chattel Mortgage in favor of PNB.

Marinduque Mining executed in favor of PNB and the Development Bank of the Philippines (DBP) a second Mortgage Trust Agreement. In said agreement, Marinduque Mining mortgaged to PNB and DBP all its real properties located at Surigao del Norte, Sipalay, Negros Occidental, and Antipolo, Rizal, including the improvements thereon. The mortgage also covered all of Marinduque Mining's chattels, as well as assets of whatever kind, nature and description which Marinduque Mining may subsequently acquire in substitution or replenishment or in addition to the properties covered by the previous Deed of Real and Chattel Mortgage.

Marinduque Mining executed in favor of PNB and DBP an Amendment to Mortgage Trust Agreement by virtue of which Marinduque Mining mortgaged in favor of PNB and DBP all other real and personal properties and other real rights subsequently acquired by Marinduque Mining. For failure of Marinduque Mining to settle its loan obligations, PNB and DBP instituted sometime on July and August 1984 extrajudicial foreclosure proceedings over the mortgaged properties. PNB and DBP emerged and were declared the highest bidders over the foreclosed real properties, buildings, mining claims, leasehold rights together with the improvements thereon as well as machineries [sic] and equipments of MMIC. Likewise, thru [sic] a Deed of Transfer dated June 6, 1984, PNB and DBP assigned and transferred in favor of Maricalum Mining Corp. all its rights, interest and participation over the foreclosed properties of MMIC at Sipalay, Negros Occidental.

On February 27, 1987, PNB and DBP, pursuant to Proclamation No. 50 as amended, again assigned,transferred and conveyed to the National Government thru [sic] the Asset Privatization Trust (APT)all its existing rights and interest over the assets of MMIC, earlier assigned to Nonoc Mining andIndustrial Corporation, Maricalum Mining Corporation and Island Cement Corporation. In the meantime, between July 16, 1982 to October 4, 1983, Marinduque Mining purchased and caused to be delivered construction materials and other merchandise from Remington Industrial Sales Corporation (Remington) worth P921,755.95. The purchases remained unpaid as of August 1, 1984 when Remington filed a complaint for a sum of money and damages against Marinduque Mining for the value of the unpaid construction materials and other merchandise purchased by Marinduque Mining, as well as interest, attorney's fees and the costs of suit.

Remington's original complaint was amended to include PNB and DBP as co-defendants in view of the foreclosure by the latter of the real and chattel mortgages on the real and personal properties, chattels, mining claims, machinery, equipment and other assets of Marinduque Mining. Remington filed a second amended complaint to include as additional defendant, the Nonoc Mining and Industrial Corporation (Nonoc Mining). Nonoc Mining is the assignee of all real and personal properties, chattels, machinery, equipment and all other assets of Marinduque Mining at its Nonoc Nickel Factory in Surigao del Norte.

Remington filed a third amended complaint including the Maricalum Mining Corporation (Maricalum Mining) and Island Cement Corporation (Island Cement) as co-defendants. Remington asserted that Marinduque Mining, PNB, DBP, Nonoc Mining, Maricalum Mining and Island Cement must be treated in law as one and the same entity by disregarding the veil of corporate fiction.

It alleged that Co-defendants NMIC, Maricalum and Island Cement which are newly created entities are practically owned wholly by defendants PNB and DBP, and managed by their officers, aside from the fact that the aforesaid co-defendants NMIC, Maricalum and Island Cement were organized in such a hurry and in such suspicious circumstances by co-defendants PNB and DBP after the supposed extrajudicial foreclosure of MMIC's assets as to make their supposed projects assets, machineries and equipment which were originally owned by co-defendant MMIC beyond the reach of creditors of the latter.

Remington filed a motion for leave to file a fourth amended complaint impleading the Asset Privatization Trust (APT) as co-defendant.

The Regional Trial Court (RTC) rendered a decision in favor of Remington. Upon appeal by PNB, DBP, Nonoc Mining, Maricalum Mining, Island Cement and APT, the Court of Appeals, in its Decision dated

October 6, 1995, affirmed the decision of the RTC. Petitioner filed a Motion for Reconsideration, which was denied in the Resolution dated August 29, 1996.

Hence, this petition, DBP maintaining that Remington has no cause of action against it or PNB, nor against their transferees, Nonoc Mining, Island Cement, Maricalum Mining, and the APT. On the other hand, private respondent Remington submits that the transfer of the properties was made in fraud of creditors. The presence of fraud, according to Remington, warrants the piercing of the corporate veil such that Marinduque Mining and its transferees could be considered as one and the same corporation. The transferees, therefore, are also liable for the value of Marinduque Mining's purchases.

ISSUE

Whether or not the doctrine of piercing the veil of corporate fiction shall apply in this case. (NO)

RULING

NO. In this case, however, we do not find any fraud on the part of Marinduque Mining and its transferees to warrant the piercing of the corporate veil. It bears stressing that PNB and DBP are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than 20% of the total outstanding obligation. Thus, PNB and DBP did not only have a right, but the duty under said law, to foreclose upon the subject properties. The banks had no choice but to obey the statutory command.

The Court of Appeals made reference to two principles in corporation law. The first pertains to transactions between corporations with interlocking directors resulting in the prejudice to one of the corporations. This rule does not apply in this case, however, since the corporation allegedly prejudiced (Remington) is a third party, not one of the corporations with interlocking directors (Marinduque Mining and DBP).

The second principle invoked by respondent court involves "directors x x x who are creditors" which is also inapplicable herein. Here, the creditor of Marinduque Mining is DBP, not the directors of Marinduque Mining.

Neither do we discern any bad faith on the part of DBP by its creation of Nonoc Mining, Maricalum and Island Cement. As Remington itself concedes, DBP is not authorized by its charter to engage in the mining business. The creation of the three corporations was necessary to manage and operate the assets acquired in the foreclosure sale lest they deteriorate from non-use and lose their value. In the absence of any entity willing to purchase these assets from the bank, what else would it do with these properties in the meantime? Sound business practice required that they be utilized for the purposes for which they were intended.

Remington also asserted in its third amended complaint that the use of Nonoc Mining, Maricalum and Island Cement of the premises of Marinduque Mining and the hiring of the latter's officers and personnel also constitute badges of bad faith.

Assuming that the premises of Marinduque Mining were not among those acquired by DBP in the foreclosure sale, convenience and practicality dictated that the corporations so created occupy the premises where these assets were found instead of relocating them. No doubt, many of these assets are heavy equipment and it may have been impossible to move them. The same reasons of convenience and practicality, not to mention efficiency, justified the hiring by Nonoc Mining, Maricalum and Island Cement of Marinduque Mining's personnel to manage and operate the properties and to maintain the continuity of the mining operations.

The Court of Appeals also held that there exists in Remington's favor a "lien" on the unpaid purchases of Marinduque Mining, and as transferee of these purchases, DBP should be held liable for the value thereof.

In the absence of liquidation proceedings, however, the claim of Remington cannot be enforced against DBP.

Article 2241 of the Civil Code provides:

ARTICLE 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

3) Claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity, neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;

(4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;

In the Barretto case, it was upheld that: It is thus apparent that the full application of Articles 2249 and 2242 demands that there must be first some proceeding where the claims of all the preferred creditors may be bindingly adjudicated, such as insolvency, the settlement of decedent's estate under Rule 87 of the Rules of Court, or other liquidation proceedings of similar import. The ruling therein should apply equally in this case where specific movable property is involved. As the extrajudicial foreclosure instituted by PNB and DBP is not the liquidation proceeding contemplated by the Civil Code, Remington cannot claim its pro rata share from DBP.

12. Executive Committee

FILIPINAS PORT SERVICES, INC., represented by stockholders, ELIODORO C. CRUZ and MINDANAO TERMINAL AND BROKERAGE SERVICES, INC., *Petitioners* -versus- VICTORIANO S. GO, ARSENIO LOPEZ CHUA, EDGAR C. TRINIDAD, HERMENEGILDO M. TRINIDAD, JESUS SYBICO, MARY JEAN D. CO, HENRY CHUA, JOSELITO S. JAYME, ERNESTO S. JAYME, and ELIEZER B. DE JESUS, *Respondents*

G.R. No. 161886, FIRST DIVISION, March 16, 2007, GARCIA, J.

Under Section 3515 of the Corporation Code, the creation of an executive committee must be provided for in the bylaws of the corporation. Notwithstanding the silence of Filport's bylaws on the matter, we *cannot rule that the creation of the executive committee by the board of directors is illegal or unlawful. One reason is the absence of a showing as to the true nature and functions of said executive committee considering that the "executive committee," referred to in Section 35 of the Corporation Code which is as powerful as the board of directors and in effect acting for the board itself, should be distinguished from other committees which are within the competency of the board to create at anytime and whose actions require ratification and confirmation by the board.*

FACTS

Eliodoro C. Cruz (Cruz) was president of Filipinas Port Services, Inc. (Filport) since 1968. He lost his bid for re-election in 1991. A year thereafter, Cruz wrote a letter to the corporation's Board of Directors questioning the creation of six (6) positions and the election of certain members of the board thereto. It would seem that Cruz was unhappy with the Board's action or actions on the matter, for a year later he filed a petition with the (SEC), joined by (MinTerBro) as co-petitioner, what he calls a "derivative suit‟ supposedly in representation of Filport and its stockholders. It is Cruz's contention that the creation of an executive committee is not provided for in the bylaws and the increase in the emoluments of several members of the board is greatly disproportionate to the volume and character of work of said directors. Further, he questions the re-creation of the positions of Assistant Vice President for corporate planning, operations, finance and administration and additional positions where those holding said offices are not doing any work but earning compensation. These acts of mismanagement according to Cruz are detrimental to the corporation and its stockholders and so the board must account for the amounts incurred in creating these positions and made to pay damages.

The derivative suit hibernated with the SEC for a long period of time. With the enactment of R.A. No. 8799, the case was first turned over to the RTC of Manila, sitting as a corporate court. Upon motion of the parties, it was transferred to RTC Davao. Though the RTC found that Filport's Board of Directors had the power to create positions not provided for in the by-laws and the increases in salaries are reasonable, nevertheless it ordered the directors holding the positions of Assistant Vice President for Corporate Planning, Special Assistant to the President and Special Assistant to the Board Chairman to refund to the corporation the salaries they have received as such officers "considering that Filipinas Port Services is not a big corporation requiring multiple executive positions" and that said positions "were just created for accommodation." Upon appeal to the Court of Appeals (CA), the RTC decision was reversed and set aside and thus the so called derivative suit was dismissed.

ISSUE

Whether the creation of an executive committee and other offices in the corporation with corresponding remunerations are within the powers of the Board of Directors?

RULING

The governing body of a corporation is its board of directors. Section 23 of the Corporation Code explicitly provides that unless otherwise provided therein, the corporate powers of all corporations formed under the Code shall be exercised, all business conducted and all property of the corporation shall be controlled and held by a board of directors. Thus, with the exception only of some powers expressly granted by law to stockholders, the board of directors has the sole authority to determine policies, enter into contracts, and conduct the ordinary business of the corporation within the scope of its charter.

The raison d'etre behind the conferment of corporate powers on the board of directors is not lost on the Court. Indeed, the concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.

In the present case, the board's creation of the positions of Assistant Vice Presidents for Corporate Planning, Operations, Finance and Administration, and those of the Special Assistants to the President and the Board Chairman, was in accordance with the regular business operations of Filport as it is authorized to do so by the corporation's by-laws, pursuant to the Corporation Code. Likewise, the fixing of the corresponding remuneration for the positions in question is provided for in the same by-laws of the corporation, viz: xxx The Board of Directors shall fix the compensation of the officers and agents of the corporation.

Unfortunately, the bylaws of the corporation are silent as to the creation by its board of directors of an executive committee. Under Section 3515 of the Corporation Code, the creation of an executive committee must be provided for in the bylaws of the corporation. Notwithstanding the silence of Filport's bylaws on the matter, we cannot rule that the creation of the executive committee by the board of directors is illegal or unlawful. One reason is the absence of a showing as to the true nature and functions of said executive committee considering that the "executive committee," referred to in Section 35 of the Corporation Code which is as powerful as the board of directors and in effect acting for the board itself, should be distinguished from other committees which are within the competency of the board to create at anytime and whose actions require ratification and confirmation by the board. Another reason is that, ratiocinated by both the two (2) courts below, the Board of Directors has the power to create positions not provided for in Filport's bylaws since the board is the corporation's governing body, clearly upholding the power of its board to exercise its prerogatives in managing the business affairs of the corporation.

13. Meetings

PEOPLE OF THE PHILIPPINES, *Petitioner* -versus- HERMENEGILDO DUMLAO y CASTILIANO and EMILIO LA'O y GONZALES, *Respondents*
G.R. No. 168918, THIRD DIVISION, March 2, 2009, CHICO-NAZARIO, J.

The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the 1980 Corporation Code requiring that the minutes of the meeting should be signed by all the members of the board.

FACTS

The accused Hermenegildo C. Dumlao, Aber Canlas, Jacobo C. Clave, Roman A. Cruz, Jr., and Fabian C. Ver, being then the members of the Board of Trustees of the Government Service Insurance System

(GSIS) entered into a contract of lease-purchase with Emilio G. La'o (La'o), selling a GSIS-acquired property consisting of three parcels of land with a 5-storey building known as the Government Counsel Centre for the sum of ₱2,000,000.00 with a down payment of ₱200,000.00 with the balance payable in fifteen years at 12% interest per annum compounded yearly, with a yearly amortization of ₱264,278.37 including principal and interest. It also granted La'o the right to sublease the ground floor for his own account during the period of lease, from which he collected yearly rentals in excess of the yearly amortization. An Information was filed against the accused, alleging that the contract is manifestly and grossly disadvantageous to the government, which is in violation of Section 3(g) of RA 3019.

After pre-trial, Dumlao filed a motion to quash, claiming that the facts charged do not constitute an offense. He argued that the allegedly approved Board Resolution was not in fact approved by the GSIS Board of Trustees. Since the signatures of Ver, Cruz, Canlas and Clave did not appear in the minutes of the meeting held on April 23, 1982, he said it was safe to conclude that these people did not participate in the alleged approval of the Lease-Purchase Agreement. He maintained that there was no quorum of the board to approve the supposed resolution authorizing the sale of the GSIS property. There can be no resolution approving the Lease-Purchase Agreement. The unapproved resolution, he added, proved his innocence.

Sandiganbayan granted the motion. The minutes of the meeting held on April 23, 1982 of the Board of Trustees of GSIS shows that the Board failed to approve the Lease-Purchase Agreement in question. As stipulated upon by both parties out of the seven (7) members of GSIS Board of Trustees only three (3) members signed the minutes, the others did not. In order to validly pass a resolution at least a majority of four (4) members of the Board of Trustees must sign and approve the same. The Resolution was not validly passed by the Board of Trustees of GSIS since it was only signed by three (3) members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against Dumlao.

In a petition for certiorari under Rule 45, People of the Philippines, represented by the Office of the Ombudsman, thru the Office of the Special Prosecutor, argues it was denied its right to due process when the Sandiganbayan dismissed the case against Dumlao after pre-trial and before it could present its witnesses and formally offer its exhibits. The Sandiganbayan deprived it of the opportunity to prove its case – that the Resolution dated April 23, 1982 was passed by the GSIS Board of Trustees and that the Lease-Purchase Agreement was grossly and manifestly disadvantageous to the government.

ISSUE

Whether signatures not appearing in the minutes of the meeting mean that persons pertaining to such signatures did not participate in the alleged approval of the Lease-Purchase Agreement.

RULING

NO. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the 1980

Corporation Code requiring that the minutes of the meeting should be signed by all the members of the board.

A resolution is distinct and different from the minutes of the meeting. A board resolution is a formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion. On the other hand, minutes are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.

The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility. In this case, Antonio Eduardo B. Nachura, Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of April 23, 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to La'o. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are prima facie evidence of what actually took place during the meeting.

The Sandiganbayan considered the ground invoked by Dumlao (that the facts charged do not constitute an offense) and, in effect, dismissed the case because of insufficiency of evidence, which is not one of the grounds of a Motion to Quash. In so doing, it violated the prosecution's right to due process. It should have given the prosecution the opportunity to fully present its case and to establish reasonable doubt on the alleged approval by the GSIS Board of Trustees of the leasepurchase of the GSIS properties.

LOPEZ REALTY, INC. and ASUNCION LOPEZ-GONZALES, *Petitioners*
-versus- SPOUSES REYNALDO TANJANGCO and MARIA LUISA ARGUELLES-TANJANGCO, *Respondents*
G.R. No. 154291, THIRD DIVISION, November 12, 2014, REYES, J.

The petitioner assails the validity of sale of shares of stocks to the respondents claiming that there was no compliance with the requirement of prior notice to the Board of Directors when the Board Resolution authorizing the sale to the respondent spouses were promulgated. The Supreme Court ruled that the general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law. However, the actions taken in such a meeting by the directors or trustees may be ratified expressly or impliedly.

FACTS

The petitioner Lopez Realty, Inc. issued a Board Resolution authorizing Arturo, a member of the Board of Directors of the corporation, to negotiate with the Tanjanco spouses for the sale of the ½ shares of LRI (Lopez Realty Corporation). Because of this, Arturo and the spouses executed a Deed of Sale for the shares for a consideration of Php3.6M. However, Asuncion, another Board of Director of the said corporation, submitted a letter requesting the Board to defer any transaction with Tanjanco as she was not apprised and given notice of the said transaction. Despite this, the execution of the Deed of Absolute Sale between Arturo and spouses Tanjanco proceeded. Asuncion then filed a complaint for the Annulment of the Deed of Sale with a prayer for a writ of preliminary injuction in the Regional Trial Court. Asuncion alleges that she was neither notified nor apprised of the on-going sale of the shares of LRI.

The Regional Trial Court granted the prayer of Asuncion and declared the subject deed null and void for failure to comply with the strict procedural requirements. The RTC ruled that for a Board Resolution authorizing the sale of share to be valid, it is necessary that notice must be sent to the Board of Directors at least one day prior to the said board meeting. However, on appeal, the Court of Appeals reversed and set aside the decision of the RTC. Hence, the current petition.

ISSUE

Whether or not the sale of the shares of stock of LRI to respondent spouses Tanjanco are valid pursuant to the Board Resolution promulgated by LRI despite lack of notice to Asuncion, one of its Board of Directors.

RULING

The sale of the shares of stock of LRI to the respondent spouses Tanjanco is deemed valid because the Board Resolution from which it is derived is also valid despite the lack of the required prior notice to its Board of Directors. The Supreme Court reinstated the decision of the RTC and affirmed the decision of the Court of Appeals.

Section 53 of the Corporation Code provides for the following:

SEC. 53. Regular and special meetings of directors or trustees.—Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise.

Special meetings of the board of directors or trustees may be held at any time upon call of the president or as provided in the by-laws.

Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least one (1) day prior to the scheduled meeting, unless otherwise provided by the by-laws. A director or trustee may waive this requirement, either expressly or impliedly.

The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's bylaws, otherwise, any action taken therein may be questioned by any objecting director or shareholder.

However, the actions taken in such a meeting by the directors or trustees may be ratified expressly or impliedly. "Ratification means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. Implied ratification may take various forms — like silence or acquiescence, acts showing approval or adoption of the act, or acceptance and retention of benefits flowing therefrom."

In the present case, the ratification was expressed through the July 30, 1982 Board Resolution. Asuncion claims that the July 30, 1982 Board Resolution did not ratify the Board Resolution dated August 17, 1981 for lack of the required number of votes because Juanito is not entitled to vote while Leo voted "no" to the ratification of the sale even if the minutes stated otherwise.

a. Quorum

ROSITA PEÑA, *Petitioner* –versus- THE COURT OF APPEALS, SPOUSES RISING T. YAP AND CATALINA YAP, PAMPANGA BUS CO., INC., JESUS DOMINGO, JOAQUIN BRIONES, SALVADOR BERNARDEZ, MARCELINO ENRIQUEZ AND EDGARDO A. ZABAT, *Respondents*
G.R. No. 91478, FIRST DIVISION, February 7, 1991, GANCAYCO, J.

Apparently, only three (3) out of five (5) members of the board of directors of respondent PAMBUSCO convened on November 19, 1974 by virtue of a prior notice of a special meeting. There was no quorum to validly transact business since, under Section 4 of the amended by-laws, at least four (4) members must be present to constitute a quorum in a special meeting of the board of directors of respondent PAMBUSCO

FACTS

Pampanga Bus Co. or PAMBUSCO is the original owners of the subject lots. It mortgaged the same to the Development Bank of the Philippines (DBP) This mortgage was foreclosed. In the foreclosure sale, the said properties were awarded to Rosita Peña as highest bidder. A certificate of sale was issued in her favor by the sheriff. Thereafter, the certificate of sale was registered.

Later on, the board of directors of PAMBUSCO, through three (3) out of its five (5) directors, resolved to assign its right of redemption over the aforesaid lots and authorized one of its members, Atty. Joaquin Briones "to execute and sign a Deed of Assignment for and in behalf of PAMBUSCO in favor of any interested party . . ."

Consequently, Briones executed a Deed of Assignment of PAMBUSCO's redemption right over the subject lots in favor of Marcelino Enriquez. The latter then redeemed the said properties and a certificate of redemption was issued in his favour.

A day after the aforesaid certificate was issued, Enriquez executed a deed of absolute sale of the subject properties in favor of plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue. However, Peña wrote the Sheriff notifying him that the redemption was not valid as it was made under a void deed of assignment. She then requested the recall of the said redemption and a restraint on any registration or transaction regarding the lots in question.

Plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue filed a complaint for recovery of possession against defendants Rosita Peña and Washington Distillery Thereafter, the defendants with prior leave of court filed a third-party complaint third-party defendants PAMBUSCO, Jesus Domingo, Joaquin Briones, Salvador Bernardez (as members of the Board of Directors of PAMBUSCO), Marcelino Enriquez, and Deputy Sheriff Edgardo Zabat of Pampanga. All these third-party defendants, however, were declared as in default for failure to file their answer, except Edgardo Zabat who did file his answer but failed to appear at the pre-trial. After trial, a decision was rendered by the court dismissing the complaint filed by the plaintiffs against the defendants and declaring as null and void the resolution of the Board of Directors of PAMBUSCO approved on November 19, 1974 assigning the PAMBUSCO's right of redemption concerning the parcels involved herein on appeal the decision is reversed. Defendant-appellee Peña is hereby ordered to vacate the lands in question and pay the plaintiffs-appellants the accrued rentals.

ISSUE

Whether or not the court of appeals erred in holding that the resolution ofrespondent, assigning its right of redemption is not void or at the very least legally defective?

RULING

The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect, written, into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.

Apparently, only three (3) out of five (5) members of the board of directors of respondent PAMBUSCO convened on November 19, 1974 by virtue of a prior notice of a special meeting. There was no quorum to validly transact business since, under Section 4 of the amended by-laws, at least four (4) members must be present to constitute a quorum in a special meeting of the board of directors of respondent PAMBUSCO.

Moreover, the records show that respondent PAMBUSCO ceased to operate as of November 15, 1949 as evidenced by a letter of the SEC to said corporation dated April 17, 1980.13 Being a dormant corporation for several years, it was highly irregular, if not anomalous, for a group of three (3) individuals representing themselves to be the directors of respondent PAMBUSCO to pass a resolution disposing of the only remaining asset of the corporation in favor of a former corporate officer. As a matter of fact, the three (3) alleged directors who attended the special meeting on November 19, 1974 were not listed as directors of respondent PAMBUSCO in the latest general information sheet of respondent PAMBUSCO filed with the SEC dated 18 March 1951.14 Similarly, the latest list of stockholders of respondent PAMBUSCO on file with the SEC does not show that the said alleged directors were among the stockholders of respondent PAMBUSCO.

It is also undisputed that at the time of the passage of the questioned resolution, respondent PAMBUSCO was insolvent and its only remaining asset was its right of redemption over the subject properties. Since the disposition of said redemption right of respondent PAMBUSCO by virtue of the questioned resolution was not approved by the required number of stockholders under the law, the said resolution, as well as the subsequent assignment executed on March 8, 1975 assigning to respondent Enriquez the said right of redemption, should be struck down as null and void.

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*
GR No. 225024, February 5, 2018, FIRST DIVISION, TIJAM, J.

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.

To constitute a quorum, the presence of 100,001 shares of stocks in Phil-Ville is necessary. Here, only 98,430 was represented during the stockholders meeting. As such, the proceedings during the meeting is void.

FACTS

Phil-Ville Development and Housing Corporation (Phil-Ville) is a family corporation founded by Geronima Gallego Que (Geronima) 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, as follows:

Carolina	32, 810 shares
Ana Maria	32,810
Angelica	32,810
Cecilia	32,810
Ma. Corazon	32,810
Maria Luisa	32,810, her shares were transferred to her children upon death

Geronima died in 2007. Cecilia, as attorney in fact of Geronima, purportedly executed a deed of absolute sale of the 3,140 shares.

Accordingly, the distribution of Geronima's shares to her grandchildren in accordance with the Sale of Shares of Stocks was reflected in the General Information Sheets filed by Phil-Ville in 2010 and 2011, x x x

In 2013, Cecilia, Eumir Carlo (child of Maria Luisa) and Ma. Corazon, herein after referred as Cecilia 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 concensus, 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 et al. proceeded with the scheduled annual stockholder's meeting participated only by a few stockholders.

In the said meeting, they elected the new members of the Board of Directors and officers of Phil-Ville namely: Cecilia, Ma. Corazon and Eumir, as Chairman/Vice President/Treasurer, President/General Manager, and Secretary, respectively.

ISSUE

Whether or not the meeting and the consequent election of officers and directors is void for lack of quorum.

RULING

Section 52 of the Corporation Code states that:

> Section 52. Quorum in meetings. — Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations.

While Section 137 of the same Code defines "outstanding capital stock," thus:

> Section 137. Outstanding capital stock defined. — The term "outstanding capital stock," as used in this Code, means the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares.

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. In this case, the presence of 100,001 shares of stocks in Phil-Ville is necessary.

The records of the case reveal 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 the intended transferees recorded in the stocks and transfer book of Phil-Ville.

Section 63 of the Corporation Code states:

> "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."

The contention of Cecilia Que, et al., that they should not be faulted for their failure to present the stock and transfer book because the same is in the possession of the corporate secretary, Ana Maria Que Tan, who has an interest adverse from them, is devoid of merit. It is basic that a stockholder has the right to inspect the books of the corporation, and if the stockholder is refused by an officer of the corporation to inspect or examine the books of the corporation, the stockholder is not without any remedy. The Corporation Code grants the stockholder a remedy — to file a case in accordance with Section 144.

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.

H. Stockholders and Members

1. Rights of a Stockholder and Members

a. Doctrine of Equality of Shares

COMMISSIONER OF INTERNAL REVENUE, *Petitioner* -versus- THE COURT OF APPEALS, COURT OF TAX APPEALS and A. SORIANO CORP., *Respondents*
G.R. No. 108576, FIRST DIVISION, January 20, 1999, MARTINEZ, J.

A stock dividend representing the transfer of surplus to capital account shall not be subject to tax.
In this case, the exchange of shares, without more, produces no realized income to the subscriber. There is only a modification of the subscriber's rights and privileges — which is not a flow of wealth for tax purposes. The issue of taxable dividend may arise only once a subscriber disposes of his entire interest and not when there is still maintenance of proprietary interest.

FACTS

Sometime in the 1930s, Don Andres Soriano, a citizen and resident of the United States, formed the corporation "A. Soriano Y Cia", predecessor of ANSCOR, with a P1,000,000.00 capitalization divided into 10,000 common shares at a par value of P100/share. ANSCOR is wholly owned and controlled by the family of Don Andres, who are all non-resident aliens.

On December 30, 1964 Don Andres died. As of that date, the records revealed that he has a total shareholdings of 185,154 shares — 50,495 of which are original issues and the balance of 134.659 shares as stock dividend declarations. Correspondingly, one-half of that shareholdings or 92,577 [14] shares were transferred to his wife, Doña Carmen Soriano, as her conjugal share. The other half formed part of his estate.
On December 28, 1967, Doña Carmen requested a ruling from the United States Internal Revenue Service (IRS), inquiring if an exchange of common with preferred shares may be considered as a tax avoidance scheme under Section 367 of the 1954 U.S. Revenue Act.

In a letter-reply dated February 1968, the IRS opined that the exchange is only a recapitalization scheme and not tax avoidance. Consequently, on March 31, 1968 Doña Carmen exchanged her whole 138,864 common shares for 138,860 of the newly reclassified preferred shares. The estate of Don Andres in turn, exchanged 11,140 of its common shares, for the remaining 11,140 preferred shares, thus reducing its (the estate) common shares to 127,727.

On June 30, 1968, pursuant to a Board Resolution, ANSCOR redeemed 28,000 common shares from the Don Andres' estate. By November 1968, the Board further increased ANSCOR's capital stock to P75M divided into 150,000 preferred shares and 600,000 common shares. About a year later, ANSCOR again redeemed 80,000 common shares from the Don Andres' estate, further reducing the latter's common shareholdings to 19,727. As stated in the Board Resolutions, ANSCOR's business purpose for both redemptions of stocks is to partially retire said stocks as treasury shares in order to reduce the company's foreign exchange remittances in case cash dividends are declared.

In 1973, after examining ANSCOR's books of account and records, Revenue examiners issued a report proposing that ANSCOR be assessed for deficiency withholding tax-at-source, pursuant to Sections 53 and 54 of the 1939 Revenue Code, for the year 1968 and the second quarter of 1969 based on the transactions of exchange 31 and redemption of stocks. [31] The Bureau of Internal Revenue (BIR) made the corresponding assessments despite the claim of ANSCOR that it availed of the tax amnesty under Presidential Decree (P.D.) 23 which were amended by P.D.'s 67 and 157. However, petitioner ruled that the invoked decrees do not cover Sections 53 and 54 in relation to Article 83(b) of the 1939 Revenue Act under which ANSCOR was assessed. ANSCOR's subsequent protest on the assessments was denied in 1983 by petitioner.

Subsequently, ANSCOR filed a petition for review with the CTA assailing the tax assessments on the redemptions and exchange of stocks. In its decision, the Tax Court reversed petitioner's ruling, after finding sufficient evidence to overcome the *prima facie* correctness of the questioned assessments. In a petition for review the CA as mentioned, affirmed the ruling of the CTA.

Petitioner contends that the exchange transaction a tantamount to "cancellation" under Section 83(b) making the proceeds thereof taxable. It also argues that the Section applies to stock dividends which is the bulk of stocks that ANSCOR redeemed. Further, petitioner claims that under the "net effect test," the estate of Don Andres gained from the redemption. Accordingly, it was the duty of ANSCOR to withhold the tax-at-source arising from the two transactions, pursuant to Section 53 and 54 of the 1939 Revenue Act.

ANSCOR, however, avers that it has no duty to withhold any tax either from the Don Andres estate or from Doña Carmen based on the two transactions, because the same were done for legitimate business purposes which are (a) to reduce its foreign exchange remittances in the event the company would declare cash dividends, and to (b) subsequently "filipinized" ownership of ANSCOR, as allegedly, envisioned by Don Andres. It likewise invoked the amnesty provisions of P.D. 67.

ISSUE

Whether ANSCOR's redemption of stocks from its stockholder as well as the exchange of common with preferred shares can be considered as "essentially equivalent to the distribution of taxable dividend" making the proceeds thereof taxable under the provisions of the above-quoted law.

RULING

TAX ON STOCK DIVIDENDS

General Rule

Sec. 83(b) of the 1939 NIRC was taken from the Section 115(g)(1) of the U.S. Revenue Code of 1928. It laid down the general rule known as the proportionate test wherein stock dividends once issued form part of the capital and, thus, subject to income tax. Specifically, the general rule states that:

A stock dividend representing the transfer of surplus to capital account shall not be subject to tax. Having been derived from a foreign law, resort to the jurisprudence of its origin may shed light. Under the US Revenue Code, this provision originally referred to "stock dividends" only, without any exception. Stock dividends, strictly speaking, represent capital and do not constitute income to its recipient. So that the mere issuance thereof is not yet subject to income tax as they are nothing but an "enrichment through increase in value of capital investment." As capital, the stock dividends postpone the realization of profits because the "fund represented by the new stock has been transferred from surplus to capital and no longer available for actual distribution." Income in tax law is "an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment." It means cash or its equivalent. It is gain derived and severed from capital, from labor or from both combined — so that to tax a stock dividend would be to tax a capital increase rather than the income. In a loose sense, stock dividends issued by the corporation, are considered unrealized gain, and cannot be subjected to income tax until that gain has been realized. Before the realization, stock dividends are nothing but a representation of an interest in the corporate properties. As capital, it is not yet subject to income tax. It should be noted that capital and income are different. Capital is wealth or fund; whereas income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction.

The Exception

> However, if a corporation cancels or *redeems stock* issued as a *dividend* at such time and in such manner as to make the *distribution and cancellation or redemption*, in whole or in part, essentially equivalent to the distribution of a *taxable dividend*, the amount so distributed in redemption or cancellation of the stock shall be considered

> as *taxable income* to the extent it represents a distribution of earnings or profits accumulated after March first, nineteen hundred and thirteen.

The exception was designed to prevent the issuance and cancellation or redemption of stock dividends, which is fundamentally not taxable, from being made use of as a device for the actual distribution of cash dividends, which is taxable.

> Although redemption and cancellation are generally considered capital transactions, as such. they are not subject to tax. However, it does not necessarily mean that a shareholder may not realize a taxable gain from such transactions.

The test of taxability under the exempting clause of Section 83(b) is, whether income was realized through the redemption of stock dividends. The redemption converts into money the stock dividends which become a realized profit or gain and consequently, the stockholder's separate property. Profits derived from the capital invested cannot escape income tax. As realized income, the proceeds of the redeemed stock dividends can be reached by income taxation regardless of the existence of any business purpose for the redemption. Otherwise, to rule that the said proceeds are exempt from income tax when the redemption is supported by legitimate business reasons would defeat the very purpose of imposing tax on income. Such argument would open the door for income earners not to pay tax so long as the person from whom the income was derived has legitimate business reasons. In other words, the payment of tax under the exempting clause of Section 83(b) would be made to depend not on the income of the taxpayer, but on the business purposes of a third party (the corporation herein) from whom the income was earned. This is absurd, illogical and impractical considering that the Bureau of Internal Revenue (BIR) would be pestered with instances in determining the legitimacy of business reasons that every income earner may interposed. It is not administratively feasible and cannot therefore be allowed.

After considering the manner and the circumstances by which the issuance and redemption of stock dividends were made, there is no other conclusion but that the proceeds thereof are essentially considered equivalent to a distribution of taxable dividends. As "taxable dividend" under Section 83(b), it is part of the "entire income" subject to tax under Section 22 in relation to Section 21 of the 1939 Code. Moreover, under Section 29(a) of said Code, dividends are included in "gross income". As income, it is subject to income tax which is required to be withheld at source. The 1997 Tax Code may have altered the situation but it does not change this disposition.

EXCHANGE OF COMMON WITH PREFERRED SHARES

Exchange is an act of taking or giving one thing for another involving reciprocal transfer and is generally considered as a taxable transaction. The exchange of common stocks with preferred stocks, or preferred for common or a combination of either for both, may not produce a recognized gain or loss, so long as the provisions of Section 83(b) is not applicable. This is true in a trade between two (2) persons as well as a trade between a stockholder and a corporation. In general, this trade must be parts of merger, transfer to controlled corporation, corporate acquisitions or corporate reorganizations. No taxable gain or loss may be recognized on exchange of property, stock or securities related to reorganizations.

Both the Tax Court and the Court of Appeals found that ANSCOR reclassified its shares into common and preferred, and that parts of the common shares of the Don Andres estate and all of Doña Carmen's shares were exchanged for the whole 150.000 preferred shares. Thereafter, both the Don Andres estate and Doña Carmen remained as corporate subscribers except that their subscriptions now include preferred shares. There was no change in their proportional interest after the exchange. There was no cash flow. Both stocks had the same par value. Under the facts herein, any difference in their market value would be immaterial at the time of exchange because no income is yet realized — it was a mere corporate paper transaction. It would have been different, if the exchange transaction resulted into a flow of wealth, in which case income tax may be imposed.

Reclassification of shares does not always bring any substantial alteration in the subscriber's proportional interest. But the exchange is different — there would be a shifting of the balance of stock features, like priority in dividend declarations or absence of voting rights. Yet neither the reclassification nor exchange *per se*, yields realize income for tax purposes. A common stock represents the residual ownership interest in the corporation. It is a basic class of stock ordinarily and usually issued without extraordinary rights or privileges and entitles the shareholder to a *pro rata* division of profits. Preferred stocks are those which entitle the shareholder to some priority on dividends and asset distribution.

Both shares are part of the corporation's capital stock. Both stockholders are no different from ordinary investors who take on the same investment risks. Preferred and common shareholders participate in the same venture, willing to share in the profits and losses of the enterprise. Moreover, under the doctrine of equality of shares — all stocks issued by the corporation are presumed equal with the same privileges and liabilities, provided that the Articles of Incorporation is silent on such differences.

In this case, the exchange of shares, without more, produces no realized income to the subscriber. There is only a modification of the subscriber's rights and privileges — which is not a flow of wealth for tax purposes. The issue of taxable dividend may arise only once a subscriber disposes of his entire interest and not when there is still maintenance of proprietary interest.

2. Participation in Management

a. Proxy

GOVERNMENT SERVICE, INSURANCE SYSTEM, *Petitioner*
-versus- THE HON. COURT OF APPEALS, (8TH DIVISION), ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO, *Respondents*
G.R. No. 183905, SECOND DIVISION, April 16, 2009, TINGA, J.

The fact that the jurisdiction of the regular courts under Section 5(c) is confined to the voting on election of officers, and not on all matters which may be voted upon by stockholders, elucidates that the power of the SEC to regulate proxies remains extant and could very well be exercised when stockholders vote on matters other than the election of directors.

FACTS

The annual stockholders' meeting (annual meeting) of the Manila Electric Company (Meralco) was scheduled on 27 May 2008. In connection with the annual meeting, proxies were required to be submitted on or before 17 May 2008, and the proxy validation was slated for five days later, or 22 May.

In view of the resignation of Camilo Quiason, the position of corporate secretary of Meralco became vacant. On 15 May 2008, the board of directors of Meralco designated Jose Vitug to act as corporate secretary for the annual meeting. However, when the proxy validation began on 22 May, the proceedings were presided over by respondent Anthony Rosete (Rosete), assistant corporate secretary and in-house chief legal counsel of Meralco. Private respondents nonetheless argue that Rosete was the acting corporate secretary of Meralco. Petitioner Government Service Insurance System (GSIS), a major shareholder in Meralco, was distressed over the proxy validation proceedings, and the resulting certification of proxies in favor of the Meralco management.

On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as invalid. Three days later, on 26 May, GSIS filed a Notice with the RTC manifesting the dismissal of the complaint. On the same day, GSIS filed an Urgent Petition13 with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents Manuel Lopez, Felipe Alfonso, Jesus Francisco, Oscar Lopez, Christian Monsod, Elpidio Ibañez, Francisco Giles-Puno "or any officer representing MERALCO Management," and to annul and declare invalid said proxies. GSIS also prayed for the issuance of a Cease and Desist Order (CDO) to restrain the use of said proxies during the annual meeting scheduled for the following day. A CDO to that effect signed by SEC Commissioner Jesus Martinez was issued on 26 May 2008, the same day the complaint was filed. During the annual meeting held on the following day, Rosete announced that the meeting would push through, expressing the opinion that the CDO is null and void.

Many developments involving the Court of Appeals' handling of CA-G.R. SP No. 103692 and the conduct of several of its individual justices are recounted in our Resolution dated 9 September 2008 in A.M. No. 08-8-11-CA (Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. SP No. 103692).26 On 23 July 2008, the Court of Appeals Eighth Division promulgated a decision in the case: The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered.

The two remaining cases before us are docketed as G.R. No. 183905 and 184275. G.R. No. 183905 pertains to a petition for certiorari and prohibition filed by GSIS, against the Court of Appeals, and respondents Rosete, Lopez, Alfonso, Francisco, Monsod, Ibañez and Puno, all of whom serve in different corporate capacities with Meralco or First Philippines Holdings Corporation, a major stockholder of Meralco and an affiliate of the Lopez Group of Companies. This petition seeks of the Court to declare the 23 July 2008 decision of the Court of Appeals null and void, affirm the SEC's jurisdiction over the petition filed before it by GSIS, and pronounce that the CDO and the SCO orders are valid. This petition was filed in behalf of GSIS by the "GSIS Law Office;" it was signed by the Chief Legal Counsel and Assistant Legal Counsel of GSIS, and three self-identified "Attorney[s]," presumably holding lawyer positions in GSIS. The OSG also filed the other petition, docketed as G.R. No. 184275. It identifies as its petitioners the SEC, Commissioner Martinez in his capacity as OIC of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC – the same petitioners in the aborted petition for review initially docketed as G.R. No. 183933. Unlike what was adverted to in the motion for extension filed by the same petitioners in G.R. No. 183933, the petition in G.R. No. 184275 is one for certiorari under Rule 65 as indicated on page 3 thereof, and not a petition for review. Interestingly, save for the first page which leaves the docket number blank, all 86 pages of this petition for certiorari carry a header wrongly identifying the pleading as the non-existent petition for review under G.R. No. 183933. This petition seeks the "reversal" of the assailed decision of the Court of Appeals, the recognition of the jurisdiction of the SEC over the petition of GSIS, and the affirmation of the CDO and SCO.

On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as invalid. Three days later, on 26 May, GSIS filed a Notice with the RTC manifesting the dismissal of the complaint. On the same day, GSIS filed an Urgent Petition with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents.

ISSUES

1. Whether the petitioner abused his discretion in nullifying the deeds of sale and in proceeding with the expropriation proceeding, that question is eclipsed by the concern of whether Judge Pedro T. Santiago may file this petition at all.
2. Whether private respondents are correct that the petition filed by the SEC in G.R. No. 184275 should be expunged
3. Whether the SEC has jurisdiction over the petition filed by GSIS. To recall, SEC has sought to enjoin the use and annul the validation, of the proxies issued in favor of several of the private respondents, particularly in connection with the annual meeting.

RULING

The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered, out of equitable considerations, as an election contest in the RTC, because the prescriptive period of 15 days from the May 27, 2008 Meralco election to file an election contest in the RTC had already run its course, pursuant to Sec. 3, Rule 6 of the interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, due to deliberate act of GSIS in filing a complaint in the SEC instead of the RTC.

With respect to the second issue, petitioners are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero.

The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on certiorari, but withheld giving due course to it. Under Section 1 of Rule 45, which governs appeals by certiorari, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for certiorari before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for certiorari filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for certiorari filed with the Court of Appeals. Yet their involvement in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest.

Under Section 20.1, the solicitation of proxies must be in accordance with rules and regulations issued by the SEC, such as AIRR-SRC Rule 4. And by virtue of Section 53.1, the SEC has the discretion "to make such investigations as it deems necessary to determine whether any person has violated" any rule issued by it, such as AIRR-SRC Rule 4. The investigatory power of the SEC established by Section 53.1 is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares. For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a motu proprio basis.

At the same time, Meralco raises the substantial point that nothing in the SRC empowers the SEC to annul or invalidate improper proxies issued in contravention of Section 20. It cites that the penalties defined by the SEC itself for violation of Section 20 or AIRR-SRC Rule 20 are limited to a reprimand/warning for the first offense, and pecuniary fines for succeeding offenses. Indeed, if the SEC does not have the power to invalidate proxies solicited in violation of its promulgated rules, serious questions may be raised whether it has the power to adjudicate claims of violation in the first place, since the relief it may extend does not directly redress the cause of action of the complainant seeking the exclusion of the proxies.

As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC.

Yet a closer reading of the provision indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."

The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers. Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) the validation of proxies, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

Unlike either Section 20.1 or Section 53.1, which merely alludes to the rule-making or investigatory power of the SEC, Section 5 of Pres. Decree No. 902-A sets forth a definitive rule on jurisdiction, expressly granting as it does "original and exclusive jurisdiction" first to the SEC, and now to the regular courts. The fact that the jurisdiction of the regular courts under Section 5(c) is confined to the voting on election of officers, and not on all matters which may be voted upon by stockholders, elucidates that the power of the SEC to regulate proxies remains extant and could very well be exercised when stockholders vote on matters other than the election of directors.

That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation. The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the CDO and SDO issued by that body. However, especially with respect to the CDO, there is need for this Court to squarely rule on the question pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC.

To recount the facts surrounding the issuance of the CDO, GSIS filed its petition with the SEC on 26 May 2008. The CDO, six (6) pages in all with three (3) pages devoted to the tenability of granting the injunctive relief, was issued on the very same day, 26 May 2008, without notice or hearing. The CDO bore the signature of Commissioner Jesus Martinez, identified therein as "Officer-in-Charge," and nobody else's.

b. Voting Trust

RAMON C. LEE and ANTONIO DM. LACDAO, *Petitioners* -versus- THE HON. COURT OF APPEALS, SACOBA MANUFACTURING CORP., PABLO GONZALES, JR. and THOMAS GONZALES, *Respondents*

GR No. 93695, THRID DIVISION, February 4, 1992, GUTIERREZ, Jr., J.

Under the 1980 Corporation Code, in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation.

Thus, Lee and Lacdao, by virtue of VTA disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the 1980 Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors. Hence, the transfer of the Lee and Lacdao's shares to the DBP created vacancies in their respective positions as directors of ALFA.

FACTS

A complaint for a sum of money was filed by the International Corporate Bank, Inc. against Sacoba Manufacturing Corporation (Sacoba), Pablo Gonzales and Thomas Gonzales (the Gonzalezes) who, in turn, filed a third-party complaint against Alfa Integrated Textile Mills (ALFA) and Ramon Lee (Lee) and Antonio Lacdao (Lacdao). Lee and Lacdao sent a letter to the RTC, claiming the summons for ALFA was erroneously served upon them considering that the management of ALFA had been transferred to the Development Bank of the Philippines (DBP), through a Voting Trust Agreement (VTA). The RTC issued an order requiring the issuance of an alias summons upon ALFA through the DBP. In a manifestation, DBP claimed that it was not authorized to receive summons on behalf of ALFA since the DBP had not taken over the company which has a separate and distinct corporate personality and existence. Sacoba and the Gonzalezes filed a Manifestation and Motion for the Declaration of Proper Service of Summons on ALFA through Lee and Lacdao, the president and vice-president, which the trial court granted.

In a Motion for Reconsideration, Lee and Lacdao maintain that with the execution of the VTA between them and the other stockholders of ALFA, as one party, and the DBP, as the other party, the former assigned and transferred all their shares in ALFA to DBP, as trustee. They argue that by virtue to of the VTA, Lee and Lacdao, can no longer be considered directors of ALFA. They ceased to be president and vice-president of ALFA. Sacoba and the Gonzalezes insist that the VTA between ALFA and the DBP had all the more safeguarded Lee and Lacdao's continuance as officers and directors of ALFA inasmuch as the general object of voting trust is to insure permanency of the tenure of the directors of a corporation.

Initially, The RTC upheld the validity of the service of summons on ALFA through the Lee and Lacdao. However, upon filing of a second motion for reconsideration by Lee and Lacdao, the RTC reversed itself and declared that service upon Lee and Lacdao, who were no longer corporate officers of ALFA, cannot be considered as proper service of summons on ALFA. The CA reversed the RTC Order. Hence, the present petition.

ISSUE

1. Whether the change in the stockholder's status (only holding an equitable title) deprives such stockholder of the right to qualify as a director.

2. Whether there was proper service of summons on ALFA through Lee and Lacdao.

RULING

1. YES. The execution of a VTA may create a dichotomy between the equitable or beneficial ownership of the corporate shares of a stockholders, on the one hand, and the legal title thereto on the other hand. Under the 1906 Corporation Code, the eligibility of a director cannot be adversely affected by the simple act of such director being a party to a VTA inasmuch as he remains owner (although beneficial or equitable only) of the shares subject of the VTA pursuant to which a transfer of the stockholder's shares in favor of the trustee is required. No disqualification arises by virtue of the phrase "in his own right" provided under the 1906 Corporation Code. With the omission of the phrase "in his own right" in the 1980 Corporation Code, the election of trustees and other persons who are not beneficial owners of the shares registered in their names on the books of the corporation becomes formally legalized. Hence, this is a clear indication that, under the 1980 Corporation Code, in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation.

Thus, Lee and Lacdao, by virtue of VTA disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the 1980 Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors. Hence, the transfer of the Lee and Lacdao's shares to the DBP created vacancies in their respective positions as directors of ALFA. Considering that the VTA between ALFA and the DBP transferred legal ownership of the stock covered by the agreement to the DBP as trustee, the latter became the stockholder of record with respect to the said shares of stocks. In the absence of a showing that the DBP had caused to be transferred in their names one share of stock for the purpose of qualifying as directors of ALFA, Lee and Lacdao can no longer be deemed to have retained their status as officers of ALFA which was the case before the execution of the subject VTA. There appears to be no dispute from the records that DBP has taken over full control and management of the firm.

2. NO. Under the Rules of Court, if the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors. Lee and Lacdao do not fall under any of the enumerated officers. The service of summons upon ALFA, through Lee and Lacdao is not valid.

3. Proprietary Rights

a. Right of Appraisal

PHILIP TURNER and ELNORA TURNER, *Petitioners* -versus- LORENZO SHIPPING CORPORATION, *Respondent*

GR No. 157479, THIRD DIVISION, November 24, 2010, BERSAMIN, J.

A stockholder who dissents from certain corporate actions has the right to demand payment of the fair value of his or her shares. This right, known as the right of appraisal, is expressly recognized in Section 81 of the Corporation Code.

The right of appraisal may be exercised when there is a fundamental change in the charter or articles of incorporation substantially prejudicing the rights of the stockholders. It does not vest unless objectionable corporate action is taken. It serves the purpose of enabling the dissenting stockholder to have his interests purchased and to retire from the corporation.

Notwithstanding, no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover the payment. In case the corporation has no available unrestricted retained earnings in its books, Section 83 of the Corporation Code provides that if the dissenting stockholder is not paid the value of his shares within 30 days after the award, his voting and dividend rights shall immediately be restored.

FACTS

This case concerns the right of dissenting stockholders to demand payment of the value of their shareholdings.

The petitioners held 1,010,000 shares of stock of the respondent, a domestic corporation engaged primarily in cargo shipping activities. In June 1999, the respondent decided to amend its articles of incorporation to remove the stockholders' pre-emptive rights to newly issued shares of stock. Feeling that the corporate move would be prejudicial to their interest as stockholders, the petitioners voted against the amendment and demanded payment of their shares at the rate of ₱2.276/share based on the book value of the shares, or a total of ₱2,298,760.00.

The respondent found the fair value of the shares demanded by the petitioners unacceptable. It insisted that the market value on the date before the action to remove the pre-emptive right was taken should be the value, or ₱0.41/share (or a total of ₱414,100.00), considering that its shares were listed in the Philippine Stock Exchange, and that the payment could be made only if the respondent had unrestricted retained earnings in its books to cover the value of the shares, which was not thecase.

The disagreement on the valuation of the shares led the parties to constitute an appraisal committee pursuant to Section 82 of the Corporation Code. On October 27, 2000, the appraisal committee reported its valuation of ₱2.54/share, for an aggregate value of ₱2,565,400.00 for the petitioners. Subsequently, the petitioners demanded payment based on the valuation of the appraisal committee, plus 2%/month penalty from the date of their original demand for payment, as well as the reimbursement of the amounts advanced as professional fees to the appraisers.

In its letter to the petitioners dated January 2, 2001, the respondent refused the petitioners' demand, explaining that pursuant to the Corporation Code, the dissenting stockholders exercising their appraisal rights could be paid only when the corporation had unrestricted retained earnings to cover the fair value of the shares, but that it had no retained earnings at the time of the petitioners' demand, as borne out by its Financial Statements for Fiscal Year 1999 showing a deficit of ₱72,973,114.00 as of December 31, 1999.

In the stockholders' suit to recover the value of their shareholdings from the corporation, the Regional Trial Court (RTC) upheld the dissenting stockholders, herein petitioners, and ordered the corporation, herein respondent, to pay. Execution was partially carried out against the respondent. On the respondent's petition for certiorari, however, the Court of Appeals (CA) corrected the RTC and dismissed the petitioners' suit on the ground that their cause of action for collection had not yet accrued due to the lack of unrestricted retained earnings in the books of the respondent.

The petitioners now come to the Court for a review on certiorari of the CA's decision

ISSUES

1. Whether the dissenting stockholders (petitioners) can recover the value of their shareholdings despite inexistence of URE at the time of demand. (NO)

RULING

1. Stockholder's Right of Appraisal, In General

A stockholder who dissents from certain corporate actions has the right to demand payment of the fair value of his or her shares. This right, known as the right of appraisal, is expressly recognized in Section 81 of the Corporation Code.

The right of appraisal may be exercised when there is a fundamental change in the charter or articles of incorporation substantially prejudicing the rights of the stockholders. It does not vest unless objectionable corporate action is taken. It serves the purpose of enabling the dissenting stockholder to have his interests purchased and to retire from the corporation.

Notwithstanding, no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover the payment. In case the corporation has no available unrestricted retained earnings in its books, Section 83 of the Corporation Code provides that if the dissenting stockholder is not paid the value of his shares within 30 days after the award, his voting and dividend rights shall immediately be restored.

The trust fund doctrine backstops the requirement of unrestricted retained earnings to fund the payment of the shares of stocks of the withdrawing stockholders. Under the doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who are preferred in the distribution of corporate assets. The creditors of a corporation have the right to assume that the board of directors will not use the assets of the corporation to purchase its own stock for as long as the corporation has outstanding debts and liabilities. There can be no distribution of assets among the stockholders without first paying corporate debts. Thus, any disposition of corporate funds and assets to the prejudice of creditors is null and void.

B. Petitioners' cause of action was premature

That the respondent had indisputably no unrestricted retained earnings in its books at the time the petitioners commenced the action for collection and damages (Civil Case No. 01-086) proved that the respondent's legal obligation to pay the value of the petitioners' shares did not yet arise. The RTC concluded that the respondent's obligation to pay had accrued by its having the unrestricted retained earnings after the making of the demand by the petitioners. It based its conclusion on the fact that the Corporation Code did not provide that the unrestricted retained earnings must already exist at the time of the demand. The RTC's construal of the Corporation Code was unsustainable, because it did not take into account the petitioners' lack of a cause of action against the respondent. In order to give rise to any obligation to pay on the part of the respondent, the petitioners should first make a valid demand that the respondent refused to pay despite having unrestricted retained earnings. Otherwise, the respondent could not be said to be guilty of any actionable omission that could sustain their action to collect.

Neither did the subsequent existence of unrestricted retained earnings of the respondent which is more than sufficient to cure the petitioner's claim cure the lack of cause of action. The petitioners' right of action could only spring from an existing cause of action. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground. In short, Civil Case No. 01-086, being a groundless suit, should be dismissed.

b. Right to Inspect

JOHN GOKONGWEI, JR., *Petitioner* -versus- SECURITIES AND EXCHANGE COMMISSION, ANDRES M. SORIANO, JOSE M. SORIANO, ENRIQUE ZOBEL, ANTONIO ROXAS, EMETERIO BUNAO, WALTHRODE B. CONDE, MIGUEL ORTIGAS, ANTONIO PRIETO, SAN MIGUEL CORPORATION, EMIGDIO TANJUATCO, SR., and EDUARDO R. VISAYA, *Respondents* GR. No. L-45911, EN BANC, April 11, 1979, ANTONIO, J.

In the absence of any legal prohibition or overriding public policy, wide latitude may be accorded to the corporation in adopting measures to protect legitimate corporation interests. Thus, "where the reasonableness of a by-law is a mere matter of judgment, and 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 expressed their authority.

FACTS

On October 22, 1976, Gokongwei, as stockholder of San Miguel Corporation, filed with the SEC a petition for "declaration of nullity of amended by-laws, cancellation of certificate of filing of amended by- laws, injunction and damages with prayer for a preliminary injunction" against the majority of the members of the Board of Directors and San Miguel Corporation as an unwilling petitioner.

Gokongwei alleged that respondents amended its bylaws unlawfully. Prior to the questioned amendment, petitioner had all the qualifications to be a director of respondent corporation, and that in amending the by-laws, respondents purposely provided for petitioner's disqualification and deprived him of his vested right as afore-mentioned hence the amended by-laws are null and void. It was alleged that corporations have no inherent power to disqualify a stockholder from being elected as a director and, therefore, the questioned act is ultra vires and void; that the Board has the prerogative of determining whether they are engaged in competitive or antagonistic business; that the Board may consider such factors as business and family relationship, is unreasonable and oppressive and, therefore, void; and that the portion of the amended by-laws which requires that "all nominations for election of directors ... shall be submitted in writing to the Board of Directors at least five (5) working days before the date of the Annual Meeting" is likewise unreasonable and oppressive. It was, therefore, prayed that the amended by-laws be declared null and void and the certificate of filing thereof be cancelled, and that individual respondents be made to pay damages, in specified amounts, to petitioner.

Respondents filed their opposition to the petition, stating that petitioner who is president and controlling shareholder of Robina and CFC was rejected by the stockholders in his bid to secure a seat in the Board of Directors on the basic issue that petitioner was engaged in a competitive business and his securing a seat would have subjected respondent corporation to grave disadvantages; that "petitioner nevertheless vowed to secure a seat in the Board of Directors at the next annual meeting; that thereafter the Board of Directors amended the by-laws as afore-stated. Petitioner filed with SEC a Manifestation stating that he intended to run for the position of director of respondent corporation Respondents filed a Manifestation disqualifying and precluding petitioner from being a candidate for director unless he could submit evidence on that he does not come within the disqualifications specified in the amendment to the by-laws.

By reason thereof, petitioner filed a manifestation and motion to resolve pending incidents in the case and to issue a writ of injunction, alleging that private respondents were seeking to nullify and render ineffectual the exercise of jurisdiction by the SEC, to petitioner's irreparable damage and prejudice, Allegedly despite a subsequent Manifestation to prod respondent Commission to act, petitioner was not heard prior to the date of the stockholders' meeting. Petitioner alleges that there appears a deliberate and concerted inability on the part of the SEC to act hence petitioner came to this Court.

Respondent SEC, Andres M. Soriano, Jr. and Jose M. Soriano filed their comment, alleging that the petition is without merit for the following reasons: (1) the interest he represents are engaged in business competitive and antagonistic to that of respondent San Miguel Corporation, it appearing that the owns and controls a greater portion of his SMC stock thru the Universal Robina Corporation and the Consolidated Foods Corporation, which corporations are engaged in business directly and substantially competing with the allied businesses of respondent SMC and of corporations in which SMC has substantial investments. (2) that the amended by law were adopted to preserve and protect respondent SMC from the clear and present danger that business competitors, if allowed to become directors, will illegally and unfairly utilize their direct access to its business secrets and plans for their own private gain to the irreparable prejudice of respondent SMC, and, ultimately, its stockholders. Further, it is asserted that membership of a competitor in the Board of Directors is a blatant disregard of no less that the Constitution and pertinent laws against combinations in restraint of trade; (3) that by laws are valid and binding since a corporation has the inherent right and duty to preserve and protect itself by excluding competitors and antogonistic parties, under the law of selfpreservation, and it should be allowed a wide latitude in the selection of means to preserve itself.

ISSUE

Whether or not the amended by-laws of SMC of disqualifying a competitor from nomination or election to the Board of Directors of SMC are valid and reasonable.

RULING

YES. In this jurisdiction, under section 21 of the Corporation Law, a corporation may prescribe in its by-laws "the qualifications, duties and compensation of directors, officers and employees ... " This must necessarily refer to a qualification in addition to that specified by section 30 of the Corporation

Law, which provides that "every director must own in his right at least one share of the capital stock of the stock corporation of which he is a director ... " In Government v. El Hogar, the Court sustained the validity of a provision in the corporate by-law requiring that persons elected to the Board of Directors must be holders of shares of the paid up value of P5,000.00, which shall be held as security for their action, on the ground that section 21 of the Corporation Law expressly gives the power to the corporation to provide in its by-laws for the qualifications of directors and is "highly prudent and in conformity with good practice. "

NO VESTED RIGHT OF STOCKHOLDER TO BE ELECTED DIRECTOR Any person "who buys stock in a corporation does so with the knowledge that its affairs are dominated by a majority of the stockholders and that he impliedly contracts that the will of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws and not forbidden by law." To this extent, therefore, the stockholder may be considered to have "parted with his personal right or privilege to regulate the disposition of his property which he has invested in the capital stock of the corporation, and surrendered it to the will of the majority of his fellow incorporators. It cannot therefore be justly said that the contract, express or implied, between the corporation and the stockholders is infringed by any act of the former which is authorized by a majority.

A DIRECTOR STANDS IN A FIDUCIARY RELATION TO THE CORPORATION AND ITS SHAREHOLDERS Although in the strict and technical sense, directors of a private corporation are not regarded as trustees, there cannot be any doubt that their character is that of a fiduciary insofar as the corporation and the stockholders as a body are concerned. As agents entrusted with the management of the corporation for the collective benefit of the stockholders, "they occupy a fiduciary relation, and in this sense the relation is one of trust." The doctrine of "corporate opportunity" is precisely a recognition by the courts that the fiduciary standards could not be upheld where the fiduciary was acting for two entities with competing interests. This doctrine rests fundamentally on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection. It is not denied that a member of the Board of Directors of the San Miguel Corporation has access to sensitive and highly confidential information, such as: (a) marketing strategies and pricing structure; (b) budget for expansion and diversification; (c) research and development; and (d) sources of funding, availability of personnel, proposals of mergers or tie-ups with other firms. It is obviously to prevent the creation of an opportunity for an officer or director of San Miguel Corporation, who is also the officer or owner of a competing corporation, from taking advantage of the information which he acquires as director to promote his individual or corporate interests to the prejudice of San Miguel Corporation and its stockholders, that the questioned amendment of the by-laws was made.

Indeed, access by a competitor to confidential information regarding marketing strategies and pricing policies of San Miguel Corporation would subject the latter to a competitive disadvantage and unjustly enrich the competitor, for advance knowledge by the competitor of the strategies for the development of existing or new markets of existing or new products could enable said competitor to utilize such knowledge to his advantage. There is another important consideration in determining whether or not the amended by-laws are reasonable. The Constitution and the law prohibit combinations in restraint of trade or unfair competition. Thus, section 2 of Article XIV of the Constitution provides: "The State shall regulate or prohibit private monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be snowed."

A "monopoly" embraces any combination the tendency of which is to prevent competition in the broad and general sense, or to control prices to the detriment of the public. The material consideration in determining its existence is not that prices are raised and competition actually excluded, but that power exists to raise prices or exclude competition when desired. From the foregoing definitions, it is apparent that the contentions of petitioner are not in accord with reality. The election of petitioner to the Board of respondent Corporation can bring about an illegal situation. Obviously, if a competitor has access to the pricing policy and cost conditions of the products of San Miguel Corporation, the essence of competition in a free market for the purpose of serving the lowest priced goods to the consuming public would be frustrated, The competitor could so manipulate the prices of his products or vary its marketing strategies by region or by brand in order to get the most out of the consumers. Where the two competing firms control a substantial segment of the market this could lead to collusion and combination in restraint of trade. As respondent SMC aptly observes, knowledge by CFC-Robina of SMC's costs in various industries and regions in the country win enable the former to practice price discrimination. CFC-Robina can segment the entire consuming population by geographical areas or income groups and change varying prices in order to maximize profits from every market segment. CFC-Robina could determine the most profitable volume at which it could produce for every product line in which it competes with SMC. Access to SMC pricing policy by CFC-Robina would in effect destroy free competition and deprive the consuming public of opportunity to buy goods of the highest possible quality at the lowest prices.

Neither are we persuaded by the claim that the by-law was intended to prevent the candidacy of petitioner for election to the Board. If the by-law were to be applied in the case of one stockholder but waived in the case of another, then it could be reasonably claimed that the by-law was being applied in a discriminatory manner. However, the by law, by its terms, applies to all stockholders. The equal protection clause of the Constitution requires only that the by-law operate equally upon all persons of a class. Besides, before petitioner can be declared ineligible to run for director, there must be hearing and evidence must be submitted to bring his case within the ambit of the disqualification. Sound principles of public policy and management, therefore, support the view that a by-law which disqualifies a competition from election to the Board of Directors of another corporation is valid and reasonable.

In the absence of any legal prohibition or overriding public policy, wide latitude may be accorded to the corporation in adopting measures to protect legitimate corporation interests. Thus, "where the reasonableness of a by-law is a mere matter of judgment, and 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 expressed their authority.

RAMON A. GONZALES, *Petitioner* -versus- THE PHILIPPINE NATIONAL BANK, *Respondent*
G.R. No. L-33320, FIRST DIVISION, May 30, 1983, VASQUEZ, J.

The unqualified provision on the right of inspection previously contained in Section 51, Act No. 1459 no longer holds true. The argument of the petitioner that the right granted to him under Section 51 of the former Corporation Law should not be dependent on the propriety of his motive or purpose in asking for the inspection of the books of the respondent bank loses whatever validity it might have had before the amendment of the law

FACTS

The petitioner instituted several cases questioning different transactions entered into by the Bark with other parties. First among them is Civil Case No. 69345 filed by petitioner as a taxpayer versus Sec. Antonio Raquiza of Public Works and Communications, the Commissioner of Public Highways, the Bank, Continental Ore Phil., Inc., Continental Ore, Huber Corporation, Allis Chalmers and General Motors Corporation. In the course of the hearing of said case, the personality of herein petitioner to sue the bank and question the letters of credit it has extended for the importation by the Republic of the Philippines of public works equipment intended for the massive development program of the President was raised. In view thereof, he expressed and made known his intention to acquire one share of stock from Congressman Justiniano Montano which was transferred in his name in the books of the Bank

Subsequent to his acquisition of one share of stock of the Bank, petitioner, in his dual capacity as a taxpayer and stockholder, filed the following cases involving the bank or the members of its Board of Directors to wit:

l. Civil Case No. 71044 vs the Board of Directors of the Bank; the National Investment and Development Corp., Marubeni Iida Co., Ltd., and Agro-Inc. Dev. Co. or Saravia;
2. Civil Case No. 72936 vs Roberto Benedicto and other Directors of the Bank, Passi (Iloilo) Sugar Central, Inc., Calinog-Lambunao Sugar Mill Integrated Farming, Inc., Talog sugar Milling Co., Inc., Safary Central, Inc., and Batangas Sugar Central Inc.;
3. Civil Case No. 76427 vs Alfredo Montelibano and the Directors of both the PNB and DBP;

However, petitioner addressed a letter to the President of the Bank, requesting submission to look into the records of its transactions covering the purchase of a sugar central by the Southern Negros Development Corp. to be financed by Japanese suppliers and financiers; its financing of the Cebu-Mactan Bridge to be constructed by V.C. Ponce, Inc. and the construction of the Passi Sugar Mills in Iloilo. The Asst. Vice-President and Legal Counsel of the Bank answered petitioner's letter denying his request for being not germane to his interest as a one-share stockholder and for the cloud of doubt as to his real intention and purpose in acquiring said share. In view of the Bank's refusal, the petitioner instituted an action.

The court a quo denied the prayer of the petitioner that he be allowed to examine and inspect the books and records of the respondent bank regarding the transactions mentioned on the grounds that the right of a stockholder to inspect the record of the business transactions of a corporation granted under Section 51 of the former Corporation Law (Act No. 1459, as amended) is not absolute, but is limited to purposes reasonably related to the interest of the stockholder, must be asked for in good faith for a specific and honest purpose and not gratify curiosity or for speculative or vicious purposes; that such examination would violate the confidentiality of the records of the respondent bank as provided in Section 16 of its charter, Republic Act No. 1300, as amended; and that the petitioner has not exhausted his administrative remedies.

ISSUE

Whether the alleged improper motive of the petitioner in asking for an examination of the books and records of the respondent bank disqualifies him to exercise the right of a stockholder to such inspection.

RULING

Yes. Under Section 51 of Act No. 1459, as amended "... the record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member or stockholder of the corporation at reasonable hours."

Petitioner maintains that the provision does not justify the qualification made by the lower court that the inspection of corporate records may be denied on the ground that it is intended for an improper motive or purpose, the law having granted such right to a stockholder in clear and unconditional terms. He further argues that, assuming that a proper motive or purpose for the desired examination is necessary for its exercise, there is nothing improper in his purpose for asking for the examination and inspection herein involved.

Petitioner may no longer insist on his interpretation of Section 51 of Act No. 1459, as amended, regarding the right of a stockholder to inspect and examine the books and records of a corporation. The former Corporation Law (Act No. 1459, as amended) has been replaced by Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines." The right of inspection granted to a stockholder under Section 51 of Act No. 1459 has been retained, but with some modifications. The second and third paragraphs of Section 74 of Batas Pambansa Blg. 68 provide the following: "The records of all business transactions of the corporation and the minutes of any meeting shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand

Among the changes introduced in the new Code with respect to the right of inspection granted to a stockholder are the following the records must be kept at the principal office of the corporation; the inspection must be made on business days; the stockholder may demand a copy of the excerpts of the records or minutes; and the refusal to allow such inspection shall subject the erring officer or agent of the corporation to civil and criminal liabilities.

However, while seemingly enlarging the right of inspection, the new Code has prescribed limitations to the same. It is now expressly required as a condition for such examination that the one requesting it must not have been guilty of using improperly any information through a prior examination, and that the person asking for such examination must be "acting in good faith and for a legitimate purpose in making his demand."

The unqualified provision on the right of inspection previously contained in Section 51, Act No. 1459 no longer holds true. The argument of the petitioner that the right granted to him under Section 51 of the former Corporation Law should not be dependent on the propriety of his motive or purpose in asking for the inspection of the books of the respondent bank loses whatever validity it might have had before the amendment of the law. If there is any doubt in the correctness of the ruling of the trial court that the right of inspection granted under Section 51 of the old Corporation Law must be dependent on a showing of proper motive on the part of the stockholder demanding the same, it is now dissipated by the clear language of the pertinent provision contained in Section 74 of Batas Pambansa Blg. 68.

Although the petitioner has claimed that he has justifiable motives in seeking the inspection of the books of the respondent bank, he has not set forth the reasons and the purposes for which he desires such inspection, except to satisfy himself as to the truth of published reports regarding certain transactions entered into by the respondent bank and to inquire into their validity. The circumstances under which he acquired one share of stock in the respondent bank purposely to exercise the right of inspection do not argue in favor of his good faith and proper motivation. Admittedly he sought to be a stockholder in order to pry into transactions entered into by the respondent bank even before he became a stockholder. His obvious purpose was to arm himself with materials which he can use against the respondent bank for acts done by the latter when the petitioner was a total stranger to the same. He could have been impelled by a laudable sense of civic consciousness, but it could not be said that his purpose is germane to his interest as a stockholder.

We also find merit in the contention of the respondent bank that the inspection sought to be exercised by the petitioner would be violative of the provisions of its charter. (Republic Act No. 1300, as amended.) Sections 15, 16 and 30 of the said charter provide respectively as follows:

Sec. 15. Inspection by Department of Supervision and Examination of the Central Bank. — The National Bank shall be subject to inspection by the Department of Supervision and Examination of the Central Bank'

Sec. 16. Confidential information. —The Superintendent of Banks and the Auditor General, or other officers designated by law to inspect or investigate the condition of the National Bank, shall not reveal to any person other than the President of the Philippines, the Secretary of Finance, and the Board of Directors the details of the inspection or investigation, nor shall they give any information relative to the funds in its custody, its current accounts or deposits belonging to private individuals, corporations, or any other entity, except by order of a Court of competent jurisdiction,'

Sec. 30. Penalties for violation of the provisions of this Act.— Any director, officer, employee, or agent of the Bank, who violates or permits the violation of any of the provisions of this Act, or any person aiding or abetting the violations of any of the provisions of this Act, shall be punished by a fine not to exceed ten thousand pesos or by imprisonment of not more than five years, or both such fine and imprisonment.

The PNB is not an ordinary corporation. Having a charter of its own, it is not governed, as a rule, by the Corporation Code of the Philippines. Section 4 of the said Code provides:

SEC. 4. Corporations created by special laws or charters. — Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them. supplemented by the provisions of this Code, insofar as they are applicable.

The provision of Section 74 of Batas Pambansa Blg. 68 of the new Corporation Code with respect to the right of a stockholder to demand an inspection or examination of the books of the corporation may not be reconciled with the provisions of the charter of the respondent bank. It is not correct to claim, therefore, that the right of inspection under Section 74 of the new Corporation Code may apply in a supplementary capacity to the charter of the respondent bank.

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *Petitioner* -versus- SANDIGANBAYAN, BIENVENIDO R. TANTOCO, JR. and DOMINADOR R. SANTIAGO, *Respondents*
G.R. No. 90478, EN BANC, November 21, 1991, NARVASA, J.

In the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers.

FACTS

In GR No. 88809: On December 26, 1988, private respondent-stockholder requested the San Miguel Corporation (SMC) and its corporate secretary the production, inspection, examination/verification and/or photocopying of the SMC corporate records to inform him of the decisions, policies, acts and performance of the management of the SMC under the PCGG-Board.

Since the shares of private respondent in the SMC have been sequestered by the PCGG, the former (SMC) sought advice from the latter on the effect of such sequestration. Subsequently, private respondent was informed by the SMC that all requests for the examination, inspection and photocopying of its corporate records should be coursed through the PCGG.

The facts set forth in G.R. No. 88809 are substantially similar in G.R. No. 88858 except that in the latter case, private respondent as stockholder of record seeks authority to inspect and examine the corporate records of United Coconut Planters Bank.
The request of private respondent for the inspection/examination of SMC's corporate records was denied by the PCGG As regards the corporate records of UCPB, private respondent was likewise advised to course his request through the PCGG.

Thereafter, private respondent filed two separate petitions for prohibition and mandamus before the Sandiganbayan seeking to enforce his stockholder's right to inspect the corporate records of SMC and the UCPB.

Subsequently, respondent Sandiganbayan rendered the assailed resolutions allowing respondent Eduardo Cojuangco, Jr., to inspect the corporate records of United Coconut Planters Bank and San Miguel Corporation.

As regards the right of inspection, it is the submission of petitioner that the request of respondent Cojuangco, Jr., for the examination of the corporate records of SMC and UCPB may be validly refused pending judicial determination of respondent's sequestered shares, i.e., whether the same are ill-gotten or not. It is further argued that respondent's purpose in examining the corporate records of SMC and the UCPB is merely to satisfy his curiosity regarding the performance of said corporations

ISSUE

W/N the PCGG may validly refuse private respondent's right to inspection; Does sequestration automatically deprive a stockholder of his right of inspection?

RULING

We rule in the negative.

The right of a stockholder to inspect and or examine the records of a corporation is explicitly provided in Section 74 of the Corporation Code, the pertinent portion of which reads:

"SEC. 74. Books to be kept; stock transfer agent. —

"x x x"

The records of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense."

Petitioners argue, however, that the Corporation Code has to give way to, as having been amended by, Executive Orders Nos. 1, 2, 14 and related issuances as well as the pronouncement laid down by this Court in Bataan Shipyard and Engineering Corporation v. Presidential Commission on Good Government on the effects of sequestration.

There is mischief in this argument. We have examined the extent of Executive Orders Nos. 1, 2 and 14 on sequestration as well as the BASECO case relied upon by petitioner. Nevertheless, the Court finds nothing therein to indicate that the Corporation Code has been deemed amended, much less an implied modification of a stockholder's right to inspection as guaranteed by Sec. 74 thereof. Moreover, what is clear in the case of BASECO, supra, is the following:

"One thing is certain, and should be stated at the outset the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration; freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG is a conservator, not an owner

The PCGG does not become, ipso facto, the owner of the shares just because the same have been sequestered; nor does it become the stockholder of record by virtue of such sequestration.

Just recently, We ruled that the PCGG cannot vote the sequestered shares of respondent Cojuangco, Jr., in San Miguel. If the PCGG cannot vote the sequestered shares of private respondent, with much more reason it cannot restrain or prevent private respondent, as stockholder from inspecting the corporate records of the SMC and the UCPB at reasonable hours on business days. The law grants respondent/stockholder such authority.

Petitioner, in seeking to bar private respondent from exercising his statutory right of inspection, lays emphasis on the argument that respondent's express purpose is to "supervise" PCGG's management, if not to gratify his curiosity regarding the performance of the SMC and the UCPB.

Again, the argument is devoid of merit. Records indicate that private respondent is the ostensible owner of a substantial number of shares and is a stockholder of record in SMC and UCPB. * Being a stockholder beyond doubt, there is therefore no reason why private respondent may not exercise his statutory right of inspection in accordance with Sec. 74 of the Corporation Code, the only express limitation being that the right of inspection should be exercised at reasonable hours on business days; 2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any information secured through any previous examination of the records of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance. As such, and in the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers.

While it may be true that the right of inspection granted by Sec. 74 of the Corporation Code is not absolute, as when the stockholder is not acting in good faith and for a legitimate purpose; or when the demand is purely speculative or merely to satisfy curiosity, the same may not be said in the case of private *Respondent*. This is because: ". . . the impropriety of purpose such as will defeat enforcement must be set up (by) the corporation defensively if the Court is to take cognizance of it as a qualification. In other words, the specific provisions take from the stockholder the burden of showing impropriety of purpose or motive.'" (Gokongwei, Jr., v. Securities and Exchange Commission, supra; citing State v. Monida & Yellowstone Stage Co., 110 Minn. 193, 124 NW 791; State v. Cities Service Co., 114 A 463.)

In the case at bar, petitioner failed to discharge the burden of proof to show that private respondent's action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right. Save for its unsubstantiated allegations, petitioner could offer no proof, nay, not even a scintilla of evidence that respondent Cojuangco, Jr., was motivated by bad faith; that the demand was for an illegitimate purpose or that the demand was impelled by speculation or idle curiosity. Surely, respondent's substantial shareholdings in the SMC and UCPB cannot be an object of mere curiosity.

VICTOR AFRICA, *Petitioner* -versus- PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, JOSE LAURETA, MELQUIADES GUTIERREZ, EDUARDO M. VILLANUEVA, EDUARDO DE LOS ANGELES and ROMAN MABANTA, JR., *Respondents* GR No. 83831, EN BANC, January 9, 1992, REGALADO, J.

FACTS

Shortly after the PCGG sequestered ETPI on March 14, 1986, the sequestration order was partially lifted in May, 1986 when 40% of the shares of stock (Class "B") owned by Cable and Wireless, Ltd. were freed from the effects of sequestration. The remaining 60% of the shares (Class "A"), however, remained under sequestration. Thereafter, on July 22, 1987, the PCGG filed with the Sandiganbayan the aforesaid Civil Case No. 0009.

Subsequently, during the annual stockholders meeting convened on January 29, 1988 pursuant to a PCGG Resolution dated January 28, 1988 which called for the resumption of the stockholders meeting originally scheduled on January 4, 1988, Eduardo M. Villanueva, as PCGG nominee, Roman Mabanta, Jr. and Eduardo de los Angeles as nominees of the foreign investors, Cable and Wireless Ltd., and Jose L. Africa (who was absent) were elected as members of the board of directors.

An organizational meeting was later held where Eduardo Villanueva was elected as president and general manager, while Ramon Desuasido, Almario Velasco and Ranulfo Payos were elected as acting corporate secretary, acting treasurer, and acting assistant corporate secretary, respectively.

The nomination and election of PCGG nominees/designees to the ETPI Board of Directors, as well as the election of its new officers, triggered a chain of contentious proceedings before the Sandiganbayan and this Court between the members of the ETPI Board and its stockholders, on the one hand, and the PCGG's nominees/designees elected ETPI Board, on the other hand, in the cases hereinunder discussed.

G.R. No. 83831
Victor Africa, who claims to be an employee of ETPI holding the positions of vice-president, general counsel (on official leave without pay), corporate secretary and special assistant to the chairman (and president), filed directly with this Court a petition for injunction seeking to enjoin the PCGG and its nominees/designees to the board of directors and the newly-installed officers of ETPI from implementing their alleged illegal, invalid and immoral act of ousting him from his offices and positions at the ETPI pending the determination of whether they have validly, legally and morally assumed their supposed positions and offices as "directors" and/or "officers" of ETPI.
He contends that the reasons advanced by the PCGG-sponsored board of directors for ousting him from his offices (redundancy, need to conserve company funds and loss of confidence) are flimsy, whimsical and arbitrary, evidencing not only the PCGG-sponsored board's discriminatory and oppressive attitude towards him but, more importantly, its clear intent to harass him into refraining from questioning before several tribunals all the invalid, illegal and immoral acts of said PCGG-sponsored board which have caused and are still causing ETPI damages because they constitute dissipation of assets.

G.R. Nos. 85597 and 85621
Jose L. Africa, Manuel Nieto and Rafael Valdez, allegedly the registered stockholders of ETPI, instituted on September 6, 1988 before the Sandiganbayan Civil Case No. 0048, [4] a complaint for injunction and damages with prayer for a temporary restraining order seeking to enjoin Eduardo M. Villanueva from acting as "Director, President and/or General Manager" of ETPI and from exercising the powers and functions of said positions, as well as to stop the PCGG from directly or indirectly interfering with the management of ETPI. They contend that the assumption of Villanueva to said positions was effected without due process of law through the PCGG using and voting the sequestered shares without legal justification.

G.R. No. 85594
The same plaintiffs in Civil Case No. 0048, now in their capacity as erstwhile members of the Board of Directors of ETPI, instituted before the Sandiganbayan on September 23, 1988 Civil Case No. 0050, another action for injunction and damages with prayer for a writ of preliminary injunction and/or temporary restraining order.

In their complaint, plaintiffs questioned the acts and orders of the PCGG leading to the election of therein defendants Melquiades Gutierrez, Mark Javier, Ranulfo P. Payos, Jose P. Roxas and Almario Velasco, and Cable and Wireless representatives Roman Mabanta, Jr. and Eduardo de los Angeles to the ETPI Board of Directors. Claiming to be the duly elected members of the ETPI Board of Directors during the January 4, 1988 special stockholders meeting, plaintiffs prayed that defendants be removed from their ETPI positions, and that an injunction be issued perpetually restraining the PCGG from electing, designating and supporting the defendants in their ETPI roles.

Recapping, therefore, from the foregoing narration it appears that the injunction suits filed and docketed as Civil Cases Nos. 0048 and 0050 in the Sandiganbayan and the petition for injunction filed directly with this Court as G.R. No. 83831 are substantially identical in the reliefs sought therein, that is, to nullify the acts and orders of the PCGG which led to the nomination and election of the new members of the board of directors and officers of the ETPI and to enjoin said directors and officers from exercising the powers and functions of said positions.

RULING
The law and jurisprudence on the jurisdiction of the Sandiganbayan over cases for the recovery of "ill-gotten wealth" are now settled. In *PCGG vs. Hon. Emmanuel G. Peña, etc., et al.*, this Court held:

> . . . Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court.

The aforequoted ruling was reiterated in *PCGG vs. Hon. Aquino, Jr., etc., et al. and Marcelo Fiberglass Corporation vs. PCGG*. In six (6) subsequent cases the Court pointed out that:

> . . . (the) exclusive jurisdiction conferred on the Sandiganbayan would evidently extend not only to the principal causes of action, *i.e.*, the recovery of alleged ill-gotten wealth, but also to "all incidents arising from, incidental to, or related to, such cases," such as the dispute over the sale of shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, the sequestration thereof, which may not be made the subject of separate actions or proceedings in another forum.

A careful examination of the records of these cases reveals that the complaints instituted by Jose L. Africa, et al. in Civil Cases Nos. 0048 and 0050 before the Sandiganbayan are in the nature of special and original civil actions for injunction directed against the defendants therein and specially seeking to restrain them from representing and acting as officers and members of the Board of Directors of ETPI and to prevent the PCGG from exercising acts of ownership and/or management over ETPI.

Moreover, in claiming as illegal the acts or orders of the PCGG issued in pursuance of the exercise of its powers and functions under Executive Orders Nos. 1, 2 and 14, which resulted in the installation of defendants to the Board of Directors of ETPI and to their corporate offices, plaintiffs Jose L. Africa, et al. merely sought to preserve the *status quo*, that is, the last actual, peaceable, uncontested status which preceded the pending controversy. The *status quo*to the plaintiffs was the fact of their election to the Board of Directors of ETPI during the special stockholders meeting on January 4, 1988 allegedly pursuant to a valid call, notice and assembly in accordance with law.

The issue of jurisdiction of the Sandiganbayan over original special civil actions involving the powers and functions of the PCGG has been raised in and resolved by this Court. In the consolidated cases of *PCGG vs. Hon. Aquino, Jr., etc., et al. and Marcelo Fiberglass Corporation vs. PCGG, supra*, therein private respondent Marcelo Fiberglass Corporation contested the jurisdiction of the Sandiganbayan over special civil actions claiming that Section 2 of Executive Order No. 14 vested the Sandiganbayan with Jurisdiction over civil and criminal cases filed by the PCGG but not over special civil actions filed by private parties; that Section 2 did not limit the filing of special civil actions by private persons exclusively with the Sandiganbayan; and that Presidential Decree No. 1606 which created the Sandiganbayan did not vest such court with jurisdiction over special civil actions such as those involved therein and as enumerated in Section 4 of Presidential Decree No. 1606.

The Court rejected such contention, declaring that the attempt to remove special civil actions from the Sandiganbayan's exclusive jurisdiction is of no avail if they similarly involve the powers and functions of the PCGG. The Court reiterated the pronouncement in *PCGG vs. Peña, etc., et al., supra*, that the Sandiganbayan has exclusive and original jurisdiction in civil or criminal cases involving ill-gotten wealth under Executive Order No. 14, as well as incidents arising from, incidental or related to such cases, subject to review on *certiorari* exclusively by the Supreme Court.
Since the injunctive suits filed by Jose L. Africa, et al. before the Sandiganbayan stemmed from incidents arising from, incidental and related to the partial sequestration of ETPI, the directive enunciated in the *Peña* case that "those who wish to question or challenge the Commission's acts or orders in such cases must seek recourse in the same court, the Sandiganbayan, which is vested with exclusive and original jurisdiction," applies to the instant case.

TERELAY INVESTMENT AND DEVELOPMENT CORPORATION, *Petitioner –versus-* CECILIA TERESITA J. YULO, *Respondent*
G.R. No. 160924, FIRST DIVISION, August 5, 2015, BERSAMIN, J.

The petitioner's submission that the respondent's "insignificant holding" of only .001% of the petitioner's stockholding did not justify the granting of her application for inspection of the corporate books and records is unwarranted.

The Corporation Code has granted to all stockholders the right to inspect the corporate books and records, and in so doing has not required any specific amount of interest for the exercise of the right to inspect

FACTS

Asserting her right as a stockholder, Cecilia Teresita Yulo wrote a letter addressed to Terelay Investment and Development Corporation (TERELAY) requesting that she be allowed to examine its books and records on September 17, 1999 at 1:30 o'clock in the afternoon at the latter's office on the 25th floor, Citibank Tower, Makati City. In its reply-letter, TERELAY denied the request for inspection and instead demanded that she show proof that she was a bona fide stockholder.

Cecilia Yulo again sent another letter clarifying that her request for examination of the corporate records was for the purpose of inquiring into the financial condition of TERELAY and the conduct of its affairs by the principal officers. The following day, Cecilia Yulo received a faxed letter from TERELAY's counsel advising her not to continue with the inspection in order to avoid trouble.

Cecilia Yulo filed with the Securities and Exchange Commission (SEC), a Petition for Issuance of a Writ of Mandamus with prayer for Damages against TERELAY.

On March 22, 2002, the RTC rendered its judgment, ruling that petitioner's application for inspection of corporate records is granted. The CA affirmed the RTC.

ISSUES

1) W/N the law requires substantial shareholding before she can exercise her right of inspection as a stockholder. (No)
2) W/N she has just and sufficient grounds to inspect its corporate records;

RULING

1. The petitioner's submission that the respondent's "insignificant holding" of only .001% of the petitioner's stockholding did not justify the granting of her application for inspection of the corporate books and records is unwarranted.

The *Corporation Code* has granted to all stockholders the right to inspect the corporate books and records, and in so doing has not required any specific amount of interest for the exercise of the right to inspect. *Ubi lex non distinguit nee nos distinguere debemos*. When the law has made no distinction, we ought not to recognize any distinction.

2.Neither could the petitioner arbitrarily deny the respondent's right to inspect the corporate books and records on the basis that her inspection would be used for a doubtful or dubious reason. Under Section 74, third paragraph, of the *Corporation Code*, the only time when the demand to examine and copy the corporation's records and minutes could be refused is when the corporation puts up as a defense to any action that "the person demanding" had "*improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand*."

The right of the shareholder to inspect the books and records of the petitioner should not be made subject to the condition of a showing of any particular dispute or of proving any mismanagement or other occasion rendering an examination proper, but if the right is to be denied, the burden of proof is upon the corporation to show that the purpose of the shareholder is improper, by way of defense. According to a recognized commentator:

By early English decisions it was formerly held that there must be something more than bare suspicion of mismanagement or fraud. There must be some particular controversy or question in which the party applying was interested, and inspection would be granted only so far as necessary for that particular occasion. By the general rule in the United States, however, shareholders have a right to inspect the books and papers of the corporation without first showing any particular dispute or proving any mismanagement or other occasion rendering an examination proper. The privilege, however, is not absolute and the corporation may show in defense that the applicant is acting from wrongful motives.

Among the purposes held to justify a demand for inspection are the following: (1) To ascertain the financial condition of the company or the propriety of dividends; (2) the value of the shares of stock for sale or investment; (3) whether there has been mismanagement; (4) in anticipation of shareholders' meetings to obtain a mailing list of shareholders to solicit proxies or influence voting; (5) to obtain information in aid of litigation with the corporation or its officers as to corporate transactions. Among the improper purposes which may justify denial of the right of inspection are: (1) Obtaining of information as to business secrets or to aid a competitor; (2) to secure business "prospects" or investment or advertising lists; (3) to find technical defects in corporate transactions in order to bring "strike suits" for purposes of blackmail or extortion.

In general, however, officers and directors have no legal authority to close the office doors against shareholders for whom they are only agents, and withhold from them the right to inspect the books which furnishes the most effective method of gaining information which the law has provided, on mere doubt or suspicion as to the motives of the shareholder. While there is some conflict of authority, when an inspection by a shareholder is contested, the burden is usually held to be upon the corporation to establish a probability that the applicant is attempting to gain inspection for a purpose not connected with his interests as a shareholder, or that his purpose is otherwise improper. The burden is not upon the petitioner to show the propriety of his examination or that the refusal by the officers or directors was wrongful, except under statutory provisions.

Accordingly, Cecilia Yulo as the right to be fully informed of TERELAY's corporate condition and the manner its affairs are being managed. It is well-settled that the ownership of shares of stock gives stockholders the right under the law to be protected from possible mismanagement by its officers. This right is predicated upon selfpreservation. In any case, TERELAY did not adduce sufficient proof that Cecilia Yulo was in bad faith or had an ulterior motive in demanding her right under the law.

ADERITO Z. YUJUICO and BONIFACIO C. SUMBILLA, *Petitioners*
-versus- CEZAR T. QUIAMBAO and ERIC C. PILAPIL, *Respondents*.
GR No. 180416, SECOND DIVISION, June 02, 2014, PEREZ, J.

A criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer hook of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code can only he maintained against corporate officers or any other persons acting on behalf of such corporation. The complaint and the evidence Quiambao and Sumbilla submitted during preliminary investigation do not establish that Quiambao and Pilapil were acting on behalf of STRADEC. Violations of Section 74 contemplates a situation wherein a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation. Thus, the dismissal is valid.

FACTS

Strategic Alliance Development Corporation is a domestic corporation operating as a business development and investment company. On 1 March 2004, during the annual stockholder's meeting of STRADEC, Aderito Z. Yujuico was elected as president and chairman of the company. Yujuico replaced Cezar T. Quiambao, who had been the president and chairman of STRADEC since 1994. STRADEC appointed petitioner Bonifacio C. Sumbilla as treasurer and one Joselito John G. Blando as corporate secretary. Blando replaced respondent Eric C. Pilapil, the previous corporate secretary of STRADEC. On 12 August 2005, Yujuico and Sumbilla filed a criminal complaint against Quiambao and Pilapil and one Giovanni T. Casanova before the Office of the City Prosecutor of Pasig City. The complaint accuses Quiambao, Pilapil and Casanova of violating Section 74 in relation to Section 144 of the Corporation Code.

That during the stockholders' meeting, Yujuico--as newly elected president and chairman of STRADEC--demanded Quiambao for the turnover of the corporate records of the company, particularly the accounting files, ledgers, journals and other records of the corporation's business. Quiambao refused. After the stockholders' meeting, Quiambao and Casanova caused the removal of the corporate records of STRADEC from the company's offices in Pasig City. Upon his appointment as corporate secretary, Blando likewise demanded Pilapil for the turnover of the stock and transfer book of STRADEC. Pilapil refused. On 25 June 2004, Pilapil proposed to Blando to have the stock and transfer book deposited in a safety deposit box with Equitable Pel Bank. Blando acceded to the proposal and the stock and transfer book was deposited in a safety deposit box with the bank identified. It was agreed that the safety deposit box may only be opened in the presence of both Quiambao and Blando. Quiambao and Pilapil withdrew the stock and transfer book from the safety deposit box and brought it to the offices of the Stradcom Corporation in Quezon City. Quiambao thereafter asked Blando to proceed to the STRADCOM offices. Upon arriving thereat, Quiambao pressured Blando to make certain entries in the stock and transfer books. After making such entries, Blando again demanded that he be given possession of the stock and transfer book. Quiambao refused.

Blando received an order issued by the RTC of Pasig City, which directed him to cancel the entries he made in the stock and transfer book. Blando wrote letters to Quiambao and Pilapil once again demanding for the turnover of the stock and transfer book. Pilapil replied where he appeared to agree to Blando's demand. However, Quiambao still refused to turnover the stock and transfer book to Blando. Blando was once again constrained to agree to a proposal by Pilapil to have the stock and transfer book deposited with the RTC of Pasig City. The said court, however, refused to accept such deposit on the ground that it had no place for safekeeping.

Since Quiambao and Pilapil still refused to turnover the stock and transfer book, Blando again acceded to have the book deposited in a safety deposit box, this time, with the Export and Industry Bank. Yujuico and Sumbilla theorize that the refusal by the Quiambao, Pilapil and Casanova to turnover STRADEC's corporate records and stock and transfer book violates their right, as stockholders, directors and officers of the corporation, to inspect such records and book under Section 74 of the Corporation Code and may be held criminally liable pursuant to Section 144 of the Corporation Code.

The MeTC partially granted the Urgent Omnibus Motion. The MeTC ordered the issuance of a warrant of arrest against Quiambao and Pilapil. The RTC issued a TRO enjoining the MeTC from conducting further proceedings in Criminal Case No. 89724.

The RTC granted Quiambao and Pilapil's certiorari petition and directing the dismissal of Criminal Case No. 89724. According to the RTC, the MeTC committed grave abuse of discretion in issuing a warrant of arrest against Quiambao and Pilapil. The RTC opined that refusing to allow inspection of the stock and transfer book, as opposed to refusing examination of other corporate records, is not punishable as an offense under the Corporation Code. The petitioners moved for reconsideration, but the RTC remained steadfast. Hence, this petition by Yujuico and Sumbilla.

ISSUE

Whether or not the RTC's refusal to allow inspection of the stock and transfer book of a corporation is not a punishable offense under the Corporation Code, such a refusal still amounts to a violation of Section 74 of the Corporation Code, for which Section 144 of the same code prescribes a penalty.

RULING

No, there is no violation of the Corporation, thus, dismissal of the complaint is warranted.

The act of refusing to allow inspection of the stock and transfer book of a corporation, when done in violation of Section 74(4) of the Corporation Code, is punishable as an offense under Section 144 of the same code. In justifying this conclusion, the RTC seemingly relied on the fact that, under Section 74 of the Corporation Code, the application of Section 144 is expressly mentioned only in relation to the act of "refusing to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from the corporation's records or minutes" that excludes its stock and transfer book, the same does not mean that the latter section no longer applies to any other possible violations of the former section. It must be emphasized that Section 144 already purports to penalize "violations" of "any provision" of the Corporation Code "not otherwise specifically penalized therein." Hence, we find inconsequential the fact that that Section 74 expressly mentions the application of Section 144 only to a specific act, but not with respect to the other possible violations of the former section.

A criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer hook of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code can only he maintained against corporate officers or any other persons acting on behalf of such corporation. The submissions of the Yujuico and Sumbilla during the preliminary investigation clearly suggest that Quiambao and Pilapil are neither in relation to STRADEC. Thus, we sustain the dismissal of Criminal Case No. 89724.

Criminal Case No. 89724 accuses Quiambao and Pilapil of denying Yujuico and Sumbilla's right to examine or inspect the corporate records and the stock and transfer book of STRADEC. It is thus a criminal action that is based on the violation of the second and fourth paragraphs of Section 74 of the Corporation Code. A perusal of the second and fourth paragraphs of Section 74, as well as the first paragraph of the same section, reveal that they are provisions that obligates a corporation: they prescribe what books or records a corporation is required to keep; where the corporation shall keep them; and what are the other obligations of the corporation to its stockholders or members in relation to such books and records. Hence, by parity of reasoning, the second and fourth paragraphs of Section 74, including the first paragraph of the same section, can only be violated by a corporation. It is clear then that a criminal action based on the violation of the second or fourth paragraphs of Section 74 can only be maintained against corporate officers or such other persons that are acting on behalf of the corporation. Violations of Section 74 contemplates a situation wherein a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation.

The problem with the Yujuico and Sumbilla's complaint and the evidence that they submitted during preliminary investigation is that they do not establish that Quiambao and Pilapil were acting on behalf of STRADEC. Quiambao and Sumbilla are not actually invoking their right to inspect the records and the stock and transfer book of STRADEC under the second and fourth paragraphs of Section 74. What they seek to enforce is the proprietary right of STRADEC to be in possession of such records and book. Such right, though certainly legally enforceable by other means, cannot be enforced by a criminal prosecution based on a violation of the second and fourth paragraphs of Section 74.

ALFREDO L. CHUA, TOMAS L. CHUA and MERCEDES P. DIAZ, *Petitioners*, - versus - PEOPLE OF THE PHILIPPINES, *Respondent*
G.R. No. 216146, August 24, 2016, THIRD DIVISION, REYES, J.

Despite the expiration of CTCM's corporate term in 1999, duties as corporate officers still pertained to the petitioners when Joselyn's complaint was filed in 2000. As correctly pointed out by the OSG, Sections 122 and 145 of the Corporation Code explicitly provide for the continuation of the body corporate for three years after dissolution. The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollarily then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Hence, Joselyn, as a stockholder, had the right to demand for the inspection of records. Lodged upon the corporation is the corresponding duty to allow the said inspection.

*In the case at bar, the petitioners were charged with violations of Section 74, in relation to Section 144, of the Corporation Code, a special law. Accordingly, since Joselyn was deprived of the exercise of an effective right of inspection, offenses had in fact been committed, **regardless of the petitioners' intent**.*

Right of Inspection

If a corporation is dissolved and is undergoing liquidation, does the right to inspect still exist? Yes. The corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. x x x The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity x x x nor those of its owners and creditors. x x x. Further, as correctly pointed out by the OSG, Sections 122 and 145 of the Corporation Code explicitly provide for the continuation of the body corporate for three years after dissolution. The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollarily then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Hence, Joselyn, as a stockholder, had the right to demand for the inspection of records. Lodged upon the corporation is the corresponding duty to allow the said inspection.

FACTS

Joselyn was a stockholder of Chua Tee Corporation of Manila. Alfredo was the president and chairman of the board, while Tomas was the corporate secretary and also a member of the board of the same corporation. Mercedes was the accountant/bookkeeper tasked with the physical custody of the corporate records.

In the Complaint-Affidavit filed before the Quezon City Prosecutors' Office, Joselyn alleged that despite written demands, the petitioners conspired in refusing without valid cause the exercise of her right to inspect Chua Tee Corporation of Manila's (CTCM) business transactions records, financial statements and minutes of the meetings of both the board of directors and stockholders. An Information indicting the petitioners for alleged violation of Section 74, in relation to Section 144, of the Corporation Code was filed before the MeTC of Quezon City **on July 4, 2001**.

The petitioners argue that since CTCM had ceased business operations since **May 26, 1999** which is prior to Joselyn's filing of her complaint before the MeTC, there was no longer any duty pertaining to corporate officers to allow a stockholder to inspect the records.

MeTC rendered its Judgment convicting the petitioners as charged, sentencing them to suffer the penalty of 30 days of imprisonment, and directing them to pay the costs of suit. Petitioners appealed to RTC but the same was denied. The petition for review filed to CA was likewise denied.

ISSUE

Whether the conviction for alleged violation of Section 74, in relation to Section 144, of the Corporation Code was proper.

RULING

The Court affirms the conviction but directs the payment of fine, in lieu of the penalty of imprisonment imposed by the courts *a quo.*

Despite the expiration of CTCM's corporate term in 1999, duties as corporate officers still pertained to the petitioners when Joselyn's complaint was filed in 2000. As correctly pointed out by the OSG, Sections 122 and 145 of the Corporation Code explicitly provide for the continuation of the body corporate for three years after dissolution. The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollarily then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Hence, Joselyn, as a stockholder, had the right to demand for the inspection of records. Lodged upon the corporation is the corresponding duty to allow the said inspection.

It is settled that "a re-examination of factual findings is outside the province of a petition for review on *certiorari,"* especially in the instant petition where the MeTC, RTC and CA concurred in convicting the petitioners of the charges against them. Be that as it may, the Court takes exception and notes the following circumstances: (a) during cross-examination, **Joselyn admitted that permission was granted for her to see the documents, but she was unable to actually view them as she was represented by her accountant**; (b) Joselyn lacked personal knowledge as . to whether or not the petitioners in fact allowed or denied the checking of the records she had requested; (c) the accountant of Joselyn stated that the letter requesting for the examination of CTCM's records was addressed to the Accounting Department, and he and his colleagues did not have personal dealings with the petitioners.

From the foregoing, it is apparent that a complete examination of CTCM's records did not occur resulting to an effective deprivation of Joselyn's right as a stockholder. However, from Joselyn and the accountant's testimonies, it can be inferred that permission to view the records was granted, albeit not fully effected. The petitioners, on their part, explained that they never prevented Joselyn from exercising her right of inspection, but when the latter made her request, Mercedes was too occupied in winding up the affairs of CTCM.

In the case at bar, the petitioners were charged with violations of Section 74, in relation to Section 144, of the Corporation Code, a special law. Accordingly, since Joselyn was deprived of the exercise of an effective right of inspection, offenses had in fact been committed, regardless of the petitioners' intent.

No exceptional grounds exist justifying the reversal of the conviction previously rendered by the MeTC, RTC and CA. However, in lieu of the penalty of 30 days of imprisonment, the Court finds it more just to impose upon each of the petitioners a fine of Ten Thousand Pesos (P10,000.00) considering the reasons below. *First.* Malicious intent was seemingly wanting. Permission to check the records was granted, albeit not effected. *Second.* Joselyn had predeceased Alfredo and Tomas, her uncles, who are in their twilight years. *Third.* Joselyn's mother, Rosario, had executed an Affidavit of Desistance stating that the filing of the complaint before was *"merely the result of [a] serious misunderstanding anent the management and operation of [CTCM], which had long ceased to exist as a corporate entity even prior to the alleged commission of the crime in question, rather than by reason of any criminal intent or actuation on the part of the [petitioners].* "

ALEJANDRO D.C. ROQUE, *Petitioner* –versus- PEOPLE OF THE PHILIPPINES, *Respondent*
G.R. No. 211108, THIRD DIVISION, June 7, 2017, TIJAM, J.

The revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

FACTS

Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA) became a corporation duly registered with the SEC on 1993. Sometime in 2003, Ongjoco, a member of BMTODA, sent a letter requesting copies of the Association's documents pursuant to his right to examine records under Section 74 of the Corporation Code after learning that BMTODA's funds were missing. However, the Secretary denied his request. He also learned that the incumbent officers were holding office for 3 years already, in violation of the one-year period provided for in BMTODA's by-laws. He requested from the President a copy of the list of its members with the corresponding franchise numbers of their respective tricycle fees and the franchise fees paid by each member, but the same was likewise denied. Thus, Ongjoco filed a Complaint against the President and Secretary for violation of Section 74 in relation to Section 144 of the Corporation Code. The President and Secretary argue however that since the letters were received by them when BMTODA's registration was already revoked, BMTODA ceased to exist as a corporation and they cannot be held liable of the same.

ISSUE

Can the President and Secretary be prosecuted under the penal provisions of the Corporation Code?

RULING

YES. Ongjoco, as a member of BMTODA, had a right to examine documents and records pertaining to said association. Ongjoco made a prior demand in writing for copy of pertinent records of BMTODA from the President and Secretary. However, both of them refused to furnish Ongjoco copies of such pertinent records. While it appears that the registration of BMTODA as a corporation with the SEC was revoked on 2003, the letter-request of Ongjoco which was dated while BMTODA's registration was revoked, was actually received by after the revocation was lifted. In any case, the revocation of a corporation's Certificate of Registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished. In the case of *Clemente v. Court of Appeals*, the Court explained that the termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors. Thus, the revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

d. Pre-Emptive Right

- SEC Letter-Opinion Dated March 10, 2000

MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, *Petitioners* -versus- MIGUEL LIM, in his personal capacity as Stockholder of Ruby Industrial Corporation and representing the MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION and the MANAGEMENT COMMITTEE OF RUBY INDUSTRIAL CORPORATION, *Respondents*
GR No. 165887, THIRD DIVISION, June 6, 2011, VILLARAMA, Jr., J.

The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders.

FACTS

Ruby Industrial Corporation is a domestic corporation engaged in glass manufacturing. Reeling from severe liquidity problems beginning in 1980, Ruby filed on December 13, 1983 a petition for suspension of payments with the SEC which was granted. The SEC Hearing Panel created the management committee (MANCOM) for Ruby, composed of representatives from Ruby's creditors. Subsequently, two rehabilitation plans were submitted to the Securities and Regulations Commission (SEC), the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim. However, the implementation of both majority plans has been enjoined. Notwithstanding the injunction order, SEC issued an Order approving the Revised BENHAR/RUBY Plan and creating a new management committee to oversee its implementation.

The Revised BENHAR/RUBY Plan had proposed the calling for subscription of unissued shares through a Board Resolution from the P11.814 million of theP23.7 million Authorized Capital Stock

(ACS) "in order to allow the long overdue program of the REHAB Program." To implement the Revised plan, RUBY's board of directors held a special meeting and took up the capital infusion of P11.814 Million representing the unissued and unsubscribed portion of the present ACS of P23.7 Million. The Board resolved that: The corporation be authorized to issue out of the unissued portion of the authorized capital stocks of the corporation in the form of common stocks 11.8134.00 Million to be subscribed and paid in full by the present stockholders in proportion to their present stockholding in the corporation on staggered basis and that should any of the stockholders fail to exercise their rights to buy the number of shares they are qualified to buy by making the first installment payment of 25% on or before October 13, 1991, then the other stockholders may buy the same and that only when none of the present stockholders are interested in the shares may there be a resort to selling them by public auction. The minority directors claimed they were not notified of said board meeting.

Consequently, Lim moved that the SEC declare as null and void the infusion of additional capital made by the majority stockholders and restore the capital structure of RUBY to its original structure prior to the time injunction was issued. Before the CA, Lim demonstrated the following evidence to rebut the presumption of regularity: (1) it was the board of directors and not the stockholders which conducted the meeting without the approval of the MANCOM; (2) there was no written waivers of the minority stockholders' pre-emptive rights and thus it was irregular to merely notify them of the board of directors' meeting and ask them to exercise their option; (3) there was an existing permanent injunction against any additional capital infusion on the BENHAR/RUBY Plan, while the CA and this Court both rejected the Revised BENHAR/RUBY Plan; (4) there was no General Information Sheet reports made to the SEC on the alleged capital infusion, as per certification by the SEC.

ISSUE

Whether or not the additional capital infusion is valid.

RULING

NO. The issuance of additional shares was done in breach of trust by the controlling stockholders. Here, the majority sought to impose their will and, through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself, as well as the minority stockholders and the unsecured creditors.

A stock corporation is expressly granted the power to issue or sell stocks. The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock do not need approval of the stockholders. What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

The SEC remained indifferent to the reliefs sought by the minority stockholders, saying that the issue of the validity of the additional capital infusion was belatedly raised. Even assuming the October 2, 1991 board meeting indeed took place, the SEC did nothing to ascertain whether indeed, as the minority claimed: (1) the minority stockholders were not given notice as required and reasonable time to exercise their pre-emptive rights; and (2) the capital infusion was not for the purpose of rehabilitation but a mere ploy to divest the minority stockholders of their 40.172% shareholding and reduce it to a mere 25.25%.

Pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. The right may be restricted or denied under the articles of incorporation, and subject to certain exceptions and limitations. The stockholder must be given a reasonable time within which to exercise their preemptive rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it.

The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders. Thus, even if the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objectionable if the directors acted in breach of trust and their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest. In this case, the following relevant observations should have signaled greater circumspection on the part of the SEC -- upon the third and last remand to it pursuant to the January 20, 1998 Decision -- to demand transparency and accountability from the majority stockholders, in view of the illegal assignments and objectionable features of the Revised BENHAR/RUBY Plan, as found by the CA and as affirmed by the Supreme Court.

d. Right to Vote

CECILIA CASTILLO, OSCAR DEL ROSARIO, ARTURO S. FLORES, XERXES NAVARRO, MARIA ANTONIA TEMPLO and MEDICAL CENTER PARAÑAQUE, INC., *Petitioners*
-versus- ANGELES BALINGHASAY, RENATO BERNABE, ALODIA DEL ROSARIO, ROMEO FUNTILA, TERESITA GAYANILO, RUSTICO JIMENEZ, ARACELI JO, ESMERALDA MEDINA, CECILIA MONTALBAN, VIRGILIO OBLEPIAS, CARMENCITA PARRENO, CESAR REYES, REYNALDO SAVET, SERAPIO TACCAD, VICENTE VALDEZ, SALVACION VILLAMORA, and HUMBERTO VILLAREAL, *Respondents***
GR. No. 150976, FIRST DIVISION, October 18, 2004, QUISUMBING, J.

One of the rights of a stockholder is the right to participate in the control and management of the corporation that is exercised through his vote. The right to vote is a right inherent in and incidental to the ownership of corporate stock, and as such is a property right. The stockholder cannot be deprived of the right to vote his stock nor may the right be essentially impaired, either by the legislature or by the corporation, without his consent, through amending the charter, or the by-laws

FACTS

MCPI is a domestic corporation. It was organized sometime in September 1977. At the time of its incorporation, Act No. 1459, the old Corporation Law was still in force and effect.

Article VII of MCPI's original Articles of Incorporation provides That the authorized capital stock of the corporation is TWO MILLION (₱2,000,000.00) PESOS, divided into TWO THOUSAND (2,000) SHARES at a par value of ₱100 each share. the ONE THOUSAND SHARES issued to, and subscribed by, the incorporating stockholders shall be classified as Class A shares while the other ONE

THOUSAND unissued shares shall be considered as Class B shares. Only holders of Class A shares can have the right to vote and the right to be elected as directors or as corporate officers.

On September 9, 1992, Article VII was amended to provide as follows:

That the authorized capital stock of the corporation is THIRTY TWO MILLION PESOS (P32,000,000.00) divided as follows:

CLASS	NO. OF SHARES	PAR VALUE
"A"	1,000	₱1,000.00
"B"	31,000	1,000.00

Except when otherwise provided by law, only holders of Class "A" shares have the right to vote and the right to be elected as directors or as corporate officers

Petitioners and the respondents are stockholders of MCPI, with the former holding Class "B" shares and the latter owning Class "A" shares.

The shareholders of MCPI held their annual stockholders' meeting and election for directors. During the course of the proceedings, respondent Rustico Jimenez, citing Article VII, as amended, and notwithstanding MCPI's history, declared over the objections of herein petitioners, that no Class "B" shareholder was qualified to run or be voted upon as a director. In the past, MCPI had seen holders of Class "B" shares voted for and serve as members of the corporate board and some Class "B" share owners were in fact nominated for election as board members. Nonetheless, Jimenez went on to announce that the candidates holding Class "A" shares were the winners of all seats in the corporate board. The petitioners protested, claiming that Article VII was null and void for depriving them, as Class "B" shareholders, of their right to vote and to be voted upon, in violation of the Corporation Code (Batas Pambansa Blg. 68), as amended.

Herein petitioners filed a Complaint for Injunction, Accounting and Damages, before the RTC for Annulment of the declaration of directors of the MCPI and for the conduct of an election whereat all stockholders, irrespective of the classification of the shares they hold, should be afforded their right to vote and be voted for.

The RTC ruled that the election held on February 9, 2001 is VALID as the holders of CLASS "B" shares are not entitled to vote and be voted for.

Petitioners assert that Article VII of the Articles of Incorporation of MCPI, which denied them voting rights, is null and void for being contrary to Section 6 of the Corporation Code. They point out that Section 6 prohibits the deprivation of voting rights except as to preferred and redeemable shares only. Hence, under the present law on corporations, all shareholders, regardless of classification, other than holders of preferred or redeemable shares, are entitled to vote and to be elected as corporate directors or officers. Since the Class "B" shareholders are not classified as holders of either preferred or redeemable shares, then it necessarily follows that they are entitled to vote and to be voted for as directors or officers.

The respondents, in turn, maintain that the grant of exclusive voting rights to Class "A" shares is clearly provided in the Articles of Incorporation and is in accord with Section 5[9] of the Corporation

Law (Act No. 1459), which was the prevailing law when MCPI was incorporated in 1977. They likewise submit that as the Articles of Incorporation of MCPI is in the nature of a contract between the corporation and its shareholders and Section 6 of the Corporation Code could not retroactively apply to it without violating the non-impairment clause[10] of the Constitution.

ISSUE

Whether or not holders of Class "B" shares of the MCPI may be deprived of the right to vote and be voted for as directors in MCPI.

RULING

When Article VII of the Articles of Incorporation of MCPI was amended in 1992, the phrase "except when otherwise provided by law" was inserted in the provision governing the grant of voting powers to Class "A" shareholders. This particular amendment is relevant for it speaks of a law providing for exceptions to the exclusive grant of voting rights to Class "A" stockholders. Which law was the amendment referring to? The determination of which law to apply is necessary. There are two laws being cited and relied upon by the parties in this case. In this instance, the law in force at the time of the 1992 amendment was the Corporation Code (B.P. Blg. 68), not the Corporation Law (Act No. 1459), which had been repealed by then.

We find and so hold that the law referred to in the amendment to Article VII refers to the Corporation Code and no other law. At the time of the incorporation of MCPI in 1977, the right of a corporation to classify its shares of stock was sanctioned by Section 5 of Act No. 1459. The law repealing Act No. 1459, B.P. Blg. 68, retained the same grant of right of classification of stock shares to corporations, but with a significant change. Under Section 6 of B.P. Blg. 68, the requirements and restrictions on voting rights were explicitly provided for, such that "no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code" and that "there shall always be a class or series of shares which have complete voting rights." Section 6 of the Corporation Code being deemed written into Article VII of the Articles of Incorporation of MCPI, it necessarily follows that unless Class "B" shares of MCPI stocks are clearly categorized to be "preferred" or "redeemable" shares, the holders of said Class "B" shares may not be deprived of their voting rights. Note that there is nothing in the Articles of Incorporation nor an iota of evidence on record to show that Class "B" shares were categorized as either "preferred" or "redeemable" shares. The only possible conclusion is that Class "B" shares fall under neither category and thus, under the law, are allowed to exercise voting rights.

One of the rights of a stockholder is the right to participate in the control and management of the corporation that is exercised through his vote. The right to vote is a right inherent in and incidental to the ownership of corporate stock, and as such is a property right. The stockholder cannot be deprived of the right to vote his stock nor may the right be essentially impaired, either by the legislature or by the corporation, without his consent, through amending the charter, or the by-laws. Neither do we find merit in respondents' position that Section 6 of the Corporation Code cannot apply to MCPI without running afoul of the non-impairment clause of the Bill of Rights. Section 148[12] of the Corporation Code expressly provides that it shall apply to corporations in existence at the time of the effectivity of the Code. Hence, the non-impairment clause is inapplicable in this instance. When Article VII of the Articles of Incorporation of MCPI were amended in 1992, the board of directors and stockholders must have been aware of Section 6 of the Corporation Code and intended that Article

VII be construed in harmony with the Code, which was then already in force and effect. Since Section 6 of the Corporation Code expressly prohibits the deprivation of voting rights, except as to "preferred" and "redeemable" shares, then Article VII of the Articles of Incorporation cannot be construed as granting exclusive voting rights to Class "A" shareholders, to the prejudice of Class "B" shareholders, without running afoul of the letter and spirit of the Corporation Code.

e. Right to Dividends

NIELSON & COMPANY, INC., *Plaintiff-appellant* -versus- LEPANTO CONSOLIDATED MINING COMPANY, *Defendant-appellee*
G.R. No. L-21601, EN BANC, December 17, 1966, ZALDIVAR, J.

Stock dividends cannot be issued to a person who is not a stockholder in payment of services rendered.In the case at bar Nielson can not be paid in shares of stock which form part of the stock dividends of Lepanto for services it rendered under the management contract.

FACTS

On January 30, 1937, the parties have entered into an operating agreement wherein Nielson & Co. would operate and manage the mining properties owned by Lepanto Consolidated Mining Co. for a period of five years. Before the lapse of the five year period, the parties have renewed the contract for another five years with modifications made by Lepanto on the management fee.

On its modified contract Nielson will receive (1) 10% of the dividends declared and paid, when and as paid during the period of the contract and at the end of each year, (2) 10% of any depletion reserve that may set up, and (3) 10% of any amount expended during the year out of surplus earnings for capital account.

In January, 1942 operation of the mining properties was disrupted on account of the war. The Japanese forces thereafter occupied the mining properties, operated the mines during the continuance of the war, and who were ousted from the mining properties only in August of 1945.

After the mining properties were liberated from the Japanese forces, Lepanto took possession thereof and embarked in rebuilding and reconstructing the mines and mill. The restoration lasted for nearly three years and the mines have resumed its operation under the exclusive management of Lepanto. Shortly after the mines were liberated from the Japanese invaders in 1945, a disagreement arose between NIELSON and LEPANTO over the status of the operating contract in question which as renewed expired in 1947.

ISSUE

Whether or not Nielson is entitled to his share in the stock dividends.

HELD

Stock dividends cannot be issued to a person who is not a stockholder in payment of services rendered.

Section 16 of the Corporation Law, in part, provides a follows:

No corporation organized under this Act shall create or issue bills, notes or other evidence of debt, for circulation as money, and no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for: (1) property actually received by it at a fair valuation equal to the par or issued value of the stock or bonds so issued; and in case of disagreement as to their value, the same shall be presumed to be the assessed value or the value appearing in invoices or other commercial documents, as the case may be; and the burden or proof that the real present value of the property is greater than the assessed value or value appearing in invoices or other commercial documents, as the case may be, shall be upon the corporation, or for (2) profits earned by it but not distributed among its stockholders or members; Provided, however, That no stock or bond dividend shall be issued without the approval of stockholders representing not less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the corporation or at a special meeting duly called for the purpose.
In the case at bar Nielson can not be paid in shares of stock which form part of the stock dividends of Lepanto for services it rendered under the management contract. We sustain the contention of Lepanto that the understanding between Lepanto and Nielson was simply to make the cash value of the stock dividends declared as the basis for determining the amount of compensation that should be paid to Nielson, in the proportion of 10% of the cash value of the stock dividends declared. In other words, Nielson must still be paid his 10% fee using as the basis for computation the cash value of the stock dividends declared.

Moreover, from the above-quoted provision of Section 16 of the Corporation Law, the consideration for which shares of stock may be issued are: (1) cash; (2) property; and (3) undistributed profits. Shares of stock are given the special name "stock dividends" only if they are issued in lieu of undistributed profits. If shares of stocks are issued in exchange of cash or property then those shares do not fall under the category of "stock dividends". A corporation may legally issue shares of stock in consideration of services rendered to it by a person not a stockholder, or in payment of its indebtedness. A share of stock issued to pay for services rendered is equivalent to a stock issued in exchange of property, because services is equivalent to property. Likewise a share of stock issued in payment of indebtedness is equivalent to issuing a stock in exchange for cash. But a share of stock thus issued should be part of the original capital stock of the corporation upon its organization, or part of the stocks issued when the increase of the capitalization of a corporation is properly authorized. In other words, it is the shares of stock that are originally issued by the corporation and forming part of the capital that can be exchanged for cash or services rendered, or property; that is, if the corporation has original shares of stock unsold or unsubscribed, either coming from the original capitalization or from the increased capitalization. Those shares of stock may be issued to a person who is not a stockholder, or to a person already a stockholder in exchange for services rendered or for cash or property. But a share of stock coming from stock dividends declared cannot be issued to one who is not a stockholder of a corporation.

A "stock dividend" is any dividend payable in shares of stock of the corporation declaring or authorizing such dividend.

So, a stock dividend is actually two things: (1) a dividend, and (2) the enforced use of the dividend money to purchase additional shares of stock at par.16 When a corporation issues stock dividends, it shows that the corporation's accumulated profits have been capitalized instead of distributed to the stockholders or retained as surplus available for distribution, in money or kind, should opportunity offer. Far from being a realization of profits for the stockholder, it tends rather to postpone said realization, in that the fund represented by the new stock has been transferred from surplus to assets and no longer available for actual distribution. Thus, it is apparent that stock dividends are issued only to stockholders. This is so because only stockholders are entitled to dividends. They are the only ones who have a right to a proportional share in that part of the surplus which is declared as dividends. A stock dividend really adds nothing to the interest of the stockholder; the proportional interest of each stockholder remains the same.18If a stockholder is deprived of his stock dividends – and this happens if the shares of stock forming part of the stock dividends are issued to a non-stockholder — then the proportion of the stockholder's interest changes radically. Stock dividends are civil fruits of the original investment, and to the owners of the shares belong the civil fruits.

NORA A. BITONG, *Petitioner* –versus- COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, AND ADORACION G. NUYDA, *Respondents*

GR. No. 123553, FIRST DIVISION, July 13, 1998, BELLOSILLO, J.

The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the bona fide ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.

FACTS

Nora Bitong claimed before the SEC that she had been the Treasurer and a Member of the Board of Directors of private respondent Mr. & Ms. Publishing Co., Inc. (Mr. & Ms.) from the time it was incorporated on 29 October 1976 to 11 April 1989, and was the registered owner of 1,000 shares of stock out of the 4,088 total outstanding shares.

Allegedly acting for the benefit of Mr. & Ms. Co., Bitong filed a derivative suit before the SEC against respondent spouses Eugenia D. Apostol and Jose A. Apostol, who were officers in said corporation, to hold them liable for fraud and mismanagement in directing its affairs.

Respondent spouses moved to dismiss on the ground that petitioner had no legal standing to bring the suit as she was merely a holder---in---trust of shares of JAKA Investments which continued to be the true stockholder of Mr. & Ms.

Petitioner contends that she was a holder of proper stock certificates and that the transfer was recorded. She further contends that even in the absence of the actual certificate, mere recording will suffice for her to exercise all stockholder rights, including the right to file a derivative suit in the name of the corporation. The SEC Hearing Panel dismissed the suit. On appeal, the SEC En Banc found for petitioner. CA reversed the SEC En Banc decision

ISSUE

Whether or not petitioner is the true holder of stock certificates to be able institute a derivative suit.

RULING

NO. Sec 63 of the Corporation Code envisions a formal certificate of stock which can be issued only upon compliance with certain requisites.

First, the certificates must be signed by the president or vice---‑president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock. Second, delivery of the certificate is an essential element of its issuance. Hence, there is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company. Third, the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. Fourth, the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is at least prima facie evidence that it was legally issued in the absence of evidence to the contrary. However, this presumption may be rebutted. Aside from petitioner's own admissions, several corporate documents disclose that the true party---‑in---‑interest is not petitioner but JAKA. It should be emphasized that JAKA executed, a deed of sale over 1,000 Mr. & Ms. shares in favor of respondent Eugenio D. Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of 1,000 Mr. & Ms. shares covered by a Certificate of Stock. And, there is nothing in the records which shows that JAKA had revoked the trust it reposed on respondent Eugenia D. Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to petitioner. In fine, the records are unclear on how petitioner allegedly acquired the shares of stock of JAKA.

Thus, for a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney---‑in---‑fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation. At most, in the instant case, petitioner has satisfied only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown.

f. Right of First Refusal

REPUBLIC OF THE PHILIPPINES, *Petitioner* –versus- SANDIGANBAYAN (3RD DIVISION), JOSE L. AFRICA, UNIMOLCO, ROBERTO BENEDICTO, ANDRES AFRICA and SMART COMMUNICATIONS, *Respondents*

GR. No. 128606, FIRST DIVISION, December 4, 2000, YNARES-SANTIAGO, J.

Where it is shown that a stockholder had actual knowledge of the intended sale within the period prescribed to exercise the right, the notice requirement had been sufficiently met. In the case at bar, PCGG had actual knowledge of UNIMOLCO's offer to sell its shares of stock. In fact, it issued Resolution No. 96-142 enjoining the sale of the said shares of stock to Smart. Petitioner, thus, cannot feign lack of notice.

Parenthetically, PCGG had no more authority to enjoin the sale of UNIMOLCO's 196,000 shares of stock, as it endeavored to do in Resolution No. 96-142. As correctly found by the Sandiganbayan, since the

196,000 shares of stock had already been adjudicated by final judgment to Benedicto and UNIMOLCO, PCGG could no longer exercise power and authority over the same

FACTS

ETPI was one of the corporations sequestered by the Presidential Commission on Good Government (PCGG). Among its stockholders were Roberto S. Benedicto and UNIMOLCO.

Sometime in 1990, PCGG and Benedicto entered into a compromise agreement whereby Benedicto ceded to the government 204,000 shares of stock in ETPI, representing his fifty-one percent (51%) equity therein. The other forty-nine percent (49%), consisting of 196,000 shares of stock, were released from sequestration and adjudicated by final judgment to Benedicto and UNIMOLCO. Furthermore, the government agreed to withdraw the cases filed against Benedicto and free him from further criminal prosecution.

In a written notice received by Melquiades Gutierrez, the President and Chairman of the Board of ETPI, UNIMOLCO offered to sell to ETPI its 196,000 shares of stock therein.

Meanwhile, on motion of petitioner, through the PCGG, the Sandiganbayan issued a Resolution authorizing the entry in the Stock and Transfer Book of ETPI of the transfer of ownership of 204,000 shares of stock to petitioner, to be taken out of the shareholdings of UNIMOLCO. Benedicto filed a "Manifestation and Motion" with the Sandiganbayan, praying that the Resolution dated May 7, 1996 be modified such that the entry of the 204,000 shares of stock of petitioner in ETPI be taken out of the shareholdings of UNIMOLCO and/or Roberto S. Benedicto.

PCGG issued Resolution No. 96-142 enjoining all stockholders of ETPI from selling shares of stock therein without the written conformity of the PCGG.

Subsequently, UNIMOLCO and Smart Communications executed a Deed of Absolute Sale whereby UNIMOLCO sold its 196,000 shares of stock in ETPI to Smart. Prior to the sale, Smart was not a stockholder of ETPI.

Petitioner filed with the Sandiganbayan a "Motion to Cite Defendant Benedicto and the Parties to the Sale of UNIMOLCO Shares in ETPI in Contempt of Court and to Rescind and/or Annul Said Sale." Petitioner alleged that the sale of the 196,000 shares of stock of UNIMOLCO to Smart was in defiance of the Resolution of the Sandiganbayan, which provided that the 204,000 shares of the government shall come from the shareholdings of UNIMOLCO, and it interfered with the proceedings thereon. In support of its prayer for the rescission and annulment of the sale, petitioner argued that the same violated its right of first refusal to purchase shares of stock in ETPI.

The right of first refusal is contained in Article 10 of the Articles of Incorporation of ETPI,

In its Resolution dated December 6, 1996, the Sandiganbayan denied petitioner's motion for contempt and to rescind or annul the sale of the 196,000 ETPI shares of stock to Smart.

Petitioner argues that it received the notice of UNIMOLCO's offer to sell its shares of stock only on August 30, 1996. The written notice, issued by Atty. Bayani K. Tan, ETPI Corporate Secretary, gave the stockholders, including petitioner, until September 26, 1996 within which to exercise their preemptive right. On September 24, 1996, petitioner sent a letter to the Corporate Secretary stating that the government is exercising its right of first refusal and offering payment thereof in the form of compensation or set-off against the assets of respondent Benedicto still due to the Philippine government under the Compromise Agreement.

Respondents UNIMOLCO, Benedicto and Andres L. Africa filed their Comment, 8 arguing that petitioner's offer of payment by way of set-off was invalid, inasmuch as the Articles of Incorporation of ETPI specifically provided that tender of payment should be in cash, certified check or checks drawn on a Philippine bank.

ISSUE

W/N the sandiganbayan erred in not recognizing petitioner pcgg's exercise of its right of first refusal as stockholder, to purchase the 196,000 etpi shares registered in the name of unimolco. (NO)

RULING

The records of the case clearly show that the written notice by UNIMOLCO, the Offeror, of its intention to sell its 196,000 shares of stock was duly received on April 24, 1996 by the President and Chairman of the Board of ETPI. The Sandiganbayan correctly held that this was valid service of the written offer to the corporation, applying by analogy the Rules of Court provisions on service of summons. Petitioner does not dispute that the written notice to the President and Chairman of the Board of ETPI was service to the corporation. It merely argues that after receipt of the offer, ETPI did not act in accordance with the procedure laid down in the Articles of Incorporation.

Petitioner maintains that under the Articles of Incorporation, the Corporate Secretary of ETPI should have given the stockholders written notice of the offer to sell on or before the expiration of the First Period. However, Resolution No. 96-142, adopted by PCGG on June 21, 1996, states among others:

WHEREAS, on 4 June 1996, the PCGG received copy of a letter of 29 May 1996 from Atty. Juan de Ocampo, alleging that he is the Corporate Secretary of ETPI, copy of which is hereto attached, stating that under Article Tenth of the ETPI articles of Incorporation, all stockholders of record have the right of first refusal to purchase pro rata to their holdings in ETPI to expire 20 days (supposed to be 30) from expiry date of ETPI's right of first refusal which was allegedly 24 May 1996, giving the Government up to 18 June 1996 to exercise the right of first refusal to purchase up to 22,148 shares of stock.

From the above, it clearly appears that, by petitioner's own admission and contrary to its belated protestation, the procedure outlined in the Articles of Incorporation relating to the right of first refusal was observed. But petitioner takes exception to Atty. De Ocampo's authority to act as Corporate Secretary of ETPI. In this connection, the Sandiganbayan held:

. . . The question of who are the legitimate directors and officers of ETPI has been elevated to the Supreme Court but has not yet been finally resolved. This should not, however, detract from the fact that PCGG has actually been informed of the intended sale.

We agree with the Sandiganbayan. The purpose of the notice requirement in Article 10 of the ETPI Articles of Incorporation is to give the stockholders knowledge of the intended sale of shares of stock of the corporation, in order that they may exercise their preemptive right. Where it is shown that a stockholder had actual knowledge of the intended sale within the period prescribed to exercise the right, the notice requirement had been sufficiently met. In the case at bar, PCGG had actual knowledge of UNIMOLCO's offer to sell its shares of stock. In fact, it issued Resolution No. 96-142 enjoining the sale of the said shares of stock to Smart. Petitioner, thus, cannot feign lack of notice.

Parenthetically, PCGG had no more authority to enjoin the sale of UNIMOLCO's 196,000 shares of stock, as it endeavored to do in Resolution No. 96-142. As correctly found by the Sandiganbayan, since the 196,000 shares of stock had already been adjudicated by final judgment to Benedicto and UNIMOLCO, PCGG could no longer exercise power and authority over the same.

Therefore, we sustain the Sandiganbayan's ruling that petitioner's right of first refusal was not seasonably exercised.

Even on the assumption that petitioner exercised its right of first refusal on time, it nonetheless failed to follow the requirement in the Articles of Incorporation that payment must be tendered in "cash or certified checks or checks drawn on a Philippine bank or banks." The set-off or compensation it proposed does not fall under any of the recognized modes of payment in the Articles.

Petitioner sought the offsetting of the price of the shares of stock with assets of respondent Benedicto, whom it claimed was indebted to it for certain lands and dividends due to it under their Compromise Agreement. Benedicto was only a stockholder of UNIMOLCO, the Offeror. While he may be the majority stockholder, UNIMOLCO cannot be said to be liable for Benedicto's supposed obligations to petitioner. To be sure, Benedicto and UNIMOLCO are separate and distinct persons. On the basis of this alone, there can be no valid set-off. Petitioner and UNIMOLCO are not principal debtors and creditors of each other.

J.G. SUMMIT HOLDINGS, INC., *Petitioner* -versus-
COURT OF APPEALS; COMMITTEE ON PRIVATIZATION, its Chairman and Members; ASSET PRIVATIZATION TRUST; and PHILYARDS HOLDINGS, INC., *Respondents*
GR. No. 124293, SPECIAL FIRST DIVISION, January 31, 2005, PUNO, J.

Public bidding is the accepted method in arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized. But the requirement for public bidding does not negate the exercise of the right of first refusal.

FACTS

On January 27, 1977, the National Investment and Development Corporation (NIDC), entered into a Joint Venture Agreement (JVA) with Kawasaki Heavy Industries, Ltd. of Kobe, Japan (KAWASAKI) for the construction, operation and management of the Subic National Shipyard, Inc. (SNS) which subsequently became the Philippine Shipyard and Engineering Corporation (PHILSECO). One of its salient features is the grant to the parties of the right of first refusal should either of them decide to sell, assign or transfer its interest in the joint venture.

NIDC transferred all its rights, title and interest in PHILSECO to the National Government pursuant to Administrative Order No. 14. There after a trust agreement was entered into between the National

Government and the Asset Privatization Trust (APT) wherein the latter was named the trustee of the National Governments share in PHILSECO.

In the interest of the national economy and the government, the Committee on Privatization (COP) and APT deemed it best to sell the National Governments share in PHILSECO to private entities. After a series of negotiations between the APT and KAWASAKI, they agreed that the latter's right of first refusal under the JVA be exchanged for the right to top by five percent (5%) the highest bid for the said shares.

At the public bidding on the said date, petitioner J.G. Summit Holdings, Inc. (JGSMI) was declared the highest bidder, the COP approved the sale on December 3, 1993 subject to the right of Kawasaki Heavy Industries, Inc./[PHILYARDS] Holdings, Inc. right to top JGSMI's bid by 5% as specified in the bidding rules."

On December 29, 1993, petitioner informed APT that it was protesting the offer of PHI to top its bid on the grounds that: among others, xxx (b) only KAWASAKI could exercise the right to top; (c) giving the same option to top to PHI constituted unwarranted benefit to a third party; (d) no right of first refusal can be exercised in a public bidding or auction sale; xxx

ISSUE

Whether or not the existence of KAWASAKIs right to top destroys the essence of competitive bidding so as to say that the bidders did not have an opportunity for competition. (NO)

RULING

In the instant case, the sale of the Government shares in PHILSECO was publicly known. All interested bidders were welcomed. The basis for comparing the bids were laid down. All bids were accepted sealed and were opened and read in the presence of the COAs official representative and before all interested bidders.

The essence of competition in public bidding is that the bidders are placed on equal footing. This means that all qualified bidders have an equal chance of winning the auction through their bids. In the case at bar, all of the bidders were exposed to the same risk and were subjected to the same condition, i.e., the existence of KAWASAKIs right to top. Under the ASBR, the Government expressly reserved the right to reject any or all bids, and manifested its intention not to accept the highest bid should KAWASAKI decide to exercise its right to top under the ABSR. This reservation or qualification was made known to the bidders in a pre---‐bidding conference held on September 28, 1993. They all expressly accepted this condition in writing without any qualification.

4. Remedial Rights

a. Individual Suit

SANTIAGO CUA, JR., SOLOMON S. CUA and EXEQUIEL D. ROBLES, in their capacity as Directors of PHILIPPINE RACING CLUB, INC., *Petitioners* -versus- MIGUEL OCAMPO TAN, JEMIE U. TAN and ATTY. BRIGIDO J. DULAY, *Respondents*

GR. No. 181455-56, THIRD DIVISION, December 4, 2009, CHICO-NAZARIO, J.

It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for thebenefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporationand indirectly upon the stockholders. A derivative suit, however, must be differentiated from individualand representative or class suits. Suits by stockholders or members of a corporation based onwrongful or fraudulent acts of directors or other persons may be classified into individual suits, classsuits, and derivative suits

FACTS

Philippine Racing Club Inc. (PRCI) was organi zed to carry on the business of a racecourse in all itsbranches and promote the breeding of better horses in the Philippines. P R CI owns two real properties : (1) the Sta. Ana Ractrack or the Makati property and (2) the ' Cavite property. P R CI managementdecided that it was best to spin off the management and development of the Makati property to awholly owned subsidiary. It then opted to ac quire another domestic corporation, JTH Davies Holdings,Inc. (JTH).

P R CI management determined that it could initially ac quire 41, 928, 290 shares, or 95.55% of theoutstanding capital stock of JTH. The P R CI Board of Directors held a meeting on 26 Sep 2006. Amongthe directors present were petitioners Santiago Sr., Santiago Jr., and Solomon, as well as respondent Dulay. After deliberating on the matter of the ac quisition of JT H by P R CI, all the directors present,eXcept respondent Dulay, voted affirmatively to pass and approve the following resolutions : (1) Declaration of Intention to Ac quire and Purchase Shares of Stock of Another Company (2) a SpecialStockholders meeting; (3) Authori zed Attorney in Fact and ProXy. The neXt day, P R CI entered into aSale and Purchase Agreement for the ac quisition from JME of 11.45 of the outstanding capital stockof JTH. In the Special Stockholders Meeting held on 7 November 2006, attended by stockholders with 481, 045,887 shares or 84.42% of the outstanding capital stock of P R CI, the ac quisition by P R CI of JTH was presented for approval. Several stockholders eXpressed their satisfaction with P R CI's decision to purchase JT H shares due to the latter's goodwill.

Thereafter, P R CI again engaged the assistance of SGv. It was then determined that the Makati property could be transferred to JTH in eXchange for the unissued portion of the latter's recently increase authori zed capital stock. The matter of the proposed eXchange was approved by the P R CI Board of Directors in its meeting, again with the lone dissent of respondent Dulay. Subse quently, the Annual Stockholders' Meeting of P R CI was scheduled. It included the property for Shares eXchange between P R CI and JT H, which was supposed to be presented for approval by stocKholders under their agenda during the special meeting.

However respondent Miguel, et al., as minority stockholders of PRCI filed before the RTC a complaint, denominated as a derivative suit with prayer for issuance of TRO/Preliminary Injunction, against the directors of PRCi and/or JTH based on their alleged devices or schemes amounting to fraud or misrepresentation.

ISSUE

Whether or not respondents complaint constituted a valid derivative suit? (No)

RULING

It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.

A derivative suit must be differentiated from individual and representative or class suits, thus:

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.

The afore-quoted exposition is relevant considering the claim of respondents Miguel, et al., that its Complaint in Civil Case No. 07-610 is not just a derivative suit, but also an intracorporate action arising from devices or schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation. A thorough study of the said Complaint, however, reveals that the distinction is deceptive. The supposed devices and schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation are the very same bases for the derivative suit. They are the very same acts of the PRCI Board of Directors that have supposedly caused injury to the corporation. From the very beginning of their Complaint, respondents have alleged that they are filing the same "as shareholders, for and in behalf of the Corporation, in order to redress the wrongs committed against the Corporation and to protect or vindicate corporate rights, and to prevent wastage and dissipation of corporate funds and assets and the further commission of illegal acts by the Board of Directors." Although respondents Miguel, et al., also aver that they are seeking "redress for the injuries of the minority stockholders against the wrongdoings of the majority," the rest of the Complaint does not bear this out, and is utterly lacking any allegation of injury personal to them or a certain class of stockholders to which they belong.

Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, viz:

As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, 'the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' [Citations.]" (Jones, supra, 1 Cal.3d 93, 106, 81 Cal.Rptr. 592, 460 P.2d 464.) In contrast, "a *direct* action [is one] filed by the shareholder individually (or on behalf of a *class* of shareholders to which he or she belongs) for injury to his or her interest as a *shareholder.* .... [T]he two actions are mutually exclusive: i.e., the right of action and recovery belongs to either the *shareholders* (direct action) *651 or the *corporation* (derivative action)." (Friedman, Cal. Practice Guide: Corporations, *supra,* 6:598, p. 6-127.)

Thus, in Nelson v. Anderson (1999) 72 Cal.App.4th 111, 84 Cal.Rptr.2d 753, the **289 minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. (Id. at p. 125, 84 Cal.Rptr.2d 753) The appellate court concluded that the plaintiff could not maintain the suit as a direct action: "Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action. [Citation.] A derivative action would have been appropriate if its responsible officials had refused or failed to act." (Id. at pp. 125-126, 84 Cal.Rptr.2d 753) The court went on to note that the damages shown at trial were the loss of corporate profits. (Id. at p. 126, 84 Cal.Rptr.2d 753) Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation."

Based on allegations in the Complaint of Miguel, et al., in Civil Case No. 07-610, the Court determines that there is only a derivative suit, based on the devices and schemes employed by the PRCI Board of Directors that amounts to mismanagement, misrepresentation, fraud, and bad faith.

d. Representative Suit

c. Derivative Suit

CATALINA R. REYES, *Petitioner* -versus- HON. BIENVENIDO A. TAN, as Judge of the Court of First Instance of Manila, Branch XIII and FRANCISCA R. JUSTINIANI, *Respondents*
G.R. No. L-16982, EN BANC, September 30, 1961, LABRADOR, J.

It is not denied by petitioner that the allocation of dollars to the corporation for the importation of raw materials was suspended. The importation of textiles instead of raw materials, as well as the failure of the Board of Directors to take action against those directly responsible for the misuse of dollar allocations constitute fraud, or consent thereto on the part of the directors.

Therefore, a breach of trust was committed which justified the derivative suit by a minority stockholder on behalf of the corporation

FACTS

Roxas-Kalaw Textile Mills, Inc. made several purchases aggregating $289,678.86 in New York for raw materials for the textile mill and shipped to the Philippines, which shipment were found out to consist not of raw materials but already finished products.

The Central Bank of the Philippines stopped all dollar allocations for raw materials for the corporation resulting to the paralyzation of the operation of the textile mill and its business.
The supplier of the aforesaid finished goods was the United Commercial Company of New York in which defendant Dalamal had interests, so as the letter of credit for said goods.

Plaintiff and some members of the board of directors urged defendants to proceed against Dalamal, exposing his offense to the Central Bank, and to initiate suit against Dalamal for his fraud against the corporation.

Defendants, petitioner in this certiorari case, refused to proceed against Dalamal and instead continued to deal with the Indian Commercial Company to the damage and prejudice of the corporation.

The prayer asks for the appointment of a receiver and a judgment marking defendants jointly and severally liable for the damages.

ISSUE

Whether the stockholders are justified in constituting the derivative suit. (YES)

RULING

It is not denied by petitioner that the allocation of dollars to the corporation for the importation of raw materials was suspended. The importation of textiles instead of raw materials, as well as the failure of the Board of Directors to take action against those directly responsible for the misuse of dollar allocations constitute fraud, or consent thereto on the part of the directors.

Therefore, a breach of trust was committed which justified the derivative suit by a minority stockholder on behalf of the corporation. It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intra---‐corporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.

REPUBLIC BANK, represented in this action by DAMASO P. PEREZ, etc., *Plaintiff-appellant* – versus- MIGUEL CUADERNO, BIENVENIDO DIZON, PABLO ROMAN, THE BOARD OF DIRECTORS OF THE REPUBLIC BANK AND THE MONETARY BOARD OF THE CENTRAL BANK OF THE PHILIPPINES, *Defendants-appellees*

G.R. No. L-22399, EN BANC, March 30, 1967, REYES, J.B.L., J.

Whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation, an individual stockholder is permitted to institute a derivative or representative suit on behalf of the corporation wherein he holds stock, in order to protect or vindicate corporate rights. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.

In corporate derivative suits it is not important whether the corporation is made party plaintiff or party defendant because the trial court has the power to direct amendments of the pleadings, by adding or dropping parties, as may be required in the interest of justice. It is enough that the corporation is made a party to the suit so that judgment will be binding upon it to bar future relitigation of issues.

FACTS

Damaso Perez, a stockholder of the Republic Bank, a Philippine banking corporation domiciled in Manila, instituted a derivative suit for and in behalf of said Bank, against Miguel Cuaderno, Bienvenido Dizon, the Board of Directors of the Republic Bank, and the Monetary Board of the Central Bank of the Philippines, for the reason that such formal demand to institute the present complaint would be a futile formality since the members of the board are personally chosen by defendant Pablo Roman himself. Damaso alleged that:

1. Roman had fraudulently granted or caused to be granted loans to fictitious and non---‐existing persons and to their close friends, relative and/or employees, who were in reality their dummies, on the basis of fictitious and in flated appraised values of real estate properties;
2. Acting upon the complaint, Miguel Cuaderno (then Governor of the Central Bank) and the Monetary Board ordered an investigation;
3. No information was filed up to the time of the retirement of Cuaderno;
4. To neutralize the impending action against him, Pablo Roman engaged Miguel Cuaderno as technical consultant at a compensation of P12,500.00 per month, even if court actions involving the actuations of Cuaderno as Governor and Member or Chairman of the Monetary Board are still pending in court;
4. Pablo Roman selecting Bienvenido Dizon as chairman of the Board of Directors of the Republic Bank after he was forced to resign from the presidency of the Philippine National Bank and from membership of the Monetary Board and within one year thereafter is in violation of section 3, subparagraph (d) of the Anti---‐Graft and Corrupt Practices Act;
5. The Board of Directors composed of individuals personally selected and chosen by Roman, connived and confederated in approving the appointment and selection of Cuaderno and Dizon;
6. Both Cuaderno and Dizon were alter egos of Pablo Roman; and
7. The Monetary Board was about to approve the appointment of Cuaderno and Dizon and would do so unless enjoined.

The complaint, therefore, prayed for a writ of preliminary injunction against the Monetary Board to prevent its confirmation of the appointments of Dizon and Cuaderno; against the Board of Directors of the Republic Bank from recognizing Cuaderno as technical consultant and Dizon as Chairman of the Board; and against Pablo Roman from appointing or selecting officers or directors of the Republic Bank. The courtdenied the petition for a writ of preliminary injunction and dismissed the case. The court in effect suggested that the matter at issue in the case may be presented in any of the pending eight cases (pending in different branches between practically the same parties) by means of amended and supplemental pleadings. Plaintiff Damaso Perez thereupon appealed to this Court.

ISSUES:

1. Whether or not the Court below erred in dismissing the complaint.
2. Whether the corporation itself must be made party defendant.

RULING:

1. YES. An individual stockholder is permitted to institute a derivative or representative suit on behalf of the corporation wherein he holds stock, in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. It was futile to demand action by the corporation, since its Directors were nominees and creatures of defendant Pablo Roman. That no other stockholder has chosen to make common cause with plaintiff Perez is irrelevant, since the smallness of plaintiff's holdings is no ground for denying him relief. This case cannot be dismissed simply because of the possibility that the cause of action here can be incorporated or introduced in any of those other pending cases. The case is remanded to the court of origin with instructions to overrule the motions to dismiss and require the defendants to answer the complaint. Thereafter, the case shall be tried and decided on its merits.

2. YES. What is important is that the corporation should be made a party, in order to make the Court's judgment binding upon it, and thus bar future re---litigation of the issues. On what side the corporation appears loses importance when it is considered that it lay within the power of the trial court to direct the making of such amendments of the pleadings, by adding or dropping parties, as may be required in the interest of justice. Misjoinder of parties is not a ground to dismiss on action.

SAN MIGUEL CORPORATION, represented by EDUARDO DE LOS ANGELES, *Petitioners* -versus- ERNEST KAHN, ANDRES SORIANO III, BENIGNO TODA, JR., ANTONIO ROXAS, ANTONIO PRIETO, FRANCISCO EIZMENDI, JR., EDUARDO SORIANO, RALPH KAHN and RAMON DEL ROSARIO, JR., *Respondents*

G.R. No. 85339, FIRST DIVISION, August 11, 1989, NARVASA, J.

The bona fide ownership by a stockholder of stock in his own right suffices to invest him with standing to bring a derivative action for the benefit of the corporation. The number of his shares is immaterial since he is not suing in his own behalf, or for the protection or vindication of his own particular right, or the redress of a wrong committed against him, individually, but in behalf and for the benefit of the corporation.

FACTS

33,133,266 shares of the outstanding capital stock of the San Miguel Corporation were acquired by fourteen (14) other corporations, and were placed under a Voting Trust Agreement in favor of the late Andres Soriano, Jr. When the latter died, Eduardo M. Cojuangco, Jr. was elected Substitute Trustee with power to delegate the trusteeship in writing to Andres Soriano III. Shortly after the Revolution of February 1986, Cojuangco left the country amid "persistent reports" that "huge and unusual cash disbursements from the funds of SMC" had been irregularly made, and the resources of the firm extensively used in support of the candidacy of Ferdinand Marcos during the snap elections in February 1986.

An "Agreement" was executed between Andres Soriano III, as "Buyer," and the 14 corporations, as "Sellers," for the purchase by Soriano, "for himself and as agent of several persons," of the 33,133,266 shares of stock at the price of P100.00 per share, or "an aggregate sum of P3,313,326,600.00 payable in specified installments. The Agreement revoked the voting trust above mentioned, and expressed the desire of the 14 corporations to sell the shares of stock "to pay certain outstanding and unpaid debts," and Soriano's own wish to purchase the same "in order to institutionalize and stabilize the management of the COMPANY in .. (himself) and the professional officer corps, mandated by the COMPANY's By- laws, and to direct the COMPANY towards giving the highest priority to its principal products and extensive support to agriculture programme of the Government. Actually, according to Soriano and the other private respondents, the buyer of the shares was a foreign company, Neptunia Corporation Limited (of Hongkong, a wholly owned subsidiary of San Miguel International which is, in turn, a wholly owned subsidiary of SMC; and it was Neptunia which had made the down payment of P500,000,000.00, "from the proceeds of certain loans".

At this point the 33,133,266 SMC shares were sequestered by the Presidential Commission on Good Government (PCGG), on the ground that the stock belonged to Eduardo Cojuangco, Jr., allegedly a close associate and dummy of former President Marcos, and the sale thereof was "in direct contravention of EO No. 1 and 2 which prohibit the transfer, conveyance, encumbrance, concealment or liquidation of assets and properties acquired by former President Marcos and/or his wife, their close relatives, subordinates, business associates. The sequestration was subsequently lifted, and the sale allowed to proceed, on representations by SMC x x that the shares were 'owned by 1.3 million coconut farmers;' the seller corporations were 'fully owned' by said farmers and Cojuangco owned only 2 shares in one of the companies, etc. However, the sequestration was soon re-imposed by Order of the PCGG. The same order forbade the SMC corporate Secretary to register any transfer or encumbrance of any of the stock without the PCGG's prior written authority. San Miguel promptly suspended payment of the other installments of the price to the fourteen (14) seller corporations. The latter as promptly sued for rescission and damages The PCGG directed SMC "to issue qualifying shares" in the corporation to seven (7) individuals, including Eduardo de los Angeles, "from the sequestered shares registered as street certificates under the control of Anscor- Hagedorn Securities, Inc.," to "be held in trust by said seven [7] persons for the benefit of Anscor-Hagedom Securities, Inc. and/or whoever shall finally be determined to be the owner/owners of said shares.

The SMC Board, by Resolution No. 86-122, "decided to assume the loans incurred by Neptunia for the down payment (P500M) on the 33,133,266 shares." The Board opined that there was "nothing illegal in this assumption of liability for the loans," since Neptunia was "an indirectly wholly owned subsidiary of SMC," there "was no additional expense or exposure for the SMC Group, and there were tax and other benefits which would redound to the SMC group of companies.

However, at the meeting of the SMC Board, de los Angeles, one of the PCGG representatives in the SMC board, impugned said Resolution, denying that it was ever adopted, and stating that what in truth was agreed upon at the meeting was merely a "further study" by Director Ramon del Rosario of a plan presented by him for the assumption of the loan. De los Angeles also pointed out certain "deleterious effects" thereof. He was however overruled by private respondents. When his efforts to obtain relief within the corporation and later the PCGG proved futile, he repaired to the Securities and Exchange Commission (SEC).

De los Angeles filed with the SEC what he describes as a derivative suit in behalf of SMC, against ten (10) of the fifteen-member Board of Directors who had "either voted to approve and/or refused to reconsider and revoke Board Resolution No. 86-12-2." His Amended Petition in the SEC recited substantially the foregoing antecedents and the following additional facts, to wit:

a) Soriano, Kahn and Roxas, as directors of Neptunia Corporation had met and passed a resolution authorizing the company to borrow up to US $26,500,000.00 from the Hongkong & Shanghai Banking Corporation, Hongkong "to enable the Soriano family to initiate steps and sign an agreement for the purchase of some 33,133,266 shares of SMC.

b) The loan of $26,500,000.00 was obtained on the same day, the corresponding loan agreement having been signed for Neptunia by Ralph Kahn and Carl Ottiger. At the latter's request, the proceeds of the loan were deposited in different banks for the account of "Eduardo J. Soriano".

c) Three (3) days later, Soriano III sent identical letters to the stockholders of SMC inter alia soliciting their proxies and announcing that "the Soriano family, friends and affiliates acquired a considerable block of SMC shares only a few days ago the transaction having been made through the facilities of the Manila Stock Exchange, and 33,133,266 shares having thereby been purchased for the aggregate price of P3,313,326,600.00." The letters also stated that the purchase was "an exercise of the Sorianos' right to buy back the same number of shares purchased in 1983 by the 14 seller corporations.

d) In implementing the assumption of the Neptunia loan and the purchase agreement for which said loan was obtained, which assumption constituted an improper use of corporate funds to pay personal obligations of Andres Soriano III, enabling him; to purchase stock of the corporation using funds of' the corporation itself, the respondents, through various subsequent machinations and manipulations, for interior motives and in breach of fiduciary duty, compound the damages caused San Miguel Corporation by, among other things: (1) agreeing to pay a higher price for the shares than was originally covenanted in order to prevent a rescission of the purchase agreement by the sellers; (2) urging UCPB to accept San Miguel Corporation and Neptunia as buyers of the shares, thereby committing the former to the purchase of its own shares for at least 25% higher than the price at which they were fairly traded in the stock exchanges, and shifting to said corporations the personal obligations of Soriano III under the purchase agreement; and (3) causing to be applied to the part payment of P1,800,000.00 on said purchase, various assets and receivables of San Miguel Corporation.

The complaint closed with a prayer for injunction against the execution or consummation of any agreement causing SMC to purchase the shares in question or entailing the use of its corporate funds or assets for said purchase, and against Andres Soriano III from further using or disposing of the funds or assets of the corporation for his obligations; for the nullification of the SMC Board's resolution of April 2, 1987 making SMC a party to the purchase agreement; and for damages. Ernest Kahn moved to dismiss de los Angeles' derivative suit. Kahn's motion to dismiss was subsequently adopted by his correspondents.

The motion to dismiss was denied by SEC Healing Officer. Kahn filed a petition for certiorari and prohibition with the Court of Appeals. A Special Division of that Court sustained him. The majority ruled that de los Angeles had no legal capacity to institute the derivative suit.

The dissenting Justices, on the other hand, were of the opinion that the suit had been properly brought by de los Angeles because — 1) the number of shares owned by him was immaterial, he being a stockholder in his own right; 2) he had not voted in favor of the resolution authorizing the purchase of the shares; and 3) even if PCGG was not the owner of the sequestered shares, it had the right to seek the protection of the interest of the corporation, it having been held that even an unregistered shareholder or an equitable owner of shares and pledgees of shares may be deemed a shareholder for purposes of instituting a derivative suit. De Los Angeles has appealed to this Court.

ISSUE

1. Whether SEC has jurisdiction over the complaint of de los Angeles.
2. Whether de los Angeles has no personality to bring suit in behalf of the corporation.
3. Whether there is a "conflict of interest" between him and the PCGG.
4. Whether PCGG has no power to vote sequestered shares of stock as an act of dominion but only in pursuance to its power of administration.

RULING

1. Yes. SEC has jurisdiction over the complaint of Delos Angeles. De los Angeles' dispute, as stockholder and director of SMC, with other SMC directors, an intra-corporate one, to be sure, is of no concern to the Sandiganbayan, having no relevance whatever to the ownership- of the sequestered stock. The contention, therefore, that in view of this Court's ruling as regards the sequestered SMC stock above adverted to, the SEC has no jurisdiction over the de los Angeles complaint, cannot be sustained and must be rejected. The dispute concerns acts of the board of directors claimed to amount to fraud and misrepresentation which may be detrimental to the interest of the stockholders, or is one arising out of intra-corporate relations between and among stockholders, or between any or all of them and the corporation of which they are stockholders.

2. No. The theory that de los Angeles has no personality to bring suit in behalf of the corporation — because his stockholding is minuscule, and there is a "conflict of interest" between him and the PCGG — cannot be sustained, either.

It is claimed that since de los Angeles 20 shares (owned by him since 1977) represent only 0.0001644% of the total number of outstanding shares (1 21,645,860), he cannot be deemed to fairly and adequately represent the interests of the minority stockholders. The implicit argument — that a stockholder, to be considered as qualified to bring a derivative suit, must hold a substantial or significant block of stock — finds no support whatever in the law. The requisites for a derivative suit are as follows: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.

The bona fide ownership by a stockholder of stock in his own right suffices to invest him with standing to bring a derivative action for the benefit of the corporation. The number of his shares is immaterial since he is not suing in his own behalf, or for the protection or vindication of his own particular right, or the redress of a wrong committed against him, individually, but in behalf and for the benefit of the corporation.

3. No. Neither can the "conflict-of-interest" theory be upheld. From the conceded premise that de los Angeles now sits in the SMC Board of Directors by the grace of the PCGG, it does not follow that he is legally obliged to vote as the PCGG would have him do, that he cannot legitimately take a position inconsistent with that of the PCGG, or that, not having been elected by the minority stockholders, his vote would necessarily never consider the latter's interests. The proposition is not only logically indefensible, non sequitur, but also constitutes an erroneous conception of a director's role and function, it being plainly a director's duty to vote according to his own independent judgment and his own conscience as to what is in the best interests of the company. Moreover, it is undisputed that apart from the qualifying shares given to him by the PCGG, he owns 20 shares in his own right, as regards which he cannot from any aspect be deemed to be "beholden" to the PCGG, his ownership of these shares being precisely what he invokes as the source of his authority to bring the derivative suit.

4. No. The inference is that the PCGG's act of voting the stock to elect de los Angeles to the SMC Board of Directors was unauthorized and void; hence, the latter could not bring suit in the corporation's behalf. The argument is strained and obviously of no merit. As already more than plainly indicated, it was not necessary for de los Angeles to be a director in order to bring a derivative action; all he had to be was a stockholder, and that he was owning in his own right 20 shares of stock, a fact not disputed by the respondents.

NORA A. BITONG, *Petitioner* –versus- COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, AND ADORACION G. NUYDA, *Respondents*

GR. No. 123553, FIRST DIVISION, July 13, 1998, BELLOSILLO, J.

The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the bona fide ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.

FACTS

Nora Bitong claimed before the SEC that she had been the Treasurer and a Member of the Board of Directors of private respondent Mr. & Ms. Publishing Co., Inc. (Mr. & Ms.) from the time it was incorporated on 29 October 1976 to 11 April 1989, and was the registered owner of 1,000 shares of stock out of the 4,088 total outstanding shares.

Allegedly acting for the benefit of Mr. & Ms. Co., Bitong filed a derivative suit before the SEC against respondent spouses Eugenia D. Apostol and Jose A. Apostol, who were officers in said corporation, to hold them liable for fraud and mismanagement in directing its affairs.

Respondent spouses moved to dismiss on the ground that petitioner had no legal standing to bring the suit as she was merely a holder---‐in---‐trust of shares of JAKA Investments which continued to be the true stockholder of Mr. & Ms.

Petitioner contends that she was a holder of proper stock certificates and that the transfer was recorded. She further contends that even in the absence of the actual certificate, mere recording will suffice for her to exercise all stockholder rights, including the right to file a derivative suit in the name of the corporation. The SEC Hearing Panel dismissed the suit. On appeal, the SEC En Banc found for petitioner. CA reversed the SEC En Banc decision

ISSUE

Whether or not petitioner is the true holder of stock certificates to be able institute a derivative suit.

RULING

NO. Sec 63 of the Corporation Code envisions a formal certificate of stock which can be issued only upon compliance with certain requisites.

First, the certificates must be signed by the president or vice---‐president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock. Second, delivery of the certificate is an essential element of its issuance. Hence, there is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company. Third, the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. Fourth, the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is at least prima facie evidence that it was legally issued in the absence of evidence to the contrary. However, this presumption may be rebutted. Aside from petitioner's own admissions, several corporate documents disclose that the true party---‐in---‐interest is not petitioner but JAKA. It should be emphasized that JAKA executed, a deed of sale over 1,000 Mr. & Ms. shares in favor of respondent Eugenio D. Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of 1,000 Mr. & Ms. shares covered by a Certificate of Stock. And, there is nothing in the records which shows that JAKA had revoked the trust it reposed on respondent Eugenia D. Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to petitioner. In fine, the records are unclear on how petitioner allegedly acquired the shares of stock of JAKA.

Thus, for a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney---‑in---‑fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation. At most, in the instant case, petitioner has satisfied only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown.

GILDA C. LIM, WILHELMINA V. JOVEN and DITAS A. LERIOS, *Petitioners –versus-.* PATRICIA LIM-YU, in her capacity as a minority stockholder of LIMPAN INVESTMENT CORPORATION, ***Respondent***

G.R. No. 138343, THIRD DIVISION, February 19, 2001, PANGANIBAN, J.

We hold, however, that the suit of respondent cannot be characterized as derivative, because she was complaining only of the violation of her preemptive right under Section 39 of the Corporation Code. She was merely praying that she be allowed to subscribe to the additional issuances of stocks in proportion to her shareholdings to enable her to preserve her percentage of ownership in the corporation. She was therefore not acting for the benefit of the corporation. Quite the contrary, she was suing on her own behalf, out of a desire to protect and preserve her preemptive rights. Unquestionably, the TRO did not prevent her from pursuing that action.

FACTS

At a special meeting on 07 October 1994, the Board of Directors of Limpan Investment Corporation (LIMPAN) approved a resolution of the following tenor:

"RESOLVED that the corporation make a partial payment [for] the legal services of Gilda C. Lim in the handling of various cases on behalf of, or involving the corporation in the amount of P1,551,500.00 to be paid in equivalent value in shares of stock of the corporation totaling 15,515 shares, the same being found to be reasonable, and there being no available funds to pay the same."

"RESOLVED FURTHER, that the Corporate Secretary be authorized, as he is hereby authorized, to secure and comply with necessary requirements of the law for the issuance of said shares."

On 18 October 1994, the Corporate Secretary Jaime G. Manzano filed a request before the Corporate and legal Affairs Department of the SEC asking for the exemption of the 15,515 shares from the registration requirements of the Revised Securities Act; the request was granted in a Resolution dated 14 November 1994. Due to the issuance of the unsubscribed shares to the petitioner GILDA C. LIM (LIM), all of LIMPAN's authorized capital stock became fully subscribed, with LIM ending up controlling 62.5% of the shares.

In July 1996, the private respondent PATRICIA LIM YU (YU), a sister of the petitioner, LIM, filed a complaint against the members of the Board of Directors of LIMPAN who approved the aforesaid resolution.

"BUNDANG, VELEZ, and MANZANO filed an Answer, asserting as affirmative defenses that the complaint failed to state a cause of action against them; that YU had no legal capacity to sue; and that the issuance of the shares in LIM's favor was bona fide and valid pursuant to law and LIMPAN's By-laws. In turn, the herein petitioners LIM, JOVEN and LERIOS filed a Motion to Dismiss on the following grounds: that YU had no legal capacity to sue; that the complaint failed to state a cause of action against JOVEN and LERIOS, and that no earnest efforts were exerted towards a compromise, YU and LIM being siblings. "In support of their ground that YU had no legal capacity to sue, the petitioners pointed out that LIM had previously filed a petition for guardianship before the RTC of Manila. On 14 July 1994, the Presiding Judge issued an Order, the relevant portion of which enjoined YU 'from entering into, or signing, contracts or documents on her behalf or on behalf of others' x x x.'

On 16 August 1994, LIM was appointed as YU's general guardian, and the former took her oath as such on the same day. YU appealed LIM's appointment to the Supreme Court and the High Court issued a Resolution giving due course to YU's petition. It likewise issued a temporary restraining order. The petitioners argued that, under the aforesaid order YU was incapacitated from filing a derivative suit. YU naturally espoused the opposite view.

Petitioners seek the reversal, under Rule 45 of the Rules of Court, of the July 31, 1998 Decision of the Court of Appeals (CA) in CA-GR SP No. 46292 and of its March 25, 1999 Resolution denying reconsideration. The decretal portion of the appealed Decision, which affirmed the Securities and Exchange Commission (SEC), reads as follows: "WHEREFORE, judgment is hereby rendered DISMISSING the Petition for lack of merit. The preliminary injunction previously issued is hereby LIFTED."

ISSUE

Whether or not the suit brought by the respondent is a derivative suit that the TRO restricts her from doing.

RULING

No. The pertinent portion of the TRO issued by this Court reads as follows:

"(b) to ISSUE the TEMPORARY RESTRAINING ORDER prayed for, limited however, to the 'Writ of Preliminary Injunction' dated 22 August 1994 and the Order dated 14 July 1994 both issued in SP Proceeding No. 94-71010 which in the opinion of the Court are all too encompassing and should be limited in scope and subject to the conditions set forth in the Resolution of September 28, 1994 that, '(D)uring the effectivity of the Temporary Restraining Order, petitioner Patricia C. Lim, her attorneys, representatives, agents and any other persons assisting petitioner Patricia C. Lim will be able to act, enter into or sign contracts or documents solely for and on behalf of Patricia C. Lim; said actions, contracts or documents should not in any way bind or affect the interests of her parents, Isabelo P. Lim and Purificacion C. Lim, her brothers and sisters and any family owned or controlled corporation in particular, the Limpan Investment Corporation."

Simply put, the TRO allows Respondent Patricia Lim-Yu to act for herself and to enter into any contract on her own behalf. However, she cannot transact in representation of or for the benefit of her parents, brothers or sisters, or the Limpan Investment Corporation. Contrary to what petitioners suggest, all that is prohibited is any action that will bind them. In short, she can act only on and in her own behalf, not that of petitioners or the Corporation.

There appears to be a confusion on the nature of the suit initiated before the SEC. Petitioners describe it as a derivative suit, which has been defined as "an action brought by minority shareholders in the name of the corporation to redress wrongs committed against it, for which the directors refuse to sue. It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority." In a derivative action, the real party in interest is the corporation itself, I not the shareholder(s) who actually instituted it.

If the suit filed by respondent was indeed derivative in character, then respondent may not have the capacity to sue. The reason is that she would be acting in representation of the corporation, an act which the TRO enjoins her from doing.

We hold, however, that the suit of respondent cannot be characterized as derivative, because she was complaining only of the violation of her preemptive right under Section 39 of the Corporation Code. She was merely praying that she be allowed to subscribe to the additional issuances of stocks in proportion to her shareholdings to enable her to preserve her percentage of ownership in the corporation. She was therefore not acting for the benefit of the corporation. Quite the contrary, she was suing on her own behalf, out of a desire to protect and preserve her preemptive rights. Unquestionably, the TRO did not prevent her from pursuing that action.

To repeat, the TRO issued by this Court had two components: (1) it allowed respondent to enter into agreements on her own behalf; and (2) it clarified that respondent's acts could not bind or affect the interests of her parents, brothers or sisters, or Limpan. In other words, respondent was, as a rule, allowed to act; but, as an exception, was prohibited from doing anything that would bind the corporation or any of the above-named persons.

Petitioners fail to appreciate the distinction between the act itself and its net result. The act of filing the suit did not in any way bind the corporation. The result of such act affected it, however. Similarly, respondent can sell her shares to the corporation or make a will and designate her parents, for example, as beneficiaries. It would be quite far-fetched to say that these acts are prohibited by the TRO, even if they will definitely affect the corporation and her parents.

VIRGINIA O. GOCHAN, FELIX Y. GOCHAN III, MAE GOCHAN EFANN, LOUISE Y. GOCHAN, ESTEBAN Y. GOCHAN JR., DOMINIC Y.GOCHAN, FELIX 0. GOCHAN III, MERCEDES R. GOCHAN, ALFREDO R. GOCHAN, ANGELINA R. GOCHAN-HERNAEZ, MARIA MERCED R. GOCHAN, CRISPO R. GOCHAN JR., MARION R. GOCHAN, MACTAN REALTY DEVELOPMENT CORPORATION and FELIX GOCHAN & SONS REALTY CORPORATION, *Petitioner* –versus-
RICHARD G. YOUNG, DAVID G. YOUNG, JANE G. YOUNG-LLABAN, JOHN D. YOUNG JR., MARY G. YOUNG-HSU and ALEXANDER THOMAS G. YOUNG as heirs of Alice Gochan; the INTESTATE ESTATE OF JOHN D. YOUNG SR.; and CECILIA GOCHAN-UY and MIGUEL C. UY, for themselves and on behalf and for the benefit of FELIX GOCHAN & SONS REALTY CORPORATION, *Respondents*
GR. No. 131889, THIRD DIVISION, March 12, 2001, PANGANIBAN, J.

Where corporate directors have committed a breach of trust either by their frauds, ultra vires acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a single stockholder may institute that suit, suing on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders.

In the present case, the Complaint alleges all the components of a derivative suit. The allegations of injury to the Spouses Uy can coexist with those pertaining to the corporation. The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit on behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors.

FACTS

Felix Gochan and Sons Realty Corporation (Gochan Realty) was registered with the SEC on June, 1951, with Felix Gochan, Sr., Maria Pan Nuy Go Tiong, Pedro Gochan, Tomasa Gochan, Esteban Gochan and Crispo Gochan as its incorporators.

Felix Gochan Sr.'s daughter, Alice, mother of respondents, inherited 50 shares of stock in Gochan Realty from the former. Alice died in 1955, leaving the 50 shares to her husband, John Young, Sr. In 1962, the Regional Trial Court of Cebu adjudicated 6/14 of these shares to her children, respondents Richard Young, David Young, Jane Young Llaban, John Young Jr., Mary Young Hsu and Alexander Thomas Young.

Having earned dividends, these stocks numbered 179 by 20 September 1979. Five days later (25 September), at which time all the children had reached the age of majority, their father John Sr., requested Gochan Realty to partition the shares of his late wife by cancelling the stock certificates in his name and issuing new stock certificates in the names of the respondents. Respondent Gochan Realty refused, citing the right of first refusal granted to the remaining stockholders by the Articles of Incorporation. On 1990, John, Sr. died, leaving the shares to the respondents.

Respondents Cecilia Gochan Uy and Miguel Uy filed a complaint with the SEC for issuance of shares of stock to the rightful owners, nullification of shares of stock, reconveyance of property impressed with trust, accounting, removal of officers and directors and damages against respondents. A Notice of Lis Pendens was annotated as real properties of the corporation. Petitioners moved to dismiss the complaint alleging that: (1) the SEC had no jurisdiction over the nature of the action; (2) the respondents were not the real parties-in-interest and had no capacity to sue; and (3) respondents causes of action were barred by the Statute of Limitations.

The motion was opposed by the respondents. Petitioners filed a Motion for cancellation of Notice of Lis Pendens. Respondents opposed the said motion. The SEC granted the motion to dismiss and ordered the cancellation of the notice of lis pendens annotated upon the titles of the corporate lands. In its order, the SEC opined: In the instant case, the complaint admits that complainants, who are the children of the late Alice T. Gochan and the late John D. Young, Sr. are suing in their own right and as heirs of and/or as the beneficial owners of the shares in the capital stock of FGSRC held in trust for them during his lifetime by the late John D. Young. Moreover, it has been shown that said complainants had never been stockholder[s] of record of FGSRC to confer them with the legal capacity to bring and maintain their action. Conformably, the case cannot be considered as an intracorporate controversy within the jurisdiction of this Commission.

The complainant heirs base what they perceived to be their stockholders rights upon the fact of their succession to all the rights, property and interest of their father, John D. Young, Sr. While their heirship is not disputed, their right to compel the corporation to register John D. Youngs Sr. shares of stock in their names cannot go unchallenged because the devolution of property to the heirs by operation of law in succession is subject to just obligations of the deceased before such property passes to the heirs. Conformably, until the estate is settled and the payment of the debts of the deceased is accomplished, the heirs cannot as a matter of right compel the delivery of the shares of stock to them and register such transfer in the books of the corporation to recognize them as stockholders. The complainant heirs succeed to the estate of [the] deceased John D. Young, Sr. but they do not thereby become stockholders of the corporation.

Moreover, John D. Young Sr's shares of stocks form part of his estate which is the subject of Special Proceedings the Regional Trial Court. As complainants clearly claim, the Intestate Estate of John D. Young, Sr. has an interest in the subject matter of the instant case. However, actions for the recovery or protection of the property such as the shares of stock in question may be brought or defended not by the heirs but by the executor or administrator thereof. Complainants further contend that the alleged wrongful acts of the corporation and its directors constitute fraudulent devices or schemes which may be detrimental to the stockholders. Again, the injury is perceived to have been suffered by complainants as stockholders, which they are not. Admittedly, the SEC has no jurisdiction over a controversy wherein one of the parties involved is not or not yet a stockholder of the corporation.

Further, by the express allegation of the complaint, herein complainants bring this action as [a] derivative suit on their own behalf and on behalf of respondent FGSRC. The rule is in accord with well settled jurisprudence holding that a stockholder bringing a derivative action must have been [so] at the time the transaction or act complained of [took] place. The language of the rule is mandatory, strict compliance with the terms thereof thus being a condition precedent, a jurisdictional requirement to the filing of the instant action. Otherwise stated, proof of compliance with the requirement must be sufficiently established for the action to be given due course by this Commission. The failure to comply with this jurisdictional requirement on derivative action must necessarily result in the dismissal of the instant complaint.

Respondents moved for a reconsideration but the same was denied for being pro-forma. Respondents appealed to the SEC en banc, contending, among others, that the SEC had jurisdiction over the case. The Court of Appeals ruled that the SEC had no jurisdiction over the case as far as the heirs of Alice Gochan were concerned, because they were not yet stockholders of the corporation. On the other hand, it upheld the capacity of Respondents Cecilia Gochan Uy and her spouse Miguel Uy. It also held that the intestate Estate of John Young Sr. was an indispensable party

ISSUES

1. Whether or not the Spouses Uy have the personality to file an action before the SEC against Gochan Realty Corporation.
2. Whether or not the Spouses Uy could properly bring a derivative suit in the name of Gochan Realty to redress wrongs allegedly committed against it for which the directors refused to sue.
3. Whether or not the intestate estate of John D. Young Sr. is an indispensable party in the SEC case considering that the individual heirs shares are still in the decedent stockholders name.
4. Whether or not the cancellation of the notice of lis pendens was justified considering that the suit did not involve real properties owned by Gochan Realty.

RULING

1. YES. As a general rule, the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the complaint. For purposes of resolving a motion to dismiss, Cecilia Uys averment in the Complaint -- that the purchase of her stocks by the corporation was null and void ab initio is deemed admitted. It is elementary that a void contract produces no effect either against or in favor of anyone; it cannot create, modify or extinguish the juridical relation to which it refers. Thus, Cecilia remains a stockholder of the corporation in view of the nullity of the Contract of Sale. Although she was no longer registered as a stockholder in the corporate records as of the filing of the case before the SEC, the admitted allegations in the Complaint made her still a bona fide stockholder of Felix Gochan & Sons Realty Corporation (FGSRC), as between said parties.

2. YES. Where corporate directors have committed a breach of trust either by their frauds, ultra vires acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a single stockholder may institute that suit, suing on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders.

In the present case, the Complaint alleges all the components of a derivative suit. The allegations of injury to the Spouses Uy can coexist with those pertaining to the corporation. The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit on behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors. This cause of action is also included in the Complaint filed before the SEC. The Spouses Uy have the capacity to file a derivative suit in behalf of and for the benefit of the corporation. The reason is that the allegations of the Complaint make them out as stockholders at the time the questioned transaction occurred, as well as at the time the action was filed and during the pendency of the action.

3. NO. While permitting an executor or administrator to represent or to bring suits on behalf of the deceased, it does not prohibit the heirs from representing the deceased. These rules are easily applicable to cases in which an administrator has already been appointed. But no rule categorically addresses the situation in which special proceedings for the settlement of an estate have already been instituted, yet no administrator has been appointed. In such instances, the heirs cannot be expected to wait for the appointment of an administrator; then wait further to see if the administrator appointed would care enough to file a suit to protect the rights and the interests of the deceased; and in the meantime do nothing while the rights and the properties of the decedent are violated or dissipated.

The Rules are to be interpreted liberally in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. They cannot be interpreted in such a way as to unnecessarily put undue hardships on litigants. For the protection of the interests of the decedent, this Court has recognized the heirs as proper representatives of the decedent, even when there is already an administrator appointed by the court. When no administrator has been appointed, as in this case, there is all the more reason to recognize the heirs as the proper representatives of the deceased. Since the Rules do not specifically prohibit them from representing the deceased, and since no administrator had as yet been appointed at the time of the institution of the Complaint with the SEC, we see nothing wrong with the fact that it was the heirs of John D. Young Sr. who represented his estate in the case filed before the SEC. 4.

The Rules of Court allows the annotation of a notice of lis pendens in actions affecting the title or right of possession of real property. Thus, the Court of Appeals was correct in reversing the SEC Order for the cancellation of the notice of lis pendens. The fact that respondents are not stockholders of the Mactan Realty Development Corporation and the Lapu-Lapu Real Estate Corporation does not make them non-parties to this case. To repeat, the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the Complaint. In this case, it is alleged that the aforementioned corporations are mere alter egos of the directors-petitioners, and that the former acquired the properties sought to be reconveyed to FGSRC in violation of the directors-petitioners fiduciary duty to FGSRC. The notion of corporate entity will be pierced or disregarded and the individuals composing it will be treated as identical if, as alleged in the present case, the corporate entity is being used as a cloak or cover for fraud or illegality; as a justification for a wrong; or as an alter ego, an adjunct, or a business conduit for the sole benefit of the stockholders.

OSCAR C. REYES, *Petitioner* -versus- HON. REGIONAL TRIAL COURT OF MAKATI, Branch 142, ZENITH INSURANCE CORPORATION, and RODRIGO C. REYES, *Respondents*

GR. No. 165744, SECOND DIVISION, August 11, 2008, PANGANIBAN, J.

The allegations of the present complaint do not amount to a derivative suit. First, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as a transferee-heir whose rights to the share are inchoate and unrecorded. Second, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies within the corporation by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied. Lastly, Court found no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith.

FACTS

Oscar and private respondent Rodrigo C. Reyes (Rodrigo) are two of the four children of the spouses Pedro and Anastacia Reyes. Pedro, Anastacia, Oscar, and Rodrigo each owned shares of stock of Zenith Insurance Corporation (Zenith), a domestic corporation established by their family. Pedro died in 1964, while Anastacia died in 1993. Although Pedro's estate was judicially partitioned among his heirs sometime in the 1970s, no similar settlement and partition appear to have been made with Anastacia's estate, which included her shareholdings in Zenith. As of June 30,1990, Anastacia owned 136,598 shares of Zenith; Oscar and Rodrigo owned 8,715,637 and 4,250 shares, respectively.
On May 9, 2000, Zenith and Rodrigo filed a complaint with the (SEC) against Oscar. The complaint stated that it is "a derivative suit initiated and filed by the complainant Rodrigo C. Reyes to obtain an accounting of the funds and assets of ZENITH INSURANCE CORPORATION which are now or formerly in the control, custody, and/or possession of respondent [herein petitioner Oscar] and to determine the shares of stock of deceased spouses Pedro and Anastacia Reyes that were arbitrarily and fraudulently appropriated [by Oscar] for himself [and] which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased spouses, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares.

In his Answer with Counterclaim,Oscar denied the charge that he illegally acquired the shares of Anastacia Reyes. He asserted, as a defense, that he purchased the subject shares with his own funds from the unissued stocks of Zenith, and that the suit is not a bona fide derivative suit because the requisites therefor have not been complied with. He thus questioned the SEC's jurisdiction to entertain the complaint because it pertains to the settlement of the estate of Anastacia Reyes.

When Republic Act (R.A.) No. 8799 took effect, the SEC's exclusive and original jurisdiction over cases enumerated in Section 5 of Presidential Decree (P.D.) No. 902-A was transferred to the RTC designated as a special commercial court. The records of Rodrigo's SEC case were thus turned over to the RTC, Branch 142, Makati.

On October 22, 2002, Oscar filed a Motion to Declare Complaint as Nuisance or Harassment Suit. He claimed that the complaint is a mere nuisance or harassment suit and should, according to the Interim Rules of Procedure for Intra-Corporate Controversies, be dismissed; and that it is not a bona fide derivative suit as it partakes of the nature of a petition for the settlement of estate of the deceased Anastacia that is outside the jurisdiction of a special commercial court. The RTC, in its Order, denied the motion in part and declared: A close reading of the Complaint disclosed the presence of two (2) causes of action, namely:

a) a derivative suit for accounting of the funds and assets of the corporation which are in the control, custody, and/or possession of the respondent [herein petitioner Oscar] with prayer to appoint a management committee; and b) an action for determination of the shares of stock of deceased spouses Pedro and Anastacia Reyes allegedly taken by respondent, its accounting and the corresponding delivery of these shares to the parties' brothers and sisters. The latter is not a derivative suit and should properly be threshed out in a petition for settlement of estate.

Accordingly, the motion is denied. However, only the derivative suit consisting of the first cause of action will be taken cognizance of by this Court.

Oscar thereupon went to the CA on a petition for certiorari , prohibition, and mandamus and prayed that the RTC Order be annulled and set aside and that the trial court be prohibited from continuing with the proceedings. The appellate court affirmed the RTC Order and denied the petition in its Decision dated May 26, 2004. It likewise denied Oscar's motion for reconsideration in a Resolution dated October 21, 2004. Petitioner now comes before us on appeal through a petition for review on certiorari under Rule 45 of the Rules of Court.

ISSUES

1. Whether or not Rodrigo may be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia.
2. Whether or not there is an intra-corporate relationship between the parties that would characterize the case as an intra-corporate dispute.
3. Whether or not the complaint is a derivative suit within the jurisdiction of the RTC acting as a special commercial court.

RULING

1. No. Rodrigo must, hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. First, he must prove that there are

shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. Second, he must register the transfer of the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and prima facie ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court. The subject shares of stock (i.e., Anastacia's shares) are concerned – Rodrigo cannot be considered a stockholder of Zenith

2. No. Court cannot declare that an intra-corporate relationship exists that would serve as basis to bring this case within the special commercial court's jurisdiction under Section 5(b) of PD 902-A, as amended because Rodrigo's complaint failed the relationship test above.

3. No. The allegations of the present complaint do not amount to a derivative suit. First, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as a transferee-heir whose rights to the share are inchoate and unrecorded. Second, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies within the corporation by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied. Lastly, Court found no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith.

In summary, whether as an individual or as a derivative suit, the RTC – sitting as special commercial court – has no jurisdiction to hear Rodrigo's complaint since what is involved is the determination and distribution of successional rights to the shareholdings of Anastacia Reyes. Rodrigo's proper remedy, under the circumstances, is to institute a special proceeding for the settlement of the estate of the deceased Anastacia Reyes, a move that is not foreclosed by the dismissal of his present complaint.

- Yu vs. Yukayguan, 588 SCRA 589 (2009)

ANTHONY S. YU, ROSITA G. YU and JASON G. YU, *Petitioners,* -versus - JOSEPH S. YUKAYGUAN, NANCY L. YUKAYGUAN, JERALD NERWIN L. YUKAYGUAN, and JILL NESLIE L. YUKAYGUAN, [on their own behalf and on behalf of] WINCHESTER INDUSTRIAL SUPPLY, INC., *Respondents.*
G.R. No. 177549, THIRD DIVISION, June 18, 2009, CHICO-NAZARIO, *J.*

Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra- Corporate Controversies lays down the following requirements which a stockholder must comply with in filing a derivative suit:

> *Sec 1. Derivative action. A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided that:*

> *1. He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;*
> *2. He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;*
> *3. No appraisal rights are available for the act or acts complained of; and*
> *4. The suit is not a nuisance or harassment suit.*

A perusal of respondents' complaint before the RTC would reveal that the same did not allege with particularity the remedies exhausted that are available under the articles of incorporation, by-laws, laws or rules governing Winchester to obtain the relief they desire. The allegation of Joseph in his Affidavit of his repeated attempts to talk to Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available". The fact that Winchester is a family corporation should not in anyway exempt respondents from complying with the clear requirements and formalities of the rules for filing a derivative suit.

FACTS

The petitioners as well as the respondents were stockholders of Winchester Industrial Supply, Inc. The latter filed against the former a verified Complaint for Accounting, Inspection of Corporate Books and Damages through Embezzlement and Falsification of Corporate Records and Accounts before the RTC. Such complaint was filed by the respondents, in their own behalf and as a derivative suit on behalf of Winchester, Inc.

The respondents alleged that petitioner Anthony Yu was one of the incorporators of Winchester, holding 1,000 shares of stock worth P100,000.00 which was paid through respondent Joseph Yukayguan's money, thus, making the former a mere trustee of the shares for the latter. Anthony then ceded 800 out of the 1,000 shares of stock to Joseph. Moreover, it was claimed that Winchester bought from its incorporators, excluding Anthony, their accumulated 8,500 shares in the corporation which was subsequently sold to other persons, including petitioners Rosita and Jason Yu.

The respondents also averred that although Joseph appeared as the Secretary and Treasurer in the corporate records, it was actually the petitioners who controlled and ran Winchester as if it were their own family business. Petitioners were also misappropriating the funds and properties of the corporation by charging their personal and family expenses to it and by withdrawing stocks for their personal use without paying for the same.

The RTC declared that the respondents failed to show that they had complied with the essential requisites for filing a derivative suit as set forth in Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies. The CA at first affirmed in toto the RTC decision. However, upon a Motion for Reconsideration, it urged the parties to strive to reach an amicable settlement. Thereafter, in accordance with respondents' allegation that the parties filed with the SEC a petition for dissolution of Winchester which was subsequently approved, the CA remanded the case to the RTC so that all the corporate concerns between the parties regarding the corporation could be resolved towards final settlement.

ISSUE

Whether the respondents exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing Winchester, Inc. to obtain the relief they desire. (NO)

RULING

A derivative suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholders suit is always one in equity. It cannot prosper without first complying with the legal requisites for its institution.

Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra- Corporate Controversies lays down the following requirements which a stockholder must comply with in filing a derivative suit:

> *Sec 1. Derivative action. A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided that:*
>
> *1. He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;*
> *2. He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;*
> *3. No appraisal rights are available for the act or acts complained of; and*
> *4. The suit is not a nuisance or harassment suit.*

A perusal of respondents' complaint before the RTC would reveal that the same did not allege with particularity the remedies exhausted that are available under the articles of incorporation, by-laws, laws or rules governing Winchester to obtain the relief they desire. It must be noted that the obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder after all other remedies to obtain the relief sought had failed.

The allegation of Joseph in his Affidavit of his repeated attempts to talk to Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available". Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester available for dispute resolution among stockholders which respondents unsuccessfully availed themselves of. The Court is not prepared to conclude that the said articles of incorporation and by-laws absolutely failed to provide for such remedies. The fact that Winchester is a family corporation should not in anyway exempt respondents from complying with the clear requirements and formalities of the rules for filing a derivative suit.

- Hi- Yield, Inc. vs. Court of Appeals, 590 SCRA 548 (2009)

HI-YIELD REALTY, INCORPORATE, *Petitioner,* -versus - HON. COURT OF APPEALS, HON. CESAR O. UNTALAN, in his capacity as PRESIDING JUDGE OF RTC-MAKATI, BRANCH 142, HONORIO TORRES & SONS, INC., and ROBERTO H. TORRES, *Respondents.*
G.R. No. 168863, SECOND DIVISION, June 23, 2009, QUISUMBING, *J.*

There are 3 requisites before a stockholder can file a derivative suit: (a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; (b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and (c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.

The Court finds that Roberto had satisfied the requirements in paragraph 5 of his petition. While it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances, such is no longer necessary where the corporation is under the complete control of the person against whom the suit is being filed. This is because a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility. Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/stockholders before he filed the case. Clearly, Roberto could not expect relief from the board.

As to venue, Section 5, Rule 1 of A.M. No. 01-2-04-SC states that all actions covered by the said Rules shall be commenced and tried in the RTC which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Considering the foregoing, Roberto correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

FACTS

Roberto H. Torres (Roberto), for and on behalf of Honorio Torres & Sons, Inc. (HTSI), filed a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale with the RTC of Makati, the court where principal office of HTSI was registered, over two parcels of land located in Marikina and Quezon City against Leonora, Ma. Theresa, Glenn and Stephanie, all surnamed Torres and Hi-Yield Realty, Inc. (Hi-Yield), among others.

Hi-Yield contends that the rule on venue under the Rules of Court prevails over the rule prescribing the venue for intra-corporate controversies. As such, HTSI erred when it filed the suit in Makati when the lands subject of the case are in Marikina and Quezon City. Furthermore, Hi-Yield argues that the caption of the case, substance of the allegations, and relief prayed for revealed that the main thrust of the action is to recover the lands not mainly as a derivative suit with annulment of real estate mortgage and foreclosure sale as merely incidental.

Roberto, on the other hand, maintains that the action is primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands. The nullification of the mortgage and foreclosure sale would just be a logical consequence of a decision adverse to the said officers and stockholders. Moreover, Roberto claims that Leonora holds 55% of the outstanding shares while Ma. Theresa, Glenn and Stephanie excluded him from the affairs of the corporation. Even more glaring was the fact that from the date when the first mortgage deed was executed until the date when the properties mortgaged were foreclosed, the Board of Directors of HTSI did nothing to rectify the alleged unauthorized transactions of Leonora. Lastly, Roberto asserts that it complied with the requirements of a derivative suit.

The RTC ruled that the case was, in nature, a real action in the form of a derivative suit cognizable by a special commercial court pursuant to Administrative Matter No. 00-11-03-SC. The CA, on the other hand, affirmed the ruling of the RTC. The case was a derivative suit and the prayer for annulment of mortgage and foreclosure proceedings was merely incidental to the main action.

ISSUES

A. Whether the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale. (YES)
B. Whether the action is filed in the proper venue. (YES)

RULING

(A) A derivative action is a suit by a shareholder to enforce a corporate cause of action. Under the 1980 Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. However, an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.

There are 3 requisites before a stockholder can file a derivative suit: (a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; (b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and (c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.

The Court finds that Roberto had satisfied the requirements in paragraph 5 of his petition which states that "Individual petitioner, being a minority stockholder, is instituting the instant proceeding by way of a derivative suit to redress wrongs done to petitioner corporation and vindicate corporate rights due to the mismanagement and abuses committed against it by its officers and controlling stockholders, especially by Leonora who, without authority from the Board of Directors, arrogated upon herself the power to bind petitioner corporation from incurring loan obligations and later allow company properties to be foreclosed". While it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances, such is no longer necessary where the corporation is under the complete control of the person against whom the suit is being filed. This is because a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility. Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/stockholders before he filed the case. Clearly, Roberto could not expect relief from the board.

(B) Derivative suits are governed by a special set of rules under A.M. No. 01-2-04-SC otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under RA No. 8799. As regards the venue, Section 5, Rule 1 of the said Rules states that all actions covered by the said Rules shall be commenced and tried in the RTC which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office is registered in the SEC as Metro Manila, the action must be filed in the city or municipality where the head office is located. Considering the foregoing, Roberto correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

- Legaspi Towers 300, Inc. vs. Muer, G.R. No. 170783, June 18, 2012

LEGASPI TOWERS 300, INC., LILIA MARQUINEZ PALANCA, ROSANNA D. IMAI, GLORIA DOMINGO and RAY VINCENT, *Petitioners,* -versus - AMELIA P. MUER, SAMUEL M. TANCHOCO, ROMEO TANKIANG, RUDEL PANGANIBAN, DOLORES AGBAYANI, ARLENEDAL A. YASUMA, GODOFREDO M. CAGUIOA and EDGARDO M. SALANDANAN, *Respondents.*
G.R. No. 170783, THIRD DIVISION, June 18, 2012, PERALTA, *J.*

In a derivative suit, it is required that the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. The reliefs prayed for must be for the benefit or interest of the corporation. When the reliefs prayed for do not pertain to the corporation, then it is an improper derivative suit.

In the case at bar, the wrong complained of was committed not against the corporation but against the stockholders whose rights are alleged to have been violated. As stated by the CA, the complaint of Palanca and Company seek to nullify the said election and to protect and enforce their individual right to vote. They are the injured party whose rights to vote and to be voted upon were directly affected by the election of the new set of BOD. The cause of action devolves on them, not the condominium corporation, which did not have the right to vote. Hence, the complaint for nullification of the election is a direct action by petitioners. Under the circumstances, the derivative suit filed is improper.

FACTS

Pursuant to the by-laws of Legaspi Towers 300, Inc., petitioners Palanca, Imai, Domingo and Vincent (Palanca and Company), the incumbent Board of Directors (BOD), set the annual meeting of the members of the condominium corporation and the election of the new BOD for the years 2004-2005.

Out of 5,723 members entitled to vote, 1,358 were supposed to vote through their respective proxies. The Committee on Elections, however, found most of the proxy votes, at its face value, irregular and questionable. Consequently, for lack of time to authenticate the same, petitioners adjourned the meeting for lack of quorum. The group of respondents challenged the adjournment of the meeting. Despite petitioners' insistence that no quorum was obtained, respondents pushed through with the scheduled election and were elected as the new BOD and officers.

Palanca and Company filed a Complaint for the Declaration of Nullity of Elections. Subsequently, in a motion, they impleaded Legaspi Towers 300, Inc. as party- plaintiff against which the respondents claimed that the same was made without the authority of the current BOD whose election were valid and in accordance with law. The motion was denied by the RTC as well as the CA. The CA held that petitioners' complaint sought to nullify the election of the BOD and to protect and enforce their individual right to vote. Such right to vote is a personal right of a stockholder which can only be enforced through a direct action, hence, Legaspi Towers 300, Inc. cannot be impleaded as plaintiff. In any case, the valid election for the years 2005-2006 has rendered the petition at bench moot and academic.

Palanca and Company clarified that the inclusion of Legaspi Towers 300, Inc. was intended as a direct action by the corporation acting through them as the reconstituted BOD. It is consistent with their position that the election conducted by respondents was invalid, hence, petitioners, under their by-laws, could reconstitute themselves as the BOD in a hold-over capacity for the succeeding term. By so doing, they had the right to bring the action in representation of Legaspi Towers 300, Inc.

Palanca and Company further contended that Legaspi Towers 300, Inc. is a real party-in- interest as it stands to be affected the most by the controversy involving the determination of whether or not the corporation's by-laws was properly carried out. Although they admit that the action involves their right to vote, they argue that it also involves the right of the condominium corporation to be managed and run by the duly-elected BOD and to seek redress against those who wrongfully occupy positions of the corporation. This is no different from and may in fact be considered as a *derivative suit* instituted by an individual stockholder against those controlling the corporation but is being instituted in the name of and for the benefit of the corporation whose right/s are being violated.

ISSUE

Whether a derivative suit is proper in this case. (NO)

RULING

In cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a *"derivative suit."* The stockholder's right to file a derivative suit is not based on any express provision of The Corporation Code, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.

Derivative suit has been proven to be an effective remedy of the minority against the abuses of management. It allows individual stockholder to institute a suit on behalf of the corporation where he holds stock in order to protect or vindicate corporate rights whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party-in-interest. Considering the foregoing, the reliefs prayed for must be for the benefit or interest of the corporation. When the reliefs prayed for do not pertain to the corporation, then it is an improper derivative suit.

The requisites for a derivative suit are as follows: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the BOD for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.

In the case at bar, the wrong complained of was committed not against the corporation but against the stockholders whose rights are alleged to have been violated. As stated by the CA, the complaint of Palanca and Company seek to nullify the said election and to protect and enforce their individual right to vote. They are the injured party whose rights to vote and to be voted upon were directly affected by the election of the new set of BOD. The cause of action devolves on them, not the condominium corporation, which did not have the right to vote. Hence, the complaint for nullification of the election is a direct action by petitioners. Under the circumstances, the derivative suit filed is improper.

- Ang, for and in behalf of Sunrise Marketing (Bacolod), Inc. vs. Spouses Ang, G.R. No. 201675, June 19, 2013

JUANITO ANG, for and in behalf of SUNRISE MARKETING (BACOLOD), INC., *Petitioner,* -versus - SPOUSES ROBERTO and RACHEL ANG, *Respondents.*
G.R. No. 201675, SECOND DIVISION, June 19, 2013, CARPIO, *J.*

Section 1, Rule 8 of the Interim Rules imposes the following requirements for derivative suits: (1) The person filing the suit must be a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed; (2) He must have exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; (3) No appraisal rights are available for the act or acts complained of; and (4) The suit is not a nuisance or harassment suit.

In the case at bar, there was no compliance with the requirements for a derivative suit. The Complaint failed to show how the acts of Rachel and Roberto resulted in any detriment to SMBI. The loan was not a corporate obligation but a personal debt of the Ang brothers and their spouses. The check was issued to them and the proceeds of the loan were used for payment of the obligations of the other corporations owned by the Ang as well as the purchase of real properties for the Ang brothers. SMBI was never a party to the Settlement Agreement or the Mortgage as they were executed by Juanito and Anecita in their personal capacity and not in their capacity as directors or officers of SMBI.

The complaint also failed to comply with the second requirement. No written demand was ever made for the board of directors to address Juanito 's concerns. The fact that SMBI is a family corporation does not exempt Juanito from complying with the Interim Rules.

Finally, the suit is a nuisance or harassment suit as provided for under Section 1(b) of the Interim Rules. As such, the court may, motu proprio or upon motion, forthwith dismiss the case.

FACTS

Sunrise Marketing (Bacolod), Inc. (SMBI) is a duly registered corporation owned by the Ang family. Roberto was elected as the President of SMBI while Juanito was elected as its Vice President. Rachel and Anecita, Juanito's wife, are SMBI's Corporate Secretary and Treasurer, respectively.

On July 31, 1995, Nancy Ang (Nancy), the sister of Juanito and Roberto, and her husband, Theodore Ang (Theodore), agreed to extend a loan to settle the obligations of SMBI and other corporations owned by the Ang family. Nancy and Theodore issued a check in the amount of $1,000,000.00 payable to "Juanito Ang and/or Anecita Ang and/or Roberto Ang and/or Rachel Ang". Part of the loan was also used to purchase real properties for SMBI, for Juanito, and for Roberto.

Juanito claimed that payments to Nancy and Theodore ceased sometime after 2006. Nancy and Theodore, through their counsel here in the Philippines, sent a demand letter to "Spouses Juanito L. Ang/Anecita L. Ang and Spouses Roberto L. Ang/Rachel L. Ang" for payment.

Juanito and Anecita executed a Deed of Acknowledgment and Settlement Agreement and an Extra-Judicial Real Estate Mortgage (Mortgage) in favor of Nancy and Theodore. Thereafter, Juanito filed a derivative suit. He alleged that the intentional and malicious refusal of Spouses Roberto and Rachel Ang to settle their 50% share of the total obligation will definitely affect the financial viability of SMBI. Juanito also claimed that he has been illegally excluded from the management and participation in the business of SMBI.

The RTC Bacolod issued an order declaring the present action as a derivative suit and the motion to dismiss based on affirmative defenses raised by defendants was denied. Aggrieved, Rachel filed a petition for certiorari with the CA Cebu which reversed the order of the RTC Bacolod.

ISSUE

Whether the nature of the case is one of a derivative suit. (NO)

RULING

A derivative suit is an action brought by a stockholder on behalf of the corporation to enforce corporate rights against the corporation's directors, officers or other insiders. Under Sections 23 and 36 of the Corporation Code, the directors or officers, as provided under the by-laws, have the right to decide whether or not a corporation should sue. Since these directors or officers will never be willing to sue themselves or impugn their wrongful or fraudulent decisions, stockholders are permitted by law to bring an action in the name of the corporation to hold these directors and officers accountable. In derivative suits, the real party in interest is the corporation, while the stockholder is a mere nominal party.

Section 1, Rule 8 of the Interim Rules imposes the following requirements for derivative suits: (1) The person filing the suit must be a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed; (2) He must have exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; (3) No appraisal rights are available for the act or acts complained of; and (4) The suit is not a nuisance or harassment suit.

In the case at bar, there was no compliance with the requirements for a derivative suit. The Complaint failed to show how the acts of Rachel and Roberto resulted in any detriment to SMBI. The CA Cebu correctly concluded that the loan was not a corporate obligation but a personal debt of the Ang brothers and their spouses. The check was issued to "Juanito Ang and/or Anecita Ang and/or Roberto

Ang and/or Rachel Ang" and not to SMBI. The proceeds of the loan were used for payment of the obligations of the other corporations owned by the Ang as well as the purchase of real properties for the Ang brothers. SMBI was never a party to the Settlement Agreement or the Mortgage. It was never named as a co-debtor or guarantor of the loan. Both instruments were executed by Juanito and Anecita in their personal capacity and not in their capacity as directors or officers of SMBI. SMBI is under no legal obligation to satisfy the claim.

The fact that Juanito and Anecita attempted to constitute a mortgage over "their" share in a corporate asset cannot affect SMBI. The wording of the Mortgage reveals that it was signed by Juanito and Anecita in their personal capacity as the "owners" of a pro-indiviso share in SMBI's land and not on behalf of SMBI.

The complaint also failed to allege that all available corporate remedies under the articles of incorporation, by-laws, laws or rules governing the corporation were exhausted, as required under the Interim Rules. No written demand was ever made for the board of directors to address Juanito 's concerns. The fact that SMBI is a family corporation does not exempt Juanito from complying with the Interim Rules.

Finally, the suit is a nuisance or harassment suit under Section 1(b) of the Interim Rules. Section 1(b) thereof provides:

> *b) Prohibition against nuisance and harassment suits. - Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:*
>
> *(1) The extent of the shareholding or interest of the initiating stockholder or member;*
> *(2) Subject matter of the suit;*
> *(3) Legal and factual basis of the complaint;*
> *(4) Availability of appraisal rights for the act or acts complained of; and*
> *(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.*

In case of nuisance or harassment suits, the court may, motu proprio or upon motion, forthwith dismiss the case.

- Nestor Ching and Andrew Wellington vs. Subic Bay Golf and Country Club Inc., et al., G.R. No. 174353, September 10, 2014

NESTOR CHING and ANDREW WELLINGTON, *Petitioners,* -versus - SUBIC BAY GOLF AND COUNTRY CLUB, INC., HU HO HSIU LIEN alias SUSAN HU, HU TSUNG CHIEH alias JACK HU, HU TSUNG HUI, HU TSUNG TZU and REYNALD R. SUAREZ, *Respondents.*

G.R. No. 174353, FIRST DIVISION, September 10, 2014, LEONARDO- DE CASTRO, *J.*

A derivative suit cannot prosper without first complying with the legal requisites for its institution. In the case at bar, it is found that petitioners failed to comply with the second requirement. The complaint contained no allegation of any effort to avail of intra-corporate remedies. Even if petitioners thought it was futile to exhaust intra-corporate remedies, they should have stated the same in the complaint and specified the reasons for such opinion. Failure to do so allows the RTC to dismiss the Complaint, even *motu proprio, in accordance with the Interim Rules. The requirement of this allegation in the Complaint is not a useless formality which may be disregarded at will.*

The RTC, however, is not correct in ruling that the fourth requirement is also not complied with. Although the shareholdings of petitioners are indeed only 2 out of the 409 alleged outstanding shares or 0.24%, such shareholdings are enough in order for a member or a minority stockholder to file a derivative suit for and in behalf of a corporation.

FACTS:

Nestor Ching and Andrew Wellington filed a Complaint with the RTC of Olongapo City on behalf of the members of Subic Bay Golf and Country Club, Inc. (SBGCCI) against the said country club and its Board of Directors and officers. The complaint alleged that SBGCCI sold shares to plaintiffs at US$22,000.00 per share, presenting to them the Articles of Incorporation. However, an amendment to the Articles of Incorporation was approved by the Securities and Exchange Commission (SEC).

Petitioners claimed that SBGCCI did not disclose to them the above amendment which allegedly makes the shares non-proprietary as it takes away the right of the shareholders to participate in the pro-rata distribution of the assets of the corporation in case of dissolution. This is fraud against the stockholders who only discovered the amendment when they filed a case for injunction to restrain SBGCCI from suspending their rights to use all the facilities of the club. Furthermore, petitioners alleged that the Board of Directors and officers of the corporation did not call any stockholders' meeting from the time of the incorporation. Neither the financial statements of the corporation nor the financial report of the operation of SBGCCI was also furnished by the directors and officers. Petitioners also claim that SBGCCI presented to the SEC an amendment to its By-Laws suspending the voting rights of the shareholders except for the five founders' shares. Said amendment was allegedly passed without any stockholders' meeting or notice. Several instances of fraud in the management allegedly committed by its Board of Directors and officers were also enumerated.

The RTC issued an order dismissing the complaint for being a derivative suit without complying with the second and fourth requirements stated in the Interim Rules in order for its institution to be proper. This was affirmed by the CA. Contrary to the ruling, the petitioners assert that the present case was not a derivative suit.

ISSUE

Whether the complaint is a derivative suit. (NO)

RULING

The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

While there were allegations in the complaint of fraud in their subscription agreements, petitioners do not pray for the rescission of their subscription or seek to avail of their appraisal rights. Instead, they ask that defendants be enjoined from managing the corporation and to pay damages for their mismanagement. Petitioners' only possible cause of action as minority stockholders against the actions of the Board of Directors is the common law right to file a derivative suit. The legal standing of minority stockholders to bring derivative suits is not a statutory right, there being no provision in the Corporation Code or related statutes authorizing the same, but is instead a product of jurisprudence based on equity. However, a derivative suit cannot prosper without first complying with the legal requisites for its institution.

Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra Corporate Controversies imposes the following requirements for derivative suits: (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed; (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; (3) No appraisal rights are available for the act or acts complained of; and (4) The suit is not a nuisance or harassment suit.

In the case at bar, it is found that petitioners failed to comply with the second requirement. The complaint contained no allegation of any effort to avail of intra-corporate remedies. Even if petitioners thought it was futile to exhaust intra-corporate remedies, they should have stated the same in the complaint and specified the reasons for such opinion. Failure to do so allows the RTC to dismiss the Complaint, even motu proprio, in accordance with the Interim Rules. The requirement of this allegation in the Complaint is not a useless formality which may be disregarded at will.

The RTC, however, is not correct in ruling that the fourth requirement is also not complied with. Although the shareholdings of petitioners are indeed only 2 out of the 409 alleged outstanding shares or 0.24%, such shareholdings are enough in order for a member or a minority stockholder to file a derivative suit for and in behalf of a corporation.

- Alfredo Villamor Jr. vs. John S. Umale in Substitution of Hernando Balmores, G.R. No. 172843, September 24, 2014

ALFREDO L. VILLAMOR, JR., ***Petitioner,*** **-versus - JOHN S. UMALE, in substitution of HERNANDO F. BALMORES,** ***Respondent.***
G.R. No. 172843, SECOND DIVISION, September 24, 2014, LEONEN, *J.*

ODIVAL E. REYES, HANS M. PALMA and DOROTEO M. PANGILINAN, ***Petitioners,*** **-versus - HERNANDO F. BALMORES,** ***Respondent.***
G.R. No. 172881, SECOND DIVISION, September 24, 2014, LEONEN, *J.*

A derivative suit cannot prosper without first complying with the legal requisites for its institution. In the case at bar, Balmores failed to exhaust all the available remedies to obtain the reliefs he prayed for. Though he tried to communicate with PPC's directors about the checks before he filed an action with the trial court, he was not able to show that this comprised all the remedies available under the articles of incorporation, bylaws, laws, or rules governing PPC. Moreover, Balmores did not implead PPC as party in the case nor did he allege that he was filing on behalf of the corporation. It must be further noted that he described the nature of his action as an action under Rule 1, Section l(a)(l) of the Interim Rules and not an action under Rule 1, Section l(a)(4) of the Interim Rules which refers to derivative suits.

A corporation may be placed under receivership or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of *the court. Management committees and receivers are appointed when the corporation is in imminent danger of (1) dissipation, loss, wastage or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. In the case at bar, PPC waived its rights without any consideration in favor of Atty. Villamor. The checks were already in Villamor's possession. Some of the checks may have already been encashed. It is, therefore, enough to constitute loss or dissipation of assets under the Interim Rules. Balmores, however, failed to show that there was an imminent danger of paralysis of PPC's business operations. Apparently, PPC was-earning substantial amounts from its other sub-lessees.*

FACTS

MC Home Depot occupied a prime property (Rockland area) in Pasig which was part of the area owned by Mid-Pasig Development Corporation. Pasig Printing Corporation (PPC) obtained an option to lease the Rockland area. PPC's Board of Directors (BOD) issued a resolution waiving all its rights, interests, and participation in the option to lease contract in favor of the law firm of Atty. Villamor. PPC, represented by Atty. Villamor, entered into a memorandum of agreement (MOA) with MC Home Depot who would continue to occupy the area for 4 years, renewable for another 4 years, at a monthly rental of P4,500,000.00 plus goodwill of P18,000,000.00.

In compliance with the terms of the MOA, MC Home Depot issued 20 post-dated checks. The checks were given to Atty. Villamor who did not turn these or the equivalent amount over to PPC, upon encashment. Hernando Balmores, stockholder and director of PPC, wrote a letter addressed to PPC's BOD informing them that Atty. Villamor should be made to deliver to PPC and account for the checks or their equivalent value.

Due to the alleged inaction of the BOD, Balmores filed with the RTC an intra-corporate controversy complaint against petitioners for their alleged devices or schemes amounting to fraud or misrepresentation. He alleged that because of petitioners' actions, PPC's assets were not only in imminent danger, but have actually been dissipated, lost, wasted and destroyed. He prayed that a receiver be appointed from his list of nominees and that the petitioners be prohibited from selling, encumbering, transferring or disposing any of PPC's properties.

The RTC denied Balmores' prayer for the appointment of a receiver or the creation of a management committee. PPC's entitlement to the checks was doubtful as the resolution issued by PPC's BOD waiving its rights to the option to lease contract must be accorded prima facie validity. The CA, on the other hand, reversed the RTC's decision and issued an order placing PPC under receivership and creating an interim management committee. The waiver of PPC's rights in favor of Villamor's law firm without any consideration and its inaction on Villamor's failure to turn over the proceeds of rental payments to PPC warrant the creation of a management committee. Also, the case filed by Balmores was a derivative suit because there were allegations of fraud by PPC's directors.

ISSUES

A. Whether the CA correctly characterized Balmores' action as a derivative suit. (NO)
B. Whether the CA properly placed PPC under receivership and created a receiver or management committee. (NO)

RULING

(A) The requisites of a derivative suit are as follows: a. He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed; b. He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; c. No appraisal rights are available for the act or acts complained of; and d. The suit is not a nuisance or harassment suit. In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

Balmores' action in the trial court failed to satisfy all the requisites of a derivative suit. Balmores failed to exhaust all the available remedies to obtain the reliefs he prayed for. Though he tried to communicate with PPC's directors about the checks before he filed an action with the trial court, he was not able to show that this comprised all the remedies available under the articles of incorporation, bylaws, laws, or rules governing PPC. Moreover, Balmores did not implead PPC as party in the case nor did he allege that he was filing on behalf of the corporation. It must be further noted that he described the nature of his action as an action under Rule 1, Section l(a)(l) of the Interim Rules and not an action under Rule 1, Section l(a)(4) of the Interim Rules which refers to derivative suits. It is clear that he did not bring the action for the benefit of the corporation when he alleged in the complaint that the acts of PPC's directors were detrimental to his individual interest as a stockholder.

(B) A corporation may be placed under receivership or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court. Management committees and receivers are appointed when the corporation is in imminent danger of (1) dissipation, loss, wastage or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public.

In the case at bar, PPC waived its rights without any consideration in favor of Atty. Villamor. The checks were already in Villamor's possession. Some of the checks may have already been encashed. It is, therefore, enough to constitute loss or dissipation of assets under the Interim Rules. Balmores, however, failed to show that there was an imminent danger of paralysis of PPC's business operations. Apparently, PPC was-earning substantial amounts from its other sub-lessees.

- MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO AND RAUL A. MUYCO, Petitioners, v. ROGELIO M. FLORETE, IMELDA C. FLORETE, DIAMEL CORPORATION, ROGELIO C. FLORETE JR., AND MARGARET RUTH C. FLORETE, Respondents. (G.R. No. 174909, January 20, 2016, 2016, LEONEN, J.)

  ROGELIO M. FLORETE SR., Petitioner, v. MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO AND RAUL A. MUYCO, Respondents. (G.R. NO. 177275, January 20, 2016, LEONEN, J.)

MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO and RAUL A. MUYCO, *Petitioners,* -versus - ROGELIO M. FLORETE, IMELDA C. FLORETE, DIAMEL CORPORATION, ROGELIO C. FLORETE JR., and MARGARET RUTH C. FLORETE, *Respondents.*
G.R. No. 174909, SECOND DIVISION, January 20, 2016, LEONEN, *J.*

ROGELIO M. FLORETE SR., ***Petitioner,*** **-versus - MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO AND RAUL A. MUYCO,** ***Respondents.***
G.R. No. 177275, SECOND DIVISION, January 20, 2016, LEONEN, *J.*

A stockholder may suffer from a wrong done to or involving a corporation but this does not vest in the aggrieved stockholder a sweeping license to sue in his or her own capacity. The determination of the stockholder's appropriate remedy—whether it is an individual suit, a class suit, or a derivative suit—hinges on the object of the wrong done. When the object of the wrong done is the corporation itself or the whole body of its stock and property without any severance or distribution among individual holders, it is a derivative suit, not an individual suit or class/representative suit, that a stockholder must resort to. An action should be a proper derivative suit even if the assailed acts do not pertain to a corporation's transactions with third persons. An action seeking to nullify and invalidate the duly constituted acts of a corporation entails a cause of action that rightfully pertains to the corporation itself.

In the case at bar, what the Marcelino, Jr. Group asks is the complete reversal of a number of corporate acts undertaken by PBSI's different Boards of Directors. These Board of Directors supposedly engaged in outright fraud or, at the very least, acted in such a manner that amounts to wanton mismanagement of the corporation. The specific provisions claimed by the Marcelino, Jr. Group to have been violated signify alleged wrongdoing committed against the corporation itself and not uniquely to those stockholders who now comprise the Marcelino, Jr. Group. Accordingly, it was upon PBSI itself that the causes of action now claimed by the Marcelino Jr. Group accrued. While the stockholders in the Marcelino, Jr. Group were permitted to seek relief, they should have done so not in their unique capacity as individuals or as a group of stockholders but in place of the corporation itself through a derivative suit. As they sought relief in their individual capacity, they did so bereft of a cause of action. Likewise, they did so without even the slightest averment that the requisites for the filing of a derivative suit, as spelled out in Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies, have been satisfied. Since the Complaint lacked a cause of action and failed to comply with the requirements of the Marcelino, Jr. Group's vehicle for relief, it was only proper for the complaint to have been dismissed.

Erroneously pursuing a derivative suit as a class suit not only meant that the Marcelino, Jr. Group lacked a cause of action as it also meant that they failed to implead an indispensable party. In derivative suits, the corporation concerned must be impleaded as a party. Hence, the Marcellino Jr. Group's complaint must fail for failure to implead PBSI.

FACTS

The case involves a Complaint for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. (PBSI) and All Posterior Subscriptions and Increases thereto with Damages. The concerned corporation, some of the transferees, transferors and other parties involved in the assailed transactions are not impleaded as parties.

PBSI sought the services of Sycip Gorres Velayo and Co. (SGV & Co.) in order to determine the ownership of equity in the corporation. Accordingly, SGV & Co. submitted a report detailing the movements of the corporation's shares. No categorical statement on equity ownership was given as PBSI's records were incomplete.

Subsequently, Marcelino, Jr., Ma. Elena, and Raul Muyco (Marcelino, Jr. Group) filed before the RTC the complaint stated above against Diamel Corporation, Rogelio, Sr., Imelda Florete, Margaret Florete, and Rogelio Florete, Jr. (Rogelio, Sr. Group). The former seeks to nullify the following transactions on the shares of stock of PBSI:

a. Issuance of 1,240 shares to Consolidated Broadcasting System, Inc. (CBSI);
b. Transfer of 10 shares from Salome to CBSI;
c. Issuance of 610 shares to Newsounds Broadcasting Network, Inc. (NBNI);
d. Transfer of 610 shares from NBNI to Rogelio, Sr.;
e. Transfer of 750 shares from CBSI to Marcelino, Sr.;
f. Transfer of 500 shares from CBSI to Rogelio, Sr.;
g. Transfer of 680 shares from Marcelino, Sr. to the following: 370 shares to Rogelio, Sr., 270 shares to Divinagracia, 20 shares to Marcelino, Jr., and 20 shares to Teresita;
h. Increase in the authorized capital stock to PI00,000,000.00 divided into 1,000,000 shares with a par value of PI00.00 per share on December 8, 1989, and the resulting subscriptions.

For the issuance of 1,250 shares to CBSI, the Marcelino, Jr. Group argues that the board resolution used as the basis for the issuance of the same was a forgery as it was passed without a quorum. Salome who allegedly transferred her 10 shares to complete the 1,250-share transfer was already dead at the time of the alleged transfer. Moreover, no member of the Board attended the meeting referred to in the board resolution and the signature of Marcelino, Sr. in the same board resolution is a forgery because he was confined in a hospital on the day of the meeting.

With respect to the issuance of 610 shares to NBNI and their subsequent transfer to Rogelio, Sr., the Marcelino, Jr. Group argues that there is no deed of conveyance to support the transfer and that the stock certificates representing the 610 shares are missing. Because of the absence of the stock certificates, there is no valid delivery and endorsement and the transfer is invalid.

Regarding the increase in the authorized capital stock of PBSI, the Marcelino, Jr. Group argues that the increase was procured by fraud because it was made by the new Board of Directors who were elected by stockholders who were transferees of the illegal, fraudulent and anomalous transfers, and therefore have no power and authority to procure such increase.

The RTC issued a decision dismissing the Marcelino, Jr. Group's complaint. The Marcelino, Jr. Group did not have a cause of action against the Rogelio, Sr. Group. Indispensible parties were not joined in their complaint. The Court of Appeals denied the Marcelino, Jr. Group's Petition and affirmed the trial court Decision.

ISSUE

Whether it was proper for the RTC to dismiss the Complaint filed by the Marcelino, Jr. Group. (YES)

RULING

A stockholder may suffer from a wrong done to or involving a corporation but this does not vest in the aggrieved stockholder a sweeping license to sue in his or her own capacity. The determination of the stockholder's appropriate remedy—whether it is an individual suit, a class suit, or a derivative suit—hinges on the object of the wrong done. When the object of the wrong done is the corporation itself or the whole body of its stock and property without any severance or distribution among individual holders, it is a derivative suit, not an individual suit or class/representative suit, that a stockholder must resort to.

An action should be a proper *derivative suit* even if the assailed acts do not pertain to a corporation's transactions with third persons. The pivotal consideration is whether the wrong done as well as the cause of action arising from it accrues to the corporation itself or to the whole body of its stockholders. An action seeking to nullify and invalidate the duly constituted acts of a corporation entails a cause of action that rightfully pertains to the corporation itself and which stockholders cannot exercise except through a derivative suit.

In the case at bar, what the Marcelino, Jr. Group asks is the complete reversal of a number of corporate acts undertaken by PBSI's different Boards of Directors. These Board of Directors supposedly engaged in outright fraud or, at the very least, acted in such a manner that amounts to wanton mismanagement of the corporation. The remedies that the Marcelino, Jr. Group seeks are for PBSI itself to avail as the specific provisions claimed by the Marcelino, Jr. Group to have been violated signify alleged wrongdoing committed against the corporation itself and not uniquely to those stockholders who now comprise the Marcelino, Jr. Group. For instance, a violation of Sections 23 and 25 of the Corporation Code implies that a decision was wrongly made for the entire corporation and not just with respect to a handful of stockholders. Section 65, on the other hand, specifically mentions that a director's or officer's liability for the issuance of watered stocks is solidary to the corporation and its creditors, not to any specific stockholder. Transfers of shares made in violation of the registration requirement in Section 63 are invalid, thus, enable the corporation to impugn the transfer. Notably, those in the Marcelino, Jr. Group have not shown any specific interest in, or unique entitlement or right to, the shares supposedly transferred in violation of Section 63.

Accordingly, it was upon PBSI itself that the causes of action now claimed by the Marcelino Jr. Group accrued. While the stockholders in the Marcelino, Jr. Group were permitted to seek relief, they should have done so not in their unique capacity as individuals or as a group of stockholders but in place of the corporation itself through a derivative suit. As they sought relief in their individual capacity, they did so bereft of a cause of action. Likewise, they did so without even the slightest averment that the requisites for the filing of a derivative suit, as spelled out in Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies, have been satisfied. Since the Complaint lacked a cause of action and failed to comply with the requirements of the Marcelino, Jr. Group's vehicle for relief, it was only proper for the complaint to have been dismissed.

Erroneously pursuing a derivative suit as a class suit not only meant that the Marcelino, Jr. Group lacked a cause of action as it also meant that they failed to implead an indispensable party. In derivative suits, the corporation concerned must be impleaded as a party. Hence, the Marcellino Jr. Group's complaint must fail for failure to implead PBSI.

- CONCORDE CONDOMINIUM, INC., BY ITSELF AND COMPRISING THE UNIT OWNERS OF CONCORDE CONDOMINIUM BUILDING, Petitioner, v. AUGUSTO H. BACULIO; NEW PPI CORPORATION; ASIAN SECURITY AND INVESTIGATION AGENCY AND ITS SECURITY GUARDS; ENGR. NELSON B. MORALES, IN HIS CAPACITY AS BUILDING OFFICIAL OF THE MAKATI CITY ENGINEERING DEPARTMENT; SUPT. RICARDO C. PERDIGON, IN HIS CAPACITY AS CITY FIRE MARSHAL OF THE MAKATI CITY FIRE STATION; F/C SUPT. SANTIAGO E.

LAGUNA, IN HIS CAPACITY AS REGIONAL DIRECTOR OF THE BUREAU OF FIRE PROTECTION-NCR, AND ANY AND ALL PERSONS ACTING WITH OR UNDER THEM, Respondents. (G.R. No. 203678, February 17, 2016, PERALTA, J.)

CONCORDE CONDOMINIUM, INC., BY ITSELF AND COMPRISING THE UNIT OWNERS OF CONCORDE CONDOMINIUM BUILDING, *Petitioner,* -versus - AUGUSTO H. BACULIO; NEW PPI CORPORATION; ASIAN SECURITY and INVESTIGATION AGENCY and its security guards; ENGR. NELSON B. MORALES, in his capacity as Building Official of the Makati City Engineering Department; SUPT. RICARDO C. PERDIGON, in his capacity as City Fire Marshal of the Makati City Fire Station; F/C SUPT. SANTIAGO E. LAGUNA, in his capacity as Regional Director of the Bureau of Fire Protection-NCR, and any and all persons acting with or under them, *Respondents.*

G.R. No. 203678, THIRD DIVISION, February 17, 2016, PERALTA, *J.*

No intra-corporate relations exists between the opposing parties. Moreover, the petition deals with the conflicting claims of ownership over the lots where Concorde Condominium Building and the parking lot for unit owners stand as well as the purported violations of the National Building Code. Considering the foregoing, as the suit between petitioner and respondents neither arises from an intra-corporate relationship nor does it pertain to the enforcement of their correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation, Branch 149 correctly found that the subject matter of the petition is in the nature of an ordinary civil action and not intra- corporate controversy.

FACTS

Concorde Condominium, Inc., by itself and comprising the Unit Owners of Concorde Condominium Building, filed with the RTC of Makati a Petition for Injunction against respondents. It seeks (1) to enjoin Baculio and New PPI Corporation from misrepresenting to the public that they are the owners of the disputed lots and Concorde Condominium Building, and from pursuing for the demolition of the building which they do not even own; (2) to prevent Asian Security and Investigation Agency from deploying its security guards within the perimeter of the said building; and (3) to restrain Engr. Morales, Supt. Perdigon and F/C Supt. Laguna from responding to and acting upon the letters being sent by Baculio who is a mere impostor and has no legal personality on matters concerning the revocation of building and occupancy permits and on the fire safety issues of the same building. The petition was raffled to Branch 149 which was designated as a Special Commercial Court.

Respondents then filed a motion to dismiss stating that the case is beyond the jurisdiction of Branch 149 as a Special Commercial Court. The petition seeks to restrain or compel individuals and government officials to stop doing particular acts and that there is no showing that the case involves a matter embraced in Section 5 of PD No. 902-A which enumerates the cases over which the SEC [now the RTC acting as Special Commercial Court pursuant to RA No. 8799] exercises exclusive jurisdiction. Petitioner also failed to exhaust administrative remedies which is a condition precedent.

The RTC dismissed the case for lack of jurisdiction. By petitioner's own allegations and admissions, Baculio and New PPI Corporation are not owners of the subject lots and the building. Due to the absence of intra-corporate relations between the parties, it ruled that the case does not involve an intra-corporate controversy cognizable by it sitting as a Special Commercial Court.

ISSUES

A. Whether the RTC erred in dismissing the petition on the ground of lack of jurisdiction. (YES)
B. Whether the allegations in the complaint constitutes an intra-corporate controversy that falls within the jurisdiction of a special commercial court. (NO)

RULING

(A) Actions for injunction and damages lie within the jurisdiction of the RTC pursuant to BP Blg. 129 or the Judiciary Reorganization Act of 1980, as amended by R.A. 7691. Meanwhile, PD No. 902-A empowered the SEC to issue preliminary or permanent injunctions in all controversies arising out of intra-corporate relations. However, such jurisdiction of the SEC was transferred to Courts of general jurisdiction or the appropriate RTC when RA No. 8799 took effect on August 8, 2000.

That being the case, the Court previously stress that Special Commercial Courts are still considered courts of general jurisdiction which have the power to hear and decide cases of all nature, whether civil, criminal or special proceedings. The designation of a branch as a Special Commercial Court has by no means diminished its power as a court of general jurisdiction. There is no question, therefore, that the Makati RTC, Branch 149 erred in dismissing the petition for injunction with damages which is clearly an ordinary civil case.

(B) The petition filed before the RTC is an action for injunction as can be gleaned from the allegations made and reliefs sought by petitioner. Applying the relationship test and the nature of the controversy test in determining whether a dispute constitutes an intra-corporate controversy, as enunciated in Medical Plaza Makati Condominium Corporation v. Cullen, the Court agrees with Branch 149 that the present case is an ordinary civil case and not an intra-corporate controversy.

No intra-corporate relations exists between the opposing parties. Moreover, the petition deals with the conflicting claims of ownership over the lots where Concorde Condominium Building and the parking lot for unit owners stand as well as the purported violations of the National Building Code. Considering the foregoing, as the suit between petitioner and respondents neither arises from an intra-corporate relationship nor does it pertain to the enforcement of their correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation, Branch 149 correctly found that the subject matter of the petition is in the nature of an ordinary civil action.

- Lu Ym v. Lu Ym, Sr., G.R. Nos. 219902 219903 & 219943-44 (Notice), [January 17, 2018]

5. Obligation of a Stockholder

- Edward A. Keller & Co., Ltd. vs. COB Group Marketing, Inc., 141 SCRA 86 (1986)

EDWARD A. KELLER & CO., LTD., *Petitioner,* -versus - COB GROUP MARKETING, INC., JOSE E. BAX, FRANCISCO C. DE CASTRO, JOHNNY DE LA FUENTE, SERGIO C. ORDOÑEZ, TRINIDAD C. ORDOÑEZ, MAGNO C. ORDOÑEZ, ADORACION C. ORDOÑEZ, TOMAS C. LORENZO, JR., LUIZ M. AGUILA-ADAO, MOISES P. ADAO, ASUNCION MANAHAN and INTERMEDIATE APPELLATE COURT, *Respondents.*

G.R. No. L-68097, SECOND DIVISION, January 16, 1986, AQUINO, *CJ.*

The Court, however, in a long line of cases already held that as to the liability of the stockholders in instances such as this, a stockholder is personally liable for the financial obligations of a corporation to the extent of his unpaid subscription only. As such, the stockholders of COB cannot be held to be liable except up to their unpaid subscription, if any.

FACTS

Edward A. Keller & Co. Ltd appointed COB Group Marketing, Inc. (COB) as exclusive distributor of its household products, Brite and Nuvan, in Panay and Negros as shown in a sales agreement where Keller sold on credit its products to COB. As security thereof for purchases up to amount of P35,000, Manahan mortgaged her land to Keller. She also assumed the faithful performance of all the terms and conditions found in the sales agreement solidarily with COB.
Subsequently, a second sales agreement was entered. As security thereof for purchases up to P25,000 in the area of Northern and Southern Luzon, Lorenzo Jr. and his father executed a mortgage on their land in Nueva Ecija. Like Manahan, the Lorenzos were solidarily liable with COB for its obligations under the sales agreement.

The Board of Directors of COB where then apprised by Bax, its president and general manager, that it owed Keller about P179,000. Bax was authorized to negotiate with Keller for the settlement of the said liability. Accordingly, a document was subsequently signed containing the conditions for the settlement of the liability.

In consideration of the settlement of COB's liability, Bax executed two second chattel mortgages over its 12 trucks as security for its obligation to Keller. However, they did not become effective as the first mortgagee, Northern Motors, did not give its consent. As such, Adao and Lorenzo, Jr., the stockholders of COB, in a letter to Keller's counsel, proposed to pay Keller P5,000 every 30th day of the month for three years until the obligation of the latter had been fully satisfied.

For failure to pay, Keller sued COB Group Marketing, its stockholders and the mortgagors. Consequently, the lower court dismissed the complaint and ordered Keller to pay COB the sum of P100,596.72 representing the overpayment made by the latter for the former. Keller, among others, was further ordered to pay P100,000 as moral damages to be allocated among the stockholders of COB in proportion to their unpaid capital subscriptions. The appellate court affirmed such judgment by the lower court.

ISSUE

Whether the stockholders of COB can be held personally liable for the credit in the event that the Court found that COB is indeed liable to Keller. (NO)

RULING

The lower court and the appellate court erred in holding that there was overpayment. Instead, the Court ruled that it is COB who is liable to Keller. The actions of Bax readily showed his admissions as to the liability of COB. Such admissions are supported by documentary evidence like invoices delivery receipts and customers' ledger. In any case, Bax did not alleged that there was an overpayment to

Keller. Moreover, in a conference held between the parties as to COB's liability, Bax did not present reconciliation statements to show overpayment. It is clear that the supposed overpayment was merely an afterthought.

The Court, however, in a long line of cases already held that as to the liability of the stockholders in instances such as this, a stockholder is personally liable for the financial obligations of a corporation to the extent of his unpaid subscription only. As such, the stockholders of COB cannot be held to be liable except up to their unpaid subscription, if any.

- Neugene Marketing, Inc.,vs. Court of Appeals, 303 SCRA 295 (1999)

NEUGENE MARKETING INC., LEONCIO TAN, NICANOR MARTIN, SONNY MORENO, JOHNSON LEE and SECURITIES AND EXCHANGE COMMISSION, *Petitioners,* -versus - COURT OF APPEALS, ARSENIO YANG, JR., CHARLES O. SY, LOK CHUN SUEN, BAN HUA U. FLORES, BAN HA U. CHUA and ROGER REYES, *Respondents.*
G.R. No. 112941, THIRD DIVISION, February 18, 1999, PURISIMA, *J.*

As nominees of the Uy family, the approval by the private respondents was necessary for the validity and effectivity of the transfer of the stock certificates registered under their names. In the case at bar, not only did the transfers lack the requisite approval, they also declared under oath that the subject certificates of stock were stolen from the confidential vault of the Uy family. Moreover, there is no reliable showing of any valuable consideration for the supposed transfer to petitioners. Fundamental is the rule that if a contract has no cause, it does not produce any effect whatsoever and is inexistent or void from the beginning.

FACTS

Neugene Marketing, Inc. was incorporated with an authorized capital stock of P3 million for 30,000 shares. Out of this P600,000.00 had been subscribed by the following subscribers: a. Johnson Lee for 600 shares; b. Lok Chun Suen for 1,200; c. Charles O. Sy for 1,800 shares; d. Eugenio Flores, Jr. for 2,100 shares and Arsenio Yang, Jr. for 300 shares. The original shareholdings was thereafter increased by P100,000.00 by virtue of stock dividend declaration in proportion to the shareholdings of the stockholders of record.

Subsequently, Flores, Jr. assigned his entire shareholdings of 2,450 shares in Neugene to the following, to wit: a. Petitioner Sonny Moreno for 1,050 shares; b. Respondent Arsenio Yang, Jr. for 700 shares and c. Respondent Charles O. Sy for 700 shares.

Sometime thereafter, private respondents, Charles O. Sy, Arsenio Yang, Jr. and Lok Chun Suen, holders of 5,250 shares (representing at least 2/3 of the outstanding capital stock of 7,000 shares) sent notice to the directors of Neugene for a board meeting and for a special stockholders' meeting to consider the dissolution of NEUGENE. Sy, Yang, Jr. and Lok Chun Suen, the directors and stockholders then present, voted for and approved a resolution dissolving Neugene. Accordingly, SEC issued a Certificate of Dissolution. In response thereto, the petitioners brought an action to annul or set aside the said SEC Certification of Dissolution.

Petitioners stated, among others, that they are the majority stockholders, owning 80% of the outstanding capital stock, at the time of the adoption and approval of the Resolution for the Dissolution. Prior thereto, the private respondents had divested themselves of their stockholdings when they endorsed their stock certificates in blank and delivered the same to the Uy Family, the beneficial owners of Neugene. The subject stock certificates were eventually awarded to Johnny K. H. Uy, who, in turn, authorized Johnson Lee to dispose of the same. Lee then sold the said shares of stock to petitioners Leoncio Tan and Nicanor Martin as reflected in the Stock and Transfer Book. In view of the said transfers, private respondents Yang, Jr., and Sy hold only 700 shares while Lok Chun Suen ceased to be a stockholder. As such, they could no longer validly vote for the dissolution.

The SEC nullified the Certification on the Dissolution issued to Neugene, holding that the private respondents were no longer holders of at least 2/3 of the outstanding capital stock at the time they presented the petition for dissolution. The CA, however, reversed the same. It ruled that the certificates of stock of private respondents were not validly transferred to petitioners. To constitute a valid transfer, a stock certificate must be delivered and its delivery must be coupled with an intention of constituting the person to whom the stock is delivered as the transferee. The latter must be a bona fide transferee and for value. It noted that Nicanor Martin and Leoncio Tan were not bona fide transferees for value and in good faith.

ISSUE

Whether the private respondents lacked the requisite number of shares of stock or had divested themselves of their stockholdings when they voted for the resolution dissolving Neugene. (NO)

RULING

The entries on the right-hand portion of the Stock and Transfer Book, under the column "Certificates Issued", record the private respondents as the holders of 5,250 shares, constituting at least 2/3 of the outstanding capital stock of 7,000 shares. Petitioners, however, pointed out that the left-hand portion, under the column "Certificates Cancelled", discloses that all of Lok Chun Suen's shares were cancelled. It also presents the idea that Yang, Jr. and Sy are the holders of only 700 shares each or 10% of the outstanding capital stock of Neugene when its dissolution was approved and voted for.Be that as it may, the Court concludes that certificates of stock mentioned above were stolen and were therefore not validly transferred. The transfers relied upon by the petitioners were fraudulently recorded in the Stock and Transfer Book of NEUGENE under the column "Certificates Cancelled."
It must be further noted that records reveal that the SEC misappreciated the true nature of the relationship between the stockholders of Neugene and the Uy family who had the understanding that the beneficial ownership would remain with them such that subject shares of stock were, immediately upon issuance, endorsed in blank by the shareholders and entrusted to them for safekeeping. Petitioners Lee and Moreno themselves, however, were aware of the real import of the indorsements in blank on the stock certificates of the private respondents. Obviously, they acted in bad faith in assigning subject certificates of stock to the petitioners and in recording the same.

Then, too, as nominees of the Uy family, the approval by the private respondents was necessary for the validity and effectivity of the transfer of the stock certificates registered under their names. In the case at bar, not only did the transfers lack the requisite approval, they also declared under oath that the subject certificates of stock were stolen from the confidential vault of the Uy family. Moreover, there is no reliable showing of any valuable consideration for the supposed transfer to petitioners. Fundamental is the rule that if a contract has no cause, it does not produce any effect whatsoever and is inexistent or void from the beginning.

- DONNINA C. HALLEY v. PRINTWELL, INC., G.R. No. 157549, 30 May 2011, Third Division, Bersamin, J.

DONNINA C. HALLEY, *Petitioner*, -versus - PRINTWELL, INC., *Respondent.*
G.R. No. 157549, THIRD DIVISION, May 30, 2011, BERSAMIN, *J.*

The trust fund doctrine enunciates a rule that the property of a corporation is a trust fund for the payment of creditors. It provides that the subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. The creditor of the corporation, in case of insolvency, is allowed to maintain an action upon any unpaid subscriptions and thereby steps into the shoes of the corporation for the satisfaction of its debt. To make out a prima facie case in such a suit, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation.

In the case at bar, Halley, as the debtor of BMPI, failed to discharge her burden of proving the full payment of her subscriptions. Although an OR is the best evidence of the fact of payment, it is not conclusive but merely presumptive and it is not an exclusive evidence, considering that parole evidence may also establish the fact of payment. To discharge the said burden, she had to adduce evidence satisfactorily proving that her payment by check was regarded as payment under the law. As such, her mere submission of the OR did not satisfactorily establish her allegation of full payment of her subscription. She could not even inform the trial court about the identity of her drawee bank and about whether the check was cleared as well as the amount paid to BMPI. She did not also present the check itself. The ITR, the statement of assets and liabilities of BMPI, the deposit slips and entries in the passbook, on the other hand, had no bearing on the issue of payment of the subscription because they did not by themselves prove payment.

It is notable that Halley did not tender an explanation as to why the stock and transfer book of BMPI was not presented. As such, it warrants the inference that the said book did not reflect the actual payment of her subscription. It must be remembered that the books and records of a corporation including the stock and transfer book are admissible in evidence in favor of or against the corporation and its members to prove its corporate acts, financial status and other matters like the status of the stockholders, and are ordinarily the best evidence of corporate acts and proceedings. Specifically, a stock and transfer book is necessary as a measure of precaution, expediency, and convenience because it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters.

Halley also did not present any certificate of stock issued by BMPI to her. Such a certificate covering her subscription might have been a reliable evidence of full payment of the subscriptions considering that a certificate of stock is issued only to a subscriber who has fully paid his subscription. The lack of any explanation for the absence of a stock certificate in her favor likewise warrants an unfavorable inference on the issue of payment.

Considering the foregoing, Halley is personally liable for the financial obligations of the corporation to the extent of her unpaid subscription. In view of her unpaid subscription being worth P262,500.00, she *was liable up to that amount. Interest is also imposable on the unpaid obligation. Absent any stipulation, interest is fixed at 12% per annum from the date the amended complaint was filed on February 8, 1990 until the obligation (i.e., to the extent of the petitioner's personal liability of P262,500.00) is fully paid.*

FACTS

Halley was an incorporator and original director of Business Media Philippines, Inc. (BMPI) which originally had an authorized capital stock of P3,000,000.00 with a par value of P10.00 of which 75,000 were initially subscribed. BMPI commissioned Printwell for the printing of a magazine that BMPI published and sold. For that purpose, Printwell extended 30-day credit accommodations.

BMPI then placed with Printwell several orders on credit totaling P316, 342.76. Considering that the former paid only P25,000.00, the latter sued the former for the collection of the unpaid balance. Impleaded as defendants are all the original stockholders and incorporators of BMPI to recover on their unpaid subscriptions.

The defendants filed a consolidated answer, averring that they all had paid their subscriptions in full and that BMPI had a separate personality from those of its stockholders. To prove payment of their subscriptions, official receipts (ORs) were submitted in evidence as well as an audit report, balance sheet and income statement, income tax return (ITR), journal vouchers, cash deposit slips and passbook in the name of BMPI.

The RTC rendered a decision in favor of Printwell, rejecting the allegation of payment in full of the subscriptions in view of an irregularity in the issuance of the ORs. It observed that the stockholders had used BMPI's corporate personality to evade payment and create injustice. Applying the trust fund doctrine under which corporate debtors might look to the unpaid subscriptions for the satisfaction of unpaid corporate debts, it declared them liable to Printwell pro rata. The CA, on the other hand, affirmed the decision of the RTC.

ISSUES

A. Whether the Trust Fund doctrine is applicable. (YES)
B. Whether the RTC is correct in ruling that Halley is liable pro-rata based on the proportion of her shares in the capital stock of BMPI for the liability of the latter. (NO)

RULING

(A) The trust fund doctrine enunciates a rule that the property of a corporation is a trust fund for the payment of creditors. It provides that the subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. It must be noted, however, that the trust fund doctrine is not limited to reaching the stockholders' unpaid subscriptions. The scope of the doctrine encompasses not only the capital stock but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts. All assets and property belonging to the corporation that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of his claim.

Moreover, under the trust fund doctrine, a corporation has no legal capacity to release an original subscriber to its capital stock from the obligation of paying for his shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors. Accordingly, the creditor is allowed to maintain an action upon any unpaid subscriptions and thereby steps into the shoes of the corporation for the satisfaction of its debt. To make out a prima facie case in such a suit, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation.

In the case at bar, Halley posits that the finding of irregularity attending the issuance of the ORs issued to the other stockholders should not affect her because her receipt did not suffer similar irregularity. Notwithstanding that the RTC and the CA did not find any irregularity in the OR issued in her favor, the Court cannot sustain her defense. In civil cases, the party who pleads payment has the burden of proving it rather than on the other party to prove nonpayment as the former must show with legal certainty that the obligation has been discharged by payment.

Halley failed to discharge the burden described above. Although an OR is the best evidence of the fact of payment, it is not conclusive but merely presumptive and it is not an exclusive evidence, considering that parole evidence may also establish the fact of payment. The OR in possession of her indicated that her supposed payment had been made by means of a check. Thus, to discharge the said burden, she had to adduce evidence satisfactorily proving that her payment by check was regarded as payment under the law. As such, her mere submission of the OR did not satisfactorily establish her allegation of full payment of her subscription. She could not even inform the trial court about the identity of her drawee bank and about whether the check was cleared as well as the amount paid to BMPI. She did not also present the check itself. The ITR, the statement of assets and liabilities of BMPI, the deposit slips and entries in the passbook, on the other hand, had no bearing on the issue of payment of the subscription because they did not by themselves prove payment.

It is notable that Halley did not tender an explanation as to why the stock and transfer book of BMPI was not presented. As such, it warrants the inference that the said book did not reflect the actual payment of her subscription. It must be remembered that the books and records of a corporation including the stock and transfer book are admissible in evidence in favor of or against the corporation and its members to prove its corporate acts, financial status and other matters like the status of the stockholders, and are ordinarily the best evidence of corporate acts and proceedings. Specifically, a stock and transfer book is necessary as a measure of precaution, expediency, and convenience because it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters.

Halley also did not present any certificate of stock issued by BMPI to her. Such a certificate covering her subscription might have been a reliable evidence of full payment of the subscriptions considering that a certificate of stock is issued only to a subscriber who has fully paid his subscription. The lack of any explanation for the absence of a stock certificate in her favor likewise warrants an unfavorable inference on the issue of payment.

(B) The prevailing rule is that a stockholder is personally liable for the financial obligations of the corporation to the extent of his unpaid subscription. In view of the petitioner's unpaid subscription being worth P262,500.00, she was liable up to that amount. Interest is also imposable on the unpaid obligation. Absent any stipulation, interest is fixed at 12% per annum from the date the amended complaint was filed on February 8, 1990 until the obligation (i.e., to the extent of the petitioner's personal liability of P262,500.00) is fully paid. Payment is defined as the delivery of money. Because a check is not money and only substitutes money, the delivery of a check does not operate as payment and does not discharge the obligation under a judgment. The delivery of a bill of exchange only produces the fact of payment when the bill has been encashed.

6. Meetings

- CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT AND MARIE GRACE H. RICAFORT,Petitioners, v. THE HONORABLE ISAIAS P. DICDICAN, THE HONORABLE RAMON M. BATO, JR., AND THE HONORABLE EDUARDO B. PERALTA, JR., IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SPECIAL FOURTEENTH DIVISION OF THE COURT OF APPEALS, NATIONWIDE DEVELOPMENT CORPORATION, ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA AND LUIS MANUEL GATMAITAN,Respondents. (G.R. Nos. 202647-50, March 09, 2016)

  CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT AND MARIE GRACE H. RICAFORT,Petitioners, v. ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA, NATIONWIDE DEVELOPMENT CORPORATION AND LUIS MANUEL L. GATMAITAN, Respondents. (G.R. NOS. 205921-24, March 09, 2016, REYES, J.)

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT AND MARIE GRACE H. RICAFORT, *Petitioners,* -versus - THE HONORABLE ISAIAS P. DICDICAN, THE HONORABLE RAMON M. BATO, JR., AND THE HONORABLE EDUARDO B. PERALTA, JR., IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SPECIAL FOURTEENTH DIVISION OF THE COURT OF APPEALS, NATIONWIDE DEVELOPMENT CORPORATION, ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA AND LUIS MANUEL GATMAITAN, *Respondents.*
G.R. Nos. 202647-50, THIRD DIVISION, March 9, 2016, REYES, *J.*

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT AND MARIE GRACE H. RICAFORT, *Petitioners,* -versus - OBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA, NATIONWIDE DEVELOPMENT CORPORATION AND LUIS MANUEL L. GATMAITAN, *Respondents.*
G.R. Nos. 205921-24, THIRD DIVISION, March 9, 2016, REYES, *J.*

There can be no denying that the petitioners were seeking the holding of a new election for members of the BOD of NADECOR for 2011-2012 by asserting their right to choose the persons who will direct, manage and operate the corporation because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting and by praying for the voiding of the August 15, 2011 ASM and for other just and equitable reliefs. Moreover, in a case on all fours with the present case, the Court expressly ruled that where one of the reliefs sought in the complaint is to nullify the election of the BOD at the ASM, the complaint involves an election contest. Considering the foregoing, under Sections 1 to 3 of Rule 6 of the Interim Rules, the case should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest.

The petitioners also participated in the ASM through their authorized representative and proxy, JG Ricafort. In his Affidavit, Gatmaitan categorically declared under oath that JG Ricafort held a valid irrevocable proxy from the petitioners to attend and vote their shares at all meetings of the stockholders and that JG Ricafort signed the attendance sheet for and in behalf of the petitioners. Moreover, the petitioners do not deny that they each executed a Nominee Agreement wherein they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. Considering the foregoing, lack of notice to the petitioners is inconsequential because JG Ricafort attended and represented them at the August 15, 2011 ASM. It defies reason, too, that he could not have informed his wife and children, who live in the same house with him, of the scheduled ASM.

Also, by failing to file their complaint seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM. The same section of the Corporation Code provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR, which is "at 12:30 P.M., on the 3rd MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the 1st day following which is not a legal holiday," will not affect the validity of the ASM or the proceedings therein.

FACTS

The Nationwide Development Corporation (NADECOR) is a holder of a Mining Production Sharing Agreement (MPSA) which covers the King-king Gold and Copper Project (King-king Project). Pursuant to NADECOR's Amended By-Laws, its regular annual stockholders' meeting (ASM) was held on August 15, 2011 to elect its Board of Directors (BOD) for 2011-2012. In his Affidavit, Gatmaitan, NADECOR's Corporate Secretary, attested to the presence of a quorum representing 94.81% of the outstanding shares of stock and the election of new set of BOD.

More than 2 months after the ASM, the petitioners, claiming to be stockholders of record, filed a complaint before the RTC to declare null and void the August 15, 2011 ASM of NADECOR including all the proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto against NADECOR itself, the newly-elected members of its BOD, and Gatmaitan (respondents). The petitioners alleged, among others, that they had no knowledge or prior notice of, and were thus unable to attend, participate in, and vote at the said ASM. They received the notice of the ASM, 1 day late, in violation of the 3-day notice provided in NADECOR's By-Laws.

The respondents, on the other hand, sought the dismissal the case on the following grounds:
a. That the complaint involved an election contest since it sought to nullify the election of the BOD of NADECOR for 2011-2012 and under Section 3, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules), it should have been filed within 15 days from the date of the election;

b. That the complaint is not only barred by prescription as stated above. The petitioners have no cause of action because they were duly served with notice of the said meeting per NADECOR messenger, Mario S. San Juan (San Juan), who mailed the notices 4 days prior to the scheduled ASM;
c. That a valid ASM was held on August 15, 2011, the third Monday of August 2011, at which the required quorum was present and that the petitioners, although physically absent, were in fact represented by their proxy, JG Ricafort, by virtue of irrevocable proxies which they executed;

d. That JG Ricafort attended and signed the attendance sheet as their proxy and participated in the ASM for himself as well as in their behalf;

e. That the true and beneficial owner of the shares of stock issued in their names is JG Ricafort as shown in the Nominee Agreements which they executed;

f. That aided by the irrevocable proxies and Nominee Agreements, JG Ricafort won election to the NADECOR BOD.

The RTC ruled that the petitioners were not validly served with notice of the ASM as required in the Amended By-Laws. Moreover, their complaint did not involve an election contest, thus, was not subject to the 15-day prescriptive period for filing an election protest. Accordingly, the RTC declared as void and of no force and effect the assailed ASM and nullified all acts performed by the new BOD elected thereat. The CA nullified and set aside the order of the RTC.

ISSUES

A. Whether the case involves an election contest subject to the 15-day prescriptive period for filling an election protest. (YES)
B. Whether the petitioners have cause of action despite their execution of an irrevocable proxy in favor of JG Ricafort. (NONE)
C. Whether the ASM and the proceedings therein will be invalidated assuming that proper notice was not given to petitioners (NO)

RULING

(A) An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide.

In the case at bar, there can be no denying that the petitioners were seeking the holding of a new election for members of the BOD of NADECOR for 2011-2012 by asserting their right to choose the persons who will direct, manage and operate the corporation because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting and by praying for the voiding of the August 15, 2011 ASM and for other just and equitable reliefs. As the CA noted, by seeking to nullify the said ASM, the petitioners were clearly challenging the validity of the election of the new BOD. NADECOR's Amended By-Laws even provides that the purpose of the ASM is for the election of directors and for the transaction of general business of its office. Moreover, in a case on all fours with the present case, the Court expressly ruled that where one of the reliefs sought in the complaint is to nullify the election of the BOD at the ASM, the complaint involves an election contest. Considering the foregoing, under Sections 1 to 3 of Rule 6 of the Interim Rules, the case should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest.

(B) The petitioners did participate in the ASM through their authorized representative and proxy, JG Ricafort. In his Affidavit, Gatmaitan categorically declared under oath that JG Ricafort held a valid irrevocable proxy from the petitioners to attend and vote their shares at all meetings of the stockholders and that JG Ricafort signed the attendance sheet for and in behalf of the petitioners. It must be noted that JG Ricafort's proxy authority was "to attend and represent the petitioners at any and all meetings of the shareholders of the Company, and for and on behalf of the petitioners, to vote upon any and all matters to be taken up at said meeting, according to the number of shares of stock of the Company of which the petitioners are the lawful record and beneficial owners, and which they would be entitled to vote if personally present."

Moreover, the petitioners do not deny that they each executed a Nominee Agreement wherein they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. Each of the nominee agreements uniformly provide that "The nominee holds the legal title to the shares for and in behalf of principal who is the beneficial owner thereof." As nominees, the petitioners expressly acknowledged further that "any and all payments made by the nominee on the shares, including but not limited to the subscription payment therefor, were funded by, and made on behalf and for the benefit of the principal [JG Ricafort]." Thus, the petitioners misled the trial court into thinking that they had an inherent right to vote as an incident of their ownership of corporate stock although they always knew that JG Ricafort was the real and beneficial owner.

Considering the foregoing, lack of notice to the petitioners is inconsequential because JG Ricafort attended and represented them at the August 15, 2011 ASM. It defies reason, too, that he could not have informed his wife and children, who live in the same house with him, of the scheduled ASM.

(C) Under NADECOR's Amended By-Laws, what is required is the mailing out of notices by registered mail at least 3 days before the ASM. The shorter notice of 3 days instead of 2 weeks for stockholders' regular or special meeting is clearly allowed under Section 50 of the Corporation Code. Furthermore, by failing to file their complaint seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM. The same section of the Corporation Code provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR, which is "at 12:30 P.M., on the 3rd MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the 1st day following which is not a legal holiday," will not affect the validity of the ASM or the proceedings therein.

- SIMNY G. GUY, AS MINORITY STOCKHOLDER AND FOR AND IN BEHALF OF GOODLAND COMPANY, INC., Petitioner, v. GILBERT G. GUY, ALVIN AGUSTIN T. IGNACIO AND JOHN AND/OR JANE DOES, Respondents. (G.R. No. 184068, April 19, 2016, SERENO, C.J.)

SIMNY G. GUY, AS MINORITY STOCKHOLDER AND FOR AND IN BEHALF OF GOODLAND COMPANY, INC., ***Petitioner,*** **-versus - GILBERT G. GUY, ALVIN AGUSTIN T. IGNACIO AND JOHN AND/OR JANE DOES,** ***Respondents.***

G.R. No. 184068, FIRST DIVISION, April 19, 2016, SERENO, *CJ.*

For a stockholders' special meeting to be valid, there must be a previous written notice sent to all stockholders at least 1 week prior to the scheduled meeting, unless otherwise provided in the by-laws. The Corporation Code itself permits the shortening (or lengthening) of the period within which to send the notice to call a special (or regular) meeting. In the case at bar, therefire, there is no irregularity *that exists in the mailing of the notice sent by respondent on September 2, 2004 calling for the special stockholders' meeting to be held on September 7, 2004.*

Petitioner avers, however, that although the notice was sent by registered mail on September 2, 2004, the registry return card shows that he received it 15 days after the stockholders' meeting was held. He insists that actual receipt of the notice of the stockholders' meeting prior to the date of the meeting is mandatory. The Court does not find this contention meritorious. The Corporation Code and the by- laws of GCI only require the sending/mailing of the notice of a stockholders' meeting to the stockholders of the corporation. "Send" means to deposit in the mail or to deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed.

As to whether the meeting was called by the proper person, the by-laws of GCI provides that the special meeting of the stockholders may be called by order of the President and must be called upon the written request of stockholders registered as the owners of l/3 of the total outstanding stock. It also provides that the Vice President, if qualified, shall exercise all of the functions and perform all the duties of the President, in the absence or disability, for any cause, of the latter. In the case at bar, the evidence conclusively show that the respondent is the owner of more than 1/3 of the outstanding stock of GCI. In fact, it is around 79.99%. Thus, pursuant to the by-laws of GCI, respondent may validly call such special stockholders' meeting.

As to whether Cheu is entitled to the notice of meeting, a "stockholder of record" is defined. A stockholder of record is a person who desires to be recognized as stockholder for the purpose of exercising stockholders' right and must secure standing by having his ownership of share recorded on the stock and transfer book. Thus, only those whose ownership of shares are duly registered in the stock and transfer book are considered stockholders of record and are entitled to all rights of a stockholder. In the case at bar, evidence presented reveals that Cheu's stockholder certificates were already cancelled and new certificates were issued already to the buyer of her shares. As such, she is not entitled to the notice of meeting.

FACTS

Goodland Company, Inc. (GCI) is a family-owned corporation of the Guy family. Petitioner is a stockholder of record and member of the board of directors of the corporation. Respondents are also stockholders of record who were allegedly elected as new directors by virtue of the assailed stockholders' meeting.

Petitioner did not receive the notice of meeting for the election of the new directors until 15 days after the said meeting, As such, petitioner, for himself and on behalf of GCI and Grace Guy Cheu (Cheu), filed a complaint against respondents before the RTC of Manila for the nullification of the same stockholders' meeting and election of director. The grounds relied upon are: (1) there was no previous notice to petitioner and Cheu; (2) the meeting was not called by the proper person; and (3) the notices were not issued by the person who had the legal authority to do so.

The RTC dismissed the complaint and upheld the validity of the stockholders' meeting and election of directors. The same was affirmed by CA in toto.

ISSUES

A. Whether the stockholders' meeting is valid. (YES)
The issue is dependent on:
1. Whether the notice of meeting was properly given. (YES)
2. Whether the stockholders' meeting was called by the proper person. (YES)

B. Whether Cheu is entitled to the notice of meeting. (NO)

RULING

(A)(1) For a stockholders' special meeting to be valid, there must be a previous written notice sent to all stockholders at least 1 week prior to the scheduled meeting, unless otherwise provided in the by-laws. The Corporation Code itself permits the shortening (or lengthening) of the period within which to send the notice to call a special (or regular) meeting.

Under the by-laws of GCI, the notice of meeting shall be mailed not less than 5 days prior to the date set for the special meeting. Thus, no irregularity exists in the mailing of the notice sent by respondent on September 2, 2004 calling for the special stockholders' meeting to be held on September 7, 2004. Petitioner avers, however, that although the notice was sent by registered mail on September 2, 2004, the registry return card shows that he received it 15 days after the stockholders' meeting was held. He insists that actual receipt of the notice of the stockholders' meeting prior to the date of the meeting is mandatory. The Court does not find this contention meritorious.

Where the law speaks in clear and categorical language, there is no room for interpretation. The provisions under Section 50 of the Corporation Code and the by-laws of GCI are clear and unambiguous. They only require the sending/mailing of the notice of a stockholders' meeting to the stockholders of the corporation. "Send" means to deposit in the mail or to deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed.

(A)(2) The by-laws of GCI provides that the special meeting of the stockholders may be called by order of the President and must be called upon the written request of stockholders registered as the owners of l/3 of the total outstanding stock. It also provides that the Vice President, if qualified, shall exercise all of the functions and perform all the duties of the President, in the absence or disability, for any cause, of the latter.

In the case at bar, the evidence conclusively show that the respondent is the owner of more than 1/3 of the outstanding stock of GCI. In fact, it is around 79.99%. Thus, pursuant to the by-laws of GCI, respondent may validly call such special stockholders' meeting.

(B) A "stockholder of record" is defined as a person who desires to be recognized as stockholder for the purpose of exercising stockholders' right and must secure standing by having his ownership of share recorded on the stock and transfer book. Thus, only those whose ownership of shares are duly registered in the stock and transfer book are considered stockholders of record and are entitled to all rights of a stockholder.

Section 63 of the Corporation Code provides that "No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred."

Evidence presented reveals that Cheu's stockholder certificates were already cancelled and new certificates were issued already to the buyer of her shares.

- LYDIA LAO v. YAO BIO LIM, G.R. No. 201306, August 9, 2017, Second Division, LEONEN, J.

LYDIA LAO, JEFFREY ONG, HENRY SY, SY TIAN TIN, SY TIAN TIN, JR., and PAUL CHUA, *Petitioners,* -versus - YAO BIO LIM AND PHILIP KING, *Respondents.*
G.R. No. 201306, SECOND DIVISION, August 9, 2017, LEONEN, *J.*

Section 50 of the Corporation Code prescribes that regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws. PSI's by-laws fixed the annual meeting of stockholders on the 3rd Friday of March of every year. March 15, 2002 was the 3rd Friday of March 2002. Moreover, the Court held that the 2002 Annual Stockholders' Meeting was a regular meeting. Hence, the object and purpose requirement does not apply to the notice therefor. Likewise, the PSI's by-laws providing only for a 5-day prior notice must prevail over the 2-week notice under the Corporation Code. By the latter's express terms, the fixing of the period within which to send the notice to call a meeting is allowed.
Moreover, King was a legitimate stockholder of PSI. The transfer of shares by Seng to his son, King, was valid, and the issue of rightful ownership over the stocks was already resolved by the Court. As to the stock dividend declaration, the declaration must be annulled as the 300% stock dividends were not validly declared by the PSI BOD. The handwritten minutes of the meeting was questionable as the number of stock dividends to be declared and the number of shares held by the stockholders were not indicated. The required 2/3 votes for the stock dividend declaration also was not met.

FACTS

Philadelphia School, Inc. (PSI) was organized with an authorized capital stock of P2,000,000.00 divided into 20,000 shares with a par value of P100 per share. Ong Y. Seng, King's father, held 1,200 shares. Before his death in 1994, he transferred the said shares to King. Since then, King had been consistently elected as a member of the Board of Directors (BOD).

During the special stockholders' meeting on May 23, 1998, a new set of directors and officers was elected with Lim, as President, and King, as Vice President. Lao, the former president, refused to acknowledge the newly elected directors and officers as well as King's ownership of the 1,200 PSI shares. Subsequently, Lao issued a Secretary's Certificate stating that there was a board resolution to nullify the transfer to King of the shares owned by his father.

Upon discovery of the holding of stockholders' meeting where new members of the BOD were elected, King filed a petition before the SEC to enjoin the newly elected officers and members from representing themselves. When RA No. 8799 took effect, the case was transferred to the RTC.

The RTC rendered a decision in favor of King, granting among others, the nullification of the meeting held and the acts performed by the alleged officers as well as the restoration of his 1,200 shares. The CA upheld the decision of the RTC.

Meanwhile, on March 15, 2002, a general stockholders' meeting was held wherein the petitioners were elected as members of the BOD. This prompted the respondents to file a petition before the RTC for the annulment of the said election, the issuance of stock dividends, and the illegal transfer of shares of stocks. On March 20, 2007, the RTC rendered its decision in favor of Lim and King. The CA affirmed the RTC decision.

ISSUES

A. Whether the notice of regular meeting should be sent at least 2 weeks prior, despite a different provision in the by-laws of PSI. (NO)
B. Whether King is a stockholder of PSI (YES) and whether the declaration of stock dividends is valid (NO)

RULING

(A) Section 50 of the Corporation Code prescribes that regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws. PSI's by-laws fixed the annual meeting of stockholders on the 3rd Friday of March of every year. March 15, 2002 was the 3rd Friday of March 2002. Moreover, the Court held that the 2002 Annual Stockholders' Meeting was a regular meeting. Hence, the object and purpose requirement does not apply to the notice therefor. Likewise, the PSI's by-laws providing only for a 5-day prior notice must prevail over the 2-week notice under the Corporation Code. By the latter's express terms, the fixing of the period within which to send the notice to call a meeting is allowed.

(B) King was a legitimate stockholder of PSI. The transfer of shares by Seng to his son, King, was valid, and the issue of rightful ownership over the stocks was already resolved by the Court. As to the stock dividend declaration, the 300% stock dividends were not validly declared by the PSI BOD. The handwritten minutes of the meeting was questionable as the number of stock dividends to be declared and the number of shares held by the stockholders were not indicated. The required 2/3 votes for the stock dividend declaration also was not met. Thus, the declaration must be annulled.

a. Quorum

- Jesus V. Lanuza, et al. vs. Court of Appeals, et al., G.R. No. 131394, March 28, 2005

JESUS V. LANUZA, MAGADYA REYES, BAYANI REYES and ARIEL REYES, *Petitioners,* -versus – COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, DOLORES ONRUBIA, ELENITA NOLASCO, JUAN O. NOLASCO III, ESTATE OF FAUSTINA M. ONRUBIA, PHILIPPINE MERCHANT MARINE SCHOOL, INC., *Respondents.*
G.R. No. 131394, SECOND DIVISION, March 28, 2005, TINGA, *J.*

According to Sec. 52 of the Corporation Code, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock. As such, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares.

In the case at bar, to accept the petitioner's contention and to base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the subscribed and issued shares. The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of *shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book. To disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist.*

FACTS

The Philippine Merchant Marine School, Inc. (PMMSI) was incorporated with 700 founders' shares and 76 common shares as reflected in its articles of incorporation. However, when private respondents and their predecessors who were in control of PMMSI registered the company's stock and transfer book for the first time, 33 common shares were recorded as the only issued and outstanding shares of PMMSI. A special stockholders' meeting was held on the basis of what was considered as a quorum of 27 common shares, representing more than 2/3 of the common shares issued and outstanding.

Subsequently, the heirs of one of the original incorporators, Juan Acayan, filed a petition with the SEC for the registration of their property rights over 120 founders' shares and 12 common shares owned by their father. The SEC held that the heirs of Acayan were entitled to the claimed shares and called for a special stockholders' meeting to elect a new set of officers. As a result, the shares of Acayan were recorded in the stock and transfer book.

On May 6, 1992, another special stockholders' meeting was held to elect a new set of directors. Private respondents filed a petition with the SEC questioning the validity of the said stockholders' meeting alleging that the quorum for the said meeting should not be based on the 165 issued and outstanding shares as per the stock and transfer book but on the initial subscribed capital stock of 776 shares, as reflected in the Articles of Incorporation. The SEC held that the shares of the deceased incorporators should be duly represented by their respective administrators or heirs concerned and directed the parties to call for a stockholders' meeting on the basis of the articles of incorporation for the purpose of electing a new set of officers. The CA affirmed the SEC. It also held that the ruling in the Acayan case would ipso facto benefit the private respondents since to require a separate judicial declaration to recognize the shares of the original incorporators would entail unnecessary delay and expense. Besides, the incorporators have already proved their stockholdings through the provisions of the articles of incorporation.

It is the claim of the petitioners that the May 6, 1992 stockholders' meeting was valid and legal. The reliance on the articles of incorporation for determining the quorum negates the existence and validity of the stock and transfer book which the private respondents themselves prepared. In addition, they posit that private respondents cannot avail of the benefits secured by the heirs of Acayan as private respondents must show and prove entitlement to the founders and common shares in a separate and independent action/proceeding.

ISSUE

Whether or not the basis of quorum for a stockholders' meeting is the outstanding capital stock as indicated in the articles of incorporation. (YES)

RULING

The Articles of Incorporation defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and the corporation and its stockholders. The contents are binding, not only on the corporation, but also on its shareholders. On the other hand, the stock and transfer book records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made; and such other entries as may be prescribed by law. The latter is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. It is not a public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein.

According to Sec. 52 of the Corporation Code, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock. As such, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares.

In the case at bar, to accept the petitioner's contention and to base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the subscribed and issued shares. The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book. To disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist. It must be remembered that one who is actually a stockholder cannot be denied his right to vote by the corporation merely because the corporate officers failed to keep its records accurately. A corporation's records are not the only evidence of the ownership of stock in a corporation.

I. Capital Structure

1. Subscription Agreements

- Ong Yong, et al. vs. David S. Tiu, et al., G.R. No. 144476 & G.R. No. 144629, April 8, 2003

ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, and JULIE ONG ALONZO, *Petitioners,* -versus – DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, INTRALAND RESOURCES DEVELOPMENT CORP., MASAGANA TELAMART, INC., REGISTER OF DEEDS OF PASAY CITY, and the SECURITIES AND EXCHANGE COMMISSION, *Respondents.*
G.R. No. 144476, SPECIAL SECOND DIVISION, April 8, 2003, CORONA, *J.*

DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, and INTRALAND RESOURCES DEVELOPMENT CORP., *Petitioners,* -versus –

ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, and JULIA ONG ALONZO, *Respondents.*
G.R. No. 144629, SPECIAL SECOND DIVISION, April 8, 2003, CORONA, *J.*

The parties' pre-subscription agreement was in fact a subscription contract since it involves unissued shares. To accommodate the Ongs, FLADC's original authorized capital stock of 500,000 shares was increased to 2,000,000. Thus, the subject matter of the contract was the 1,000,000 unissued shares of FLADC stock allocated to the Ongs.

A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is a property owned by the corporation — its shares of stock. Thus, the subscription contract denominated as a pre-subscription agreement in this case was, from the viewpoint of the law, one between the Ongs and FLADC and not between the Ongs and the Tius. Considering the foregoing, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC had the legal personality to file suit. A party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.

In any case, the rescission of the pre-subscription agreement will result in an unauthorized liquidation since it distributes without authority the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine. The Corporation Code is also violated since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

FACTS

The construction of the Masagana Citimall in Pasay City was threatened with stoppage when its owner, First Landlink Asia Development Corporation (FLADC), which was owned, in turn, by David S. Tiu, Cely Y. Tiu, Moly Yu Gaw, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (the Tius), encountered dire financial difficulties. It was heavily indebted to the Philippine National Bank (PNB) for P190 million. To stave off foreclosure of the mortgage on the two lots where the mall was being built, the Tius invited Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julia Ong Alonzo (the Ongs) to invest in FLADC.

Under their pre-subscription agreement, the Ongs and the Tius agreed to maintain equal shareholdings in FLADC, that is, 1,000,000 shares each at P100.00 par value. Furthermore, they agreed that the Tius were entitled to nominate the Vice-President and the Treasurer plus 5 directors while the Ongs were entitled to nominate the President, the Secretary and 6 directors (including the chairman) to the board of directors of FLADC. The Ongs were also given the right to manage and operate the mall.

Accordingly, the Ongs paid P100 million in cash for their subscription while the Tius committed to contribute a 4-storey building and 2 parcels of land and P79.8 million in cash. The Ongs paid another P70 million to FLADC and P20 million to the Tius, the total sum of which (P190 million) was used to settle the P190 million mortgage indebtedness of FLADC to PNB. The business harmony between the Ongs and the Tius, however, was shortlived because the Tius eventually rescinded the Pre-Subscription Agreement. The Tius accused the Ongs of (1) refusing to credit to them the FLADC shares covering their real property contributions; (2) preventing David S. Tiu and Cely Y. Tiu from assuming the positions of and performing their duties as Vice-President and Treasurer, respectively, and (3) refusing to give them the office spaces agreed upon. On February 27, 1996, the Tius filed a case at SEC, seeking confirmation of their rescission of the Pre-Subscription Agreement.

The SEC eventually confirmed the rescission. The Ongs' P70 million was considered as premium on capital, hence, was not entitled to earn interest. The CA modified this SEC decision. Their motions for reconsideration having been denied, both parties filed separate petitions for review before the SC. The SC, in its decision, affirmed the assailed decision of the CA with modifications that the P20 million loan by the Ongs to the Tius shall earn interest at 12% per annum, that the P70 million advanced by the Ongs to the FLADC shall earn interest at 10% per annum and that the Tius shall be credited with 49,800 shares in FLADC for their property contribution. Both parties violated their respective obligations under the Pre-Subscription Agreement.

ISSUES

Whether the pre-subscription agreement is actually a subscription contract (YES) and whether the rescission filed by the Tius can prosper (NO)

RULING

To accommodate the Ongs, FLADC's original authorized capital stock of 500,000 shares was increased to 2,000,000. Thus, the subject matter of the contract was the 1,000,000 unissued shares of FLADC stock allocated to the Ongs. Since these were unissued shares, the parties' pre-subscription agreement was in fact a subscription contract as defined under Section 60, Title VII of the Corporation Code.

A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is a property owned by the corporation — its shares of stock. Thus, the subscription contract denominated as a pre-subscription agreement in this case was, from the viewpoint of the law, one between the Ongs and FLADC and not between the Ongs and the Tius. Otherwise stated, the Tius did not contract in their personal capacities with the Ongs since they were not selling any of their own shares to them. Considering therefore that the real contracting parties to the subscription agreement were FLADC and the Ongs, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC had the legal personality to file suit. A party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.

In any case, the rescission of the pre-subscription agreement will result in an unauthorized liquidation without the benefit of prior dissolution in accordance with Sections 117, 118, 119 and 120 of the Corporation Code since it distributes without authority the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine. The Corporation Code is also violated since rescission of a subscription agreement is not one of the instances when distribution of capital assets and property of the corporation is allowed.

- INTERPORT RESOURCES CORPORATION vs. SECURITIES SPECIALIST, INC., and R.C. LEE SECURITIES INC. (G .R. No. 154069, June 6, 2016, BERSAMIN, J.)

INTERPORT RESOURCES CORPORATION, ***Petitioner,*** **-versus – SECURITIES SPECIALIST, INC., AND R.C. LEE SECURITIES INC.,** ***Respondents.***
G.R. No. 154069, FIRST DIVISION, June 6, 2016, BERSAMIN, *J.*

The SEC correctly categorized the assignment of the subscription agreements as a form of novation by substitution of a new debtor which required the consent of or notice to the creditor even without the knowledge or against the will of the former. The change of debtor took place when R.C. Lee assigned the Oceanic shares under subscription agreement to SSI such that that the latter became obliged to settle the 75% unpaid balance on the subscription.

The effect of the assignment was to extinguish the obligation of R.C. Lee to Oceanic, now Interport, to settle the unpaid balance on the subscription. As a result of the assignment, Interport was no longer obliged to accept any payment from R.C. Lee because the latter had ceased to be privy to subscription agreements. On the other hand, Interport was legally bound to accept SSI's tender of payment for the 75% balance on the subscription price because SSI had become the new debtor. As such, the issuance of the stock certificates in the name of R.C. Lee had no legal basis.

FACTS

Oceanic Oil & Mineral Resources, Inc. (Oceanic) entered into a subscription agreement with R.C. Lee covering 5,000,000 of its shares with par value of P0.01 per share. Thereupon, R.C. Lee paid 25% of the subscription. Oceanic then merged with the petitioner, with the latter as the surviving corporation. Thereafter, R.C. Lee endorsed the subscription agreements to Securities Specialist, Inc. (SSI), a domestic corporation registered as a dealer in securities.

Subsequently, R.C. Lee requested Interport for a list of subscription agreements and stock certificates issued in its name and other individuals. Upon finding no record showing any transfer or assignment of the Oceanic subscription agreements and stock certificates of Interport to SSI, R.C. Lee paid its unpaid subscriptions and was accordingly issued stock certificates.

Interport eventually issued a call for the full payment of subscription receivables. SSI tendered payment prior to the deadline through 2 stockbrokers of the Manila Stock Exchange. However, the stockbrokers reported to SSI that lnterport refused to honor the Oceanic subscriptions. On the date of the deadline, SSI directly tendered payment to lnterport for the balance covered by the Oceanic subscription agreements. Interport rejected the same.

SSI learned that Interport had issued the 5,000,000 shares to R.C. Lee, relying on the latter's registration as the owner of the subscription agreements in the books of the former, thus, SSI wrote R.C. Lee demanding the delivery of the 5,000,000 shares on the basis of a purported assignment of the subscription agreements. However, R.C. Lee failed to return the subject shares inasmuch as it had already sold the same to other parties. SSI, thus, demanded that R.C. Lee pay not only the equivalent of the 25% it had paid on the subscription but the whole 5,000,000 shares at current market value. SSI also made demands upon Interport and R.C. Lee for the cancellation of the shares issued to the latter and for the delivery of the shares to SSl. After its demands were not met, SSI commenced this case in the SEC. The SEC, in its ruling, stated that it would be inequitable to issue the 5,000,000 shares in favor of SSI since it only paid 25% thereof. This decision of the SEC was affirmed by the CA.

lnterport argues that R.C. Lee should be held liable for the delivery of 25% of the shares inasmuch as R.C. Lee had already received all the 5,000,000 shares upon its payment of the balance on the subscription price and that it was only proper for R.C. Lee to deliver 25% of the shares under the Oceanic subscription agreements because it had already received the corresponding payment therefor from SSI for the assignment of the shares. In any case, it merely relied on its records.

ISSUE

Whether Interport is liable to deliver the Oceanic shares of stock or the value thereof to SSI. (YES)

RULING

Under the Civil Code, obligations may be modified by: (l) changing their object or principal conditions; (2) substituting the person of the debtor; or (3) subrogating a third person in the rights of the creditor. In this case, the SEC correctly categorized the assignment of the subscription agreements as a form of novation by substitution of a new debtor which required the consent of or notice to the creditor even without the knowledge or against the will of the former. The change of debtor took place when R.C. Lee assigned the Oceanic shares under subscription agreement to SSI such that that the latter became obliged to settle the 75% unpaid balance on the subscription.

The effect of the assignment was to extinguish the obligation of R.C. Lee to Oceanic, now Interport, to settle the unpaid balance on the subscription. As a result of the assignment, Interport was no longer obliged to accept any payment from R.C. Lee because the latter had ceased to be privy to subscription agreements. On the other hand, Interport was legally bound to accept SSI's tender of payment for the 75% balance on the subscription price because SSI had become the new debtor. As such, the issuance of the stock certificates in the name of R.C. Lee had no legal basis in the absence of a contractual agreement between R.C. Lee and Interport.

Under Section 63 of the Corporation Code, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation. This statutory rule cannot be strictly applied herein because lnterport had unduly refused to recognize the assignment of the shares between R.C. Lee and SSI.

2. Shares of Stock

a. Nature of Stock

- Stockholders of F. Guanson vs. Register of Deeds of Manila, 6 SCRA 373 (1962)

STOCKHOLDERS OF F. GUANZON AND SONS, INC., ***Petitioners,*** **-versus – REGISTER OF DEEDS OF MANILA,** ***Respondent.***

G.R. No. L-18216, EN BANC, October 30, 1962, BAUTISTA ANGELO, *J.*

A corporation is a juridical person distinct from the shareholders composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its shareholders. While shares of stock constitute personal property, they do not represent a property of the corporation. ***A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not***

the owner of any part of the capital of the corporation. *Nor is he entitled to the possession of any definite portion of its property or assets.*

Considering the foregoing, it is clear that the act of liquidation made by the stockholders of the F. Guanzon and Sons, Inc. of the latter's assets is not and cannot be considered a partition of community property, but rather a transfer or conveyance of the title of its assets to the individual stockholders. Indeed, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings, that transfer cannot be effected without the corresponding deed of conveyance from the corporation to the stockholders.

FACTS

On September 19, 1960, the 5 stockholders of the F. Guanzon and Sons, Inc. executed a certificate of liquidation of the assets of the corporation reciting, among others, that by virtue of a resolution of the stockholders, dissolving the corporation, they have distributed among themselves in proportion to their shareholdings, as liquidating dividends, the assets of said corporation, including real properties located in Manila.

The certificate of liquidation, when presented to the Register of Deeds of Manila, was denied registration on seven grounds, of which the following were disputed by the stockholders: 1. the number of parcels not certified in the acknowledgment; 2. P430.50 Reg. fees need be paid; 3. P940.45 documentary stamps need be attached to the document and 4. the judgment of the Court approving the dissolution and directing the disposition of the assets of the corporation need be presented. Deciding the consulta elevated by the stockholders, the Commissioner of Land Registration overruled ground No. 4 and sustained requirements Nos. 1, 2 and 3.

ISSUE

Whether the liquidation should be granted. (NO)

RULING

As correctly stated by the Commissioner of Land Registration, the propriety or impropriety of the 3 grounds on which the denial of the registration of the certificate of liquidation was predicated hinges on whether or not that certificate merely involves a distribution of the corporation's assets or consists of a transfer or conveyance. The Commissioner of Land Registration, in his decision, concurred in the view expressed by the register of deeds to the effect that the certificate of liquidation in question, though involves a distribution of the corporation's assets, represents a transfer of said assets from the corporation to the stockholders. Hence, in substance it is a transfer or conveyance.

The Court agrees with the above opinion as a corporation is a juridical person distinct from the shareholders composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its shareholders. While shares of stock constitute personal property, they do not represent a property of the corporation. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets.

Considering the foregoing, it is clear that the act of liquidation made by the stockholders of the F. Guanzon and Sons, Inc. of the latter's assets is not and cannot be considered a partition of community property, but rather a transfer or conveyance of the title of its assets to the individual stockholders. Indeed, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings, that transfer cannot be affected without the corresponding deed of conveyance from the corporation to the stockholders.

- Philippine National Bank vs. Bitulok Sawmill, Inc., 23 SCRA 1366 (1968)

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus – BITULOK SAWMILL, INC., DINGALAN LUMBER CO., INC., SIERRA MADRE LUMBER CO., INC., NASIPIT LUMBER CO., INC., WOODWORKS, INC., GONZALO PUYAT, TOMAS B. MORATO, FINDLAY MILLAR LUMBER CO., INC., ET AL., INSULAR LUMBER CO., ANAKAN LUMBER CO., AND CANTILAN LUMBER CO., INC., *Respondents.*
G.R. Nos. L-24177-85, EN BANC, June 29, 1968, FERNANDO, *J.*

It is an established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt.

In the case at bar, it would be unwarranted to ascribe to President Roxas the view that the payment of the stock subscriptions, as thus required by law, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. Even if such were the case and such a promise were in fact made to further the laudable purpose for which the proposed corporation would be devoted, still, the plain and specific wording of the applicable legal provision as interpreted by the Court must be controlling.

FACTS

The Philippine Lumber Distributing Agency, Inc. (Agency) was organized upon the initiative and insistence of the late President Manuel Roxas for the purpose of ensuring a steady supply of lumber which could be sold at reasonable prices to enable the war sufferers to rehabilitate their devastated homes. At the beginning, the lumber producers were reluctant to organize the Agency as they believed that the alien middleman would not be eliminated. However, because President Roxas promised to finance the Agency by making the Government invest P9.00 for every peso that the members would invest therein, the lumber producers eventually agreed thereto.

Accordingly, President Roxas instructed Hon. Emilio Abello, then Executive Secretary and Chairman of the Board of Directors of the Philippine National Bank (PNB), to grant the Agency an overdraft for P350,000.00. In response thereto, the grant was approved with interest at the rate of 6% per annum, secured by chattel mortgages on the stock of lumber of the Agency. Unfortunately, the loan extended to the Agency was not paid. The Philippine Government did not also invest the promised amount.

Conidering the foregoing, the PNB, as creditor, against the Agency. For this, the lower court allowed PNB to substitute the latter's receiver for the recovery of the balance of the lumber producers' stock subscriptions. However, the lower court ruled against PNB as it did not allow the latter to recover the subscription balance on the basis of equity. To its mind, it is grossly unfair and unjust to rule otherwise. When President Roxas made representations to PNB grant the overdraft, it was the only way by which he could make good his commitment that the Government would invest in the Agency since the legislature had not appropriated any amount for such.

ISSUE

Whether the balance of the stock subscriptions of the lumber producers may be recovered. (YES)

RULING

It is an established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt. In case of insolvency, all unpaid stock subscriptions become payable on demand and are immediately recoverable. Moreover, a corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares without a valuable consideration for such release. As against creditors, a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation.

In the case at bar, it would be unwarranted to ascribe to President Roxas the view that the payment of the stock subscriptions, as thus required by law, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. Even if such were the case and such a promise were in fact made to further the laudable purpose for which the proposed corporation would be devoted, still, the plain and specific wording of the applicable legal provision as interpreted by the Court must be controlling. It is a well-settled principle that with all the vast powers lodged in the Executive, he is still devoid of the prerogative of suspending the operation of any statute or any of its terms.

- Rivera vs. Florendo, 144 SCRA 643 (1986)

AQUILINO RIVERA, ISAMU AKASAKO and FUJIYAMA HOTEL & RESTAURANT, INC., *Petitioners,* -versus – THE HON. ALFREDO C. FLORENDO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH XXXVI), LOURDES JUREIDINI and MILAGROS TSUCHIYA, *Respondents.*
G.R. Nos. L-57586, SECOND DIVISION, October 8, 1986, PARAS, *J.*

Section 63 of the Corporation Code provides that the shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the book 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. There should be compliance with the mode of transfer prescribed by law. In the case at bar, the requirements cited above were not properly complied with. No indorsement was made by Rivera, the registered owner of the subject shares of stock. In fact, the bone of contention in this case is the refusal of Rivera to indorse the same.

In any case, mandamus will not lie to compel the registration of the subject shares of stock in the books of the corporation where they are not even indorsed by the registered owner Rivera who is specifically resisting the registration thereof. Even the shares of stock which were purchased by respondents from the other incorporators cannot also be the subject of mandamus on the strength of mere indorsement of the supposed owners of said shares in the absence of express instructions from them.

FACTS

Fujiyama Hotel & Restaurant, Inc. is incorporated with a capital stock of P1 million divided into 10,000 shares of P100.00 par value each by Aquilino Rivera and 4 other incorporators. Subsequently, Rivera increased his subscription from the original 1,250 to a total of 4899 shares.
Isamu Akasako who is allegedly the real owner of the shares of stock in the name of Rivera, sold 2550 shares of the same to Milagros Tsuchiya with the assurance that Tsuchiya will be made the President while Lourdes Jureidini will be made a director after the purchase. Rivera who was in Japan also assured Tsuchiya and Jureidini by overseas call that he will sign the stock certificates because Akasako is the real owner. However, after the sale was consummated, Rivera refused to make the indorsement unless he is also paid.

It appears that the other incorporators sold their shares to both Jureidini and Tsuchiya such that both became the owners of a total of 3300 shares out of 5,649 outstanding subscribed shares and that there was no dispute as to the legality of the transfer of the stock certificate to Jureidini, all of which bear the signatures of the president and the secretary with the proper indorsements of the respective owners appearing thereon. Some are specifically indorsed to her while others are indorsed in blank. Rivera admitted the genuineness of all the signatures of the officers of the corporation and of all the indorsee therein.

Tsuchiya and Jureidini attempted several times to register their stock certificates with the corporation but the latter refused to register the same. Thus, they filed a special civil action for mandamus and damages against the petitioners. Petitioners filed a motion to dismiss on the ground that Judge Florendo has no jurisdiction to entertain the case.

ISSUES

A. Whether the ordinary court has jurisdiction. (YES)
B. Whether the certificate of stock was properly transferred. (NO)
C. Whether mandamus is a proper course of action to compel the registration of the shares of stocks in Fujiyama's books. (NO)

RULING

(A) An intracorporate controversy has been defined as one which arises between a stockholder and the corporate. There is no distinction, qualification, nor any exemption whatsoever and it calls for the jurisdiction of the SEC. In cases where respondents are not shareholders of the corporation, the same cannot be considered as a an intracorporate controversy as it does not arise out of intracorporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively.

In the case at bar, the controversy is not an intracorporate one since Tsuchiya and Jureidini are not yet stockholders. They are only seeking to be registered as stockholders because of an alleged sale of shares of stock to them. As the petition is filed by outsiders, jurisdiction properly belongs to the regular courts.

(B) Section 63 of the Corporation Code provides that the shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney--in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the book 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. There should be compliance with the mode of transfer prescribed by law. In the case at bar, the requirements cited above were not properly complied with. No indorsement was made by Rivera, the registered owner of the subject shares of stock. In fact, the bone of contention in this case is the refusal of Rivera to indorse the same. Considering the foregoing, the lower court correctly ruled that the case is not an intra-corporate one.
(C) Mandamus will not lie where the shares of stock in question are not even indorsed by the registered owner Rivera who is specifically resisting the registration thereof in the books of the corporation. Even the shares of stock which were purchased by respondents from the other incorporators cannot also be the subject of mandamus on the strength of mere indorsement of the supposed owners of said shares in the absence of express instructions from them.

- De Erguiga vs. Court of Appeals, 178 SCRA 1 (1989)

GLORIA M. DE ERQUIAGA, ADMINISTRATRIX OF THE ESTATE OF THE LATE SANTIAGO DE ERQUIAGA & HON. FELICIANO S. GONZALES, *Petitioners,* -versus – HON. COURT OF APPEALS, AFRICA VALDEZ VDA. DE REYNOSO, JOSES V. REYNOSO, JR., EERNESTO REYNOSO, BENEDICT REYNOSO, SYLVIA REYNOSO, LOURDES REYNOSO, CECILE REYNOSO, EDNA REYNOSO, ERLINDA REYNOSO & EMILY REYNOSO, *Respondents.*
G.R. No. 47206, FIRST DIVISION, September 27, 1989, GRINO-AQUINO, *J.*

A stockholder acquires voting rights only when the shares of stock to be voted are registered in his name in the corporate books. Until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. The unrecorded transferee cannot enjoy the status of a stockholder and cannot vote nor be voted for. He will also not be entitled to dividends. Considering the foregoing, in the case at bar, the CFI indeed gravely abused its discretion when it gave Erquiaga voting rights on the 3,100 shares.

FACTS

Santiago de Erquiaga was the owner of 3,100 shares (100%) of Erquiaga Development Corporation (EDC) which owns the Hacienda San Jose in Irosin, Sorsogon. He entered into an agreement with Jose L. Reynoso to sell to the latter his 3,100 shares of EDC for P900,000.00, payable in installments. As of 1968, Reynoso was able to pay P410,000.00 to Erquiaga who thereupon transferred all his shares to Reynoso as well as the possession of the Hacienda. To secure the balance of the obligation, Reynoso pledged 1,500 shares in favor of Erquiaga.

Reynoso eventually failed to pay the balance on or before the date they agreed upon. As such, Erquiaga filed a complaint for rescission against Reynoso and EDC. The decision rescinded the sale and ordered Reynoso to return and reconvey to Erquiaga the 1,600 shares of stock of EDC including the fruits received by virtue of the shares as well as the possession of the Hacienda after the latter returned the P410,000.00 plus interest. It was further ordered that should there be refusal or delay in delivering such shares of stock, Erquiaga is authorized: a) to call and hold a special meeting of the stockholders of EDC to elect the members of the Board of Directors; b) to vote not only the 1,500 shares of stock in his name but also the 1,600 shares in the name and possession of the respondents; and c) to decide as to who shall be elected members of the Board of Directors and officers.

The CA held that the CFI acted with grave abuse of discretion or in excess of jurisdiction in issuing the above order insofar as it: a) gave Erquiaga voting rights on the 3,100 shares without first divesting Reynoso of his title thereto and ordering the registration of the same in the corporation books in the name of the former; and b)authorized corporate meetings and election.

At the time of filing the petition before the Court, while the Hacienda's possession was returned, only the pledged 1,500 shares of stock was returned to Erquiaga who has not returned P410,000.00 yet.

ISSUE

Whether the CFI acted with grave abuse of discretion when it gave Erquiaga voting rights on the 3,100 shares. (YES)

RULING

A stockholder acquires voting rights only when the shares of stock to be voted are registered in his name in the corporate books. Until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. The unrecorded transferee cannot enjoy the status of a stockholder and cannot vote nor be voted for. He will also not be entitled to dividends. The purpose of registration, therefore, is two-fold: to enable the transferee to exercise all the rights of a stockholder and to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder. Considering the foregoing, in the case at bar, the CFI indeed gravely abused its discretion when it gave Erquiaga voting rights on the 3,100 shares.

- Embassy Farms, Inc. vs. Court of Appeals, 188 SCRA 492 (1990)

EMBASSY FARMS, INC., *Petitioner,* -versus – HON. COURT OF APPEALS (INTERMEDIATE APPELLATE COURT), HON. ZENAIDA S. BALTAZAR, Judge of the Regional Trial Court, Branch CLVIII, (158), Pasig, Metro Manila, VOLTAIRE B. CRUZ, Deputy Sheriff, Branch CLVIII, Regional Trial Court, Pasig, Metro Manila and EDUARDO B. EVANGELISTA, *Respondents.*
G.R. No. 80682, SECOND DIVISION, August 13, 1990, PARAS, *J.*

Although EBE has indorsed in blank the shares outstanding in his name, he has not delivered the certificate of stocks to AGA because the latter has not fully complied with his obligations under the memorandum of agreement. There being no delivery of the indorsed shares of stock AGA cannot effectively transfer to other person or his nominees the undelivered shares of stock. It must be noted that a transfer of shares of stock to be effective, the mode and manner of transfer as prescribed by law must *be followed. In this regard, the Corporation Code provides that the shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. However, no transfer shall be valid, except as between the parties until the transfer is properly recorded in the books of the corporation.*

FACTS

Alexander G. Asuncion (AGA) and Eduardo B. Evangelists (EBE) entered into a Memorandum of Agreement. Under the said agreement, EBE obligated himself to transfer to AGA 19 parcels of agricultural land registered in his name together with the stocks, equipment and facilities of a piggery farm owned by Embassy Farms, Inc. (EFI), a registered corporation wherein 90% of its shares is owned by EBE. He obligated himself to transfer in a manner absolute and irrevocable any and all of his shares of stocks in EFI until the total of said shares so transferred shall constitute 90% of the paid-in-equity of said corporation. In exchange thereof, AGA obligated himself to pay to EBE the total sum of close to P8.630 million and organize and register a new corporation with an authorized capital stock of P10 million which upon registration will take over all the rights and liabilities of AGA.

EBE then served as President and Chief Executive of the EFI and indorsed in blank all his shares of stock including that of his wife and three nominees for a total of 3,125 shares. These are all paid subscription. However, despite the indorsement, EBE retained possession of said shares and opted to deliver to AGA only upon full compliance of the latter of his obligations under the Memorandum of Agreement. Notwithstanding the non-delivery of the shares, however, in a Deed of Transfer of Shares of Stock, AGA transferred a total of 8,602 shares to several persons.

For failure to comply with his obligations, EBE intimated the institution of appropriate legal action. However, AGA preempted EBE by filing an action for rescission of the Memorandum of Agreement with damages alleging among others EBE's misrepresentation on the piggery business. The RTC issued a writ of preliminary injunction in favor of EBE. The CA sustained this decision of the RTC and found that the Board of Directors of EFI are nominees of AGA so that it considered AGA and EFI as one and the same person. It noted that EBE has not delivered the certificate of stock outstanding in his name because AGA has not complied with the terms and conditions of the agreement. Furthermore, there is no transfer of shares of stock from EBE at AGA as there had been no delivery of the certificate.

ISSUE

Whether EBE is still the controlling stockholder despite the execution of the memorandum of agreement and the blank indorsement of shares. (NO)

RULING

Although EBE has indorsed in blank the shares outstanding in his name, he has not delivered the certificate of stocks to AGA because the latter has not fully complied with his obligations under the memorandum of agreement. There being no delivery of the indorsed shares of stock AGA cannot effectively transfer to other person or his nominees the undelivered shares of stock. It must be noted that a transfer of shares of stock to be effective, the mode and manner of transfer as prescribed by law must be followed. In this regard, the Corporation Code provides that the shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. However, no transfer shall be valid, except as between the parties until the transfer is properly recorded in the books of the corporation.

Considering the foregoing, EBE is still the controlling stockholder of EFI despite the execution of the memorandum of agreement and the turn-over of control and management of EFI to AGA.

Moreover, it must be noted that when AGA filed an action for the rescission of contracts, the RTC merely restored and established the status quo prior to the execution of the memorandum of agreement by the issuance of a restraining order. It would, thus, be unjust and unfair to allow AGA and his nominees to control and manage EFI despite the fact that AGA who is the source of their supposed shares of stock is not asking for the delivery of the indorsed certificate of stock. It is but proper to allow EBE to manage the farm.

- Tan vs. Securities and Exchange Commission, 206 SCRA 740 (1992)

ALFONSO S. TAN, *Petitioner,* -versus – SECURITIES AND EXCHANGE COMMISSION, VISAYAN EDUCATIONAL SUPPLY CORP., TAN SU CHING, ALFREDO B. UY, ANGEL S. TAN and PATRICIA AGUILAR, *Respondents.*

G.R. No. 95696, SECOND DIVISION, March 3, 1992, PARAS, *J.*

In any case, it must be noted that a certificate of stock is not a negotiable instrument. Although it is sometimes regarded as quasi-negotiable in the sense that it may be transferred by endorsement coupled with delivery, it is well-settled that it is non-negotiable because the holder therefore takes it without prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law except insofar as such rights or defenses subject to limitations imposed by the principles governing estoppel. As such, in the case at bar, since stocks were already cancelled and reported to SEC, there was no necessity to endorse. All the acts required for the transferee to exercise its rights over the acquired stocks were attendant.

FACTS

As incorporator of Visayan Educational Supply Corp., Alfonso S. Tan had 400 shares of stock in his name evidenced by Certificate of Stock No .2. He was then elected as President and subsequently reelected, holding such position until 1982 but remained in the Board of Directors until 1983.

In 1981, 2 other incorporators, Young and Ong, assigned to the corporation their shares represented by Certificate of Stock No. 4 and 5 after which they were paid the corresponding 40% corporate stock-in-trade. Meanwhile, Alfonso's Certificate of Stock No.2 was cancelled by virtue of Resolution No. 1981 (b).

Due to the withdrawal of Young and Ong and in order to complete the membership of 5 directors, Alfonso sold 50 shares out of his 400 shares of capital stock to his brother Angel Tan. Another incorporator, Alfredo Uy, also sold 50 of his 400 shares to Teodora Tan. Subsequently, Angel was elected as a director. Meanwhile, as a result of the sale by Alfonso of his 50 shares, Certificate of Stock No, 2 was cancelled and the corresponding Certificate of Stock No. 6 (for Angel) and 8 (for Alfonso) were issued and signed by the newly elected Angel as Vice President upon instruction of Alfonso who was then the President.

Subsequently, a certain Mr. Buzon submitted an Affidavit alleging that Mr. Tan Su Ching, having taken 33 1/3 interest, personally asked him to request Alfonso to make the proper endorsement in the cancelled Certificate of Stock No.2 and Certificate of Stock No. 8. However, Alfonso did not endorse and instead kept Certificate of Stock No. 2. Only Certificate of Stock No. 8 was returned and delivered to Tan Su Ching.

In 1983, during the annual meeting of the corporation, Tan Su Ching was elected as President while Alfonso was elected as Vice-President. Having been dislodged from his position as President, Alfonso withdrew from the corporation on the condition that he be paid with stocks-in-trade equivalent to 33.3% in lieu of the stock value of his shares in the amount of P35,000. Consequently, Stock Certificate Nos. 2 and 8 were cancelled.

Sometime thereafter, Alfonso filed a case before the SEC, questioning for the first time the cancellation of his Stock Certificates Nos. 2 and 8. He alleged that the deprivation of his shares despite the non-endorsement or surrender of the said stock certificates was without the process contrary to the provision of Section 63 of the Corporation Code. The SEC ruled against him.

ISSUE

Whether the transfer was valid even without delivery. (YES)

RULING

There is no doubt that there was delivery of Stock Certificate No. 2 to the Corporation before its replacement with the Stock Certificate Nos. 6 and 8. The problem arose when Alfonso was given back Stock Certificate No. 2 for him to endorse and he deliberately withheld it for reasons of his own. Petitioner devised the scheme of not returning the cancelled Stock Certificate No.2 to skim off the largesse of the corporation as shown by the trading of his Stock Certificate No.8 for goods of the corporation valued at P2 million when the par value of the same was only worth P35, 000.00. He also used this scheme to renege on his indebtedness to Tan Su Ching in the amount of P1 million.

In any case, it must be noted that a certificate of stock is not a negotiable instrument. Although it is sometimes regarded as quasi-negotiable in the sense that it may be transferred by endorsement coupled with delivery, it is well-settled that it is non-negotiable because the holder therefore takes it without prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law except insofar as such rights or defenses subject to limitations imposed by the principles governing estoppel.

As such, in the case at bar, since stocks were already cancelled and reported to SEC, there was no necessity to endorse. All the acts required for the transferee to exercise its rights over the acquired stocks were attendant and even the corporation was protected from other parties, considering that said transfer was earlier recorded or registered in the corporate and transfer book.

- Razon vs. Intermediate Appellate Court, 207 SCRA 234 (1992)

ENRIQUE RAZON, *Petitioner,* -versus – INTERMEDIATE APPELLATE COURT and VICENTE B. CHUIDIAN, in his capacity as Administrator of the Estate of the Deceased JUAN T. CHUIDIAN, *Respondents.*
G.R. No. 74306, THIRD DIVISION, March 16, 1992, GUTIERREZ, JR., *J.*

VICENTE B. CHUIDIAN, *Petitioner,* -versus – INTERMEDIATE APPELLATE COURT, ENRIQUE RAZ0N, and E. RAZON, INC., *Respondents.*
G.R. No. 74315, THIRD DIVISION, March 16, 1992, GUTIERREZ, JR., *J.*

The law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly indorsed. Indorsement is a mandatory requirement of law for an effective transfer of a certificate of stock. Title to such certificate of stock is vested in the transferee by the delivery of the duly indorsed certificate of stock. Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the Razon, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. Razon's oral testimony alleging the existence of an agreement between the two parties cannot prevail and his asseveration that he did not require the indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian is unmeritorious.

FACTS

Enrique Razon organized the E. Razon, Inc. (ERI) for the purpose of bidding for the arrastre services in South Harbor, Manila. Stock certificate No. 003 for 1,500 shares of stock was issued in the name of the late Juan T. Chuidian. Vicente B. Chuidian, as an administrator, filed a complaint against Razon for the delivery of certificate of stocks representing the shareholdings of the deceased Juan T. Chuidian in ERI.

Vicente alleged that after organizing ERI, Razon distributed shares of stock previously placed in the names of the withdrawing nominal incorporators to some friends including Juan T. Chuidian. Stock Certificate No. 003, upon instruction of the late Chuidian, was personally delivered to the Corporate Secretary of ERI. Since then, Enrique was in possession of the said stock certificate even during the lifetime of the late Chuidian.

By agreement of the parties, the stock certificate was delivered for deposit with the bank under the joint custody of the parties. Razon alleged later that he paid for all the subscription on the subject shares of stock and the understanding was that he was the owner of the same and was to have possession thereof until such time as he was paid therefor by the other nominal stockholders.

The then Court of First Instance of Manila declared that Razon is the owner of the subject shares of stock. The then Intermediate Appellate Court, however, reversed the CFI's decision and ruled that Juan T. Chuidian is the owner of the shares of stock.

ISSUE

Whether Juan T. Chuidian is the rightful owner of the stocks. (YES)

RULING

The law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly indorsed. Indorsement is a mandatory requirement of law for an effective transfer of a certificate of stock. Title to such certificate of stock is vested in the transferee by the delivery of the duly indorsed certificate of stock. Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the Razon, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. Razon's oral testimony alleging the existence of an agreement between the two parties cannot prevail over what appears in the certificate of shares of stocks and the corporate books. Razon's asseveration that he did not require the indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian cannot overcome the failure to follow the procedure required by law or the proper conduct of business even among friends.

- Rural Bank of Salinas, Inc. vs. Court of Appeals, 210 SCRA 510 (1992)

RURAL BANK OF SALINAS, INC., MANUEL SALUD, LUZVIMINDA TRIAS and FRANCISCO TRIAS, *Petitioners,* -versus – COURT OF APPEALS*, SECURITIES AND EXCHANGE COMMISSION, MELANIA A. GUERRERO, LUZ ANDICO, WILHEMINA G. ROSALES, FRANCISCO M. GUERRERO, JR., and FRANCISCO GUERRERO, SR., *Respondents.*
G.R. No. 96674, SECOND DIVISION, June 26, 1992, PARAS, *J.*

Sec. 63 of the Corporation Code contemplates no restriction as to whom the stocks may be transferred. The owner of shares, as owner of personal property, is at liberty, under said section to dispose them in favor of whomever he pleases without limitation in this respect than the general provisions of law. In this case, the Corporation's obligation to register is ministerial. The secretary of the corporation, in transferring stock, acts in purely ministerial capacity and does not try to decide the question of ownership.

FACTS
Clemente G. Guerrero, President of the Rural Bank of Salinas, Inc. (Bank), executed a Special Power of Attorney in favor of his wife, Melania, giving and granting the latter full power and authority to sell or otherwise dispose of and/or mortgage 473 shares of stock of the Bank registered in his name.
Melania then presented to the Bank 2 deeds of assignment for registration with a request for the transfer in the Bank's stock and transfer book shares of stock so assigned, the cancellation of stock certificates in the name of Clemente and the issuance of new stock certificates covering the transfer in the name of the new owners thereof. However, the Bank denied the request. Consequently, Melania filed with the SEC an action for mandamus against the Bank, its President and Corporate Secretary.
The SEC rendered a Decision granting the writ of Mandamus directing petitioners to cancel the subject stock certificates, all in the name of Clemente, and to issue new certificates in the names of private respondents, except Melania. This was affirmed by the CA.

ISSUES

A. Whether SEC has jurisdiction over the instant case. (YES)
B. Whether the corporation is obliged to register the transfer. (YES)

RULING

(A) P.D. No. 902 grants to the SEC the original and exclusive jurisdiction to hear and decide cases involving intra-corporate controversies. An intra- corporate controversy has been defined as one that arises between a stockholder and the corporation.

The case at bar involves shares of stock and their registration, cancellation and issuances thereof by the bank. Applying the foregoing, it is therefore within the power of SEC to adjudicate the controversy presented herein.
(B) Sec. 63 of the Corporation Code contemplates no restriction as to whom the stocks may be transferred. The owner of shares, as owner of personal property, is at liberty, under said section to dispose them in favor of whomever he pleases without limitation in this respect than the general provisions of law. In this case, the Corporation's obligation to register is ministerial. The secretary of the corporation, in transferring stock, acts in purely ministerial capacity and does not try to decide the question of ownership.

- Torres vs. Court of Appeals, 270 SCRA 493 (1997)

MANUEL A. TORRES, JR., (Deceased), GRACIANO J. TOBIAS, RODOLFO L. JOCSON, JR., MELVIN S. JURISPRUDENCIA, AUGUSTUS CESAR AZURA and EDGARDO D. PABALAN, *Petitioners,* - versus – COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, TORMIL REALTY & DEVELOPMENT CORPORATION, ANTONIO P. TORRES, JR., MA. CRISTINA T. CARLOS, MA. LUISA T. MORALES and DANTE D. MORALES, *Respondents.*
G.R. No. 120138, FIRST DIVISION, September 5, 1997, KAPUNAN, *J.*

Contrary to the generally accepted corporate practice, the stock and transfer book of Tormil Realty was not kept by the corporate secretary but by Judge Torres, the President and Chairman of the Board of Directors of the corporation. It was also not kept at the principal office of the corporation but at the place of Judge Torres. These being the obtaining circumstances, any entries made in the stock and transfer book of an alleged transfer of nominal shares to Pabalan and Co. cannot therefore be given any valid effect. Where the entries made are not valid, Pabalan and Co. cannot therefore be considered stockholders of record of Tormil Realty. Because they are not stockholders, they cannot be elected as directors. To rule otherwise would not only encourage violation of clear mandate of Sec. 74 of the Corporation Code but would likewise open the flood gates of confusion as to who has the proper custody of the stock and transfer book and who are the real stockholders of record as any holder of the stock and transfer book, though not the corporate secretary, at pleasure could make entries therein. It must be noted that being a simple family corporation is not an exemption. Such corporations cannot have rules and practices other than those established by law.

FACTS

The late Manuel A. Torres Jr. (Judge Torres) was the majority stockholder of Tormil Realty & Development Corporation while private respondents who are the children of Judge Torres' deceased brother, Antonio A. Torres, constituted the minority stockholders.

To make substantial savings in taxes, Judge Torres adopted an "estate planning" scheme under which he assigned to Tormil Realty real properties and shares of stock in other corporations in exchange for 225,972 shares of the latter. Consequently, the properties mentioned were duly recorded in the books of Tormil Realty as well as the revenues generated from them. Likewise, the assigned parcels of land were registered with the respective register of deeds in the name of Tormil Realty except that located in Makati and Pasay City. At the time of the assignments, however, only 225,000 Tormil Realty shares remained unsubscribed.

Due to the insufficient number of shares of stock issued to Judge Torres and the alleged refusal of private respondents to approved the needed increase in the corporations authorized capital stock, Judge Torres revoked the 2 deeds of assignment covering the properties in Makati and Pasay City. On the other hand, noting the disappearance of the Makati and Pasay City properties from the books of the corporation, private respondents filed a complaint with the SEC to compel Judge Torres to deliver the 2 deeds of assignment mentioned above and to cause the registration of the corresponding titles in the name of Tormil Realty.

Meanwhile, the time for the 1987 annual stockholders meeting and election of directors of Tormil Realty came. Pursuant thereto, Judge Torres assigned from his own shares, 1 share each to the petitioners. These assigned shares were in the nature of "qualifying shares" for the sole purpose of meeting the legal requirement in electing them to the Board of Directors. Consequently, private respondents instituted another complaint with the SEC praying that the election of petitioners to be annulled. They alleged that the petitioners were not legitimate stockholders of Tormil Realty because the assignment of shares to them violated the minority stockholders right of pre-emption. Petitioners, on the other hand, insist that the assignment of "qualifying shares" does not partake of the real nature of a transfer of shares of stock as would call for the "imposition of stringent requirements recording of the transfer of said shares." Anyway, there was substantial compliance with the requirements since said assignments were entered by Judge Torres himself in the corporation's stock and transfer book prior the elections.

ISSUE

Whether the 1987 election was valid considering the fact that the assignment of the qualifying shares was not recorded in the corporation books. (NO)

RULING

In the absence of any provision to the contrary, the corporate secretary is the custodian of corporate records. He keeps the stock and transfer book and makes proper and necessary entries therein.
In the case at bar, contrary to the generally accepted corporate practice, the stock and transfer book of Tormil Realty was not kept by the corporate secretary but by Judge Torres, the President and Chairman of the Board of Directors of the corporation. It was also not kept at the principal office of the corporation but at the place of Judge Torres. These being the obtaining circumstances, any entries made in the stock and transfer book of an alleged transfer of nominal shares to Pabalan and Co. cannot therefore be given any valid effect.

Where the entries made are not valid, Pabalan and Co. cannot therefore be considered stockholders of record of Tormil Realty. Because they are not stockholders, they cannot be elected as directors. To rule otherwise would not only encourage violation of clear mandate of Sec. 74 of the Corporation Code that stock and transfer book shall be kept in the principal office of the corporation but would likewise open the flood gates of confusion in the corporation as to who has the proper custody of the stock and transfer book and who are the real stockholders of records of a certain corporation as any holder of the stock and transfer book, though not the corporate secretary, at pleasure could make entries therein. All corporations, big or small, must abide by the provisions of the Corporation Code. Being a simple family corporation is not an exemption. Such corporations cannot have rules and practices other than those established by law.

- China Banking Corporation vs. Court of Appeals, 270 SCRA 503 (1997)

CHINA BANKING CORPORATION, *Petitioner*, -versus – COURT OF APPEALS and VALLEY GOLF and COUNTRY CLUB, INC., *Respondents.*
G.R. No. 117604, FIRST DIVISION, March 26, 1997, KAPUNAN, *J.*

VGCCI insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws. However, VGCCI began sending notices of delinquency to Calapatia only after it was informed by CBC of the foreclosure proceedings although Calapatia has been delinquent in paying his monthly dues to the club since 1975. Moreover, CBC, whom VGCCI had officially recognized as the pledgee, was neither informed nor furnished copies of these letters of overdue accounts until VGCCI itself sold the pledged share at another public auction. It even failed to give petitioner a notice of said auction sale. Such actuations of VGCCI belie its claim of good faith.

VGCCI likewise maintains that CBC is bound by its by-laws. In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI could have easily informed CBC of its by-laws when it sent notice formally recognizing the latter as pledgee. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.

Finally, Sec. 63 of the Corporation Code cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." In the case at bar, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate No. 1219. What Calapatia owed the corporation were merely the monthly dues.

FACTS

Galicano Calapatia, Jr. (Calapatia), a stockholder of private respondent Valley Golf & Country Club, Inc. (VGCCI), pledged his Stock Certificate No. 1219 to China Banking Corporation (CBC) as security for the loan of P20,000.00. CBC wrote VGCCI requesting that the said pledge agreement be recorded in its books. VGCCI replied that the same deed of pledge was duly noted in its corporate books.
Due to Calapatia's failure to pay his obligation, CBC filed a petition for extrajudicial foreclosure before a notary public, requesting the latter to conduct a public auction sale of the pledged stock. CBC then informed VGCCI of the foreclosure proceedings and requested that the pledged stock be transferred to its name and be recorded as such in the corporate books. VGCCI, however, expressed its inability to accede to CBC's request in view of Calapatia's unsettled accounts with the club. In the public auction of the pledged stocks, CBC eventually emerged as the highest bidder. Consequently, it was issued the corresponding certificate of sale.

Meanwhile, VGCCI sent Calapatia a notice demanding full payment of his overdue account. Said notice was followed by a demand letter for the same amount and another notice. It as well caused the publication of a notice of auction sale of a number of its stock certificates including Calapatia's Stock

Certificate No. 1219. It then informed Calapatia of the termination of his membership due to the sale of his share of stock in the auction.

In line with it being the highest bidder, CBC advised VGCCI that it is the new owner of Calapatia's Stock Certificate No. 1219 and requested that a new certificate of stock be issued in its name. VGCCI replied that "for reason of delinquency" Calapatia's stock was sold at the public auction. Consequently, CBC protested the said sale by VGCCI and thereafter filed a case with the RTC for its nullification.

The RTC dismissed the complaint for lack of jurisdiction over the subject matter on the theory that it involves an intra-corporate dispute. CBC then filed a complaint with the SEC which rendered a decision in favor of CBC declaring that it has a prior right over the pledged share. However, the CA nullified this SEC decision on the ground of lack of jurisdiction over the subject matter since the controversy involved is not intra-corporate.

ISSUES

A. Whether the nature of the controversy between CBC and VGCCI is intra-corporate therefore SEC has jurisdiction. (YES)
B. Whether VGCCI has a prior right over the subject share pursuant on Sec. 3, Art VIII of its by-laws. (NO)

RULING

(A) To ascertain which tribunal has jurisdiction, it must be determined first whether CBC is a stockholder of VGCCI and whether the nature of the controversy between is intra-corporate.

As to the first query, there is no question that the purchase of the subject share at public auction by CBC transferred ownership of the same to the latter and thus is entitled to have the said share registered in its name. It is readily observed that VGCCI did not assail the transfer directly and has in fact expressly recognized the pledge agreement. Because of the foregoing, the conflict that arose between VBV and VGCCI aptly exemplifies an intra-corporate controversy between a corporation and its stockholder.

It must be noted further that VGCCI caps its argument by asserting that its corporate by-laws should prevail. The bone of contention, thus, is the proper interpretation and application of VGCCI's by-laws, a subject which irrefutably calls for the special competence of the SEC.

(B) VGCCI assails the validity of the pledge agreement and contends that the same was null and void for lack of consideration because the pledge agreement was entered into earlier than the loan which it secured. VGCCI's contention is unmeritorious. A careful perusal of the pledge agreement will readily reveal that the contracting parties explicitly stipulated therein that the said pledge will also stand as security for any future advancements or renewals thereof that Calapatia may procure from CBC. The validity of the pledge agreement cannot thus be held suspect by VGCCI.

VGCCI likewise insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws. It is significant to note, however, that VGCCI began sending notices of delinquency to Calapatia after it was informed by CBC of the foreclosure proceedings initiated against Calapatia's pledged share although Calapatia has been delinquent in paying his monthly dues to the club since 1975. Moreover, CBC, whom VGCCI had officially recognized as the pledgee, was neither informed nor furnished copies of these letters of overdue accounts until VGCCI itself sold the pledged share at another public auction. It even failed to give petitioner a notice of said auction sale. Such actuations of VGCCI belie its claim of good faith.

In defending its actions, VGCCI likewise maintains that CBC is bound by its by-laws. In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction or agreement between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI could have easily informed CBC of its by-laws when it sent notice formally recognizing the latter as pledgee of one of its shares registered in Calapatia's name. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.

VGCCI's contends also that petitioner is duty-bound to know its by-laws because of Art. 2099 of the Civil Code which stipulates that the creditor must take care of the thing pledged with the diligence of a good father of a family. It fails to convince the Court. In applying this provision, it must be borne in mind that an ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket and the contract of the pledge is, therefore, absolvable to bearer. One who takes a pawn ticket in pledge acquires domination over the pledge. A a membership share is quite different in character from a pawn ticket.

Finally, Sec. 63 of the Corporation Code which provides that "no shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation" cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." In the case at bar, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate No. 1219. What Calapatia owed the corporation were merely the monthly dues. Hence, the aforequoted provision does not apply.

- Bitong vs. Court of Appeals, 292 SCRA 503 (1998)

NORA A. BITONG, *Petitioner,* -versus – COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, and ADORACION G. NUYDA, *Respondents.*

G.R. No. 123553, FIRST DIVISION, July 13, 1998, BELLOSILLO, *J.*

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is a prima facie evidence that it was legally issued However, this presumption may be rebutted. For a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney -in -fact or other persons legally authorized to make the transfer; and (c) the transfer must be recorded in the books of the corporation to be valid against third parties.

In the case at bar, aside from Bitong's own admissions, several corporate documents disclose that the true party-in-interest is JAKA. It must be noted that JAKA executed a deed of sale in favor of respondent Eugenia Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was *the registered owner of the subject shares. At most, in the instant case, Bitong has satisfied only the third requirement as stated above. Compliance with the first two requisites has not been clearly and sufficiently shown.*

FACTS

Nora Bitong claimed before the SEC that she had been the Treasurer and a Member of the Board of Directors of private respondent Mr. & Ms. Publishing Co., Inc. (Mr. & Ms.) from the time it was incorporated on October 29, 1976 to April 11 1989. and was the registered owner of 1,000 shares of stock out of the 4,088 total outstanding shares.

Allegedly acting for the benefit of Mr. & Ms. Co., Bitong filed a derivative suit before the SEC against respondent spouses Eugenia D. Apostol and Jose A. Apostol who were officers in said corporation to hold them liable for fraud and mismanagement in directing its affairs.

Respondent spouses moved to dismiss on the ground that Bitong had no legal standing to bring the suit as she was merely a holder-in-trust of shares of JAKA Investments Corporation (JAKA) which continued to be the true stockholder of Mr. & Ms. Bitong, on the other hand, contends that she was a holder of proper stock certificates and that the transfer was recorded. She further asserts that even in the absence of the actual certificate, mere recording will suffice for her to exercise all stockholder rights including the right to file a derivative suit in the name of the corporation.

ISSUE

Whether Bitong is the true holder of stock certificates to be able institute a derivative suit. (NO)
RULING

NO. Sec 63 of the Corporation Code envisions a formal certificate of stock which can be issued only upon compliance with certain requisites. Such are:

a. The certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock.
b. Delivery of the certificate is an essential element of its issuance. There is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company.
c. The par value, as to par value shares, or the full subscription as to no par value shares, must be fully paid.
d. The original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is a prima facie evidence that it was legally issued However, this presumption may be rebutted. For a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) the transfer must be recorded in the books of the corporation to be valid against third parties.

In the case at bar, aside from Bitong's own admissions, several corporate documents disclose that the true party-in-interest is JAKA. It must be noted that JAKA executed a deed of sale over 1,000 Mr. & Ms. shares in favor of respondent Eugenia Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of the subject shares. Nothing in the records shows that JAKA had revoked the trust reposed on respondent Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to Bitong. In fine, the records are unclear on how Bitong allegedly acquired the shares of stock of JAKA. At most, in the instant case, Bitong has satisfied only the third requirement as stated above. Compliance with the first two requisites has not been clearly and sufficiently shown.

- Thomson vs. Court of Appeals, 298 SCRA 280 (1998)

MARSH THOMSON, *Petitioner*, -versus – COURT OF APPEALS and THE AMERICAN CHAMPER OF COMMERCE OF THE PHILIPPINES, INC, *Respondents.*
G.R. No. 116631, FIRST DIVISION, October 28, 1998, QUISUMBING, *J.*

As the Executive Vice-President of AmCham, Thomson occupied a fiduciary position in the business of AmCham. AmCham released the funds to acquire a share in MPC for the use of Thomson but obliged the latter to execute such document as necessary to acknowledge beneficial ownership thereof by the former. A trust relationship is, therefore, involved in this case and AmCham is the beneficial owner thereof. It must be noted that the claim of waiver of the beneficial ownership alleged by Thomson by the issuance of a Release and Quitclaim does not hold water. The quitclaim executed does not clearly show the intent to include therein the ownership over the MPC share.

Such being the case, it has been held that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the beneficiary, and the statute of limitations does not run between them. In the instant case, there was no declared or explicit repudiation of the trust existing between the parties. Such repudiation could only be inferred as evident when Thomson showed his intent to appropriate the MPC share for himself. In relation thereto, it has also been held that actions to recover movables shall prescribe 8 years from the time the possession thereof is lost unless the possessor has acquired the ownership by prescription for a less period of 4 years if in good faith. Since AmCham filed the necessary action on time and the defense of good faith is not available to Thomson, there is no basis for any purported claim of prescription.

FACTS

Marsh Thomson was the Executive Vice-President and, later on, the Management Consultant of the American Chamber of Commerce of the Philippines, Inc. (AmCham). While he was still working with AmCham, his superior, A. Lewis Burridge, retired as the President. He wanted to transfer his proprietary share in the Manila Polo Club (MPC) to Thomson. As such, through the intercession of Burridge, AmCham paid for the share listed in Thomson's name. Accordingly, MPC issued Proprietary Membership Certificate Number 3398 in favor of Thomson who failed to execute a document recognizing AmCham's beneficial ownership over said share.

Following AmCham's practice of yearly renewing employment contracts, Thomson notified AmCham that he would no longer be available as Executive Vice President after September 30, 1989. As such, a consultancy arrangement was attempted to be entered into between the two However, when Thomson made a counter-proposal of retaining the MPC share subject to reimbursement of the purchase price to AmCham or P110,000.00, the latter rejected the same.

AmCham then demanded the return and delivery of the MPC share which it owns, but Thomson refused to do so. Consequently, a case was filed by AmCham before the trial court for the return of the MPC share.

The trial court awarded the MPC share to Thomson on the ground that the Articles of Incorporation and By-laws of MPC prohibit artificial persons to be club members. The CA, however, reversed this decision.

Before the Court, Thomson claims ownership of the MPC share, asserting that he merely incurred a debt to AmCham when the latter advanced the funds for the purchase of the share. On the other hand, AmCham asserts beneficial ownership.

ISSUES

A. Whether AmCham as the beneficial owner of the disputed share. (YES)
B. Whether Thomson may be ordered to transfer said share to AmCham's nominees. (YES)

RULING

(A) A debt is different from a trust. First, the beneficiary of a trust has beneficial interest in the trust property, while a creditor has merely a personal claim against the debtor. Second, in trust, there is a fiduciary relation between a trustee and a beneficiary, but there is no such relation between a debtor and creditor. Third, while a debt implies merely an obligation to pay a certain sum of money, a trust refers to a duty to deal with a specific property for the benefit of another. If a creditor-debtor relationship exists, but not a fiduciary relationship between the parties, there is no express trust. When the purported trustee of funds is entitled to use them as his or her own and commingle them with his or her own money, a debtor-creditor relationship exists and not a trust.

In the present case, as the Executive Vice-President of AmCham, Thomson occupied a fiduciary position in the business of AmCham. AmCham released the funds to acquire a share in MPC for the use of Thomson but obliged the latter to execute such document as necessary to acknowledge beneficial ownership thereof by the former. A trust relationship is, therefore, involved in this case.
There was also no waiver of the beneficial ownership over MPC share by the issuance of a Release and Quitclaim in favor of the Thomson as argued by the latter. The quitclaim executed does not clearly show the intent to include therein the ownership over the MPC share. Settled is the rule that a waiver to be valid and effective must, in the first place, be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him.
(B) The petitioner contends that the Articles of Incorporation and By-laws of MPC prohibit corporate membership. While true, this does not mean anything in the present case AmCham does not insist nor intend to transfer the club membership in its name but to its designated nominee. In any case, the MPC does not necessarily prohibit the transfer of proprietary shares by its members. It only

restricts membership to deserving applicants in accordance with its rules. It must be noted that the authority granted to a corporation to regulate the transfer of its stock does not empower it to restrict the right of a stockholder to transfer his shares, but merely authorizes the adoption of regulations as to the formalities and procedure to be followed in effecting transfer.

Moreover, it has been held that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the beneficiary, and the statute of limitations does not run between them. With regard to a constructive or a resulting trust, the statute of limitations does not begin to run until the trustee clearly repudiates or disavows the trust and such disavowal is brought home to the other party, "*cestui que trust*". In the instant case, there was no declared or explicit repudiation of the trust existing between the parties. Such repudiation could only be inferred as evident when Thomson showed his intent to appropriate the MPC share for himself.

As such, the actions to recover movables shall prescribe 8 years from the time the possession thereof is lost unless the possessor has acquired the ownership by prescription for a less period of 4 years if in good faith. Since AmCham filed the necessary action on time and the defense of good faith is not available to Thomson, there is no basis for any purported claim of prescription, after repudiation of the trust, which will entitle the latter to ownership of the disputed share.

- Garcia vs. Jomouad, 323 SCRA 424 (2000)

NEMESIO GARCIA, *Petitioner,* -versus – NICOLAS JOMOUAD, Ex-officio Provincial Sheriff of Cebu and SPOUSES JOSE ATINON & SALLY ATINON, *Respondents.*
G.R. No. 133969, FIRST DIVISION, January 26, 2000, KAPUNAN, *J.*

In the prior case of Uson vs. Diosomito, the Court held that the attachment prevails over the unrecorded transfer of shares. All transfers of shares should be entered on the books of the corporation and all transfers not so entered are invalid or void as to attaching or execution creditors of the assignors, to the corporation, to subsequent purchasers in good faith and to all other interested parties except the parties to such transfers. This is not because they are without notice or fraudulent in law or fact, but because they are made so void by statute.

Applying the foregoing jurisprudence in this case, the transfer of the subject certificate made by Dico to Garcia was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. The entry in the minutes of the meeting of the Club's Board of Directors noting the resignation of Dico as proprietary member thereof does not constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation.

FACTS

Nemesion Garcia avers that Dico, the judgment debtor of the spouses Atinon, was employed as manager of his Young Auto Supply. In order to assist him in entertaining clients, Gracia lent his Proprietary Ownership Certification (POC) 1459 in the Cebu Country Club to Dico so the latter could enjoy the "signing" privileges of its members. The Club issued POC No. 0668 in the name of Dico.

Dico then resigned as manager of petitioner's business. Upon demand of Garcia, he returned POC No. 0668 to the latter and executed a Deed of Transfer covering the same. The Club was furnished with a copy of said deed but the transfer was not recorded in the books of the Club because Garcia failed to present proof of payment of the requisite capital gains tax.

Meanwhile, spouses Atinon filed a case for collection of sum of money against Dico. The RTC rendered judgment ordering Dico to pay the spouses Atinon. Consequently, upon the judgment becoming final and executory, Jomouad, ex- oficio sheriff, proceeded with its execution. In the course thereof, POC No. 0668 was levied on and scheduled for public auction. Claiming ownership over the subject certificate, Garcia filed an action for injunction.

After trial, the RTC dismissed Garcia's complaint for injunction for lack of merit. On appeal, the CA affirmed in toto the decision of the RTC. In assailing the decision of the CA, Garcia mainly argues that the appellate court erroneously relied on Section 63 of the Corporation Code. He contends that the subject stock certificate, albeit in the name of Dico, cannot be levied upon because even prior to the institution of the case for collection of sum of money against him the spouses Atinon had knowledge that Dico already conveyed back the ownership of the subject certificate to him and that Dico already executed a deed of transfer covering the same and the Club was furnished with a copy thereof.

ISSUE

Whether the subject POC is owned by Garcia and thus cannot be levied to satisfy the debt owned by Dico. (NO)

RULING

Section 63 of the Corporation Code provides 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."

The sole issue in this case is similar to that raised in Uson vs. Diosomito, that is, whether a bona fide transfer of the shares of a corporation, not registered in the books of the corporation, is valid as against a subsequent lawful attachment of said shares, regardless of whether the attaching creditor had actual notice of said transfer or not." In that case, the Court held that the attachment prevails over the unrecorded transfer. All transfers of shares should be entered on the books of the corporation and all transfers not so entered are invalid or void as to attaching or execution creditors of the assignors, to the corporation, to subsequent purchasers in good faith and to all other interested parties except the parties to such transfers. This is not because they are without notice or fraudulent in law or fact, but because they are made so void by statute.

Applying the foregoing jurisprudence in this case, the transfer of the subject certificate made by Dico to Garcia was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. The entry in the minutes of the meeting of the Club's Board of Directors noting the resignation of Dico as proprietary member thereof does not constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation and not elsewhere to be valid as against third parties.

- Rural Bank of Lipa City, Inc. vs. Court of Appeals, 366 SCRA 188 (2001). See also Batangas Laguna Tayabas Bus Company, Inc., et al., vs. Benjamin Bitanga, et al., 362 SCRA 635 (2001)

THE RURAL BANK OF LIPA CITY, INC., THE OFFICERS AND DIRECTORS, BERNARDO BAUTISTA, JAIME CUSTODIO, OCTAVIO KATIGBAK, FRANCISCO CUSTODIO, and JUANITA BAUTISTA OF THE RURAL BANK OF LIPA CITY, INC., *Petitioners,* -versus – HONORABLE COURT OF APPEALS, HONORABLE COMMISSION EN BANC, SECURITIES AND EXCHANGE COMMISSION, HONORABLE ENRIQUE L. FLORES, JR., in his capacity as Hearing Officer, REYNALDO VILLANUEVA, SR, AVELINA M. VILLANUEVA, CATALINO VILLANUEVA, ANDRES GONZALES, AURORA LACERNA, CELSO LAYGO, EDGARDO REYES, ALEJANDRA TONOGAN and ELENA USI, *Respondents.*

G.R. No. 124535, FIRST DIVISION, September 28, 2001, YNARES-SANTIAGO, *J.*

For a valid transfer of stocks, there must be strict compliance with the mode of transfer prescribed by law. The requirements are: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) To be valid against third parties, the transfer must be recorded in the books of the corporation.

In the case at bar, compliance with any of these requisites has not been clearly and sufficiently shown. While it may be true that there was an assignment, said assignment was not sufficient to affect the transfer of the said shares since there was no endorsement as required above. Moreover, the petitioners admit that the assignment was not coupled with delivery. The rule is that the delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the transferee.

FACTS

Reynaldo Villanueva, Sr., a stockholder of the Rural Bank of Lipa City (Bank), executed a Deed of Assignment concerning 10,467 shares he own or under his control in favor of the stockholders of the Bank represented by its directors Bernardo Bautista, Jaime Custodio and Octavio Katigbak. Thereafter, Reynaldo and his wife, Avelina, executed an Agreement wherein they acknowledged their indebtedness to the Bank in the amount of P4,000,000.00 and stipulated that said debt will be paid out of the proceeds of the sale a specific real property. In a meeting of the Bank's Board of Directors, the Villanueva spouses assured that their debt would be paid on time, otherwise, the Bank would be entitled to liquidate their shareholdings including those under their control.

Eventually, the Villanueva spouses failed to settle their obligation to the Bank on due date. Consequently, the Board sent them a letter demanding the surrender of all the stock certificates issued to them. However, they ignored the Bank's demands. Their shares of stock were converted into Treasury Stocks. Later, they questioned the legality of the conversion of their shares.

Meanwhile, the stockholders of the Bank met to elect new directors and set of officers for 1994 for which the Villanueva spouses were not notified. As such, the Villanueva spouses questioned the legality of the said stockholders' meeting. In reply thereto, the new set of officers of the Bank informed them that they were no longer entitled to any notice since they had relinquished their rights as stockholders in favor of the Bank.

The Villanueva spouses filed with the SEC a petition for annulment of the stockholders' meeting and election of directors and officers with prayer for preliminary injunction which was granted upon finding that since the Villanueva spouses have not disposed of their shares, whether voluntarily or involuntarily, they were still stockholders entitled to notice.

ISSUE

Whether there was valid transfer of the shares to the Bank. (NO)

RULING

For a valid transfer of stocks, there must be strict compliance with the mode of transfer prescribed by law. The requirements are: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) To be valid against third parties, the transfer must be recorded in the books of the corporation.

In the case at bar, compliance with any of these requisites has not been clearly and sufficiently shown. While it may be true that there was an assignment of the subject shares to the petitioners, said assignment was not sufficient to affect the transfer of the said shares since there was no endorsement thereof by the owners, their attorneys-in-fact or any other person legally authorized to make the transfer. Moreover, the petitioners admit that the assignment was not coupled with delivery. The rule is that the delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the transferee.

It may be argued that despite non-compliance with the requisite endorsement and delivery, the assignment was valid between the parties. While the assignment may be valid and binding on the parties, it does not necessarily make the transfer effective. The petitioners, as mere assignees, cannot enjoy the status of a stockholder, cannot vote nor be voted for, and will not be entitled to dividends, insofar as the assigned shares are concerned.

BATANGAS LAGUNA TAYABAS BUS COMPANY, INC., DOLORES A. POTENCIANO, MAX JOSEPH A. POTENCIANO, MERCEDELIN A. POTENCIANO, and DELFIN C. YORRO, *Petitioners,* -versus – BENJAMIN M. BITANGA, RENATO L. LEVERIZA, LAUREANO A. SIY, JAMES A. OLAYVAR, EDUARDO A. AZUCENA, MONINA GRACE S. LIM, and GEMMA M. SANTOS, *Respondents.*

G.R. No. 137934, FIRST DIVISION, August 10, 2001, YNARES-SANTIAGO, *J.*

ANILO L. CONCEPCION, FE ELOISA GLORIA and EDIJER A. MARTINEZ, in their capacities as ASSOCIATE COMMISSIONERS OF THE SECURITIES AND EXCHANGE COMMISSION, BATANGAS LAGUNA TAYABAS BUS COMPANY, INC., MICHAEL A. POTENCIANO, CANDIDIO A. POTENCIANO, HENRY JOHN A. POTENCIANO, REYNALDO MAGTIBAY, LORNA NAVARRO and RESTITUTO BAYLON, *Petitioners,* -versus – THE COURT OF APPEALS, BATANGAS LAGUNA

TAYABAS BUS COMPANY, INC., BENJAMIN M. BITANGA, RENATO L. LEVERIZA, LAUREANO A. SIY, JAMES A. OLAYVAR, EDUARDO A. AZUCENA, MONINA GRACE S. LIM, and GEMMA M. SANTOS, *Respondents.*

G.R. No. 137936, FIRST DIVISION, August 10, 2001, YNARES-SANTIAGO, *J.*

The transfer of shares is not valid unless the same is recorded in the books of the corporation. Until the registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. As such, until the transfer is registered, the transferee is not a stockholder but an outsider. In the case at bar, it is not disputed that the transfer of the shares has not yet been recorded in the books of the corporation. Hence, the Potenciano Group, in whose names the subject shares still stand, were the ones entitled to attend and vote at BLTB's stockholders' meeting. The Bitanga group cannot vote nor be voted for.

FACTS

Dolores A. Potenciano, Max Joseph A. Potenciano, Mercedelin A. Potenciano, Delfin C. Yorro, and Maya Industries, Inc. entered into a Sale and Purchase Agreement to sell to BMB Property Holdings, Inc., represented by its President, Benjamin Bitanga, their 21,071,114 shares of stock in Batangas Laguna Tayabas Bus Company, Inc. (BLTB). The said shares represented 47.98% of the total outstanding capital stock of BLTB.

Barely a month after the agreement was executed, a meeting of the stockholders of BLTB was held wherein Bitanga and Monina Grace Lim were elected as directors, replacing Dolores and Max Joseph. Another stockholders' meeting was held wherein Laureano A. Siy and Renato L. Leveriza were also elected as directors, replacing Candido Potenciano and Yorro.

For the year 1998, before the scheduled stockholders' meeting for the election of directors, Michael Potenciano wrote Bitanga, requesting for a postponement of the said stockholders' meeting due to the absence of a 30-day advance notice. However, there was no response from Bitanga regarding the matter. As such, on the scheduled date of the meeting, 286 stockholders, representing 87% of the shares of stock of BLTB, arrived. The Potenciano group was then re-elected to the Board of Directors and a new set of officers was thereafter elected.

The Bitanga group refused to relinquish their positions and continued to act as directors and officers of BLTB. Accordingly, the Potenciano group filed a complaint for injunction and damages. On the other hand, the Bitanga group filed another complaint, seeking to annul the stockholders' meeting.
The SEC ruled in favor of the Potenciano group. It ruled that the stockholders' meeting where the Potenciano group was elected is valid considering that there was no valid transfer yet of shares sold to BMB Property Holdings, Inc. This decision was, however, reversed by the CA.

ISSUE

Whether there is already a valid transfer of shares. (NO)

RULING

The transfer of shares is not valid unless the same is recorded in the books of the corporation. Until the registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. As such, until the transfer is registered, the transferee is not a stockholder but an outsider. The purpose of registration is, therefore, two-fold: to enable the transferee to exercise all the rights of a stockholder, including the right to vote and to be voted for, and to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder. Until challenged in a proper proceeding, a stockholder of record has a right to participate in any meeting and his vote can be properly counted to determine whether a stockholders' resolution was approved, despite the claim of the alleged transferee.

In the case at bar, it is not disputed that the transfer of the shares has not yet been recorded in the books of the corporation. Hence, the Potenciano Gr
oup, in whose names the subject shares still stand, were the ones entitled to attend and vote at BLTB's stockholders' meeting. The Bitanga group cannot vote nor be voted for.

- Ponce vs. Alsons Cement Corporation, 393 SCRA 602 (2002)

VICENTE C. PONCE, *Petitioner,* -versus – ALSONS CEMENT CORPORATION, and FRANCISCO M. GIRON, JR., *Respondents.*
G.R. No. 139802, SECOND DIVISION, December 10, 2002, QUISUMBING, *J.*

A transfer of shares of stock not recorded in the stock and transfer book of the corporation is nonexistent as far as the corporation is concerned. As between the corporation on the one hand and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize a stockholder's rights as it is mandated by law to recognize arises. Without such recording, therefore, the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. As such, considering that the transfer to Ponce was not recorded, ALS is not wrong in denying the issuance of stock certificate in Ponce's favor.

Moreover, a mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the corporation unless it affirmatively appears that he has failed or refused so to do upon the demand either of the person in whose name the stock is registered or of some person holding a power of attorney for that purpose from the registered owner of the stock. The mere indorsement of stock certificates does not in itself give to the indorsee such a right to have the transfer of the shares on the books of the company as will entitle him to the writ of mandamus.

FACTS

Vicente C. Ponce filed a complaint with the SEC for mandamus and damages against Alsons Cement Corporation (ACC) and its corporate secretary, Francisco M. Giron. Jr. Ponce alleged, among others, that the late Fausto G. Gaid was an incorporator of the then Victory Cement Corporation (VCC) now ACC with 239,500 shares. Ponce and Gaid executed a "Deed of Undertaking" and "Indorsement" whereby the latter acknowledged that the former is the owner of said shares and he was therefore assigning/endorsing the same to Ponce. However, from the time of incorporation of ACC up to the present, no certificates of stock were issued in the name of Gaid and/or Ponce despite repeated demands. ACC and Giron refused without any justifiable reason to issue the certificates of stocks, in violation of Ponce's right to secure the corresponding certificate of stock in his name.

ACC and Giron moved to dismiss the case. In ruling that a transfer or assignment of stocks need not be registered first before it can take cognizance of the case to enforce Ponce's rights as a stockholder, the SEC cited the SC's ruling in Abejo vs. De la Cruz. The CA, however, held that in the absence of any allegation that the transfer of the shares from Gaid to Ponce was registered in the stock and transfer book of ACC, Ponce failed to state a cause of action.

ISSUES

A. Whether ACC is wrong in refusing to issue the stock certificates in favor of Ponce. (NO)
B. Whether Ponce can require the corporate secretary to register Gaid's share to his name. (NO)

RULING

(A) A transfer of shares of stock not recorded in the stock and transfer book of the corporation is nonexistent as far as the corporation is concerned. As between the corporation on the one hand and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize a stockholder's rights as it is mandated by law to recognize arises. Without such recording, therefore, the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. The situation would be different if Ponce was himself the registered owner of the stock which he sought to transfer to a third party for then he would be entitled to the remedy of mandamus.

(B) A mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the corporation unless it affirmatively appears that he has failed or refused so to do upon the demand either of the person in whose name the stock is registered or of some person holding a power of attorney for that purpose from the registered owner of the stock. The mere indorsement of stock certificates does not in itself give to the indorsee such a right to have the transfer of the shares on the books of the company as will entitle him to the writ of mandamus because, under such circumstances the legal obligation is not so indisputable as to justify the issuance of the writ. It must be noted that a corporation looks only to its books for the purpose of determining who its shareholders are so that a mere indorsee of a stock certificate, claiming to be the owner, will not necessarily be recognized as such by the corporation in the absence of express instructions from the registered owner or a power of attorney.

That petitioner was under no obligation to request for the registration of the transfer is not in issue. One may own shares of corporate stock without possessing a stock certificate. In Tan vs. SEC, the Court had occasion to declare that a certificate of stock is not necessary to render one a stockholder in a corporation.

A certificate of stock is the tangible evidence of the stock itself and of the various interests therein. The certificate is the evidence of the holders interest and status in the corporation, his ownership of the share represented thereby. It expresses the contract between the corporation and the stockholder but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. In fact, it rests on the will of the stockholder whether he wants to be issued stock certificates. In Won vs. Wack Wack Golf and Country Club, Inc. the Court held that considering that the law does not prescribe a period within which the registration should be effected, the action to enforce the right does not accrue until there has been a demand and a refusal concerning the transfer.

- Republic of the Philippines vs. Sandiganbayan and Victor Africa, 402 SCRA 84 (2003)

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *Petitioner,* -versus – THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) and VICTOR AFRICA, *Respondents.*
G.R. Nos. 107789 & 147214, EN BANC, April 30, 2003, CARPIO MORALES, *J.*

The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds but which landed in private hands. However, the Sandiganbayan held that the public character exception does not apply in this case, in which case it should have proceeded to apply the two-tiered test. This it failed to do. The questions thus remain if there is prima facie evidence showing that the subject shares are ill-gotten and if there is imminent danger of dissipation.

FACTS

The Presidential Commission on Good Government (PCGG) conducted an Eastern Telecommunications, Philippines, Inc. (ETPI) stockholders meeting during which a PCGG controlled board of directors was elected. On the other hand, a special stockholders meeting was later convened by the registered ETPI stockholders wherein another set of board of directors was elected.

Africa, a stockholder of ETPI, alleged that PCGG had been illegally exercising the rights of stockholders of ETPI especially in the election of the members of ETPI's board of directors. Consequently, he filed a motion in Sandiganbayan praying that the said court order the calling and holding of the ETPI annual stockholders meeting for 1992 under the court's control and supervision and prescribed guidelines. Sandiganbayan then ordered that an annual stockholders meeting of ETPI for 1992 be held under the supervision and control of the Court. In accordance with the Court's ruling in Cojuangco et al vs. Azcuna, et al., only the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.

Consequently, PCGG filed a petition with the Court alleging that Sandiganbayan acted in excess of its authority (a) in ruling that the registered stockholders of ETPI had the right to vote in spite of (1) the ruling in PCGG v SEC and Africa and (2) a clear showing that ETPI's stock and transfer book was altered and cannot be used as the basis to determine who can vote in a stockholders meeting and (b) in holding that PCGG cannot vote at least 23.9 % of the outstanding capital stock of ETPI, among others. By resolution, Sandiganbayan was enjoined from holding the 1992 stockholders' meeting.

The PCGG then filed a "VERY URGENT PETITION FOR AUTHORITY TO HOLD SPECIAL STOCKHOLDERS' MEETING FOR THE SOLE PURPOSE OF INCRESING ETPI's AUTHORIZED CAPITAL STOCK", it claiming that the increase in authorized capital stock was necessary in light of the requirements laid down by EO No. 109 and RA No. 7975. By resolution, the Sandiganbayan issued a resolution granting such authority to PCGG and to vote therein the sequestered Class 'A' shares of stock. During the said special stockholders meeting, the increase in ETPI's authorized capital stock was "unanimously approved".

As a result, Africa filed a motion with the Court to nullify the special stockholders meeting contending, among others, that (a) only the Court, and not the Sandiganbayan, has the power to authorize the PCGG to call a stockholders meeting and vote the sequestered shares; and (b) that PCGG had no right to vote the sequestered Class 'A' shares.

ISSUES

A. Whether the PCGG can vote the sequestered ETPI Class "A" shares in the stockholders meeting for the election of the board of directors. (NO)

B. Whether the Sandiganbayan can order the Division Clerk of Court to call the stockholders' meeting. (NO)

RULING

(A) In Cojuangco v. Calpo and PCGG v. Cojuangco, Jr, the Court developed a "two-tiered" test in determining whether the PCGG may vote sequestered share. The two factual matters which must be considered are:

> 1. Whether there is prima facie evidence showing that the said shares are ill-gotten and thus belong to the State; and
> 2. Whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue is pending with the Sandiganbayan.

The two-tiered test, however, does not apply in cases involving funds of "public character." In such cases, the government is granted the authority to vote said shares, namely:

> 1. Where government shares are taken over by private persons or entities who/which registered them in their own names, and
> 2. Where the capitalization or shares that were acquired with public funds somehow landed in private hands.

The public character exceptions are based on the common-sense principle that legal fiction must yield to truth; that public property registered in the names of non-owners is affected with trust relations; and that the privilege of enjoying the rights flows from the prima facie fact of ownership.

The rule in this jurisdiction is clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds but which landed in private hands. However, the Sandiganbayan held that the public character exception does not apply in this case, in which case it should have proceeded to apply the two-tiered test. This it failed to do. The questions thus remain if there is prima facie evidence showing that the subject shares are ill-gotten and if there is imminent danger of dissipation. This Court is not, however, a trier of facts, hence, it is not in a position to rule on the correctness of the PCGG's contention. Consequently, the issue must be remanded to the Sandiganbayan for resolution.

(B) The Clerk of Court, who is already saddled with judicial responsibilities, need not be burdened with the additional duties of a corporate secretary. Moreover, the Clerk of Court may not have the requisite knowledge and expertise to discharge the function of a corporate secretary. The creation of a committee empowered to call, conduct and supervise the election of the board of directors is the solution to the Sandiganbayan's dilemma of calling a meeting when ETPI had two sets of officers. Such a committee composed of impartial persons knowledgeable in corporate proceedings would provide the needed expertise and objectivity in the calling and the holding of the meeting without compromising the Sandiganbayan or its officers.

- Republic vs. Estate of Hans Menzi, 476 SCRA (2005)

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Petitioner,* -versus – ESTATE OF HANS MENZI (THROUGH ITS EXECUTOR, MANUEL G. MONTECILLO), EMILIO T. YAP, EDUARDO M. COJUANGCO, JR., ESTATE OF FERDINAND MARCOS, SR., and IMELDA R. MARCOS, *Respondents.*
G.R. No. 152578, EN BANC, November 23, 2005, TINGA, *J.*

EDUARDO M. COJUANGCO, JR., *Petitioner,* -versus – REPUBLIC OF THE PHILIPPINES, *Respondent.*
G.R. No. 154487, EN BANC, November 23, 2005, TINGA, *J.*

ESTATE OF HANS M. MENZI (THROUGH ITS EXECUTOR, MANUEL G. MONTECILLO), and HANS M. MENZI HOLDINGS AND MANAGEMENT, INC. (HMHMI), *Petitioners,* -versus – REPUBLIC OF THE PHILIPPINES, (REPRESENTED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *Respondent.*
G.R. No. 154518, EN BANC, November 23, 2005, TINGA, *J.*

The Corporation Code acknowledges that the delivery of a duly indorsed stock certificate is sufficient to transfer ownership of shares of stock in stock corporations. Such mode of transfer is valid between the parties. In order to bind third persons, however, the transfer must be recorded in the books of the corporation. Clearly then, the absence of a deed of assignment is not a fatal flaw which renders the transfer invalid as the Republic posits. In the case at bar, there appears to be no dispute that the stock certificates covering the subject shares were duly indorsed and delivered to the buyer, US Automotive. The parties to the sale, in fact, do not question the validity and legality of the transfer.
As to the other shares subject of this case, the Court explained that a stock certificate is merely a tangible evidence of ownership of shares of stock. Its presence or absence does not affect the right of the registered owner to dispose of the shares covered by the stock certificate. The fact that the stock

certificates covering the shares registered under the names of Campos, Cojuangco and Zalamea were found in Menzi's possession does not necessarily prove that the latter owned the shares.

FACTS

Following a lead that President Ferdinand Marcos had substantial holdings in Bulletin Publishing Corporation (Bulletin), the Presidential Commission on Good Government (PCGG) issued a Writ of Sequestration relevant to the shares of Marcos, Emilio T. Yap, Eduardo M. Cojuangco, Jr., and their nominees and agents in Bulletin. This was followed by another Writ of Sequestration as to the shares of stock of Hans Menzi Holdings and Management, Inc. (HMHMI).

The Republic then instituted before the Sandiganbayan a complaint for reconveyance, reversion, accounting, restitution and damages. The complaint substantially averred that Yap, Cojuanco and Cesar Zalamea acted as the dummy of the Marcos spouses in acquiring substantial shares in Bulletin in order to prevent disclosure and recovery of illegally obtained assets and that Zalamea established, together with third persons, HMHMI which acquired Bulletin. Zalamea was eventually dropped as defendant in view of the Deed of Assignmen which he executed, assigning to the Government the 121,178 Bulletin shares registered in his name. The Estate of Hans M. Menzi (Estate of Menzi) was impleaded as defendant instead through its executor, Atty. Manuel G. Montecillo (Atty. Montecillo), as one of the defendants.

The Sandiganbayan rendered a decision declaring 244,678.5 shares as ill- gotten wealth of Marcos spouses, 198,052.5 of which were transferred to HMHMI and later on to Bulletin. The Estate of Menzi were order to surrender for cancellation the original eight Bulletin certificates of stock in its possession. As to the 154,472 shares (subject shares) sold by Menzi to US Automative, the Sandiganbayan ruled that the sale of such is valid and legal and does not involve ill-gotten wealth because the same was made pursuant to the stock option executed between the parties to the sale. It must be noted that previously, Menzi purchased the entire interest in Bulletin from its founder while Yap, owner of US Automotive, purchased Bulletin shares from Menzi and became one of the corporation's major stockholders. A stock option was subsequently executed by and between Menzi and Menzi and Co. and Yap and US Automotive whereby the parties gave each other preferential right to buy the other's Bulletin shares. Thereafter, Atty. Amorsolo V. Mendoza, Vice President of US Automotive, executed a promissory note with his personal guarantee in favor of Menzi, promising to pay a certain sum in consideration for Menzi's sale of the subject shares. A court confirmed the said sale and, accordingly, Atty. Montecillo received from US Automotive 2 checks in full payment of the agreed purchase price and interest for the sale of the subject 154,472 shares.

The Republic insists that the 154,472 shares should be considered as ill-gotten wealth. The sale was a sham because the parties failed to comply with the basic requirement of a deed of sale in the transfer of the subject shares. On the other hand, the Estate of Menzi and HMHMI claim that the requirements for a valid transfer of stocks, namely: (1) there must be delivery of the stock certificate; (2) the certificate must be indorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (3) the transfer must be recorded in the books of the corporation in order to be valid against third parties, have all been met. The parties to the sale confirm the indorsement and delivery of the subject shares while US Automotive exercised its rights as a shareholder, thus, the transfer was recorded in the books of Bulletin. Furthermore, it was asserted that the absence of a deed of sale is not irregular because the law itself does not require any deed for the validity of the transfer of shares of stock. A stock certificate covering the subject shares was also issued to US Automotive.

On the other hand, as to the 244,768.5 shares declared by the Sandiganbayan as ill- gotten wealth, the Estate of Menzi claims that such is a mistake because Jose Y. Campos, Cojuangco and Zalamea, the supposed owners of the said shares, are nominees of Menzi.

ISSUE

A. Whether the sale of 154,470 shares of stock of Bulletin by Menzi to U.S. Automotive is valid and legal. (YES)
B. Whether the 244,678.5 shares are correctly declared as ill-gotten wealth. (YES)

RULING

(A) The Corporation Code acknowledges that the delivery of a duly indorsed stock certificate is sufficient to transfer ownership of shares of stock in stock corporations. Such mode of transfer is valid between the parties. In order to bind third persons, however, the transfer must be recorded in the books of the corporation. Clearly then, the absence of a deed of assignment is not a fatal flaw which renders the transfer invalid as the Republic posits.

In the case at bar, there appears to be no dispute that the stock certificates covering the subject shares were duly indorsed and delivered to the buyer, US Automotive. The parties to the sale, in fact, do not question the validity and legality of the transfer.

The objection raised by the Republic actually concerns the authority of Atty. Montecillo to indorse the stock certificates. This must fail. Atty. Montecillo's authority to negotiate the transfer and execute the necessary documents for the sale of the subject shares is found in the General Power of Attorney executed by Menzi which specifically authorizes Atty. Montecillo to sell any and all shares of stock standing in Menzi's name on the books of any and all corporation, among others. On the other hand, Atty. Montecillo's authority to accept payment of the purchase price after Menzi's death springs from the latter's will and the order of the court confirming the sale and authorizing Atty. Montecillo to accept payment therefor.

(B) The Court did not disturb Sandiganbayan's findings that the 244,678.5 shares are ill- gotten wealth. The Estate of Menzi and HMHMI was not able prove their allegation that Campos, Cojuangco and Zalamea are Menzi's nominees. It is important to note that the Estate of Menzi did not include the said shares in the inventory of the estate's assets. If, as it claims, these were held by the three as nominees of Menzi, these shares should have been included in the inventory. The justification advanced for the non-inclusion, which is that the stock certificates covering them were not in the possession of Atty. Montecillo, is nothing but a hollow pretext given the fact that even after the certificates came to Atty. Montecillo's possession, an updated inventory declaring the said shares as part of Menzi's estate was not filed. Even so, the fact that the stock certificates covering the shares registered under the names of Campos, Cojuangco and Zalamea were found in Menzi's possession does not necessarily prove that the latter owned the shares. A stock certificate is merely a tangible evidence of ownership of shares of stock. Its presence or absence does not affect the right of the registered owner to dispose of the shares covered by the stock certificate.

- Nautica Canning Corporation vs. Yumul 473 SCRA 415 (2005)

NAUTICA CANNING CORPORATION, FIRST DOMINION PRIME HOLDINGS, INC. and FERNANDO R. ARGUELLES, JR., *Petitioners,* -versus – ROBERTO C. YUMUL, *Respondent.*
G.R. No. 164588, FIRST DIVISION, October 19, 2005, YNARES-SANTIAGO, *J.*

The validity of incorporation is not affected when an incorporator gives nominal ownership of only 1 share of stock to each of the other 4 incorporators. This is not necessarily illegal. However, it must be noted that this is valid only between or among the incorporators privy to the agreement. It does bind the corporation which, at the time the agreement is made, was non-existent. As such, incorporators continue to be stockholders unless, subsequent to the incorporation, they have validly transferred their subscriptions to the real parties in interest. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.

In the case at bar, Yumul is found to be a stockholder of Nautica for 1 share of stock which was recorded in Yumul's name although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws as well as the General Information Sheet indicated that Yumul was an incorporator and a subscriber of 1 share. Even granting that there was an agreement between Yumul and Dee as stated above, the same is binding only between them.

FACTS

Nautica Canning Corporation (Nautica) was incorporated with an authorized capital stock of P40 million divided into 400,000 shares. One of its stockholders is Alvin Dee who have 89,991 shares, making him own the majority of the outstanding capital shares.

Roberto C. Yumul was then appointed as the Chief Operating Officer/General Manager of Nautica. On the same date, First Dominion Prime Holdings, Inc. (FDPHI), Nautica's parent company, through its Chairman, Alvin Y. Dee, granted Yumul an option to purchase up to 15% of the total stocks it subscribed from Nautica.

Subsequently, a deed of trust and assignment was executed between FDPHI and Yumul whereby the former assigned 14,999 of its subscribed shares in Nautica to the latter. The deed stated that the shares were acquired and paid for in the name of the assignor only for convenience but actually executed in behalf of and in trust for the asignee.

Yumul resigned from Nautica. He then wrote a letter to Dee requesting the latter to formalize his offer to buy Yumul's 15% share in Nautica and demanding the issuance of the corresponding certificate of shares in his name should Dee refuse to buy the same. Dee denied the request claiming that Yumul was not a stockholder of Nautica.

Subsequently, Yumul requested that the deed of trust and assignment be recorded in the stock and transfer book of Nautica, and that he, as a stockholder, be allowed to inspect its books and records. These requests were denied allegedly because he neither exercised the option to purchase the shares nor paid for the acquisition price of the 14,999 shares. The cash dividends received by Yumul in consonance withi his shares of stock are allegedly held by him only in trust for FDPHI.

Consequently, Yumul filed before the SEC a petition for mandamus with damages, with prayer that the deed of trust and assignment be recorded in the stock and transfer book of Nautica and that the certificate of stocks corresponding thereto be issued in his name. The SEC ruled in favor of Yumul.

ISSUE

Whether Yumul may inspect the stock and transfer book.

RULING

It is possible for a business to be wholly owned by 1 individual. The validity of its incorporation is not affected when such individual gives nominal ownership of only 1 share of stock to each of the other 4 incorporators. This is not necessarily illegal. However, it must be noted that this is valid only between or among the incorporators privy to the agreement. It does bind the corporation which, at the time the agreement is made, was non-existent. As such, incorporators continue to be stockholders unless, subsequent to the incorporation, they have validly transferred their subscriptions to the real parties in interest. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.

In the case at bar, Yumul is found to be a stockholder of Nautica for 1 share of stock which was recorded in Yumul's name although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws as well as the General Information Sheet indicated that Yumul was an incorporator and a subscriber of 1 share. Even granting that there was an agreement between Yumul and Dee as stated above, the same is binding only between them. From the corporation's vantage point, Yumul is its stockholder with 1 share considering that there is no showing that Yumul transferred his subscription to Dee.

The conduct of the parties also constitute sufficient proof of Yumul's status as a stockholder. Yumul was elected during the regular annual stockholders' meeting as a director of Nautica's board of directors and eventually as its president. Thus, Nautica and its stockholders knowingly held respondent out to the public as an officer and a stockholder of the corporation.
As to whether Yumul is beneficial owner of the 14,999 shares of Nautica, the Court held that he is not so because Yumul failed to exercise the option. There was no cause or consideration for the deed of trust and assignment which makes it void for being simulated or fictitious.

- Trans Middle East (Phils.) vs. Sandiganbayan. 490 SCRA 455 (2006)

TRANS MIDDLE EAST (PHILS.), *Petitioner*, -versus – SANDIGANBAYAN (5th Division) PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), THE BOARD OF DIRECTORS OF EQUITABLE PCI BANK, REPRESENTED BY ITS CHAIRMAN, CORAZON DELA PAZ and SABINO ACUT, JR. (IN HIS CAPACITY AS CORPORATE SECRETARY OF EQUITABLE PCI BANK), *Respondents.*

G.R. No. 172556, EN BANC, June 9, 2006, TINGA, *J.*

It is settled that as a general rule, the registered owner of the shares of a corporation, even if they are sequestered by the government through the PCGG, exercises the right and the privilege of voting on them. The PCGG as a mere conservator cannot, as a rule, exercise acts of dominion by voting these shares. The registered owner of sequestered shares may only be deprived of these voting rights, and the PCGG authorized to exercise the same, only if the latter is able to establish that (1) there is prima facie evidence showing that the said shares are ill-gotten and thus belong to the State; and (2) there is an imminent danger of dissipation, thus necessitating the continued sequestration of the shares and authority to vote thereupon by the PCGG while the main issue is pending before the Sandiganbayan.

In the case, at bar, the Sandiganbayan or any other court has yet to pronounce any findings as to the things that must be established before the registered owner may be deprived of his right to vote. In fact, the Sandiganbayan, in one of its resolutions, instead declared that TMEE possessed "a prima facie right" as the registered owner of the sequestered shares, and that there appeared to be "no strong grounds for apprehension of dissipation or loss of assets of TMEE." It must be noted that the subject shares are even deposited in escrow on the initiative of TMEE itself. Moreover, the shares of TMEE comprise only of 7.13% of the outstanding capital stock of EPCIB and would entitle TMEE to only one 1 seat in the 15-person Board of Directors.

FACTS

Trans Middle East (Phil.) Equities Inc. (TMEE) is the registered owner of 6,119,067 common shares of stock in the then PCBank, now Equitable-PCI Bank. These shares were sequestered by the Presidential Commission on Good Government (PCGG) on the theory that since they actually belong to Benjamin Romualdez, they constitute illegally acquired wealth. Thereafter, a complaint was filed against Romualdez by the PCGG before the Sandiganbayan for the recovery of these shares. Upon motion, TMEE was allowed to intervene and it sought to enjoin the PCGG from voting these shares. Eventually, the Sandiganbayan resolved to enjoin the PCGG from voting the subject shares and authorize TMEE to exercise its voting rights. However, the Court issued a TRO enjoining the implementation of these Sandiganbayan resolutions.

After some time, the Sandiganbayan proceeded to recognize the right of TMEE to vote the EPCIB shares of stock registered in its name. It justified such recognition based on the following premises, among others: (a) that the PCGG which bore the burden of proof to show prima facie foundation for the sequestration had failed to timely do so and (b) that no damage or dissipation of the sequestered shares would result should TMEE be allowed to vote them.

Meanwhile, a Motion for Execution of the Court's decision in G.R. Nos. 105808 and 105809 promulgated on 10 years earlier was filed by the PCGG. Desiring to exercise its voting rights as upheld by the Court, the PCGG prayed of the Sandiganbayan to issue the appropriate order permitting it to vote the sequestered shares or, in the alternative, to order re-enforced and/or reissued the previous TRO. Because of the fact that the stockholders' meeting will happen in a short amount of time, there was an urgent need for the same. It was also alleged that they had received reports that the Romualdezes are bent on disposing of their shares in EPCIB and that should they gain control of the bank, there is a danger that the sequestered shares might dissipate. In response thereto, the Sandiganbayan issued a resolution where it acknowledged that the resolution recognizing TMEE's right to vote had not yet attained finality since it still had to resolve the motions for reconsideration related thereto filed by PCGG. As such, TMEE filed the present petition for the issuance of a TRO to preserve the status quo wherein TMEE was allowed to vote the shares registered in its name.

In the absence of an injunctive order restraining the holding of the stockholders' meeting, the same was held. Over the objections of TMEE, the election of a new Board of Directors of EPCIB was held. Since TMEE was not allowed to vote its shares, it was unable to elect any representative to the Board of Directors despite the fact that it maintained enough shares to be entitled to at least one board seat.

ISSUE

Whether TMEE was rightfully deprived of its right to vote its shares. (NO)

RULING

It is settled that as a general rule, the registered owner of the shares of a corporation, even if they are sequestered by the government through the PCGG, exercises the right and the privilege of voting on them. The PCGG as a mere conservator cannot, as a rule, exercise acts of dominion by voting these shares. The registered owner of sequestered shares may only be deprived of these voting rights, and the PCGG authorized to exercise the same, only if the latter is able to establish that (1) there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and (2) there is an imminent danger of dissipation, thus necessitating the continued sequestration of the shares and authority to vote thereupon by the PCGG while the main issue is pending before the Sandiganbayan. Clearly, the existence of the writ of sequestration alone would not legally justify barring a registered owner from voting its shares.

In the case, at bar, the Sandiganbayan or any other court has yet to pronounce any findings as to the things that must be established before the registered owner may be deprived of his right to vote. In fact, the Sandiganbayan, in one of its resolutions, instead declared that TMEE possessed "a *prima facie* right" as the registered owner of the sequestered shares, and that there appeared to be "no strong grounds for apprehension of dissipation or loss of assets of TMEE." It must be noted that the subject shares are even deposited in escrow on the initiative of TMEE itself. As such, the only way by which these shares may be diminished or dissipated would be through radical corporate changes within EPCIB such as through the increase of capital stock or even through the dissolution or merger of the bank itself. It is highly dubious that TMEE could, by exercising its right to vote the shares, effect such changes that would dissipate those stocks since the shares of TMEE comprise only of 7.13% of the outstanding capital stock of EPCIB and would entitle TMEE to only one 1 seat in the 15-person Board of Directors. TMEE is very much a minority stockholder in Equitable-PCI Bank, and on its own, incapable of imposing its will on the bank.

- Pacific Basin Securities vs. Oriental Petroleum 531 SCRA 667 (2007)

PACIFIC BASIN SECURITIES CO., INC., ***Petitioner,*** **-versus – ORIENTAL PETROLEUM and MINERALS CORP. and EQUITABLE BANKING CORP.,** ***Respondents.***
G.R. No. 143972, THIRD DIVISION, August 31, 2007, AUSTRIA-MARTINEZ, *J.*

ORIENTAL PETROLEUM and MINERALS CORP., EQUITABLE BANKING CORP. and ROBERT COYIUTO, JR., ***Petitioners,*** **-versus – PACIFIC BASIN SECURITIES CO., INC.,** ***Respondent.***
G.R. No. 144056, THIRD DIVISION, August 31, 2007, AUSTRIA-MARTINEZ, *J.*

PACIFIC BASIN SECURITIES CO., INC., ***Petitioner,*** **-versus – ORIENTAL PETROLEUM and MINERALS CORP., EQUITABLE BANKING CORP., ROBERTO COYIUTO and ETHELWOLDO FERNANDEZ,** ***Respondents.***
G.R. No. 144631, THIRD DIVISION, August 31, 2007, AUSTRIA-MARTINEZ, *J.*

The right of a transferee/ assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. As previously ruled by the Court, the corporation's obligation to register is ministerial. In transferring stock, the secretary of a corporation does not try to decide the question of ownership. As such, if the corporate secretary refuses to do so without good cause, he may be compelled by mandamus.

There is, however, a limitation. It is imposed by Section 63 of the Corporation Code when the corporation holds any unpaid claim against the shares intended to be transferred.

In the case at bar, Pacific Basin satisfied the condition of full payment of the OPMC shares as evidenced by the FRMC Buy Invoice No. 14200. This fact was never denied by both OPMC and EBC. Therefore, it is a ministerial duty on the part of OPMC to record the transfer in its stock and transfer book and issue new stock certificates.

FACTS

Pacific Basin Securities, Inc. (Pacific Basin), through the stock brokerage firm First Resources Management and Securities Corporation (FRMSC), purchased 308.3 million Class "A" shares of Oriental Petroleum and Minerals Corporation (OPMC). Pacific Basin fully paid for the same which are listed and traded in the Makati Stock Exchange.

The OPMC shares turned out to be owned by Piedras Petroleum Mining Corporation (Piedras Petroleum), a sequestered company controlled by the nominees of the Presidential Commission on Good Government (PCGG). Consequently, PCGG sent a letter to Equitable Banking Corporation (EBC), OPMC's stock and transfer agent, confirming Piedras Petroleum's sale of the OPMC shares in favor of Pacific Basin through FRMSC. It requested EBC to record the acquisition of said shares and to issue the corresponding certificates of stock. The requests were left unheeded on 2 grounds: a) that the endorser of the stock certificate, Mr. Clemente Madarang, was not among the authorized signatories of Piedras Petroleum; and b) that there was no board resolution from Piedras Petroleum which authorized the sale of the OPMC shares. FRMSC then complied with the requirements imposed by EBC and renewed its demand. However, the request again proved futile.

Consequently, Pacific Basin filed a Petition for Mandamus alleging that a) when EBC refused to record its acquisition of the shares and to issue the corresponding certificates of stock, it is in grave neglect of the performance of its ministerial duty specifically enjoined by Section 63 of the Corporation Code and b) there was a violation of OPMC's by- laws which mandates the issuance of certificate of stock to each holder of fully paid stock. In their Answer, OPMC and EBC claimed that the government's title over the subject OPMC shares was based on the cession made by Mr. Roberto S. Benedicto, an associate of former President Ferdinand Marcos, in exchange for immunity from prosecution and suit by the government for allegedly amassing ill-gotten wealth. However, a Temporary Restraining Order was issued enjoining the enforcement of the Compromise Agreement stated above. Thus, OPMC and EBC maintained that the basis for PCGG's claim of title over the OPMC shares disappeared.

The SEC ruled in favor of Pacific Basin. The subject shares have been fully paid by Pacific Basin. As such, it is the ministerial duty of OPMC and EBC to transfer the shares in the corporate books and issue certificates of stock in favor of Pacific Basin. The corporate officers of OPMC acted in bad faith when they refused. The CA affirmed in toto this SEC ruling.

ISSUE

Whether EBC is in grave neglect of the performance of its ministerial duty when it refused to record acquisition of OPMC shares and to issue the corresponding certificates of stock. (YES)

RULING

The right of a transferee/ assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. As previously ruled by the Court, the corporation's obligation to register is ministerial. In transferring stock, the secretary of a corporation does not try to decide the question of ownership. As such, if the corporate secretary refuses to do so without good cause, he may be compelled by mandamus.

There is, however, a limitation. It is imposed by Section 63 of the Corporation Code when the corporation holds any unpaid claim against the shares intended to be transferred.

In the case at bar, Pacific Basin satisfied the condition of full payment of the OPMC shares as evidenced by the FRMC Buy Invoice No. 14200. This fact was never denied by both OPMC and EBC. Therefore, upon Pacific Basin's full payment of the OPMC shares, it became a ministerial duty on the part of OPMC to record the transfer in its stock and transfer book and issue new stock certificates. OPMC's and EBC's refusal to record the transfer is violative of Section 63 of the Corporation Code and OPMC's own a by-laws which state that certificate of stock shall be issued to each holder of fully paid stock.

It must be noted that the rights of an innocent purchaser of shares of stock cannot be prejudiced and has to be protected especially when the purchase of the shares are coursed through the stock market. An investor when purchasing in the stock market has every right to presume that the shares traded therein are free from any defect, and that upon purchase of the said shares, it will be registered in his name in the corporate books. Instead of building investor's confidence and encourage investment, every investor will have second thoughts as they will be purchasing shares subject to a caveat that there is no guaranty the shares they buy are good or transferable to his name.

- Valley Golf and Country Club, Inc., vs. Vda. De Caram 585 SCRA 218 (2009)

VALLEY GOLF & COUNTRY CLUB, INC., *Petitioner,* -versus – ROSA O. VDA. DE CARAM, *Respondent.*
G.R. No. 158805, SECOND DIVISION, April 16, 2009, TINGA, *J.*

The procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation vis-à-vis a member's outstanding dues. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share he subscribed thereby authorizing the stock corporation to call on the unpaid *subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction. In the case at bar, the share of Caram in Valley Golf is already fully paid.*

On the other hand, there is a specific provision under Title XI on Non-Stock Corporations of the Corporation Code dealing with the termination of membership. Section 91 of the Corporation Code provides:

> *Membership shall be terminated* ***in the manner and for the causes provided in the articles of incorporation or the by-laws****. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws.*

Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone as is the situation in this case. Thus, both the SEC and the CA are wrong in holding that the establishment of a lien and the loss of the Golf Share consequent to the enforcement of the lien should have been provided for in the articles of incorporation.

FACTS

Petitioner operates a golf course. The members and their guests are entitled to play golf on the said course and avail of the facilities and privilege. The shareholders, however, are assessed with monthly membership dues.

Cong. Fermin Z. Caram, Jr., respondent's husband, subscribed and paid in full 1 Golf Share and was subsequently issued with a stock certificate. It was alleged that Caram stopped paying his monthly dues and 5 letters concerning the delinquent account were sent to Caram through the mailing address he has allegedly given. Pursuant to the provisions of the by-laws, the petitioner warned Caram that should he continue to default on his membership dues, it would exercise its right to sell the Golf Share to satisfy the outstanding amount. Eventually, the Golf Share was sold at public auction after the BOD had authorized the sale and the notice of auction sale was published.

It turned out that Caram already died. Unaware of the pending controversy over the Golf Share, the the Golf Share was included as part of Caram's estate. It was only through a letter that his heirs learned of the sale of the Golf Share following their inquiry with the petitioner. Consequently, Rosa O. Vda. De Caram filed an action for reconveyance before SEC.

The SEC rendered a decision in favor of Rosa, ordering the petitioner to convey ownership of the Golf Share, or in the alternative, to issue 1 fully paid share of stock of Valley Golf of the same class as the Golf Share. It was ruled that, under Section 67 of the Corporation Code, a share stock could only be deemed delinquent and sold in an extrajudicial sale at public auction upon the failure of the stockholder to pay the unpaid subscription for the share. Such could not have applied in Caram's case since he had fully paid for the Golf Share and he had been assessed for his delinquent club dues. As such, the auction sale had no basis in law. Moreover, as to the argument that the sale was authorized under the by-laws, it was ruled that pursuant to Section 6 of the Corporation Code, a provision creating a lien upon shares of stock for unpaid debts of stockholders to the corporation should be embodied in the articles of incorporation and not merely in the by-laws. The articles of incorporation of the petitioner did not impose any lien, liability or restriction on the Golf Share or even any condition that the Golf Share would be subject to assessment of monthly dues or a lien on the share for non-payment of such dues. Lastly, it was ruled that Caram was not properly notified of the delinquencies, citing Caram's letter about the change in his mailing address. Most of the letters were also after Caram's death. The CA affirmed this SEC decision.

ISSUE

A. Whether the SEC and CA, using Section 67 of the Corporation Code, are correct in ruling that Valley Golf wrongly sold Caram's share. (YES)
B. Whether the SEC and CA are correct in ruling that the lien on the Golf Share is not valid since the power to constitute such a lien should be provided in the articles of incorporation and not merely in the by-laws per Article 6 of the Corporation Code (NO) and, consequently, whether the sale is valid (NO)

RULING

(A) The procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation vis-à-vis a member's outstanding dues. The basic factual backdrops in the two situations are different. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share he subscribed thereby authorizing the stock corporation to call on the unpaid subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction. In the case at bar, the share of Caram in Valley Golf is already fully paid.

(B) There is a specific provision under Title XI on Non-Stock Corporations of the Corporation Code dealing with the termination of membership. Section 91 of the Corporation Code provides:

> Membership shall be terminated **in the manner and for the causes provided in the articles of incorporation or the by-laws**. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws.

Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone as is the situation in this case. Thus, both the SEC and the CA are wrong in holding that the establishment of a lien and the loss of the Golf Share consequent to the enforcement of the lien should have been provided for in the articles of incorporation.

Be that as it may, the Court declare the sale as invalid. Valley Golf acted in bad faith when it sent the final notice to Caram under the pretense that it believed him to be still alive when in fact it had very well known that he had already died. It must be noted that the 3rd and 4th letter which were sent after Caram had died were both addressed to "Est. of Fermin Z. Caram, Jr.". However, the 5th and final letter was again addressed to Fermin Caram himself and not to his estate as if he was still alive. As such, the Court concluded that this signifies that Valley Golf was bent on selling the Golf Share, impervious to potential complications that would impede its intentions, such as the need to pursue the claim before the estate proceedings of Caram. By pretending to assume that Caram was then still alive, Valley Golf would have been able to capitalize on his previous unresponsiveness to their notices and proceed in feigned good faith with the sale.

- Calatagan Golf Club, Inc. vs. Clemente, Jr. 585 SCRA 300 (2009)

CALATAGAN GOLF CLUB, INC., *Petitioner,* -versus – SIXTO CLEMENTE, JR., *Respondent.*
G.R. No. 165443, SECOND DIVISION, April 16, 2009, TINGA, *J.*

Section 69 of the Corporation Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within 6 months from the date of sale. This provision, however, is not applicable in the present case. This is because such refers only to unpaid subscriptions to capital stock and, in the case at bar, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. Instead, Article 1140 of the Civil Code is applicable which provides that an action to recover movables shall prescribe in 8 years. It must be noted that Calatagan's action is for the recovery of a share of stock plus damages.

In any case, the delinquent sale is not valid. In the case at bar, Calatagan did not actually comply with the procedures as stated in the by-laws when it sold Clemente's share. It must be remembered that the third and final letter was again sent to Clemente's mailing address despite Calatagan's prior knowledge that the same is already closed. Due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address which, under the By-Laws, have to be kept on file and are in fact on file. One telephone call to Clemente's phone numbers on file would have alerted him of his impending loss.

Calatagan wanted to fault Clemente for failing to notify the club of the closure of the postal box. This cannot be supported by the Court. Knowing as he did that Calatagan was in possession of his home address as well as his residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him.

FACTS

Clemente applied to purchase 1 share of stock of Calatagan Golf Club, Inc., indicating in his application for membership his mailing address at "Phimco Industries, Inc. – P.O. Box 240, MCC", complete residential address, office and residence telephone numbers and the company with which he was connected. Subsequently, Calatagan issued to him Certificate of Stock No. A-01295.

It is the practice of Calatagan to charge monthly dues on its members to meet expenses for general operations. This policy is incorporated in its Articles of Incorporation and By-Laws and the same is reproduced at the back of each certificate of stock. Initially, Clemente was able to pay his monthly dues. However, after some time, he ceased to do so.

10 months from the time of Clemente's default, Calatagan made the initial step to collect Clemente's back accounts by sending a demand letter twice. Both letters were sent to Clemente's mailing address as indicated in his application. However, they were sent back to sender with the postal note that the address had been closed. Calatagan then declared Clemente delinquent for having failed to pay his monthly dues for more than 60 days. Clemente's name was also included in the list of delinquent members posted on the club's bulletin board. Eventually, Calatagan's board of directors adopted a resolution authorizing the foreclosure of shares of delinquent members, including Clemente's and the public auction of these shares.

A third and final letter was sent to Clemente, this time signed by its Corporate Secretary and contained a warning that unless he settles his outstanding dues, his share would be included among the delinquent shares to be sold at public auction. Again, it was sent to Clemente's mailing address that had already been closed.

Since the demand went unheeded, a notice of auction sale was posted on the Club's bulletin board, as well as on the club's premises. At the said auction sale in 1993, Clemente's share was purchased by Nestor A. Virata. A notice of foreclosure was also published.

Clemente learned of the sale of his share only in 1997. Consequently, he filed a claim with the SEC, 4 years after the sale, seeking the restoration of his shareholding. The SEC then rendered a decision dismissing the complaint. Citing Section 69 of the Corporation Code which provides that the sale of shares at an auction sale can only be questioned within 6 months from the date of sale, the SEC concluded that Clemente's claim had already prescribed. It must be noted that Calatagan had complied with all the requirements for a valid sale considering that Clemente failed to inform the former that the address he had earlier supplied was no longer his address. The CA, however, reversed the decision of the SEC and restored Clemente's 1 share. Section 69 refers only to unpaid subscriptions and not to any other debt of stockholders. Moreover, Calatagan very well knew that its third and final demand letter also sent to the same mailing address that was closed would not be received by Clemente. In any case, a person who is in danger of the imminent loss of his property has the right to be notified and be given the chance to prevent the loss.

ISSUES

A. Whether the action filed by Clemente is already prescribed. (NO)
B. Whether the delinquent sale is valid. (NO)

RULING

(A) Section 69 of the Corporation Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within 6 months from the date of sale. This provision, however, is not applicable in the present case. As correctly pointed out by the Court of Appeals, such refers only to unpaid subscriptions to capital stock. In the case at bar, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. As such, Calatagan's reliance on Section 69 is without merit.

Instead of Section 69 as stated above, Article 1140 of the Civil Code is applicable. It provides that an action to recover movables shall prescribe in 8 years. It must be noted that Calatagan's action is for the recovery of a share of stock plus damages.

(B) Calatagan's Articles of Incorporation and By- Laws admittedly provides for a clear and comprehensive procedure to govern the payment of monthly dues, the declaration of a member as delinquent, and the constitution of a lien on the shares for any debt a member may have in favor of it. They actually affords due protection to the member by assuring that the member should be notified by the Corporation Secretary of the looming execution sale that would terminate membership in the club.

However, in the case at bar, Calatagan did not actually comply with the procedures as stated in the by-laws when it sold Clemente's share. It must be remembered that the third and final letter was again sent to Clemente's mailing address despite Calatagan's prior knowledge that the same is already closed. It is unacceptable that Atty. Benjamin Tanedo, Jr., Calatagan's Corporate Secretary, who signed the said letter and is presumed knowledgeable on the law and on the standards of good faith and fairness that the law requires, committed such a huge mistake.

Contrary to Calatagan's assertion that it "exercised due diligence before the foreclosure sale", the Court is of belief that it is actually in bad faith. It must be noted that due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address which, under the By-Laws, have to be kept on file and are in fact on file. Significantly, Atty. Tanedo, Jr. does not even have to do the actual verification of other addressees on record by his own. A mere clerk can do the very simple task of checking the files. In fact, one telephone call to Clemente's phone numbers on file would have alerted him of his impending loss. In any case, a careful perusal of Calatagan's By-Laws reveals that it does not require that the final notice prior to the auction sale be made solely through the member's mailing address.

Calatagan wanted to fault Clemente for failing to notify the club of the closure of the postal box. This cannot be supported by the Court. Knowing as he did that Calatagan was in possession of his home address as well as his residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him. In addition, he was not even aware of the closure of the postal box as the maintenance of such was not his responsibility but his employer Phimco's.

It must be noted that a non-stock corporation like Calatagan is not exempt from that obligation of treating its members rightly. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

- Joselito Musni Puno vs. Puno Enterprises, Inc., represented by Jesusa Puno, G.R. No. 177066, September 11, 2009

JOSELITO MUSNI PUNO (AS HEIR OF THE LATE CARLOS PUNO), ***Petitioner,*** **-versus – PUNO ENTERPRISES, INC., REPRESENTED BY JESUSA PUNO,** ***Respondent.***
G.R. No. 177066, THIRD DIVISION, September 11, 2009, NACHURA, *J.*

The stockholder's right of inspection of the corporation's books and records is based upon his ownership of shares in the corporation and the necessity for self-protection. Such right rests upon the stockholder's underlying ownership of the corporation's assets and property. In the case at bar, petitioner failed to establish his right to do so as he was not able to prove satisfactorily his filiation to the deceased stockholder. There was no evidence that Carlos L. Puno acknowledged petitioner as his son in the latter's certificate of live birth.

In any case, it must be noted that upon the death of a shareholder, the heirs do not automatically become stockholders and acquire the rights and privileges of the deceased as shareholder of the corporation. The stocks must be distributed first to the heirs in estate proceedings, and the transfer of the stocks must be recorded in the books of the corporation. During such interim period, the heirs stand as the equitable *owners of the stocks while the executor or administrator duly appointed by the court being vested with the legal title to the stock. Consequently, during such time, it is the administrator or executor who is entitled to exercise the rights of the deceased as stockholder. As such, in the case at bar, even if petitioner presents sufficient evidence to establish that he is the son of Carlos L. Puno, he would still not be allowed to inspect respondent's books, absent any showing in its transfer book that some of the shares owned by Carlos L. Puno were transferred to him. This would only be possible if petitioner has been recognized as an heir and has participated in the settlement of the estate of the deceased.*

FACTS

The late Carlos L. Puno was an incorporator of respondent Puno Enterprises, Inc. Petitioner Joselito Musni Puno, claiming to be an heir of Carlos L. Puno, initiated a complaint for specific performance against respondent. Petitioner averred that he, as the surviving heir, is entitled to the rights and privileges of his late father as stockholder of respondent. He prayed that he be allowed to inspect its corporate book, render an accounting of all the transactions it entered into from 1962, and give petitioner all the dividends pertaining to the shares of Carlos L. Puno.

Respondent filed a motion to dismiss on the ground that petitioner did not have the legal personality to sue because his birth certificate names him as "Joselito Musni Muno." Apropos, there was yet a need for a judicial declaration that "Joselito Musni Puno" and "Joselito Musni Muno" were one and the same. Petitioner submitted the corrected birth certificate with the name Joselito M. Puno.

The court rendered a decision ordering Jesusa Puno and/or Felicidad Fermin to allow the petitioner to inspect the corporate books and records of the company from 1962 up to the present including the financial statements of the corporation. On appeal, the CA ordered the dismissal of the complaint as the petitioner was not able to establish the paternity of and his filiation to Carlos L. Puno. His birth certificate was prepared without the intervention of and the participatory acknowledgment of by Carlos L. Puno. Accordingly, the petitioner had no right to demand that he be allowed to examine respondent's books. He was not a stockholder of the corporation but was merely claiming rights as an heir of Carlos L. Puno, an incorporator of the corporation.

ISSUE

Whether petitioner is entitled to the reliefs demanded as an heir of the late Carlos Puno. (NO)

RULING

The stockholder's right of inspection of the corporation's books and records is based upon his ownership of shares in the corporation and the necessity for self-protection. Such right rests upon the stockholder's underlying ownership of the corporation's assets and property. After all, a shareholder has the right to be intelligently informed about the corporate affairs. Similarly, only stockholders of record are entitled to receive dividends declared by the corporation, a right inherent in the ownership of the shares.

In the case at bar, petitioner failed to establish his right to inspect respondent's books and receive dividends on the stocks owned by Carlos L. Puno as he was not able to prove satisfactorily his filiation to the deceased stockholder. There was no evidence that Carlos L. Puno acknowledged petitioner as his son in the latter's certificate of live birth.

In any case, it must be noted that upon the death of a shareholder, the heirs do not automatically become stockholders of the corporation and acquire the rights and privileges of the deceased as shareholder of the corporation. The stocks must be distributed first to the heirs in estate proceedings, and the transfer of the stocks must be recorded in the books of the corporation. During such interim period, the heirs stand as the equitable owners of the stocks while the executor or administrator duly appointed by the court being vested with the legal title to the stock. Consequently, during such time, it is the administrator or executor who is entitled to exercise the rights of the deceased as stockholder.

In the case at bar, even if petitioner presents sufficient evidence in this case to establish that he is the son of Carlos L. Puno, he would still not be allowed to inspect respondent's books and be entitled to receive dividends therefrom, absent any showing in its transfer book that some of the shares owned by Carlos L. Puno were transferred to him. This would only be possible if petitioner has been recognized as an heir and has participated in the settlement of the estate of the deceased.

- Marsh Thomson vs. Court of Appeals and the American Chamber of Commerce of the Philippines, Inc., G.R. No. 116631, October 28, 1998

MARSH THOMSON, *Petitioner*, -versus – COURT OF APPEALS and THE AMERICAN CHAMPER OF COMMERCE OF THE PHILIPPINES, INC, *Respondents.*
G.R. No. 116631, FIRST DIVISION, October 28, 1998, QUISUMBING, *J.*

As the Executive Vice-President of AmCham, Thomson occupied a fiduciary position in the business of AmCham. AmCham released the funds to acquire a share in MPC for the use of Thomson but obliged the latter to execute such document as necessary to acknowledge beneficial ownership thereof by the former. A trust relationship is, therefore, involved in this case and AmCham is the beneficial owner thereof. It must be noted that the claim of waiver of the beneficial ownership alleged by Thomson by the issuance of a Release and Quitclaim does not hold water. The quitclaim executed does not clearly show the intent to include therein the ownership over the MPC share.

Such being the case, it has been held that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the beneficiary, and the statute of limitations does not run between them. In the instant case, there was no declared or explicit repudiation of the trust existing between the parties. Such repudiation could only be inferred as evident when Thomson showed his intent to appropriate the MPC share for himself. In relation thereto, it has also been held that actions to recover movables shall prescribe 8 years from the time the possession thereof is lost unless the possessor has acquired the ownership by prescription for a less period of 4 years if in good faith. Since AmCham filed the necessary action on time and the defense of good faith is not available to Thomson, there is no basis for any purported claim of prescription.

FACTS

Marsh Thomson was the Executive Vice-President and, later on, the Management Consultant of the American Chamber of Commerce of the Philippines, Inc. (AmCham). While he was still working with AmCham, his superior, A. Lewis Burridge, retired as the President. He wanted to transfer his proprietary share in the Manila Polo Club (MPC) to Thomson. As such, through the intercession of Burridge, AmCham paid for the share listed in Thomson's name. Accordingly, MPC issued Proprietary

Membership Certificate Number 3398 in favor of Thomson who failed to execute a document recognizing AmCham's beneficial ownership over said share.

Following AmCham's practice of yearly renewing employment contracts, Thomson notified AmCham that he would no longer be available as Executive Vice President after September 30, 1989. As such, a consultancy arrangement was attempted to be entered into between the two However, when Thomson made a counter-proposal of retaining the MPC share subject to reimbursement of the purchase price to AmCham or P110,000.00, the latter rejected the same.

AmCham then demanded the return and delivery of the MPC share which it owns, but Thomson refused to do so. Consequently, a case was filed by AmCham before the trial court for the return of the MPC share.

The trial court awarded the MPC share to Thomson on the ground that the Articles of Incorporation and By-laws of MPC prohibit artificial persons to be club members. The CA, however, reversed this decision.

Before the Court, Thomson claims ownership of the MPC share, asserting that he merely incurred a debt to AmCham when the latter advanced the funds for the purchase of the share. On the other hand, AmCham asserts beneficial ownership.

ISSUES

A. Whether AmCham as the beneficial owner of the disputed share. (YES)
B. Whether Thomson may be ordered to transfer said share to AmCham's nominees. (YES)

RULING

(A) A debt is different from a trust. First, the beneficiary of a trust has beneficial interest in the trust property, while a creditor has merely a personal claim against the debtor. Second, in trust, there is a fiduciary relation between a trustee and a beneficiary, but there is no such relation between a debtor and creditor. Third, while a debt implies merely an obligation to pay a certain sum of money, a trust refers to a duty to deal with a specific property for the benefit of another. If a creditor-debtor relationship exists, but not a fiduciary relationship between the parties, there is no express trust. When the purported trustee of funds is entitled to use them as his or her own and commingle them with his or her own money, a debtor-creditor relationship exists and not a trust.

In the present case, as the Executive Vice-President of AmCham, Thomson occupied a fiduciary position in the business of AmCham. AmCham released the funds to acquire a share in MPC for the use of Thomson but obliged the latter to execute such document as necessary to acknowledge beneficial ownership thereof by the former. A trust relationship is, therefore, involved in this case.
There was also no waiver of the beneficial ownership over MPC share by the issuance of a Release and Quitclaim in favor of the Thomson as argued by the latter. The quitclaim executed does not clearly show the intent to include therein the ownership over the MPC share. Settled is the rule that a waiver to be valid and effective must, in the first place, be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him.
(B) The petitioner contends that the Articles of Incorporation and By-laws of MPC prohibit corporate membership. While true, this does not mean anything in the present case AmCham does not insist

nor intend to transfer the club membership in its name but to its designated nominee. In any case, the MPC does not necessarily prohibit the transfer of proprietary shares by its members. It only restricts membership to deserving applicants in accordance with its rules. It must be noted that the authority granted to a corporation to regulate the transfer of its stock does not empower it to restrict the right of a stockholder to transfer his shares, but merely authorizes the adoption of regulations as to the formalities and procedure to be followed in effecting transfer.

Moreover, it has been held that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the beneficiary, and the statute of limitations does not run between them. With regard to a constructive or a resulting trust, the statute of limitations does not begin to run until the trustee clearly repudiates or disavows the trust and such disavowal is brought home to the other party, "*cestui que trust*". In the instant case, there was no declared or explicit repudiation of the trust existing between the parties. Such repudiation could only be inferred as evident when Thomson showed his intent to appropriate the MPC share for himself.

As such, the actions to recover movables shall prescribe 8 years from the time the possession thereof is lost unless the possessor has acquired the ownership by prescription for a less period of 4 years if in good faith. Since AmCham filed the necessary action on time and the defense of good faith is not available to Thomson, there is no basis for any purported claim of prescription, after repudiation of the trust, which will entitle the latter to ownership of the disputed share.

- Majority of Stockholders of Ruby Industrial Corporation vs. Lim, G.R. No. 165887, June 6, 2011

MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, *Petitioners,* -versus – MIGUEL LIM, IN HIS PERSONAL CAPACITY AS STOCKHOLDER OF RUBY INDUSTRIAL CORPORATION and REPRESENTING THE MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION and THE MANAGEMENT COMMITTEE OF RUBY INDUSTRIAL CORPORATION, *Respondents.*
G.R. No. 165887, THIRD DIVISION, June 6, 2011, VILLARAMA, JR., *J.*

CHINA BANKING CORPORATION, *Petitioner,* -versus – MIGUEL LIM, IN HIS PERSONAL CAPACITY AS A STOCKHOLDER OF RUBY INDUSTRIAL CORPORATION and REPRESENTING THE MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, *Respondent.*
G.R. No. 165929, THIRD DIVISION, June 6, 2011, VILLARAMA, JR., *J.*

A stock corporation is expressly granted the power to issue or sell stocks. It is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock do not need approval of the stockholders. What is required is only a board resolution approving the additional issuance of shares. The validity of issuance of additional shares, however, may be questioned if done in breach of trust by the controlling stockholders.

In the case at bar, the issuance of additional shares was done in breach of trust by the controlling stockholders. The majority sought to impose their will and, through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself as well as the minority stockholders and the unsecured creditors. Even assuming that the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of *incorporation, an issue of shares may still be objected if the directors acted in breach of trust and if their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest.*

FACTS

Reeling from severe liquidity problems, Ruby Industrial Corporation (Ruby) filed petition for suspension of payments with the SEC which was granted. The SEC Hearing Panel created the management committee (MANCOM) for Ruby composed of representatives from Ruby's creditors. Subsequently, 2 rehabilitation plans were submitted to the SEC, the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim. However, the implementation of both majority plans has been enjoined. Notwithstanding the injunction order, SEC issued an order approving the Revised BENHAR/RUBY Plan and creating a new management committee to oversee its implementation.

The Revised BENHAR/RUBY Plan had proposed the calling for subscription of unissued shares through a Board Resolution from the P11.814 million of the P23.7 million Authorized Capital Stock (ACS) "in order to allow the long overdue program of the REHAB Program." To implement the Revised plan, Ruby's board of directors held a special meeting and took up the capital infusion of P11.814 million. It is resolved that the corporation be authorized to issue out of the unissued portion of the ACS in the form of common stocks 11.814 million shares to be subscribed and paid in full by the present stockholders in proportion to their present stockholding in the corporation on staggered basis and that should any of the stockholders fail to exercise their right to buy the number of shares they are qualified to buy, the other stockholders may buy the same. Only when none of the present stockholders are interested in the shares may there be a resort to selling them by public auction. The minority directors claimed they were not notified of said board meeting.

Consequently, Lim moved that the SEC declare as null and void the infusion of additional capital made by the majority stockholders and restore the capital structure of Ruby to its original structure prior to the time injunction was issued. Lim claimed that it was the board of directors and not the stockholders which conducted the meeting without the approval of the MANCOM. There was also no written waivers of the minority stockholders' pre-emptive rights and thus it was irregular to merely notify them of the board of directors' meeting and ask them to exercise their option. Moreover, there was no general information sheet reports made to the SEC on the alleged capital infusion, as per certification by the SEC.

ISSUE

Whether the additional capital infusion is valid. (NO)

RULING

A stock corporation is expressly granted the power to issue or sell stocks. It is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock do not need approval of the stockholders. What is required is only a board resolution approving the additional issuance of shares. The validity of issuance of additional shares, however, may be questioned if done in breach of trust by the controlling stockholders. In any case, the corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

As mentioned by Lim, pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class in proportion to their respective shareholdings. The stockholder, in this case, must be given a reasonable time within which to exercise their rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it. It must be noted, however, that such right may be restricted or denied under the articles of incorporation, subject to certain exceptions and limitations.

In the case at bar, the issuance of additional shares was done in breach of trust by the controlling stockholders. The majority sought to impose their will and, through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself as well as the minority stockholders and the unsecured creditors. Even assuming that the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objected if the directors acted in breach of trust and if their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest.

- Africa vs. Hon. Sandiganbayan, G.R. Nos. 172222/G.R. No. 174493/ G.R. No. 184636, November 11, 2013

VICTOR AFRICA, *Petitioner,* -versus – THE HONORABLE SANDIGANBAYAN and BARBARA ANNE C. MIGALLOS, *Respondents.*
G.R. No. 172222, THIRD DIVISION, November 11, 2013, ABAD, *J.*

EASTERN TELECOMMUNICATIONS PHILS., INC., (ETPI)-PCGG, *Petitioner,* -versus – VICTOR V. AFRICA, *Respondent.*
G.R. No. 174493, THIRD DIVISION, November 11, 2013, ABAD, *J.*

VICTOR AFRICA, *Petitioner,* -versus – THE HONORABLE SANDIGANBAYAN and EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., *Respondents.*
G.R. No. 184636, THIRD DIVISION, November 11, 2013, ABAD, *J.*

The second tier of the two-tiered test assumes a situation where the registered shareholders had been dissipating company assets and the PCGG wanted to step in, vote the sequestered shares, and seize control of its board to save those assets. Apparently, this was the situation obtaining at ETPI in 1991. The BAN group was then in control but the PCGG held a stockholders' meeting, sanctioned by the Court, and voted the sequestered shares to elect a new ETPI Board.
The two- tiered test, however, is not satisfied in 1997. It was the PCGG elected board that remained in control during that year and it apparently had done well in guarding company assets. Besides the 1997 shareholders' meeting had a limited purpose: to approve the increase in ETPI's authorized capital stock. There is no allegation that such increase had prejudiced the company's interest.

FACTS

Eastern Extension Australasia and China Telegraph Company, Ltd. (Eastern Extension) got instructions from the Marcos government to reorganize its telecommunications business in the Philippines into a 60/40 corporation in favor of Filipinos. As a result, Eastern Extension negotiated with Philippine Overseas Telecoms for the formation of Eastern Telecommunications Philippines, Inc. (ETPI), 60% of the capital stock of which went to the group consisting of Benedicto, Atty. Africa, and Nieto (BAN group). Subsequently, the BAN group spread its shares to three corporations, namely: Aerocom Investors, Universal Molasses, and Polygon Investors and Managers.

With the fall of the Marcos government, the Presidential Commission on Good Government (PCGG) sequestered the ETPI shares of the BAN group upon a prima facie finding that the same belonged to the favored Marcos cronies. On July 1987, PCGG filed with the Sandiganbayan a civil case to recover said shares.

During the annual stockholders' meeting of 1991, PCGG voted the sequestered shares. This resulted in the PCGG acquiring control of ETPI's operations. Thereafter, in order to comply with the requirements of E.O. 109 and R.A. 7925, a 1997 stockholders' meeting was held and PCGG again voted the sequestered shares to approve the increase in ETPI's authorized capital stock.

In G.R. 172222, Aerocom notified ETPI of its intention to sell its Class B shares to A.G.N Philippines (AGNP) so as to enable the latter to decide whether to exercise its option of first refusal. Subsequently, ETPI Board decided to waive the option. Upon notice to the shareholders, the Africa-led group wrote ETPI a letter, reserving the exercise of their own options until after a validly constituted ETPI Board could waive the company's option. This did not keep Aerocom from transferring its shares to AGNP. However, because of the need to comply with certain requirements, the transfer of shares in the Stock Transfer Book (STB) was delayed for more than 4 years after the sale. To complete the transfer, ETPI's corporate secretary filed with the Sandiganbayan a motion for the issuance of new stock certificates and the recording of entries in its Stock and Transfer Book (STB) which the Sandiganbayan granted. Africa's claim that the Sandiganbayan should first determine, before allowing transfer in its book, whether the PCGG validly voted the sequestered shares that elected ETPI's Board is denied.

In G.R. 174493, Sandiganbayan rendered a decision ruling that the PCGG's votes during the ETPI stockholders' meetings were invalid for failure to satisfy the two-tiered test. It found that, while the sequestered shares were prima facie ill-gotten, the PCGG failed to prove that ETPI's assets were in such imminent danger of dissipation as to warrant their intervention in the 1991 and 1997 stockholders' meetings. In response, PCGG claiming that the two-tiered test did not apply to ETPI. While the company was in no imminent danger of dissipation, this became possible only because the PCGG had ousted the BAN group from control.

In G.R. 184636, Africa filed a petition to allow him to hold a stockholders' meeting to elect a new ETPI Board. This was denied by the Sandiganbayan stating that the holding of a stockholders' meeting was not within its powers to decide.

ISSUES

A. Whether the determination on the validity of PCGG voting the sequestered shares must first be had before allowing transfer in ETPI's STB. (NO)

B. Whether the two-tiered test has been satisfied in the 1991 (YES) and 1997 (NO) stockholders' meeting.
C. Whether the Sandiganbayan has jurisdiction to order the holding of stockholders' meeting. (YES)

RULING

(A) Since neither the Sandiganbayan nor this Court enjoined ETPI's Board from performing its functions, no legal impediment prevented it from waiving ETPI's right of first refusal. For the same reason, the Sandiganbayan committed no error in allowing the subsequent registration of the sale in the book of the corporation.

The fact that the corporate secretary asked for leave to register the transfer 5 years after the sale did not make the transfer irregular. Since the law does not prescribe a period for such kind of registration, the action to enforce the right to have it done does not begin to toll until a demand for it had been made and was refused. This did not happen in this case.

(B) The second tier of the two-tiered test assumes a situation where the registered shareholders had been dissipating company assets and the PCGG wanted to step in, vote the sequestered shares, and seize control of its board to save those assets. Apparently, this was the situation obtaining at ETPI in 1991. The BAN group was then in control but the PCGG held a stockholders' meeting, sanctioned by the Court, and voted the sequestered shares to elect a new ETPI Board.

The Sandiganbayan said that no such dissipation threatened the company assets in 1991. Evidently, however, it overlooked the fact that when the BAN group was still in control of the corporation, the Court had occasion to admonish the Sandiganbayan for prohibiting the PCGG from calling a stockholders' meeting to elect a new ETPI Board. The clear implication of that admonition is that the PCGG was justified in seeking a change in the management of the company. Since neither the Sandiganbayan nor this Court enjoined that Board from assuming control, it cannot now be said that the PCGG had cast an invalid vote, rendering void all the Board's actions in the last 22 years.

The two- tiered test, however, is not satisfied in 1997. It was the PCGG elected board that remained in control during that year and it apparently had done well in guarding company assets. Besides the 1997 shareholders' meeting had a limited purpose: to approve the increase in ETPI's authorized capital stock. There is no allegation that such increase had prejudiced the company's interest.

(C) Section 2 of Executive Order 14 dated May 7, 1986 vests in the Sandiganbayan exclusive jurisdiction over all cases regarding "the funds, moneys, assets and properties illegally acquired or misappropriated by former president Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees" including "all incidents arising from, incidental to, or related to, such cases." As such, it follows that the Sandiganbayan can issue the requested order.

b. Subscription Agreements

- Philippine National Bank vs. Bitulok Sawmill, Inc., et al., G.R. Nos. L-24177-85, June 29, 1968

PHILIPPINE NATIONAL BANK, *Petitioner,* -versus – BITULOK SAWMILL, INC., DINGALAN LUMBER CO., INC., SIERRA MADRE LUMBER CO., INC., NASIPIT LUMBER CO., INC., WOODWORKS, INC., GONZALO PUYAT, TOMAS B. MORATO, FINDLAY MILLAR LUMBER CO., INC., ET AL., INSULAR LUMBER CO., ANAKAN LUMBER CO., AND CANTILAN LUMBER CO., INC., *Respondents.*

G.R. Nos. L-24177-85, EN BANC, June 29, 1968, FERNANDO, *J.*

It is an established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt.

In the case at bar, it would be unwarranted to ascribe to President Roxas the view that the payment of the stock subscriptions, as thus required by law, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. Even if such were the case and such a promise were in fact made to further the laudable purpose for which the proposed corporation would be devoted, still, the plain and specific wording of the applicable legal provision as interpreted by the Court must be controlling.

FACTS

The Philippine Lumber Distributing Agency, Inc. (Agency) was organized upon the initiative and insistence of the late President Manuel Roxas for the purpose of ensuring a steady supply of lumber which could be sold at reasonable prices to enable the war sufferers to rehabilitate their devastated homes. At the beginning, the lumber producers were reluctant to organize the Agency as they believed that the alien middleman would not be eliminated. However, because President Roxas promised to finance the Agency by making the Government invest P9.00 for every peso that the members would invest therein, the lumber producers eventually agreed thereto.

Accordingly, President Roxas instructed Hon. Emilio Abello, then Executive Secretary and Chairman of the Board of Directors of the Philippine National Bank (PNB), to grant the Agency an overdraft for P350,000.00. In response thereto, the grant was approved with interest at the rate of 6% per annum, secured by chattel mortgages on the stock of lumber of the Agency. Unfortunately, the loan extended to the Agency was not paid. The Philippine Government did not also invest the promised amount.

Conidering the foregoing, the PNB, as creditor, against the Agency. For this, the lower court allowed PNB to substitute the latter's receiver for the recovery of the balance of the lumber producers' stock subscriptions. However, the lower court ruled against PNB as it did not allow the latter to recover the subscription balance on the basis of equity. To its mind, it is grossly unfair and unjust to rule otherwise. When President Roxas made representations to PNB grant the overdraft, it was the only way by which he could make good his commitment that the Government would invest in the Agency since the legislature had not appropriated any amount for such.

ISSUE

Whether the balance of the stock subscriptions of the lumber producers may be recovered. (YES)

RULING

It is an established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt. In case of insolvency, all unpaid stock subscriptions become payable on demand and are immediately recoverable. Moreover, a corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares without a valuable consideration for such release. As against creditors, a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation.

In the case at bar, it would be unwarranted to ascribe to President Roxas the view that the payment of the stock subscriptions, as thus required by law, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. Even if such were the case and such a promise were in fact made to further the laudable purpose for which the proposed corporation would be devoted, still, the plain and specific wording of the applicable legal provision as interpreted by the Court must be controlling. It is a well-settled principle that with all the vast powers lodged in the Executive, he is still devoid of the prerogative of suspending the operation of any statute or any of its terms.

c. Classes of Shares of Stock

- Republic Planters Bank vs. Hon. Enrique A. Agana, Sr., as Presiding Judge, Court of First Instance of Rizal, Branch XXVIII, Pasay City, Robes-Francisco Realty & Development Corporation and Adalia F. Robes, G.R. No. 51765, March 3, 1997

REPUBLIC PLANTERS BANK, *Petitioner,* -versus – HON. ENRIQUE A. AGANA, SR., as Presiding Judge, Court of First Instance of Rizal, Branch XXVIII, Pasay City, ROBES-FRANCISCO REALTY & DEVELOPMENT CORPORATION and ADALIA F. ROBES, *Respondents.*
G.R. No. 51765, FIRST DIVISION, March 3, 1997, HERMOSISIMA, JR., *J.*

A preferred share of stock's most common forms may be classified into two: (1) preferred shares as to assets; and (2) preferred as to dividends. The former is a share which gives the holder thereof the preference in the distribution of the assets of the corporation in case of liquidation while the latter is a share which makes the holder entitled to receive dividends to the extent agreed upon before any dividends at all are paid to the holders of common stock. There is no guarantee, however, that the share will receive any dividends. It must be understood that these preferences do not give the holders thereof a lien upon the property of the corporation nor make them creditors of the corporation, the right of the former being always subordinate to the latter.
On the other hand, redeemable shares are shares which by their terms are redeemable at a fixed date, or at the option of either the issuing corporation or the stockholder or both at certain redemption price. It must be noted that redemption may not be made where the corporation is insolvent or if such redemption will cause insolvency or inability of the corporation to meet its debts as they mature. In the case at bar, while the stock certificates does allow redemption, the option to do so was clearly vested in the petitioner. In any case, the redemption of said shares cannot be allowed. The Central Bank made a finding that said petitioner has been suffering from chronic reserve deficiency. Such finding resulted in the directive prohibiting the petitioner from redeeming any preferred share on the ground that said redemption would reduce the assets of the bank to the prejudice of its depositors and creditors.

FACTS:

Private respondent Robes Francisco Realty & Development Corporation secured a loan from petitioner Republic Planters Bank in the amount of P120,000.00. As part of the proceeds of the loan, preferred shares of stocks were issued to private respondent. Instead of giving money in full, petitioner lent partially in the form of stock certificates for a total of P8,000.00. Said stock certificates were in the name of private respondent Adalia Robes. They bear the following terms and conditions:

1. The right to receive a quarterly dividend of 1%, cumulative and participatin; and 2. The preferred shares may be redeemed, by the system of drawing lots, at any time after 2 years from the date of issue at the option of the petitioner.

Private respondents proceeded against petitioner and filed a complaint anchored on private respondents' alleged rights to collect dividends as to the preferred shares in question and to have petitioner redeem the same under the terms and conditions of the stock certificates.

The RTC ordered the petitioner to pay private respondents the face value of the stock certificates at redemption price, plus 1% quarterly interest.

ISSUE

Whether the private respondents have the right to collect dividends and whether they can compel petitioner to redeem the preferred shares. (NO)

RULING

A preferred share of stock is one which entitles the holder thereof to certain preferences over the holders of common stock. The preferences are designed to induce persons to subscribe for shares of a corporation. Their most common forms may be classified into two: (1) preferred shares as to assets; and (2) preferred as to dividends. The former is a share which gives the holder thereof the preference in the distribution of the assets of the corporation in case of liquidation while the latter is a share which makes the holder entitled to receive dividends to the extent agreed upon before any dividends at all are paid to the holders of common stock. There is no guarantee, however, that the share will receive any dividends.

The preferences cited above that are granted to preferred stockholders do not give them a lien upon the property of the corporation nor make them creditors of the corporation, the right of the former being always subordinate to the latter. Shareholders, both common and preferred are considered risk takers who invest capital in the business and who can look only to what is left after corporate debts and liabilities are fully paid.

On the other hand, redeemable shares are shares usually preferred which by their terms are redeemable at a fixed date, or at the option of either the issuing corporation or the stockholder or both at certain redemption price. It must be noted that redemption may not be made where the corporation is insolvent or if such redemption will cause insolvency or inability of the corporation to meet its debts as they mature.

While the stock certificates, in the case at bar, does allow redemption, the option to do so was clearly vested in the petitioner. The redemption is therefore optional. In any case, the redemption of said shares cannot be allowed. The Central Bank made a finding that said petitioner has been suffering from chronic reserve deficiency. Such finding resulted in the directive prohibiting the petitioner from redeeming any preferred share on the ground that said redemption would reduce the assets of the bank to the prejudice of its depositors and creditors.

3. Payment of Balance of Subscription

a. Call by Board of Directors

b. Notice Requirement

e. Sale of Delinquent Shares

i. Effect of Delinquency

- Calatagan Golf Club, Inc. vs. Sixto Clemente, Jr., G.R. No. 165443, April 16, 2009

CALATAGAN GOLF CLUB, INC., *Petitioner,* -versus – SIXTO CLEMENTE, JR., *Respondent.*
G.R. No. 165443, SECOND DIVISION, April 16, 2009, TINGA, *J.*

Section 69 of the Corporation Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within 6 months from the date of sale. This provision, however, is not applicable in the present case. This is because such refers only to unpaid subscriptions to capital stock and, in the case at bar, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. Instead, Article 1140 of the Civil Code is applicable which provides that an action to recover movables shall prescribe in 8 years. It must be noted that Calatagan's action is for the recovery of a share of stock plus damages.

In any case, the delinquent sale is not valid. In the case at bar, Calatagan did not actually comply with the procedures as stated in the by-laws when it sold Clemente's share. It must be remembered that the third and final letter was again sent to Clemente's mailing address despite Calatagan's prior knowledge that the same is already closed. Due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address which, under the By-Laws, have to be kept on file and are in fact on file. One telephone call to Clemente's phone numbers on file would have alerted him of his impending loss.
Calatagan wanted to fault Clemente for failing to notify the club of the closure of the postal box. This cannot be supported by the Court. Knowing as he did that Calatagan was in possession of his home address as well as his residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him.

FACTS

Clemente applied to purchase 1 share of stock of Calatagan Golf Club, Inc., indicating in his application for membership his mailing address at "Phimco Industries, Inc. – P.O. Box 240, MCC", complete residential address, office and residence telephone numbers and the company with which he was connected. Subsequently, Calatagan issued to him Certificate of Stock No. A-01295.

It is the practice of Calatagan to charge monthly dues on its members to meet expenses for general operations. This policy is incorporated in its Articles of Incorporation and By-Laws and the same is reproduced at the back of each certificate of stock. Initially, Clemente was able to pay his monthly dues. However, after some time, he ceased to do so.

10 months from the time of Clemente's default, Calatagan made the initial step to collect Clemente's back accounts by sending a demand letter twice. Both letters were sent to Clemente's mailing address as indicated in his application. However, they were sent back to sender with the postal note that the address had been closed. Calatagan then declared Clemente delinquent for having failed to pay his monthly dues for more than 60 days. Clemente's name was also included in the list of delinquent members posted on the club's bulletin board. Eventually, Calatagan's board of directors adopted a resolution authorizing the foreclosure of shares of delinquent members, including Clemente's and the public auction of these shares.

A third and final letter was sent to Clemente, this time signed by its Corporate Secretary and contained a warning that unless he settles his outstanding dues, his share would be included among the delinquent shares to be sold at public auction. Again, it was sent to Clemente's mailing address that had already been closed.

Since the demand went unheeded, a notice of auction sale was posted on the Club's bulletin board, as well as on the club's premises. At the said auction sale in 1993, Clemente's share was purchased by Nestor A. Virata. A notice of foreclosure was also published.

Clemente learned of the sale of his share only in 1997. Consequently, he filed a claim with the SEC, 4 years after the sale, seeking the restoration of his shareholding. The SEC then rendered a decision dismissing the complaint. Citing Section 69 of the Corporation Code which provides that the sale of shares at an auction sale can only be questioned within 6 months from the date of sale, the SEC concluded that Clemente's claim had already prescribed. It must be noted that Calatagan had complied with all the requirements for a valid sale considering that Clemente failed to inform the former that the address he had earlier supplied was no longer his address. The CA, however, reversed the decision of the SEC and restored Clemente's 1 share. Section 69 refers only to unpaid subscriptions and not to any other debt of stockholders. Moreover, Calatagan very well knew that its third and final demand letter also sent to the same mailing address that was closed would not be received by Clemente. In any case, a person who is in danger of the imminent loss of his property has the right to be notified and be given the chance to prevent the loss.

ISSUES:

A. Whether the action filed by Clemente is already prescribed. (NO)
B. Whether the delinquent sale is valid. (NO)

RULING:

(A) Section 69 of the Corporation Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within 6 months from the date of sale. This provision, however, is not applicable in the present case. As correctly pointed out by the Court of Appeals, such refers only to unpaid subscriptions to capital stock. In the case at bar, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. As such, Calatagan's reliance on Section 69 is without merit.

Instead of Section 69 as stated above, Article 1140 of the Civil Code is applicable. It provides that an action to recover movables shall prescribe in 8 years. It must be noted that Calatagan's action is for the recovery of a share of stock plus damages.

(B) Calatagan's Articles of Incorporation and By- Laws admittedly provides for a clear and comprehensive procedure to govern the payment of monthly dues, the declaration of a member as delinquent, and the constitution of a lien on the shares for any debt a member may have in favor of it. They actually affords due protection to the member by assuring that the member should be notified by the Corporation Secretary of the looming execution sale that would terminate membership in the club.

However, in the case at bar, Calatagan did not actually comply with the procedures as stated in the by-laws when it sold Clemente's share. It must be remembered that the third and final letter was again sent to Clemente's mailing address despite Calatagan's prior knowledge that the same is already closed. It is unacceptable that Atty. Benjamin Tanedo, Jr., Calatagan's Corporate Secretary, who signed the said letter and is presumed knowledgeable on the law and on the standards of good faith and fairness that the law requires, committed such a huge mistake.

Contrary to Calatagan's assertion that it "exercised due diligence before the foreclosure sale", the Court is of belief that it is actually in bad faith. It must be noted that due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address which, under the By-Laws, have to be kept on file and are in fact on file. Significantly, Atty. Tanedo, Jr. does not even have to do the actual verification of other addressees on record by his own. A mere clerk can do the very simple task of checking the files. In fact, one telephone call to Clemente's phone numbers on file would have alerted him of his impending loss. In any case, a careful perusal of Calatagan's By-Laws reveals that it does not require that the final notice prior to the auction sale be made solely through the member's mailing address.

Calatagan wanted to fault Clemente for failing to notify the club of the closure of the postal box. This cannot be supported by the Court. Knowing as he did that Calatagan was in possession of his home address as well as his residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him. In addition, he was not even aware of the closure of the postal box as the maintenance of such was not his responsibility but his employer Phimco's.

It must be noted that a non-stock corporation like Calatagan is not exempt from that obligation of treating its members rightly. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

ii. Call by Resolution of the Board of Directors

- Apocada vs. National Labor Relations Commission, 172 SCRA 442 (1989)

ERNESTO M. APODACA, *Petitioner,* -versus – NATIONAL LABOR RELATIONS COMMISSION, JOSE M. MIRASOL and INTRANS PHILS., INC., *Respondents.*
G.R. No. 80039, FIRST DIVISION, April 18, 1989, GANCAYCO, *J.*

The unpaid subscriptions are not due and payable until a call is made by the corporation for payment. In the case at bar, the private respondents have not presented a resolution of the board of directors calling for the payment of the unpaid subscriptions. It does not even appear that a notice of such call has been sent to Apocada. As such, the set-off made by Intrans was without lawful basis, if not premature.

Moreover, assuming that there was a call for payment of the unpaid subscription, the NLRC cannot validly set it off against the wages and other benefits due Apocada. Article 113 of the Labor Code allows such a deduction from the wages only in three instances. The present case does not involve any of those instances.

FACTS

Ernesto Apocada was employed in Intrans Phils., Inc. Jose M. Mirasol persuaded Apocada to subscribe to 1,500 shares for which the latter made an initial payment of P37,500.00. Subsequently, Apocada was appointed President and General Manager. He eventually resigned.

Subsequently, Apocada instituted with the NLRC a complaint against the private respondents for the payment of his unpaid wages, among others. It was admitted by the latter that there is due to Apocada the amount of P17,060.07 but this was applied to the unpaid balance of his subscription in the amount of P95,439.93. As such, Apocada questioned the set-off alleging that there was no call for the payment of the unpaid subscription and that, accordingly, the alleged obligation is not enforceable.

The labor arbiter sustained the claim of Apocada because the employer has no right to withhold payment of wages already earned. The NLRC, however, reversed this decision since a stockholder who fails to pay his unpaid subscription on call becomes a debtor of the corporation and that the set-off of said obligation against the wages and others due to Apocada. is not contrary to law, morals and public policy.

ISSUES

A. Whether the NLRC has jurisdiction to resolve a claim for non-payment of stock subscriptions to a corporation. (NO)

B. Whether an obligation arising from non-payment of stock subscriptions can be offset against a money claim arising from an employer-employee relationship.

RULING

(A) A controversy involving the non-payment of stock subscriptions is an intra-corporate one. Such is within the exclusive jurisdiction of the SEC. As such, the NLRC has no jurisdiction in the present case.

(B) The unpaid subscriptions are not due and payable until a call is made by the corporation for payment. In the case at bar, the private respondents have not presented a resolution of the board of directors calling for the payment of the unpaid subscriptions. It does not even appear that a notice of such call has been sent to Apocada. Instead, the records show that Intrans deducted the amount due to Apocada from the amount receivable from him for the unpaid subscriptions. No doubt such set-off was without lawful basis, if not premature, as there was no notice or call for the payment of unpaid subscriptions, thus, the same is not yet due and payable.

Moreover, assuming that there was a call for payment of the unpaid subscription, the NLRC cannot validly set it off against the wages and other benefits due Apocada. Article 113 of the Labor Code allows such a deduction from the wages only in three instances. The present case does not involve any of those instances.

4. Certificate of Stock

a. Nature of the Certificate

- Stockholders of F. Guanzon and Sons, Inc. vs. Register of Deeds of Manila, G.R. No. L-18216, October 30, 1962

STOCKHOLDERS OF F. GUANZON AND SONS, INC., *Petitioners,* -versus – REGISTER OF DEEDS OF MANILA, *Respondent.*
G.R. No. L-18216, EN BANC, October 30, 1962, BAUTISTA ANGELO, *J.*

A corporation is a juridical person distinct from the shareholders composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its shareholders. While shares of stock constitute personal property, they do not represent a property of the corporation. ***A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation.*** *Nor is he entitled to the possession of any definite portion of its property or assets.*

Considering the foregoing, it is clear that the act of liquidation made by the stockholders of the F. Guanzon and Sons, Inc. of the latter's assets is not and cannot be considered a partition of community property, but rather a transfer or conveyance of the title of its assets to the individual stockholders. Indeed, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings, that transfer cannot be effected without the corresponding deed of conveyance from the corporation to the stockholders.

FACTS

On September 19, 1960, the 5 stockholders of the F. Guanzon and Sons, Inc. executed a certificate of liquidation of the assets of the corporation reciting, among others, that by virtue of a resolution of the stockholders, dissolving the corporation, they have distributed among themselves in proportion to their shareholdings, as liquidating dividends, the assets of said corporation, including real properties located in Manila.

The certificate of liquidation, when presented to the Register of Deeds of Manila, was denied registration on seven grounds, of which the following were disputed by the stockholders: 1. the number of parcels not certified in the acknowledgment; 2. P430.50 Reg. fees need be paid; 3. P940.45 documentary stamps need be attached to the document and 4. the judgment of the Court approving the dissolution and directing the disposition of the assets of the corporation need be presented. Deciding the consulta elevated by the stockholders, the Commissioner of Land Registration overruled ground No. 4 and sustained requirements Nos. 1, 2 and 3.

ISSUE

Whether the liquidation should be granted. (NO)

RULING

As correctly stated by the Commissioner of Land Registration, the propriety or impropriety of the 3 grounds on which the denial of the registration of the certificate of liquidation was predicated hinges on whether or not that certificate merely involves a distribution of the corporation's assets or consists of a transfer or conveyance. The Commissioner of Land Registration, in his decision, concurred in the view expressed by the register of deeds to the effect that the certificate of liquidation in question, though involves a distribution of the corporation's assets, represents a transfer of said assets from the corporation to the stockholders. Hence, in substance it is a transfer or conveyance.

The Court agrees with the above opinion as a corporation is a juridical person distinct from the shareholders composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its shareholders. While shares of stock constitute personal property, they do not represent a property of the corporation. A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity, but its holder is not the owner of any part of the capital of the corporation. Nor is he entitled to the possession of any definite portion of its property or assets.

Considering the foregoing, it is clear that the act of liquidation made by the stockholders of the F. Guanzon and Sons, Inc. of the latter's assets is not and cannot be considered a partition of community property, but rather a transfer or conveyance of the title of its assets to the individual stockholders. Indeed, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings, that transfer cannot be affected without the corresponding deed of conveyance from the corporation to the stockholders.

- Alfonso S. Tan vs. Securities and Exchange Commission, G.R. No. 95696 March 3, 1992

ALFONSO S. TAN, *Petitioner,* -versus – SECURITIES AND EXCHANGE COMMISSION, VISAYAN EDUCATIONAL SUPPLY CORP., TAN SU CHING, ALFREDO B. UY, ANGEL S. TAN and PATRICIA AGUILAR, *Respondents.*

G.R. No. 95696, SECOND DIVISION, March 3, 1992, PARAS, *J.*

In any case, it must be noted that a certificate of stock is not a negotiable instrument. Although it is sometimes regarded as quasi-negotiable in the sense that it may be transferred by endorsement coupled *with delivery, it is well-settled that it is non-negotiable because the holder therefore takes it without prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law except insofar as such rights or defenses subject to limitations imposed by the principles governing estoppel. As such, in the case at bar, since stocks were already cancelled and reported to SEC, there was no necessity to endorse. All the acts required for the transferee to exercise its rights over the acquired stocks were attendant.*

FACTS

As incorporator of Visayan Educational Supply Corp., Alfonso S. Tan had 400 shares of stock in his name evidenced by Certificate of Stock No .2. He was then elected as President and subsequently reelected, holding such position until 1982 but remained in the Board of Directors until 1983.

In 1981, 2 other incorporators, Young and Ong, assigned to the corporation their shares represented by Certificate of Stock No. 4 and 5 after which they were paid the corresponding 40% corporate stock-in-trade. Meanwhile, Alfonso's Certificate of Stock No.2 was cancelled by virtue of Resolution No. 1981 (b).

Due to the withdrawal of Young and Ong and in order to complete the membership of 5 directors, Alfonso sold 50 shares out of his 400 shares of capital stock to his brother Angel Tan. Another incorporator, Alfredo Uy, also sold 50 of his 400 shares to Teodora Tan. Subsequently, Angel was elected as a director. Meanwhile, as a result of the sale by Alfonso of his 50 shares, Certificate of Stock No, 2 was cancelled and the corresponding Certificate of Stock No. 6 (for Angel) and 8 (for Alfonso) were issued and signed by the newly elected Angel as Vice President upon instruction of Alfonso who was then the President.

Subsequently, a certain Mr. Buzon submitted an Affidavit alleging that Mr. Tan Su Ching, having taken 33 1/3 interest, personally asked him to request Alfonso to make the proper endorsement in the cancelled Certificate of Stock No.2 and Certificate of Stock No. 8. However, Alfonso did not endorse and instead kept Certificate of Stock No. 2. Only Certificate of Stock No. 8 was returned and delivered to Tan Su Ching.

In 1983, during the annual meeting of the corporation, Tan Su Ching was elected as President while Alfonso was elected as Vice-President. Having been dislodged from his position as President, Alfonso withdrew from the corporation on the condition that he be paid with stocks-in-trade equivalent to 33.3% in lieu of the stock value of his shares in the amount of P35,000. Consequently, Stock Certificate Nos. 2 and 8 were cancelled.

Sometime thereafter, Alfonso filed a case before the SEC, questioning for the first time the cancellation of his Stock Certificates Nos. 2 and 8. He alleged that the deprivation of his shares despite the non-endorsement or surrender of the said stock certificates was without the process contrary to the provision of Section 63 of the Corporation Code. The SEC ruled against him.

ISSUE

Whether the transfer was valid even without delivery. (YES)

RULING

There is no doubt that there was delivery of Stock Certificate No. 2 to the Corporation before its replacement with the Stock Certificate Nos. 6 and 8. The problem arose when Alfonso was given back Stock Certificate No. 2 for him to endorse and he deliberately withheld it for reasons of his own. Petitioner devised the scheme of not returning the cancelled Stock Certificate No.2 to skim off the largesse of the corporation as shown by the trading of his Stock Certificate No.8 for goods of the corporation valued at P2 million when the par value of the same was only worth P35, 000.00. He also used this scheme to renege on his indebtedness to Tan Su Ching in the amount of P1 million.

In any case, it must be noted that a certificate of stock is not a negotiable instrument. Although it is sometimes regarded as quasi-negotiable in the sense that it may be transferred by endorsement coupled with delivery, it is well-settled that it is non-negotiable because the holder therefore takes it without prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law except insofar as such rights or defenses subject to limitations imposed by the principles governing estoppel.

As such, in the case at bar, since stocks were already cancelled and reported to SEC, there was no necessity to endorse. All the acts required for the transferee to exercise its rights over the acquired stocks were attendant and even the corporation was protected from other parties, considering that said transfer was earlier recorded or registered in the corporate and transfer book.

- Nora A. Bitong vs. Court of Appeals, et al., G.R. No. 123553, July 13, 1998

NORA A. BITONG, *Petitioner,* -versus – COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, and ADORACION G. NUYDA, *Respondents.*
G.R. No. 123553, FIRST DIVISION, July 13, 1998, BELLOSILLO, *J.*

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is a prima facie evidence that it was legally issued However, this presumption may be rebutted. For a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney -in -fact or other persons legally authorized to make the transfer; and (c) the transfer must be recorded in the books of the corporation to be valid against third parties.

In the case at bar, aside from Bitong's own admissions, several corporate documents disclose that the true party-in-interest is JAKA. It must be noted that JAKA executed a deed of sale in favor of respondent Eugenia Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of the subject shares. At most, in the instant case, Bitong has satisfied only the third requirement as stated above. Compliance with the first two requisites has not been clearly and sufficiently shown.

FACTS

Nora Bitong claimed before the SEC that she had been the Treasurer and a Member of the Board of Directors of private respondent Mr. & Ms. Publishing Co., Inc. (Mr. & Ms.) from the time it was incorporated on October 29, 1976 to April 11 1989. and was the registered owner of 1,000 shares of stock out of the 4,088 total outstanding shares.

Allegedly acting for the benefit of Mr. & Ms. Co., Bitong filed a derivative suit before the SEC against respondent spouses Eugenia D. Apostol and Jose A. Apostol who were officers in said corporation to hold them liable for fraud and mismanagement in directing its affairs.

Respondent spouses moved to dismiss on the ground that Bitong had no legal standing to bring the suit as she was merely a holder-in-trust of shares of JAKA Investments Corporation (JAKA) which continued to be the true stockholder of Mr. & Ms. Bitong, on the other hand, contends that she was a holder of proper stock certificates and that the transfer was recorded. She further asserts that even in the absence of the actual certificate, mere recording will suffice for her to exercise all stockholder rights including the right to file a derivative suit in the name of the corporation.

ISSUE

Whether Bitong is the true holder of stock certificates to be able institute a derivative suit. (NO)

RULING

NO. Sec 63 of the Corporation Code envisions a formal certificate of stock which can be issued only upon compliance with certain requisites. Such are:

a. The certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock.
b. Delivery of the certificate is an essential element of its issuance. There is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company.
c. The par value, as to par value shares, or the full subscription as to no par value shares, must be fully paid.
d. The original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is a prima facie evidence that it was legally issued However, this presumption may be rebutted. For a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney‑in‑fact or other persons legally authorized to make the transfer; and (c) the transfer must be recorded in the books of the corporation to be valid against third parties.

In the case at bar, aside from Bitong's own admissions, several corporate documents disclose that the true party-in-interest is JAKA. It must be noted that JAKA executed a deed of sale over 1,000 Mr. & Ms. shares in favor of respondent Eugenia Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of the subject shares. Nothing in the records shows that JAKA had revoked the trust reposed on respondent Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to Bitong.

In fine, the records are unclear on how Bitong allegedly acquired the shares of stock of JAKA. At most, in the instant case, Bitong has satisfied only the third requirement as stated above. Compliance with the first two requisites has not been clearly and sufficiently shown.

b. Negotiability

i. Requirements for Valid Transfer of Stocks

- Enrique Razon vs. Intermediate Appellate Court and Vicente B. Chuidian, in his capacity as Administrator of the Estate of the Deceased Juan T. Chuidian, G.R. No. 74306, March 16, 1992

ENRIQUE RAZON, *Petitioner,* -versus – INTERMEDIATE APPELLATE COURT and VICENTE B. CHUIDIAN, in his capacity as Administrator of the Estate of the Deceased JUAN T. CHUIDIAN, *Respondents.*
G.R. No. 74306, THIRD DIVISION, March 16, 1992, GUTIERREZ, JR., *J.*

VICENTE B. CHUIDIAN, *Petitioner,* -versus – INTERMEDIATE APPELLATE COURT, ENRIQUE RAZON, and E. RAZON, INC., *Respondents.*
G.R. No. 74315, THIRD DIVISION, March 16, 1992, GUTIERREZ, JR., *J.*

The law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly indorsed. Indorsement is a mandatory requirement of law for an effective transfer of a certificate of stock. Title to such certificate of stock is vested in the transferee by the delivery of the duly indorsed certificate of stock. Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the Razon, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. Razon's oral testimony alleging the existence of an agreement between the two parties cannot prevail and his asseveration that he did not require the indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian is unmeritorious.

FACTS

Enrique Razon organized the E. Razon, Inc. (ERI) for the purpose of bidding for the arrastre services in South Harbor, Manila. Stock certificate No. 003 for 1,500 shares of stock was issued in the name of the late Juan T. Chuidian. Vicente B. Chuidian, as an administrator, filed a complaint against Razon for the delivery of certificate of stocks representing the shareholdings of the deceased Juan T. Chuidian in ERI.

Vicente alleged that after organizing ERI, Razon distributed shares of stock previously placed in the names of the withdrawing nominal incorporators to some friends including Juan T. Chuidian. Stock Certificate No. 003, upon instruction of the late Chuidian, was personally delivered to the Corporate Secretary of ERI. Since then, Enrique was in possession of the said stock certificate even during the lifetime of the late Chuidian.

By agreement of the parties, the stock certificate was delivered for deposit with the bank under the joint custody of the parties. Razon alleged later that he paid for all the subscription on the subject shares of stock and the understanding was that he was the owner of the same and was to have possession thereof until such time as he was paid therefor by the other nominal stockholders.

The then Court of First Instance of Manila declared that Razon is the owner of the subject shares of stock. The then Intermediate Appellate Court, however, reversed the CFI's decision and ruled that Juan T. Chuidian is the owner of the shares of stock.

ISSUE

Whether Juan T. Chuidian is the rightful owner of the stocks. (YES)

RULING

The law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly indorsed. Indorsement is a mandatory requirement of law for an effective transfer of a certificate of stock. Title to such certificate of stock is vested in the transferee by the delivery of the duly indorsed certificate of stock. Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the Razon, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. Razon's oral testimony alleging the existence of an agreement between the two parties cannot prevail over what appears in the certificate of shares of stocks and the corporate books. Razon's asseveration that he did not require the indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian cannot overcome the failure to follow the procedure required by law or the proper conduct of business even among friends.

- Rural Bank of Salinas, Inc. vs. Securities and Exchange Commission, et al., G.R. No. 96674, June 26, 1992

RURAL BANK OF SALINAS, INC., MANUEL SALUD, LUZVIMINDA TRIAS and FRANCISCO TRIAS, *Petitioners,* -versus – COURT OF APPEALS*, SECURITIES AND EXCHANGE COMMISSION, MELANIA A. GUERRERO, LUZ ANDICO, WILHEMINA G. ROSALES, FRANCISCO M. GUERRERO, JR., and FRANCISCO GUERRERO, SR., *Respondents.*
G.R. No. 96674, SECOND DIVISION, June 26, 1992, PARAS, *J.*

Sec. 63 of the Corporation Code contemplates no restriction as to whom the stocks may be transferred. The owner of shares, as owner of personal property, is at liberty, under said section to dispose them in favor of whomever he pleases without limitation in this respect than the general provisions of law. In this case, the Corporation's obligation to register is ministerial. The secretary of the corporation, in transferring stock, acts in purely ministerial capacity and does not try to decide the question of ownership.

FACTS

Clemente G. Guerrero, President of the Rural Bank of Salinas, Inc. (Bank), executed a Special Power of Attorney in favor of his wife, Melania, giving and granting the latter full power and authority to sell or otherwise dispose of and/or mortgage 473 shares of stock of the Bank registered in his name.
Melania then presented to the Bank 2 deeds of assignment for registration with a request for the transfer in the Bank's stock and transfer book shares of stock so assigned, the cancellation of stock

certificates in the name of Clemente and the issuance of new stock certificates covering the transfer in the name of the new owners thereof. However, the Bank denied the request. Consequently, Melania filed with the SEC an action for mandamus against the Bank, its President and Corporate Secretary. The SEC rendered a Decision granting the writ of Mandamus directing petitioners to cancel the subject stock certificates, all in the name of Clemente, and to issue new certificates in the names of private respondents, except Melania. This was affirmed by the CA.

ISSUES

A. Whether SEC has jurisdiction over the instant case. (YES)
B. Whether the corporation is obliged to register the transfer. (YES)

RULING

(A) P.D. No. 902 grants to the SEC the original and exclusive jurisdiction to hear and decide cases involving intra-corporate controversies. An intra- corporate controversy has been defined as one that arises between a stockholder and the corporation.

The case at bar involves shares of stock and their registration, cancellation and issuances thereof by the bank. Applying the foregoing, it is therefore within the power of SEC to adjudicate the controversy presented herein.

(B) Sec. 63 of the Corporation Code contemplates no restriction as to whom the stocks may be transferred. The owner of shares, as owner of personal property, is at liberty, under said section to dispose them in favor of whomever he pleases without limitation in this respect than the general provisions of law. In this case, the Corporation's obligation to register is ministerial. The secretary of the corporation, in transferring stock, acts in purely ministerial capacity and does not try to decide the question of ownership.

- China Banking Corporation vs. Court of Appeals, and Valley Golf and Country Club, Inc., G.R. No. 117604, March 26, 1997

CHINA BANKING CORPORATION, *Petitioner,* -versus – COURT OF APPEALS and VALLEY GOLF and COUNTRY CLUB, INC., *Respondents.*
G.R. No. 117604, FIRST DIVISION, March 26, 1997, KAPUNAN, *J.*

VGCCI insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws. However, VGCCI began sending notices of delinquency to Calapatia only after it was informed by CBC of the foreclosure proceedings although Calapatia has been delinquent in paying his monthly dues to the club since 1975. Moreover, CBC, whom VGCCI had officially recognized as the pledgee, was neither informed nor furnished copies of these letters of overdue accounts until VGCCI itself sold the pledged share at another public auction. It even failed to give petitioner a notice of said auction sale. Such actuations of VGCCI belie its claim of good faith.

VGCCI likewise maintains that CBC is bound by its by-laws. In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI *could have easily informed CBC of its by-laws when it sent notice formally recognizing the latter as pledgee. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.*

Finally, Sec. 63 of the Corporation Code cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." In the case at bar, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate No. 1219. What Calapatia owed the corporation were merely the monthly dues.

FACTS

Galicano Calapatia, Jr. (Calapatia), a stockholder of private respondent Valley Golf & Country Club, Inc. (VGCCI), pledged his Stock Certificate No. 1219 to China Banking Corporation (CBC) as security for the loan of P20,000.00. CBC wrote VGCCI requesting that the said pledge agreement be recorded in its books. VGCCI replied that the same deed of pledge was duly noted in its corporate books.

Due to Calapatia's failure to pay his obligation, CBC filed a petition for extrajudicial foreclosure before a notary public, requesting the latter to conduct a public auction sale of the pledged stock. CBC then informed VGCCI of the foreclosure proceedings and requested that the pledged stock be transferred to its name and be recorded as such in the corporate books. VGCCI, however, expressed its inability to accede to CBC's request in view of Calapatia's unsettled accounts with the club. In the public auction of the pledged stocks, CBC eventually emerged as the highest bidder. Consequently, it was issued the corresponding certificate of sale.
Meanwhile, VGCCI sent Calapatia a notice demanding full payment of his overdue account. Said notice was followed by a demand letter for the same amount and another notice. It as well caused the publication of a notice of auction sale of a number of its stock certificates including Calapatia's Stock Certificate No. 1219. It then informed Calapatia of the termination of his membership due to the sale of his share of stock in the auction.

In line with it being the highest bidder, CBC advised VGCCI that it is the new owner of Calapatia's Stock Certificate No. 1219 and requested that a new certificate of stock be issued in its name. VGCCI replied that "for reason of delinquency" Calapatia's stock was sold at the public auction. Consequently, CBC protested the said sale by VGCCI and thereafter filed a case with the RTC for its nullification.

The RTC dismissed the complaint for lack of jurisdiction over the subject matter on the theory that it involves an intra-corporate dispute. CBC then filed a complaint with the SEC which rendered a decision in favor of CBC declaring that it has a prior right over the pledged share. However, the CA nullified this SEC decision on the ground of lack of jurisdiction over the subject matter since the controversy involved is not intra-corporate.

ISSUES

A. Whether the nature of the controversy between CBC and VGCCI is intra-corporate therefore SEC has jurisdiction. (YES)

B. Whether VGCCI has a prior right over the subject share pursuant on Sec. 3, Art VIII of its by-laws. (NO)

RULING

(A) To ascertain which tribunal has jurisdiction, it must be determined first whether CBC is a stockholder of VGCCI and whether the nature of the controversy between is intra-corporate.

As to the first query, there is no question that the purchase of the subject share at public auction by CBC transferred ownership of the same to the latter and thus is entitled to have the said share registered in its name. It is readily observed that VGCCI did not assail the transfer directly and has in fact expressly recognized the pledge agreement. Because of the foregoing, the conflict that arose between VBV and VGCCI aptly exemplifies an intra-corporate controversy between a corporation and its stockholder.

It must be noted further that VGCCI caps its argument by asserting that its corporate by-laws should prevail. The bone of contention, thus, is the proper interpretation and application of VGCCI's by-laws, a subject which irrefutably calls for the special competence of the SEC.

(B) VGCCI assails the validity of the pledge agreement and contends that the same was null and void for lack of consideration because the pledge agreement was entered into earlier than the loan which it secured. VGCCI's contention is unmeritorious. A careful perusal of the pledge agreement will readily reveal that the contracting parties explicitly stipulated therein that the said pledge will also stand as security for any future advancements or renewals thereof that Calapatia may procure from CBC. The validity of the pledge agreement cannot thus be held suspect by VGCCI.

VGCCI likewise insists that due to Calapatia's failure to settle his delinquent accounts, it had the right to sell the share in question in accordance with the express provision found in its by-laws. It is significant to note, however, that VGCCI began sending notices of delinquency to Calapatia after it was informed by CBC of the foreclosure proceedings initiated against Calapatia's pledged share although Calapatia has been delinquent in paying his monthly dues to the club since 1975. Moreover, CBC, whom VGCCI had officially recognized as the pledgee, was neither informed nor furnished copies of these letters of overdue accounts until VGCCI itself sold the pledged share at another public auction. It even failed to give petitioner a notice of said auction sale. Such actuations of VGCCI belie its claim of good faith.

In defending its actions, VGCCI likewise maintains that CBC is bound by its by-laws. In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction or agreement between said third party and the shareholder was entered into, in this case, at the time the pledge agreement was executed. VGCCI could have easily informed CBC of its by-laws when it sent notice formally recognizing the latter as pledgee of one of its shares registered in Calapatia's name. Petitioner's belated notice of said by-laws at the time of foreclosure will not suffice.

VGCCI's contends also that petitioner is duty-bound to know its by-laws because of Art. 2099 of the Civil Code which stipulates that the creditor must take care of the thing pledged with the diligence of a good father of a family. It fails to convince the Court. In applying this provision, it must be borne in mind that an ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket and the contract of the pledge is, therefore, absolvable to bearer. One who takes a pawn ticket in pledge acquires domination over the pledge. A a membership share is quite different in character from a pawn ticket.

Finally, Sec. 63 of the Corporation Code which provides that "no shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation" cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." In the case at bar, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate No. 1219. What Calapatia owed the corporation were merely the monthly dues. Hence, the aforequoted provision does not apply.

- Nemesio Garcia vs. Nicolas Jomouad, Ex-Officio Provincial Sheriff of Cebu, and Spouses Jose Atinon& Sally Atinon, G.R. No. 133969, January 26, 2000

NEMESIO GARCIA, *Petitioner*, -versus – NICOLAS JOMOUAD, Ex-officio Provincial Sheriff of Cebu and SPOUSES JOSE ATINON & SALLY ATINON, *Respondents.*
G.R. No. 133969, FIRST DIVISION, January 26, 2000, KAPUNAN, *J.*

In the prior case of Uson vs. Diosomito, the Court held that the attachment prevails over the unrecorded transfer of shares. All transfers of shares should be entered on the books of the corporation and all transfers not so entered are invalid or void as to attaching or execution creditors of the assignors, to the corporation, to subsequent purchasers in good faith and to all other interested parties except the parties to such transfers. This is not because they are without notice or fraudulent in law or fact, but because they are made so void by statute.

Applying the foregoing jurisprudence in this case, the transfer of the subject certificate made by Dico to Garcia was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. The entry in the minutes of the meeting of the Club's Board of Directors noting the resignation of Dico as proprietary member thereof does not constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation.

FACTS

Nemesion Garcia avers that Dico, the judgment debtor of the spouses Atinon, was employed as manager of his Young Auto Supply. In order to assist him in entertaining clients, Gracia lent his Proprietary Ownership Certification (POC) 1459 in the Cebu Country Club to Dico so the latter could enjoy the "signing" privileges of its members. The Club issued POC No. 0668 in the name of Dico.

Dico then resigned as manager of petitioner's business. Upon demand of Garcia, he returned POC No. 0668 to the latter and executed a Deed of Transfer covering the same. The Club was furnished with a copy of said deed but the transfer was not recorded in the books of the Club because Garcia failed to present proof of payment of the requisite capital gains tax.

Meanwhile, spouses Atinon filed a case for collection of sum of money against Dico. The RTC rendered judgment ordering Dico to pay the spouses Atinon. Consequently, upon the judgment becoming final and executory, Jomouad, ex- oficio sheriff, proceeded with its execution. In the course thereof, POC No. 0668 was levied on and scheduled for public auction. Claiming ownership over the subject certificate, Garcia filed an action for injunction.

After trial, the RTC dismissed Garcia's complaint for injunction for lack of merit. On appeal, the CA affirmed in toto the decision of the RTC. In assailing the decision of the CA, Garcia mainly argues that the appellate court erroneously relied on Section 63 of the Corporation Code. He contends that the subject stock certificate, albeit in the name of Dico, cannot be levied upon because even prior to the institution of the case for collection of sum of money against him the spouses Atinon had knowledge that Dico already conveyed back the ownership of the subject certificate to him and that Dico already executed a deed of transfer covering the same and the Club was furnished with a copy thereof.

ISSUE

Whether the subject POC is owned by Garcia and thus cannot be levied to satisfy the debt owned by Dico. (NO)

RULING

Section 63 of the Corporation Code provides 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."

The sole issue in this case is similar to that raised in Uson vs. Diosomito, that is, whether a bona fide transfer of the shares of a corporation, not registered in the books of the corporation, is valid as against a subsequent lawful attachment of said shares, regardless of whether the attaching creditor had actual notice of said transfer or not." In that case, the Court held that the attachment prevails over the unrecorded transfer. All transfers of shares should be entered on the books of the corporation and all transfers not so entered are invalid or void as to attaching or execution creditors of the assignors, to the corporation, to subsequent purchasers in good faith and to all other interested parties except the parties to such transfers. This is not because they are without notice or fraudulent in law or fact, but because they are made so void by statute.

Applying the foregoing jurisprudence in this case, the transfer of the subject certificate made by Dico to Garcia was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. The entry in the minutes of the meeting of the Club's Board of Directors noting the resignation of Dico as proprietary member thereof does not constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation and not elsewhere to be valid as against third parties.

- The Rural Bank of Lipa City, Inc., et al. vs. Honorable Court of Appeals, G.R. No. 124535, September 28, 2001

THE RURAL BANK OF LIPA CITY, INC., THE OFFICERS AND DIRECTORS, BERNARDO BAUTISTA, JAIME CUSTODIO, OCTAVIO KATIGBAK, FRANCISCO CUSTODIO, and JUANITA BAUTISTA OF THE RURAL BANK OF LIPA CITY, INC., *Petitioners,* -versus – HONORABLE COURT OF APPEALS, HONORABLE COMMISSION EN BANC, SECURITIES AND EXCHANGE COMMISSION, HONORABLE ENRIQUE L. FLORES, JR., in his capacity as Hearing Officer, REYNALDO VILLANUEVA, SR, AVELINA M. VILLANUEVA, CATALINO VILLANUEVA, ANDRES

GONZALES, AURORA LACERNA, CELSO LAYGO, EDGARDO REYES, ALEJANDRA TONOGAN and ELENA USI, *Respondents.*

G.R. No. 124535, FIRST DIVISION, September 28, 2001, YNARES-SANTIAGO, *J.*

For a valid transfer of stocks, there must be strict compliance with the mode of transfer prescribed by law. The requirements are: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) To be valid against third parties, the transfer must be recorded in the books of the corporation.

In the case at bar, compliance with any of these requisites has not been clearly and sufficiently shown. While it may be true that there was an assignment, said assignment was not sufficient to affect the transfer of the said shares since there was no endorsement as required above. Moreover, the petitioners admit that the assignment was not coupled with delivery. The rule is that the delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the transferee.

FACTS

Reynaldo Villanueva, Sr., a stockholder of the Rural Bank of Lipa City (Bank), executed a Deed of Assignment concerning 10,467 shares he own or under his control in favor of the stockholders of the Bank represented by its directors Bernardo Bautista, Jaime Custodio and Octavio Katigbak. Thereafter, Reynaldo and his wife, Avelina, executed an Agreement wherein they acknowledged their indebtedness to the Bank in the amount of P4,000,000.00 and stipulated that said debt will be paid out of the proceeds of the sale a specific real property. In a meeting of the Bank's Board of Directors, the Villanueva spouses assured that their debt would be paid on time, otherwise, the Bank would be entitled to liquidate their shareholdings including those under their control.

Eventually, the Villanueva spouses failed to settle their obligation to the Bank on due date. Consequently, the Board sent them a letter demanding the surrender of all the stock certificates issued to them. However, they ignored the Bank's demands. Their shares of stock were converted into Treasury Stocks. Later, they questioned the legality of the conversion of their shares.

Meanwhile, the stockholders of the Bank met to elect new directors and set of officers for 1994 for which the Villanueva spouses were not notified. As such, the Villanueva spouses questioned the legality of the said stockholders' meeting. In reply thereto, the new set of officers of the Bank informed them that they were no longer entitled to any notice since they had relinquished their rights as stockholders in favor of the Bank.

The Villanueva spouses filed with the SEC a petition for annulment of the stockholders' meeting and election of directors and officers with prayer for preliminary injunction which was granted upon finding that since the Villanueva spouses have not disposed of their shares, whether voluntarily or involuntarily, they were still stockholders entitled to notice.

ISSUE:

Whether there was valid transfer of the shares to the Bank. (NO)

RULING:

For a valid transfer of stocks, there must be strict compliance with the mode of transfer prescribed by law. The requirements are: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) To be valid against third parties, the transfer must be recorded in the books of the corporation.

In the case at bar, compliance with any of these requisites has not been clearly and sufficiently shown. While it may be true that there was an assignment of the subject shares to the petitioners, said assignment was not sufficient to affect the transfer of the said shares since there was no endorsement thereof by the owners, their attorneys-in-fact or any other person legally authorized to make the transfer. Moreover, the petitioners admit that the assignment was not coupled with delivery. The rule is that the delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the transferee.

It may be argued that despite non-compliance with the requisite endorsement and delivery, the assignment was valid between the parties. While the assignment may be valid and binding on the parties, it does not necessarily make the transfer effective. The petitioners, as mere assignees, cannot enjoy the status of a stockholder, cannot vote nor be voted for, and will not be entitled to dividends, insofar as the assigned shares are concerned.

- Vicente C. Ponce vs. Alsons Cement Corporation, and Francisco M. Giron, Jr., G.R. No. 139802, December 10, 2002

VICENTE C. PONCE, *Petitioner,* -versus – ALSONS CEMENT CORPORATION, and FRANCISCO M. GIRON, JR., *Respondents.*
G.R. No. 139802, SECOND DIVISION, December 10, 2002, QUISUMBING, *J.*

A transfer of shares of stock not recorded in the stock and transfer book of the corporation is nonexistent as far as the corporation is concerned. As between the corporation on the one hand and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize a stockholder's rights as it is mandated by law to recognize arises. Without such recording, therefore, the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. As such, considering that the transfer to Ponce was not recorded, ALS is not wrong in denying the issuance of stock certificate in Ponce's favor.

Moreover, a mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the corporation unless it affirmatively appears that he has failed or refused so to do upon the demand either of the person in whose name the stock is registered or of some person holding a power of attorney for that purpose from the registered owner of the stock. The mere indorsement of stock certificates does not in itself give to the indorsee such a right to have the transfer of the shares on the books of the company as will entitle him to the writ of mandamus.

FACTS

Vicente C. Ponce filed a complaint with the SEC for mandamus and damages against Alsons Cement Corporation (ACC) and its corporate secretary, Francisco M. Giron. Jr. Ponce alleged, among others, that the late Fausto G. Gaid was an incorporator of the then Victory Cement Corporation (VCC) now ACC with 239,500 shares. Ponce and Gaid executed a "Deed of Undertaking" and "Indorsement" whereby the latter acknowledged that the former is the owner of said shares and he was therefore assigning/endorsing the same to Ponce. However, from the time of incorporation of ACC up to the present, no certificates of stock were issued in the name of Gaid and/or Ponce despite repeated demands. ACC and Giron refused without any justifiable reason to issue the certificates of stocks, in violation of Ponce's right to secure the corresponding certificate of stock in his name.

ACC and Giron moved to dismiss the case. In ruling that a transfer or assignment of stocks need not be registered first before it can take cognizance of the case to enforce Ponce's rights as a stockholder, the SEC cited the SC's ruling in Abejo vs. De la Cruz. The CA, however, held that in the absence of any allegation that the transfer of the shares from Gaid to Ponce was registered in the stock and transfer book of ACC, Ponce failed to state a cause of action.

ISSUES

A. Whether ACC is wrong in refusing to issue the stock certificates in favor of Ponce. (NO)
B. Whether Ponce can require the corporate secretary to register Gaid's share to his name. (NO)

RULING

(A) A transfer of shares of stock not recorded in the stock and transfer book of the corporation is nonexistent as far as the corporation is concerned. As between the corporation on the one hand and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize a stockholder's rights as it is mandated by law to recognize arises. Without such recording, therefore, the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. The situation would be different if Ponce was himself the registered owner of the stock which he sought to transfer to a third party for then he would be entitled to the remedy of mandamus.

(B) A mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the corporation unless it affirmatively appears that he has failed or refused so to do upon the demand either of the person in whose name the stock is registered or of some person holding a power of attorney for that purpose from the registered owner of the stock. The mere indorsement of stock certificates does not in itself give to the indorsee such a right to have the transfer of the shares on the books of the company as will entitle him to the writ of mandamus because, under such circumstances the legal obligation is not so indisputable as to justify the issuance of the writ. It must be noted that a corporation looks only to its books for the purpose of determining who its shareholders are so that a mere indorsee of a stock certificate, claiming to be the owner, will not necessarily be recognized as such by the corporation in the absence of express instructions from the registered owner or a power of attorney.

That petitioner was under no obligation to request for the registration of the transfer is not in issue. One may own shares of corporate stock without possessing a stock certificate. In Tan vs. SEC, the Court had occasion to declare that a certificate of stock is not necessary to render one a stockholder in a corporation.

A certificate of stock is the tangible evidence of the stock itself and of the various interests therein. The certificate is the evidence of the holders interest and status in the corporation, his ownership of the share represented thereby. It expresses the contract between the corporation and the stockholder but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. In fact, it rests on the will of the stockholder whether he wants to be issued stock certificates. In Won vs. Wack Wack Golf and Country Club, Inc. the Court held that considering that the law does not prescribe a period within which the registration should be effected, the action to enforce the right does not accrue until there has been a demand and a refusal concerning the transfer.

- Fil-Estate Golf and Development vs. Vertex Sales and Trading Inc., G.R. No. 202079, June 10, 2013

FIL-ESTATE GOLF AND DEVELOPMENT, INC. and FILESTATE LAND, INC., *Petitioners,* -versus – VERTEX SALES AND TRADING, INC., *Respondent.*
G.R. No. 202079, SECOND DIVISION, June 10, 2013, BRION, *J.*

Physical delivery is necessary to transfer ownership of stocks. In the case at bar, Vertex fully paid the purchase price but the stock certificate was only delivered after Vertex filed an action for rescission against FEGDI. As such, FEGDI clearly failed to deliver the stock certificates, representing the shares of stock purchased by Vertex, within a reasonable time from the point the shares should have been delivered. It is not entirely correct to say that a sale had already been consummated as Vertex already enjoyed the rights a shareholder can exercise. The law, by its express terms, requires a specific form to transfer ownership.

FACTS

Fil-Estate Golf and Development, Inc. (FEGDI) was the developer of the Forest Hills Golf and Country Club (Forest Hills) and, in consideration for its financing support and construction efforts, was issued several shares of stock of Forest Hills.

FEGDI eventually sold, on installment, to RS Asuncion Construction Corporation (RSACC) one Class "C" Common Share of Forest Hills for ₱1,100,000.00. Prior to the full payment of the purchase price, RSACC sold the said share to Vertex Sales and Trading, Inc. (Vertex). RSACC advised FEGDI of the sale to Vertex and FEGDI, in turn, instructed Forest Hills to recognize Vertex as a shareholder. For this reason, Vertex enjoyed membership privileges in Forest Hills.

Despite Vertex's full payment, the share remained in the name of FEGDI. Consequently, 17 months after the sale, Vertex wrote FEDGI a letter demanding the issuance of a stock certificate in its name. Filestate Land, Inc. (FELI) replied and initially requested Vertex to first pay the necessary fees for the transfer. Although Vertex complied with this request, no certificate was issued. As such, Vertex made a final demand.

As the demand went unheeded, Vertex filed a Complaint for Rescission with Damages and Attachment against FEGDI, FELI and Forest Hills. It averred that the petitioners defaulted in their obligation as sellers when they failed and refused to issue the stock certificate covering the subject share despite repeated demands. As such, it prayed for the rescission of the sale and demanded the reimbursement of the amount it paid plus interest. During the pendency of the rescission action, a certificate of stock was issued in Vertex's name, but Vertex refused to accept it.

The RTC dismissed the complaint and held the issuance of the stock certificate is just a collateral matter to the sale and it is not essential to the creation of the relation of shareholder. The CA reversed the decision of the RTC. There can be no valid transfer of shares where there is no delivery of the stock certificate.

FEDGI contends that the delay cannot be considered a substantial breach because Vertex was unequivocally recognized as a shareholder of Forest Hills. FELI, on the other hand, claims that it is not a party to the contract sought to be rescinded as it was just recklessly dragged into the action due to a mistake committed by FEGDI's staff. Meanwhile, Vertex alleges that the fulfillment of its obligation to pay the purchase price called into action the petitioners' reciprocal obligation to deliver the stock certificate. Its use and enjoyment of Forest Hills' facilities cannot be considered delivery and transfer of ownership.

ISSUE

Whether the delay in the issuance of a stock certificate can be considered a substantial breach as to warrant rescission of the contract of sale. (YES)

RULING

Physical delivery is necessary to transfer ownership of stocks. In the case at bar, Vertex fully paid the purchase price but the stock certificate was only delivered after Vertex filed an action for rescission against FEGDI. As such, FEGDI clearly failed to deliver the stock certificates, representing the shares of stock purchased by Vertex, within a reasonable time from the point the shares should have been delivered. It is not entirely correct to say that a sale had already been consummated as Vertex already enjoyed the rights a shareholder can exercise. The law, by its express terms, requires a specific form to transfer ownership.

Regarding the involvement of FELI in this case, no privity of contract exists between Vertex and FELI. In the sale of the Class "C" Common Share, the parties are only FEGDI, as seller, and Vertex, as buyer. As can be seen from the records, FELl was only dragged into the action when its staff used the wrong letterhead in replying to Vertex and issued the wrong receipt for the payment of transfer taxes. Thus, FELl should be absolved from any liability.

- Forest Hills Golf & Country Club vs. Vertex Sales and Trading Inc.G.R. No. 202205, March 6, 2013

FOREST HILLS GOLF & COUNTRY CLUB, *Petitioner,* -versus - VERTEX SALES AND TRADING, INC., *Respondent.*

G.R. No. 202205, SECOND DIVISION, March 06, 2013, BRION, *J.*

The corporation whose shares of stock are the subject of a transfer transaction (through sale, assignment, donation, or any other mode of conveyance) need not be a party to the transaction, as may be inferred from the terms of Section 63 of the Corporation Code. However, to bind the corporation as well as third parties, it is necessary that the transfer is recorded in the books of the corporation.

FACTS

Petitioner Forest Hills Golf & Country Club (Forest Hills) is a domestic non-profit stock corporation. It was created as a result of a joint venture agreement between Kings Properties Corporation (Kings) and Fil-Estate Golf and Development, Inc. (FEGDI). In August 1997, FEGDI sold to RS Asuncion Construction Corporation (RSACC) one (1) Class "C" common share of Forest Hills for P1.1 million. Prior to the full payment of the purchase price, RSACC transferred its interests over FEGDI's Class "C" common share to respondent Vertex Sales and Trading, Inc. (Vertex). RSACC advised FEGDI of the transfer and FEGDI, in turn, requested Forest Hills to recognize Vertex as a shareholder. Forest Hills acceded to the request, and Vertex was able to enjoy membership privileges in the golf and country club. Despite the sale of FEGDI's Class "C" common share to Vertex, the share remained in the name of FEGDI, prompting Vertex to demand for the issuance of a stock certificate in its name. As its demand went unheeded, Vertex filed a complaint for rescission with damages against defendants Forest Hills, FEGDI, and Fil-Estate Land, Inc. (FELI) – the developer of the Forest Hills golf course. The Regional Trial Court (RTC) dismissed Vertex's complaint after finding that the failure to issue a stock certificate did not constitute a violation of the essential terms of the contract of sale that would warrant its rescission.

The CA reversed the RTC. It declared that in the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. It based its ruling on Section 63 of the Corporation Code, Hence, the CA rescinded the sale of the share and ordered the defendants to return the amount paid by Vertex by reason of the sale.

ISSUE

Whether the delay in the issuance of a stock certificate can be considered a substantial breach as to warrant rescission of the contract of sale

RULING

As correctly pointed out by Forest Hills, it was not a party to the sale even though the subject of the sale was its share of stock. The corporation whose shares of stock are the subject of a transfer transaction (through sale, assignment, donation, or any other mode of conveyance) need not be a party to the transaction, as may be inferred from the terms of Section 63 of the Corporation Code. However, to bind the corporation as well as third parties, it is necessary that the transfer is recorded in the books of the corporation.

In the present case, the parties to the sale of the share were FEGDI as the seller and Vertex as the buyer (after it succeeded RSACC). As party to the sale, FEGDI is the one who may appeal the ruling rescinding the sale. The remedy of appeal is available to a party who has "a present interest in the subject matter of the litigation and is aggrieved or prejudiced by the judgment. A party, in turn, is deemed aggrieved or prejudiced when his interest, recognized by law in the subject matter of the lawsuit, is injuriously affected by the judgment, order or decree. The rescission of the sale does not in any way prejudice Forest Hills in such a manner that its interest in the subject matter – the share of stock – is injuriously affected. Thus, Forest Hills is in no position to appeal the ruling rescinding the sale of the share. Since FEGDI, as party to the sale, filed no appeal against its rescission, we consider as final the CA's ruling on this matter.

With regard to the amounts paid by Vertex, Forest Hills is under no obligation to return such amount for not being a party in the contract of sale. Indeed, Vertex failed to present sufficient evidence showing that Forest Hills received the purchase price for the share or any other fee paid on account of the sale (other than the membership fee) to make Forest Hills jointly or solidarily liable with FEGDI for restitution.

Although Forest Hills received P150,000.00 from Vertex as membership fee, it should be allowed to retain this amount. For three years prior to the rescission of the sale, the nominees of Vertex enjoyed membership privileges and used the golf course and the amenities of Forest Hills. The Court considered the amount paid as sufficient consideration for the privileges enjoyed by Vertex's nominees as members of Forest Hills.

- ANNA TENG, Petitioner, v. SECURITIES AND EXCHANGE COMMISSION (SEC) AND TING PING LAY, Respondents. (G.R. No. 184332, February 17, 2016, REYES, J.)

ANNA TENG, *Petitioners,* -versus - SECURITIES AND EXCHANGE COMMISSION (SEC) AND TING PING LAY, *Respondents.*
G.R. No. 184332, THIRD DIVISION, February 17, 2016, REYES, *J.*

The delivery or surrender of certificate of stock is not a requisite before the conveyance may be recorded in its books. To compel delivery to the corporation of the certificates as a condition for the registration of the transfer would amount to a restriction on the right of a stockholder to have the stocks transferred to his name, which is not sanctioned by law. The only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred.

FACTS

This case has its origin in the case entitled TCL Sales Corporation and Anna Teng v. Hon. Court of Appeals and Ting Ping Lay (G.R. No. 129777). Herein respondent Ting Ping purchased 480 shares of TCL Sales Corporation (TCL) from Peter Chiu (Chiu) on February 2, 1979; 1,400 shares on September 22, 1985 from his brother Teng Ching Lay (Teng Ching), who was also the president and operations manager of TCL; and 1,440 shares from Ismaelita Maluto (Maluto) on September 2, 1989.

Upon Teng Ching's death in 1989, his son Henry Teng (Henry) took over the management of TCL. To protect his shareholdings with TCL, Ting Ping on August 31, 1989 requested TCL's Corporate Secretary, herein petitioner Teng, to enter the transfer in the Stock and Transfer Book of TCL for the proper recording of his acquisition. He also demanded the issuance of new certificates of stock in his favor. TCL and Teng, however, refused despite repeated demands. Because of their refusal, Ting Ping filed a petition for mandamus with the SEC against TCL and Teng, The Securities and Exchange Commission (SEC) granted the issuance of an alias writ of execution, compelling petitioner Anna Teng (Teng) to register and issue new certificates of stock in favor of respondent Ting Ping Lay (Ting Ping). The order of the SEC was affirmed by the CA; hence, this petition.

ISSUE

Whether the surrender of the certificates of stock is a requisite before registration of the transfer may be made in the corporate books and for the issuance of new certificates in its stead.

RULING: NO.

Under Section 63 of the Corporation Code, certain minimum requisites must be complied with for there to be a valid transfer of stocks, to wit: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.

It is the delivery of the certificate, coupled with the endorsement by the owner or his duly authorized representative that is the operative act of transfer of shares from the original owner to the transferee. The Court even emphatically declared. in Fil-Estate Golf and Development, Inc., et al. v. Vertex Sales and Trading, Inc. that in "a sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. The delivery contemplated in Section 63, however, pertains to the delivery of the certificate of shares by the transferor to the transferee, that is, from the original stockholder named in the certificate to the person or entity the stockholder was transferring the shares to, whether by sale or some other valid form of absolute conveyance of ownership. Shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. Title may be vested in the transferee by the delivery of the duly indorsed certificate of stock. It is thus clear that Teng's position - that Ting Ping must first surrender Chiu's and Maluto's respective certificates of stock before the transfer to Ting Ping may be registered in the books of the corporation - does not have legal basis. The delivery or surrender adverted to by Teng, i.e., from Ting Ping to TCL, is not a requisite before the conveyance may be recorded in its books. To compel Ting Ping to deliver to the corporation the certificates as a condition for the registration of the transfer would amount to a restriction on the right of Ting Ping to have the stocks transferred to his name, which is not sanctioned by law. The only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred.

- JOSEPH OMAR O. ANDAYA vs. RURAL BANK OF CABADBARAN, INC., DEMOSTHENES P. ORAIZ and RICARDO D. GONZALEZ (G.R. No. w, August 3, 2016, SERENO, CJ)

JOSEPH OMAR O. ANDAYA,, *Petitioner*, -versus - RURAL BANK OF CABADBARAN, INC., DEMOSTHENES P. ORAIZ and RICARDO D. GONZALEZ, *Respondents.*
G.R. No. 188769, FIRST DIVISION, August 03, 2016, SERENO, C.J.

Transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates.

FACTS

Andaya bought from Chute 2,200 shares of stock in the Rural Bank of Cabadbaran. The transaction was evidenced by a notarized document denominated as Sale of Shares of Stocks. Chute duly endorsed and delivered the certificates of stock to Andaya and, subsequently, requested the bank to register the transfer and issue new stock certificates in favor of the latter. Andaya also separately communicated with the bank's corporate secretary, respondent Oraiz, reiterating Chute's request for the issuance of new stock certificates in petitioner's favor. The bank eventually denied the request of Andaya. It reasoned that he had a conflict of interest, as he was then president and chief executive officer of the Green Bank of Caraga, a competitor bank.

Respondent bank concluded that the purchase of shares was not in good faith, and that the purchase "could be the beginning of a hostile bid to take-over control of the Rural Bank of Cabadbaran." Citing Gokongwei v. Securities and Exchange Commission, respondent insisted that it may refuse to accept a competitor as one of its stockholders. It also maintained that Chute should have first offered her shares to the other stockholders, as agreed upon during the 2001 stockholders' meeting.

Andaya instituted an action for mandamus and damages to compel the recording of the transfer in the bank's stock and transfer book and to issue new certificates of stock in his name. The RTC issued a Decision dismissing the complaint. Citing Ponce v. Alsons Cement Corporation, the trial court ruled that Andaya had no standing to compel the bank to register the transfer and issue stock certificates in his name. It explained that he had failed "to show that the transfer of subject shares of stock was recorded in the stock and transfer book of the bank or that he was authorized by Chute to make the transfer.

ISSUES

1. Whether Andaya, as a transferee of shares of stock, may initiate an action for mandamus compelling the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book, as well as issue new stock certificates in his name.

2. Whether a writ of mandamus should issue in favor of petitioner.

RULING

1. Transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates. Andaya has been able to establish that he is a bona fide transferee of the shares of stock of Chute. In proving this fact, he presented to the RTC the following documents evidencing the sale: (1) a notarized Sale of Shares of Stocks showing Chute's sale of 2,200 shares of stock to petitioner; (2) a Documentary Stamp Tax Declaration/ Retum; (3) a Capital Gains Tax Return; and (4) stock certificates covering the subject shares duly endorsed by Chute. There is no doubt that Andaya had the standing to initiate an action for mandamus to compel the Rural Bank of Cabadbaran to record the transfer o shares in its stock and transfer book and to issue new stock certificates in his name. As the transferee of the shares, petitioner stands to be benefited or injured by the judgment in the instant petition, a judgment that will either order the bank to recognize the legitimacy of the transfer and petitioner's status as stockholder or to deny the legitimacy thereof.

This Court further finds that the reliance of the RTC on Ponce in finding that petitioner had no cause of action for mandamus against the defendant bank was misplaced. In Ponce, the issue resolved by this Court was whether the petitioner therein had a cause of action for mandamus to compel the issuance of stock certificates, not the registration of the transfer. Ruling in the negative, the Court said in that case that without any record of the transfer of shares in the stock and transfer book of the corporation, there would be no clear basis to compel that corporation to issue a stock certificate. By the import of Section 63 of the Corporation Code, the stock and transfer book would be the main reference book in ascertaining a person's entitlement to the rights of a stockholder. Consequently, without the registration of the transfer, the alleged transferee could not yet be recognized as a stockholder who is entitled to be given a stock certificate.

In contrast, at the crux of this petition are the registration of the transfer and the issuance of the corresponding stock certificates. Requiring petitioner to register the transaction before he could institute a mandamus suit in supposed abidance by the ruling in Ponce was a palpable error. It led to an absurd, circuitous situation in which Andaya was prevented from causing the registration of the transfer, ironically because the shares had not been registered. With the logic resorted to by the RTC, transferees of shares of stock would never be able to compel the registration of the transfer and the issuance of new stock certificates in their favor. They would first be required to show the registration of the transfer in their names – the ministerial act that is the subject of the mandamus suit in the first place.

2. On the issue of propriety of issuing a writ of mandamus, Respondents primarily challenge the mandamus suit on the grounds that the transfer violated the bank stockholders' right of first refusal and that petitioner was a buyer in bad faith. Both parties refer to Section 98 of the Corporation Code to support their arguments, which reads as follows:

SECTION 98. Validity of restrictions on transferof shares. - Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith. Said restrictions shall not be more than onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person.

It must be noted that Section 98 applies only to close corporations. Hence, before the Court can allow the operation of this section in the case at bar, there must first be a factual determination that respondent Rural Bank of Cabadbaran is indeed a close corporation. There needs to be a presentation of evidence on the relevant restrictions in the articles of incorporation and bylaws of the said bank. From the records or the RTC Decision, there is apparently no such determination or even allegation that would assist this Court in ruling on these two major factual matters. With the foregoing, the validity of the transfer cannot yet be tested using that provision. These are the factual matters that the parties must first thresh out before the RTC.

After finding that petitioner has legal standing to initiate an action for mandamus, the Court now reinstates the action he filed and remands the case to the RTC to resolve the propriety of issuing a writ of mandamus. If a corporate secretary fails to record the attachment of a stockholder's shares in the stock and transfer book, and eventually said stockholder sold his share to another person, can the latter hold the corporate secretary liable on the ground that the corporate secretary's failure to record the earlier lien (attachment) lured him to buy the shares? No. Even if we lend credence to the graver allegation that Rolando Navarro (the corporate secretary) showed the stock and transfer books of the corporation to Ramon Garcia (the buyer of the shares) which bore no record of the Consortium Banks' lien (attachment), still he could not be faulted in the absence of showing that he acted in bad faith with the intention to lure the buyer to believe that the subject shares were lien-free. As the Corporate Secretary of Chemical Industries, he is under no obligation to record the attachment of the Consortium Banks, not being a transfer of ownership but merely a burden on the title of the owner. Only absolute transfers of shares of stock are required to be recorded in the corporation's stock and transfer book in order to have "force and effect as against third persons." In Chemphil Export and Import Corporation v. Court of Appeals, et al. , the Court enunciated the rule that attachments of shares are not considered "transfer" and need not be recorded in the corporations' stock and transfer book.

- Tee Ling Kiat v. Ayala Corp., G.R. No. 192530, [March 7, 2018]

TEE LING KIAT, ***Petitioner*, -*v*ersus-** **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

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 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.

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.

RULING: YES.

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*.

- Florete, Sr. v. Florete, Jr., G.R. No. 223321, [April 2, 2018]\

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.

- Legaspi y Navera v. People, G.R. Nos. 225753 & 225799 , [October 15, 2018]

JOSE PAULO LEGASPI Y NAVERA, *Petitioner,* -versus –
PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 225753, FIRST DIVISION, October 15, 2018, TIJAM, *J.*

VICTOR DAGANAS Y JANDOC, *Petitioner,* -versus - PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 225799, FIRST DIVISION, October 15, 2018, TIJAM, *J.*

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.

FACTS

Legaspi and Daganas were charged with the crime of estafa committed under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in an Information filed before the Acting City Prosecutor of Pasig City.

When arraigned, petitioners pleaded not guilty. At the pre-trial conference, the parties stipulated that Fung Hing Kit (private complainant) remitted, through Express Padala in Hongkong, the amount of P9,500,000.00 to iGen-Portal International Corporation (iGen-Portal).

The prosecution presented private complainant and one Marcelina Balisi (Balisi), private complainant's domestic helper in Hongkong. Private complainant is a businessman in Hongkong. In May 2005, he met Daganas in Hongkong who then proposed a "joint venture" by buying 10% share of iGen-Portal. 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 Balisi 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.

On November 14, 2013, the RTC rendered Judgment finding petitioners guilty of the crime of estafa. This prompted petitioners to appeal to the CA, essentially arguing 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.

The CA, however, affirmed petitioners' conviction in a Decision dated January 21, 2016. According to the CA, all elements of estafa through conversion or misappropriation are present: (1) money in the amount of P9,500,000.00 was received by Legaspi as evidenced by an acknowledgment receipt issued by the latter; (2) there is a legal presumption of conversion or misappropriation when petitioners failed to issue to private complainant the stock certificate evidencing the 2,000 shares which he purchased and when petitioners failed to return the amount of P9,500,000.00;22 (3) private complainant was prejudiced by petitioners' misappropriation; and (4) there was demand for the return of private complainant's investment.

Petitioners' motion for reconsideration met similar denial from the CA Resolution dated July 13, 2016. Thus, resort to the present appeal.

ISSUE

Whether or not the CA correctly affirmed petitioners' conviction for estafadefined and penalized under Article 315, paragraph 1(b) of the RPC.

RULING: NO.

In the absence of the first and second elements, there can be no crime of estafa; petitioners' acquittal should follow as a matter of course.

To secure conviction, it behooves upon the State to prove the existence of all the essential elements of the offense charged beyond reasonable doubt. Anything less than all the elements of the offense charged negates a finding of guilt.

For one, Article 315, paragraph 1(b) requires proof of receipt by the offender of the money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same. In other words, mere receipt of the money, goods, or personal property does not satisfy the first element, it must be demonstrated that the character of such receipt must either be in trust, on commission or for administration or that the accused has the obligation to deliver or return the same money, goods or personal property received. It is therefore essential to prove that the accused acquired both material or physical possession and juridical possession of the thing received.

The Information itself is bereft of any indication that petitioners received private complainant's money in such manner as to create a fiduciary relationship between them. On the contrary, the Information reads that private complainant "invested" his money with iGen-Portal. It is undisputed that at the time material to the instant case, iGen-Portal was a duly-registered corporation engaged in wholesale and retail business, the existence of which was never denied by private complainant as he himself admitted having scrutinized iGen-Portal's Articles of Incorporation, income analysis and projected income analysis. Clearly, by the transfer of stocks in exchange for the amount of P9,500,000.00, no fiduciary relationship was created between petitioners and private complainant.

However, as the undisputed facts reveal, the shares of stock of Legaspi were transferred to Balisi, a Filipino, instead of to private complainant. This transaction was duly evidenced by a Deed of Sale of Shares of Stock between Legaspi and Balisi. Accordingly, a stock certificate was issued for the 2,000 shares in the name of Balisi which was recorded in the stock and transfer book of iGen-Portal. To be sure, the issue of whether such arrangement was contrary to foreign ownership restrictions or was used to circumvent Commonwealth Act No. 108 or the "Anti-Dummy Law" is not the pressing concern in this estafa case. If at all, what this circumstance reveals is that there was no abuse of confidence committed by petitioners nor suffered by private complainant; rather, private complainant voluntarily parted with his money after he was made fully aware of foreign ownership restrictions and then, even acquiesced to having Balisi, private complainant's domestic helper, purchase the stocks albeit the funds therefor would come from him.

For another, the acknowledgment receipt relied upon by the CA unequivocally states that the amount of P9,500,000.00 was "for the payment for 2,000 shares of stocks of [i-Gen] Portal." This is consistent with private complainant's allegation in his complaint that he remitted the amount of P9,500,000.00 as "payment for the 10% shares of [i-Gen] Portal." At the pre-trial, the prosecution also stipulated that said amount was "received by i-Gen Portal in its account." The Information also charges that private complainant deposited the amount of P9,500,000.00 "into the account of [i-Gen] Portal." Such partake of judicial admissions which require no further proof. Thus, the inevitable conclusion is that the sum of P9,500,000.00 was not received by petitioners, either materially or juridically, but by iGen-Portal – an entity separate and distinct from individual petitioners which veil of corporate fiction was not pierced.

Anent the second element, the CA relied on a legal presumption of conversion or misappropriation only because petitioners failed to issue to private complainant the stock certificates for the 2,000 shares of stocks purchased. This reasoning is utterly misplaced.

The Court held in a categorical pronouncement that the words "convert" and "misappropriate"; connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

Thus, 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.

c. Issuance

i. Full Payment

- Irineo S. Baltazar vs. Lingayen Gulf Electric Power, Co., Inc., G.R. No. L-16236, June 30, 1965

IRINEO S. BALTAZAR, *Petitioner,* -versus LINGAYEN GULF ELECTRIC POWER CO., INC., DOMINADOR C. UNGSON BRIGIDO G. ESTRADA, MANUEL L. FERNANDEZ, BENEDICTO C. YUSON and BERNARDO ACENA, *Respondents.*

G.R. No. L-16236, EN BANC, June 30, 1965, PAREDES, *J.*

MARVIN O. ROSE, *Petitioner,* -versus LINGAYEN GULF ELECTRIC POWER CO., INC., DOMINADOR C. UNGSON, BRIGIDO G. ESTRADA, MANUEL L. FERNANDEZ, BENEDICTO C. YUSON and BERNARDO C. ACENA, *Respondents.*
G.R. No. L-16237, EN BANC, June 30, 1965, PAREDES, *J.*

IRENEO S. BALTAZAR and MARVIN O. ROSE, *Petitioners,* -versus BERNARDO C. ACENA, *Respondent.*
G.R. No. L- 16238, EN BANC, June 30, 1965, PAREDES, *J.*

Section 37of the Corporation Code makes payment of the "par value" as prerequisite for the issuance of certificates of par value stocks, and makes payment of the "full subscription" as prerequisite for the issuance of certificates of no par value stocks. No such distinction was contained in section 36 of our Corporation Law of 1906, corresponding to section 37 now. The present law could have simply provided that no certificate of par value and no par value stock shall be issued to a subscriber, as fully paid up, until the full subscription has been paid him to the corporation, if full payment of subscription were intended as the criterion in the issuance of certificates, for both the par value and no par value stocks.

FACTS

Plaintiffs Baltazar and Rose were among the incorporators of Lingayen Gulf, the corporation. It is alleged that it has always been the practice and procedure of the Corporation to issue certificates of stock to its individual subscribers for unpaid shares of stock. Of the 600 shares of capital stock subscribed by Baltazar, he had fully paid 535 shares of stock, and the Corporation issued to him several fully paid up and non-assessable certificates of stock, corresponding to 535 shares. Defendants Ungson, Estrada, Fernandez and Yuzon, constituted the majority of the holdover seven-member Board of Directors of the Corporation. Let the first group be called the Ungson Group and the second, Baltazar group.

Annual stockholders' meeting of the Corporation had been fixed, principally for the purpose of electing new officers and Board of Directors for the calendar year 1955. The fight for control o the management and property of the corporation was close and keen.

The Ungson group (specially defendant Acena), in order to continue retaining control, management and property of the corporation, in the regular meeting of the Board o directors, held on January 30, 1955, passed three resolutions.

Resolution No. 2 declared all watered stocks issued to Acena, Baltazar, Rose and Jubenville, "of no value and consequently cancelled from the books of the Corporation.
Resolution No. 3 resolved that "…all unpaid subscriptions should bear interest annually from the year of subscription..

Resolution No. 4 resolved that "any and all shares of stock of the Lingayen Gulf Electric Power Co., Inc., issued as fully paid-up to stockholders whose subscription to a number of shares have been declared are hereby incapacitated to utilize or avail of the voting power until such delinquency interest is fully paid up.

On the authority of these resolutions, the Ungson group was threatening and procuring to expel and oust the plaintiffs and their companion stockholders, for the ultimate purpose of depriving them of

their right to vote in the said annual stockholders'' meeting scheduled for May 1, 1955. Baltazar and Rose prayed that a writ of preliminary injunction be issued, which was granted.
Defendants set up counterclaims praying that the resolutions be declared legal and valid. Plaintiffs filed their answer to defendant's counterclaims. On August 8, 1955, the lower court dismissed plaintiff's counterclaims.

The following tentative amicable settlement, dated September 13, 1958, formulated and entered into by some of the parties:

1. As to the so-called water stocks P30, 000.00 each of the holders of said stock, namely, Irineo Baltazar, Marvin Rose and Bernardo Acena, will return to the corporation P3,500 each, thereby retaining P6,500 worth of stocks;
2. With respect to Dr. Bernardo Acena, of the certificates of stock allegedly representing his profit, he will return to the corporation P3, 500.00 of said share of stock and retain P7, 500.00 worth thereof;…

On February 29 1959, the lower court rendered a decision, approving the agreement and dissolved the writ of preliminary injunction, with costs. Defendants on March 14, 1959, filed a motion for reconsideration, asking that the agreement be amended in the sense that delinquent stocks cannot be voted until fully paid in accordance with the agreement.

On March 18, 1959, plaintiffs, in cases Nos. 13211 and 13212, filed a petition for immediate execution and for preliminary injunction and/or mandamus, praying that a writ be issued, ordering the defendants, as controlling majority hold-over board of directors, to hold immediately the long delayed stockholders' meeting and to allow the plaintiffs and all the stockholders with unpaid subscriptions, to vote all their stocks and subscriptions at said stockholders' meeting, as directed in the decision.

On March 25, 1959, the Court issued an amending decisions, pertinent portion are as follows:
"Regarding the right to vote, this Court likewise agrees with the defendants that the facts considered during the negotiations for settlement effected by the parties in the Chambers of the presiding judge do not warrant repeal of the declaration of delinquency and complete restoration of voting rights until full payment of the unpaid stock subscriptions and interest within the time and to the extent mentioned in par. 3 of the aforesaid compromise agreement. To rule otherwise would be to encourage non-payment of the balance of stock subscriptions and thus defeat the paramount intention of the compromise agreement."

Defendants on August 14, 1959, perfected their appeal against the above ruling, on purely questions of law. Defendants-appellants claim that resolution No. 4 (Exh. C-2), withdrawing or nullifying the voting power of all the aforesaid shares of stock is valid, notwithstanding the existence of partial payments, evidenced by certificates duly issued therefor. They invoke the ruling laid down by the Court in the Fua Cun v. Summers Case (44 Phil. 705, March 27, 1923, pertinent portion of which states:

In the absence of special agreement to the contrary, a subscriber for a certain number of shares of stock does not, upon payment of one-half of the subscription price become entitled to the issuance of certificates for one-half of the number of shares subscribed for; the subscriber's right consists only in equity entitling him to a certificate for the total number of shares subscribed for by him upon payment of the remaining portion of the subscription price.

ISSUE

Whether or not the partially unpaid subscriptions in a stock corporation are entitled to vote based on an agreement entered into by the Board of Directors.

RULING: NO.

The cases at bar do not come under the aegis of the principle enunciated in the Fua Cun v. Summers case, because it was the practice and procedure, since the inception of the corporation, to issue certificates of stock to its individual subscribers for unpaid shares of stock and gave voting power to shares of stock fully paid. And even though no agreement existed, the ruling in said case, does not now reflect the correct view on the matter, for better than an agreement or practice, there is the law, which renders the said case of Fua Cun-Summers, obsolescent.

The cited case connotes the principle that a partial payment of a subscription, does not entitle the stockholder to a certificate for the total number of shares subscribed by him; his right consists only in equity to a certificate of the total number of shares subscribed for, upon payment of the remaining portion of the subscription price. In other words, it is contended, as in the present case, that if Baltazar subscribed to 600 shares of stock in a single subscription, and he merely paid for 300 shares, for which he was given fully paid certificates for 300 shares, he cannot vote said 300 shares, in any meeting of the Corporation, until he shall have paid the remaining 300 shares of stock. The saving clause in the quoted pronouncement, "in the absence of agreement to the contrary," reveals that the doctrine is not mandatory, but merely directory and that if "there is an agreement to the contrary," which is not violative of law, the rigor of the pronouncement may be relaxed. The plaintiffs-appellees seem to sustain an adverse concept, postulating that once a stockholder has subscribed to a certain number of shares, although he has made partial payments only, but is issued a certificate for the paid up share of stock, he is entitled to vote the whole number of shares subscribed by him, paid or not, until the said unpaid shares shall have been called for payment or declared delinquent.

Section 37of the Corporation Code makes payment of the "par value" as prerequisite for the issuance of certificates of par value stocks, and makes payment of the "full subscription" as prerequisite for the issuance of certificates of no par value stocks. No such distinction was contained in section 36 of our Corporation Law of 1906, corresponding to section 37 now. The present law could have simply provided that no certificate of par value and no par value stock shall be issued to a subscriber, as fully paid up, until the full subscription has been paid him to the corporation, if full payment of subscription were intended as the criterion in the issuance of certificates, for both the par value and no par value stocks. Stated in another way, the present law requires as a condition before a shareholder can vote his shares, that his full subscription be paid in the case of no par value stock; and in case of stock corporation with par value, the stockholder can vote the shares fully paid by him only, irrespective of the unpaid delinquent shares. As well observed by the trial court, a corporation may now, in the absence of provisions in their by-laws to the contrary, apply payments made by subscribers-stockholders, either as:

(a) full payment for the corresponding number of shares of stock, the par value of each of which is covered by such payment; or

(b) as payment pro-rata to each and all the entire number of shares subscribed for

In the cases at bar, the defendant-corporation had chosen to apply payments by its stockholders to definite shares of the capital stock shares certificates for said payments; its call for payment of unpaid subscriptions and its declaration of delinquency for nonpayment of said call affecting only the remaining number of shares of its capital stock, for which no fully paid capital stock shares certificates have been issued, and only these have been legally shorn of their voting rights by said declaration of delinquency.

5. Stock and Transfer Book

a. Contents

- Jesus V. Lanuza, et al. vs. Court of Appeals, et al., G.R. No. 131394, March 28, 2005

JESUS V. LANUZA, MAGADYA REYES, BAYANI REYES and ARIEL REYES, *Petitioners,* - COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, DOLORES ONRUBIA, ELENITA NOLASCO, JUAN O. NOLASCO III, ESTATE OF FAUSTINA M. ONRUBIA, PHILIPPINE MERCHANT MARINE SCHOOL, INC., *Respondents.*
G.R. No. 131394, SECOND DIVISION, March 28, 2005, TINGA, *J.*

Quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares, to base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares. The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed.

FACTS

In 1952, the Philippine Merchant Marine School, Inc. (PMMSI) was incorporated, with seven hundred (700) founders' shares and seventy-six (76) common shares as its initial capital stock subscription reflected in the articles of incorporation. However, private respondents and their predecessors who were in control of PMMSI registered the company's stock and transfer book for the first time in 1978, recording thirty-three (33) common shares as the only issued and outstanding shares of PMMSI. Sometime in 1979, a special stockholders' meeting was called and held on the basis of what was considered as a quorum of twenty-seven (27) common shares, representing more than two-thirds (2/3) of the common shares issued and outstanding. In 1982, the heirs of one of the original incorporators, Juan Acayan, filed a petition with the (SEC) for the registration of their property rights over one hundred (120) founders' shares and twelve (12) common shares owned by their father.

The SEC hearing officer held that the heirs of Acayan were entitled to the claimed shares and called for a special stockholders' meeting to elect a new set of officers. The SEC En Banc affirmed the decision. As a result, the shares of Acayan were recorded in the stock and transfer book. On 06 May 1992, a special stockholders' meeting was held to elect a new set of directors. Private respondents thereafter filed a petition with the SEC questioning the validity of the 06 May 1992 stockholders' meeting, alleging that the quorum for the said meeting should not be based on the 165 issued and outstanding shares as per the stock and transfer book, but on the initial subscribed capital stock of seven hundred seventy-six (776) shares, as reflected in the 1952 Articles of Incorporation. The petition was dismissed. Appeal was made to the SEC En Banc, which granted said appeal, holding that the shares of the deceased incorporators should be duly represented by their respective administrators or heirs concerned. The SEC directed the parties to call for a stockholders meeting on the basis of the stockholdings reflected in the articles of incorporation for the purpose of electing a new set of officers for the corporation.

Petitioners, who are PMMSI stockholders, filed a petition for review with the Court of Appeals. Rebecca Acayan, Jayne O. Abuid, Willie O. Abuid and Renato Cervantes, stockholders and directors of PMMSI, earlier filed another petition for review of the same SEC En Banc's orders. The petitions were thereafter consolidated. The consolidated petitions essentially raised the following issues, viz: (a) whether the basis the outstanding capital stock and accordingly also for determining the quorum at stockholders' meetings it should be the 1978 stock and transfer book or if it should be the 1952 articles of incorporation; and (b) whether the Court of Appeals "gravely erred in applying the Espejo Decision to the benefit of respondents. The "Espejo Decision" is the decision of the SEC en banc which ordered the recording of the shares of Jose Acayan in the stock and transfer book.

The Court of Appeals held that for purposes of transacting business, the quorum should be based on the outstanding capital stock as found in the articles of incorporation. As to the second issue, the Court of Appeals held that the ruling in the Acayan case would ipso facto benefit the private respondents, since to require a separate judicial declaration to recognize the shares of the original incorporators would entail unnecessary delay and expense. Besides, the Court of Appeals added, the incorporators have already proved their stockholdings through the provisions of the articles of incorporation.

In the instant petition, petitioners claim that the 1992 stockholders' meeting was valid and legal. They submit that reliance on the 1952 articles of incorporation for determining the quorum negates the existence and validity of the stock and transfer book which private respondents themselves prepared. In addition, they posit that private respondents cannot avail of the benefits secured by the heirs of Acayan, as private respondents must show and prove entitlement to the founders and common shares in a separate and independent action/proceeding. In private respondents' Memorandum dated 08 March 2000, they point out that the instant petition raises the same facts and issues as those raised in G.R. No. 131315 , which was denied by the First Division of this Court on 18 January 1999 for failure to show that the Court of Appeals committed any reversible error. They add that as a logical consequence, the instant petition should be dismissed on the ground of res judicata. Furthermore, private respondents claim that in view of the applicability of the rule on res judicata, petitioners' counsel should be cited for contempt for violating the rule against forum-shopping. For their part, petitioners claim that the principle of res judicatadoes not apply to the instant case. They argue that the instant petition is separate and distinct from G.R. No. 131315, there being no identity of parties, and more importantly, the parties in the two petitions have their own distinct rights and interests in relation to the subject matter in litigation. For the same reasons, they claim that counsel for petitioners cannot be found guilty of forum-shopping.

In their Manifestation and Motion dated 22 September 2004, private respondents moved for the dismissal of the instant petition in view of the dismissal of G.R. No. 131315. Attached to the said manifestation is a copy of the Entry of Judgment issued by the First Division dated 01 December 1999. The petition must be denied, not on res judicata, but on the ground that like the petition in G.R. No. 131315 it fails to impute reversible error to the challenged Court of Appeals' Decision. The petition in this case involves the same facts and substantially the same issues and arguments as those in G.R.

No. 131315 which the First Division has long denied with finality. The First Division found the petition before it inadequate in failing to raise any reversible error on the part of the Court of Appeals. We reach a similar conclusion as regards the present petition.

ISSUE

Whether or not the basis of quorum for a stockholders' meeting is the outstanding capital stock as indicated in the articles of incorporation or that contained in the company's stock and transfer book.

RULING: The articles of incorporation.

Articles of Incorporation define the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders. The contents are binding, not only on the corporation, but also on its shareholders. Stock and transfer book- book which records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made; and such other entries as may be prescribed by law.

It is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. It is not public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein In this case, the articles of incorporation indicate that at the time of incorporation, the incorporators were bona fide stockholders of 700 founders' shares and 76 common shares.

Hence, at that time, the corporation had 776 issued and outstanding shares. According to Sec. 52 of the Corp Code, "a quorum shall consist of the stockholders representing a majority of the outstanding capital stock." As such, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares, to base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares.

The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book. One who is actually a stockholder cannot be denied his right to vote by the corporation merely because the corporate officers failed to keep its records accurately. A corporation's records are not the only evidence of the ownership of stock in a corporation. It is no less than the articles of incorporation that declare the incorporators to have in their name the founders and several common shares. Thus, to disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist and accordingly to allow great injustice to be caused to the incorporators and their heirs.

b. Who May Make Valid Entries

- Manuel A. Torres, Jr., (Deceased), et al. vs. Court of Appeals, et al., G.R. No. 120138, September 5, 1997

MANUEL A. TORRES, JR., (Deceased), GRACIANO J. TOBIAS, RODOLFO L. JOCSON, JR., MELVIN S. JURISPRUDENCIA, AUGUSTUS CESAR AZURA and EDGARDO D. PABALAN, *Petitioners,* - versus - COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, TORMIL REALTY & DEVELOPMENT CORPORATION, ANTONIO P. TORRES, JR., MA. CRISTINA T. CARLOS, MA. LUISA T. MORALES and DANTE D. MORALES, *Respondents.*

G.R. No. 120138, FIRST DIVISION, September 05, 1997, KAPUNAN, *J.*

The Corporate secretary keeps the stock and transfer book and makes proper and necessary entries therein. The stock and transfer book of TORMIL was not kept by the corporate secretary but by respondent Torres, the President and Chairman of the Board of Directors of TORMIL. Furthermore, the stock and transfer book was not kept at the principal office of the corporation either but at the place of respondent Torres. These being the obtaining circumstances, any entries made in the stock and transfer book on by respondent Torres of an alleged transfer of nominal shares to Pabalan and Co. cannot therefore be given any valid effect.

FACTS

The late Manuel A. Torres Jr. was the majority stockholder of Tormil Realty & Development Corporation while private respondents who are the children of Judge Torres' deceased brother Antonio A. Torres, constituted the minority stockholders. In 1984, Judge Torres, in order to make substantial savings in taxes, adopted an "estate planning" scheme under which he had assigned to Tormil Realty & Development Corporation various real properties he owned and his shares of stock in other corporations in exchange for 225,972 Tormil realty shares. Hence, on various dates in July and August of 1984, 10 deeds of assignment were executed by the late Judge Torres. Consequently, the aforelisted properties were duly recorded in the inventory of assets of Tormil realty and the revenues generated by the said properties were correspondingly entered in the corporation's books of account and financial records. Likewise, all the assigned parcel of land were duly registered with the respective register of deeds in the name of Tormil realty, except for the ones located in Makati and Pasay City. At the time of the assignments and exchange, however, only 225,000 Tormil Realty shares remained unsubscribed, all of which were duly issued to and received by Judge Torres. Due to the insufficient number of shares of stock issued to Judge Torres and the alleged refusal to private respondents to approved the needed increase in the corporations authorized capital stock, on September 11, 1986 Judge Torres revoked the two deeds of assignment covering the properties in Makati and Pasay City. Noting the disappearance of the Makati and Pasay City properties from the corporations inventory of assets and financial records private respondents, on March 31, 1987, were constrained to file a complaint with the Securites and Exchange Commission (SEC) docketed as SEC Case No. 3153 to compel Judge Torres to deliver to Tormil corporation the two deed of assignment covering the aforementioned Makati and Pasay City properties which had unilaterally revoked and to cause the registration of the corresponding titles in the name of Tormil. The 1987 annual stockholders meeting and election of directors of Tormil corporation was scheduled on March 25, 1987, in compliance with the provision of its by-laws. Pursuant thereto, Judge Torres assigned from his own shares, one share each to petitioners. These assigned shares were in the nature of "qualifying shares" for the sole purpose of meeting the legal requirement to be able to elect them to the Board of directors as Torres nominees. Consequently, on 10 April 1987, private respondents instituted a complaint with the SEC (SEC Case No. 3161) praying in the main, that the election of petitioners to the Board of Directors be annulled. Private respondents alleged that the petitioners-nominees were not legitimate stockholders of Tormil because the assignment of shares to them violated the minority stockholders right of pre-emption as provided in the corporations articles and by-laws.

In this petition for review on certiorari under Rule 45 of the Revised Rules of Court, petitioners seek to annul the decision of the Court of Appeals in CA-G.R. SP. No. 31748 dated 23 May 1994 and its subsequent resolution dated 10 May 1995 denying petitioners motion for reconsideration.

ISSUE

Whether or not election the March 25, 1987 election was valid on the ground that the assignment of the qualifying shares were not recorded in the corporation books.

RULING: NO.

In the absence of any provision to the contrary, the corporate secretary is the custodian of corporate records. Corollarily, he keeps the stock and transfer book and makes proper and necessary entries therein. Contrary to the generally accepted corporate practice, the stock and transfer book of TORMIL was not kept by the corporate secretary but by respondent Torres, the President and Chairman of the Board of Directors of TORMIL. In contravention to the above cited provision, the stock and transfer book was not kept at the principal office of the corporation either but at the place of respondent Torres. These being the obtaining circumstances, any entries made in the stock and transfer book on by respondent Torres of an alleged transfer of nominal shares to Pabalan and Co. cannot therefore be given any valid effect. Where the entries made are not valid, Pabalan and Co. cannot therefore be considered stockholders of record of TORMIL. Because they are not stockholders, they cannot therefore be elected as directors of TORMIL. To rule otherwise would not only encourage violation of clear mandate of Sec. 74 of the Corporation Code that stock and transfer book shall be kept in the principal office of the corporation but would likewise open the flood gates of confusion in the corporation as to who has the proper custody of the stock and transfer book and who are the real stockholders of records of a certain corporation as any holder of the stock and transfer book, though not the corporate secretary, at pleasure would make entries therein. All corporations, big or small, must abide by the provisions of the Corporation Code. Being a simple family corporation is not an exemption. Such corporations cannot have rules and practices other than those established by law.

J. Dissolution and Liquidation

- Chase vs. Buencamino, 136 SCRA 365 (1985)

ELTON W. CHASE, as minority Stockholder and on behalf of other Stockholders similarly situated and for the benefit of AMERICAN MACHINERY AND PARTS MANUFACTURING, INC., *Petitioner*, -versus - DR. VICTOR BUENCAMINO, SR., VICTOR BUENCAMINO, JR., JULIO B. FRANCIA and DOLORES A. BUENCAMINO, *Respondents.*
G.R. No. L-20395, SECOND DIVISION, May 13, 1985, CUEVAS, *J.*

The removal of a stockholder (in this case a majority stockholder) from the management of the corporation and/or the dissolution of a corporation in a suit filed by a minority stockholder is a drastic *measure. It should be resorted to only when the necessity is clear which is not the situation in the case at bar.*

FACTS

Defendant Dr. Buencamino, Sr., a Filipino and William Cranker, an American, even prior to the year 1954 were already business associates. They owned two firms namely, the Philippine American Machinery and Equipment Corporation (PAMEC) which was organized in 1947 and the BUCRA which means Buencamino and Cranker.

Plaintiff Elton Chase, on the other hand, was the owner of Production Manufacturing Company, of Portland, Oregon, USA, a corporation primarily dedicated to the operation of a machine shop and heat-treating plant for the production of tractor parts.

Sometime in 1954, Chase was notified by the Highway Commission of the State of Oregon that his factory was going to be in the path of a proposed highway. He was then advised to sell or face expropriation and warned to remove his plant within a year. His distributor Craig Carrol told him of a Dr. Buencamino of Manila who he said was interested in establishing a manufacturing plant in the Philippines. Craig Carrol contacted Buencamino who told him to contact his associate William Cranker in the United States. Thereafter, a series of negotiations took place both here in Manila, and in the United States, between Chase on the one hand, and Cranker and Buencamino, on the other, for the purchase of Chase's factory (Production Manufacturing Company) and the establishment of a new factory in Manila which was to be called the American Machinery Engineering Parts, Inc. (Amparts for short). These negotiations culminated in a final agreement to the effect that-Elton Chase was to be paid One Hundred Thousand Dollars ($100,000.00) and he would also be given a one-third interest in Amparts, with the other two, Dr. Buencamino and Cranker, as the owner of the other two-thirds (2/3) interest, 1/3 interest each; that in exchange for said $100,000.00 and the 1/3 interest, Chase was to transfer to Amparts his tractor plant, ship his machineries to Manila, assuming all costs of dismantling, preserving and crating for shipment to Manila, install said machineries at Amparts plant with the aid of five technicians and finally, he has to be the production manager of Amparts.

AMPARTS was formally organized as a corporation on July 5, 1955 with an authorized capital stock of P4,000,000.00 divided into 4,000 shares with a par value of P1,000.00 each. The original subscription was P1,800,000.00. Dr. Buencamino, Cranker & Chase subscribed P600,000.00 each. But since five were necessary to organize a corporation, Buencamino and Cranker took in their respective wives.

In the meanwhile, Chase had already shipped his machineries and had them installed in the AMPARTS plant in Pasig, Rizal. AMPARTS then began operation with Dr. Buencamino as President, William Cranker as Manager and Elton Chase as Production Manager. For some time the three maintained harmonious relations but later on distrust came in until finally Chase tendered his letter of resignation as Production Manager, dated March 28, 1957 which was accepted by both Dr. Buencamino and Cranker thru a letter dated July 8, 1957.

On April 21, 1958, Chase thru his lawyer addressed a letter of demand to both Dr. Buencamino and Cranker to enforce the former's claim against the latter for breach of contract, unpaid salaries and expenses, and damages amounting to approximately P500,000.00 at the official rate of exchange between pesos and U.S. dollars.

This was answered by Dr. Buencamino the next day in a letter saying that they are not aware of the claims being demanded and they further asked for a more definite statement of the claims.

On May 23, 1958, Chase filed an action against Cranker with the Superior Court of Los Angeles [12] seeking to recover the sum of $ 150,000.00 as alleged balance of the purchase price of his plant. This case however died a natural death because Cranker I left and was never reached by process from the California Court. Then, sometime in August 1958, Cranker sold out all his interest in Amparts to Dr. Buencamino.

Finally, on August 20, 1960, Chase filed this case before the Court of First Instance of Manila, alleging various acts of fraud which he claimed had been committed by both Dr. Buencamino and Cranker, namely:

1. Dr. Buencamino got stock in part without paying for it and in part with proceeds of the sale of Amparts dollars in the blackmarket;
2. Dr. Buencamino purchased for Amparts certain materials from Bertoni and Cotti of Italy and inflated the invoice price from $ 122,250.00 to $ 387,933.36, sending the excess dollars abroad and selling them at the blackmarket for his private gain;
3. Dr. Buencamino purchased land from the province of Rizal for Amparts and then resold part of it to himself for private gain;
4. Dr. Buencamino and Cranker in August 1955, bought a surplus building in Guam for $ 60,000.00 C.I.F. and in the same year sold it to Amparts for $ 187,500.00 for their private gain;
5. Dr. Buencamino permitted the use of third parties for his private gain, of the Amparts dock at the Pasig River;
6. Dr. Buencamino collected and collects rentals for apartments by him constructed even though no longer used by Amparts technicians;
7. Dr. Buencamino permitted the sale abroad of Amparts manufactured tractor parts at depressed prices;
8. Dr. Buencamino collected a mark up interest on moneys borrowed by him from the banks and by him advanced unto Amparts;
9. The Board Resolutions of 13 May 1960 which also increased compensation of Buencamino's relatives and gave him an increased mark up on his evidences and authorized his and his wife's trip abroad and also authorized the conversion of his credit for unpaid interest into Amparts stocks were all void.

On the other hand, defendants in their Answer set up by way of counterclaim that:

1. Chase sold machineries unto Amparts thru Overseas part of which consisting of 24 pieces worth of P264,000.00 were junk;
2. Chase maliciously spread false rumors against Amparts, and induced its employees to leave; and is engaged in competition with Amparts;
3. Chase spread false rumors against the integrity of defendants to embarass and humiliate them and injure their reputation;
4. Chase took into the Philippines thru the shipment of his factory, his own personal effects, machineries and materials the freight expenses for which reach P6,676.60; and

5. Chase by the unfounded action should pay defendants their attorney's fees; for all of which counterclaims, defendants claim a monetary judgment against Chase.

On August 20, 1960, Elton Chase in his capacity as director and minority stockholder of American Machinery and Parts Manufacturing, Inc. (AMPARTS) and in behalf of the other stockholders of said corporation similarly situated and for the benefit of Amparts filed Civil Case No. 49346, before the then Court of First Instance of Manila, Branch XIV against the respondents.

The complaint seeks the the removal of Dr. Buencamino, Sr., Victor Buencamino, Jr. and Julio B. Francia from the offices held by them to enjoin defendants from participating in the management, operation and control of Amparts and if necessary, order a dissolution and liquidation of Amparts. Furthermore, the complaint prayed that the appointment of a receiver pendente lite in order to prevent the continuance and aggravation of the violations of defendants and to preserve and protect the rights and interests of plaintiff-appellant and other stockholders similarly situated.

Defendants William E. Cranker and Florence Cranker even at the time the complaint was filed no longer resided in the Philippines and had no assets against which a judgment may be executed because as alleged by the plaintiffs, the said defendants "had already disposed of their interests in favor of defendants Buencaminos". For this reason, plaintiffs' motion to serve summons upon them extraterritorially was denied by the lower court. The remaining defendants, Dr. Victor Buencamino, Sr., Victor Buencamino, Jr., Mrs. Dolores A. Buencamino and Julio B. Francia filed their "Opposition to Preliminary Receivership" and subsequently, on September 6, 1960, their Answer with Counterclaim.

On June 10, 1961, the lower court issued an Order denying plaintiffs' application for receivership but ordering defendants to file a bond in the amount of P100,000.00 to answer for the damages that plaintiffs might suffer by the non-appointment of a receiver. After trial on the merits, the lower court rendered judgment dated May 3, 1962, finding defendant Dr. Buencamino guilty of "breach of a legal obligation".

ISSUE

Whether or not Dr. Buencaino and Cranker may be ousted from management of AMPARTS due to acts of fraud committed by them despite being stockholders of the said corporation.

RULING: NO.

It will above be noted that while the Court found Chase guilty on two counts, on the counterclaims the guilt referred to acts performed during the litigation; they do not show that Chase had come to Court already guilty; as the Court has found, when he came to Court on 20 August, 1960, he was an innocent party, and Amparts was the victim of fraud; on the other hand, while this really is true, the Court cannot see how under the present circumstances, the correct equitable relief that the Court should grant should be to change over the management from Buencamino unto Chase; especially considering that the Court has also seen that Chase pendente lite had performed an act that has virtually helped an AMPARTS competitor; neither can the Court grant a dissolution because the action is a derivative one for the benefit of AMPARTS and not for the personal benefit of Chase, and AMPARTS cannot be benefited by its extinction; as to the ouster of Dr. Buencamino from management, it should not be forgotten that Dr. Buencamino is not only a manager, but is in fact 2/3 owner of AMPARTS and to oust him from management would amount to his disenfranchisement as owner of the majority of the enterprise apart from the fact that it is also established in the proofs that Amparts is already picking up and has been a going concern after Cranker left unto him the direction of its affairs; the Court therefore having in mind all these finds that the solution most equitable and just would be to limit its decision to imposing a monetary judgment upon the guilty parties for the benefit of Amparts.

The record further shows that there were other precautionary measures adopted by lower court for the protection of Chase's rights and interest in Amparts. Thus, on May 12, 1962, the following Order was issued:

"After hearing the parties and with a view to protect the interests of both and to prevent a possibility of abuse, the Court resolves that until further orders, the hereinafter while the case is pending:

'(1) Mr. Chase shall have free access to AMPARTS and its record personally and/or through representative duly authorized;
(2) Decisions of Dr. Buencamino and/or management of AMPARTS shall be made known to Chase who shall have the right to object and if so, the matter shall be notified to the Court which shall resolve the difficulties; in the interim, pending the objection, the decision shall not be enforced or made operative;

With this resolution, the Court disposes for the present of the issue of receivership."

Supplementing the above-quoted Order, the lower court, then already presided by the Honorable Jesus de Veyra, issued the following Order of August 27, 1962:

"As for the appointment of a receiver, Judge Gatmaitan decided on the temporary measure of giving plaintiff (petitioner herein) a veto right, appealable to this Court, on all decisions of management. Considering that up to the present, the Buencaminos own 2/3 of the stock corporation, the solution is equitable, and must be allowed to continue subject to the condition that once a decision of management is made known to plaintiff, he must make know his objection thereto to the Court within five (5) days from receipt of said decision, otherwise he shall be deemed to have waived any objection to the decision."

The removal of a stockholder (in this case a majority stockholder) from the management of the corporation and/or the dissolution of a corporation in a suit filed by a minority stockholder is a drastic measure. It should be resorted to only when the necessity is clear which is not the situation in the case at bar.

- Chung Ka Bio vs. Intermediate Appellate Court, 163 SCRA 534 (1988)

CHUNG KA BIO, WELLINGTON CHUNG, CHUNG SIONG PEK, VICTORIANO CHUNG, and MANUEL CHUNG TONG OH, *Petitioners,* -versus - INTERMEDIATE APPELLATE COURT (2nd Special Cases Division), SECURITIES and EXCHANGE COMMISSION EN BANC, HON. ANTONIO R. MANABAT, HON. JAMES K. ABUGAN, HON. ANTERO F.L. VILLAFLOR, JR., HON. SIXTO T.J. DE GUZMAN, JR., ALFREDO CHING, CHING TAN, CHIONG TIONG TAY, CHUNG KIAT HUA, CHENG LU KUN, EMILIO TAÑEDO, ROBERTO G. CENON and PHILIPPINE BLOOMING MILLS COMPANY, INC., *Respondents.*

G.R. No. 71837 , FIRST DIVISION, July 26, 1988, CRUZ, *J.*

There is the presumption of regularity which must operate in favor of the private respondents, who insist that the proper authorization was duly obtained at a meeting called for the purpose. The authorization was embodied in a unanimous resolution which was reproduced verbatim in the deed of assignment. Otherwise, the new PBM would not have been issued a certificate of incorporation, which should also be presumed to have been done regularly.

It is not unlawful for the old board of directors to negotiate and transfer the assets of the dissolved corporation to the new corporation intended to be created as long as the stockholders have given their consent.

FACTS

The Philippine Blooming Mills Company was incorporated in 1952 for a term of 25 years which expired on January 19, 1977. On May 14, 1977, the BOD executed a deed of assignment of all of the accounts receivables, properties, obligations and liabilities of the old PBM in favor of Chung Siong Pek in his capacity as treasurer of the new PBM, then in the process of reincorporation. After two months, the new PMB was issued a certificate of incorporation.

On May 5, 1981, Chung Ka Bio and the other petitioners herein, all stockholders of the old PBM, filed with the SEC a petition for liquidation (but not for dissolution) of both the old and the new PBM. The allegation was that the former had become legally non-existent for failure to extend its corporate life and that the latter had likewise been ipso facto dissolved for non-use of the charter and continuous failure to operate within 2 years from incorporation. The case was dismissed for lack of cause of action. On appeal to the SEC en banc, it remanded to a new panel of hearing officers for further proceedings, including the proper accounting of the assets and liabilities of the old PBM. This order was appealed to the questioning the authority of the SEC in Case No. 055 to adjudicate a matter not properly raised on appeal or resolved in the order appealed from. Alfredo Ching, a director of the old PBM who executed the deed of assignment, filed with the IAC a separate petition for certiorari questioning the same order and SEC's decision in AC Case No. 055. He alleged that SEC had gravely erred in not dismissing the petition for liquidation since the action amounted to a quo warranto proceeding which only the state could institute through the Solicitor General. Earlier, on April 1, 1982, the new PBM and Alfredo Ching had filed with the SEC a petition for suspension of payment, which was opposed by Chung Ka Bio, et al., on the ground that the SEC had no jurisdiction over a petition for suspension of payments initiated by a mere individual. The opposition was rejected and the case was set for hearing. Chung Ka Bio elevated the matter to the SEC en banc on certiorari with preliminary injunction and receivership praying for the annulment and setting aside of the proceedings. The case was remanded to the hearing officers for further proceedings. Chung Ka Bio came to this Court but we referred his case to the IAC. The three cases, viz., PBM v. SEC; Chung Ka Bio, et al. v. SEC; and Alfredo Ching, et al. v. SEC were then consolidated in the respondent court which issued the decision now challenged on certiorari by the petitioners in the case at bar. The decision affirmed the orders issued by the SEC in the said cases except the requirement for the accounting of the assets of the old PBM, which was set aside.

ISSUES

1. Whether or not the BOD of an already dissolved corporation does not have the inherent power, without the express consent of the stockholders, to convey all its assets to a new corporation.
2. Whether or not the new corporation has not substantially complied with the two-year requirement of Section 22 of the new Corporation Code on non-user because its stockholders never adopted a set of bylaws.
3. Whether or not SEC has jurisdiction over a petition for suspension of payments filed by an individual only.

RULING

1. The petitioners insist that no stockholders' meeting had been convened to discuss the deed of assignment and the 2/3 vote required to authorize such conveyance had not been obtained. The Court mentioned Sec. 77 and Sec. 28-1/2 of the Corporation Code now Sections 122 and 40 with modifications of the Corporation Code. The Court held that there is the presumption of regularity which must operate in favor of the private respondents, who insist that the proper authorization was duly obtained at a meeting called for the purpose. The authorization was embodied in a unanimous resolution which was reproduced verbatim in the deed of assignment. Otherwise, the new PBM would not have been issued a certificate of incorporation, which should also be presumed to have been done regularly. It must also be noted that under Section 28-1/2, "any stockholder who did not vote to authorize the action of the board of directors may, within 40 days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares." The record does not show, nor have the petitioners alleged or proven, that they filed a written objection and demanded payment of their shares during the reglementary forty-day period. This circumstance should bolster the private respondents' claim that the authorization was unanimous. It is not unlawful for the old board of directors to negotiate and transfer the assets of the dissolved corporation to the new corporation intended to be created as long as the stockholders have given their consent. It was expressly allowed by Section 28-1/2 of the Corporation Act. What the Court finds especially intriguing in this case is the fact that although the deed of assignment was executed in 1977, it was only in 1981 that it occurred to the petitioners to question its validity. All of four years had elapsed. The new PBM was in full operation, conducting the same with the same personnel who worked for the old PBM. Laches has operated against them. To begin with, what gave rise to the situation now complained of by the petitioners was the adoption of the deed of assignment by the directors of the old PBM allegedly without the consent of its stockholders and the acceptance of the deeded assets by the new PBM. Secondly, there was delay on the petitioners' part since it took them nearly four years, i.e., from May 14, 1977 to May 5,1981, before they made their move to assail the transfer despite complete knowledge of the transaction. To note, Chung Siong Pek, acted not only as director of the old PBM but also as treasurer of the new PBM in the transaction. Finally, the injury or prejudice in the event relief is granted is obvious as all the transactions of the new PBM will have to be undone, including credits extended and commitments made to third parties in good faith.

2. The second issue is moot and academic. It is undeniable that the new PBM has in fact been operating all these years. They argued that Alfredo Ching was merely continuing the business of the old PBM is self-defeating for they themselves argue that the old PBM had already been dissolved. Moreover, failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution. Section 19 of the Corporation Law, part of which is now Section 22 of the Corporation Code, provided that the powers of the corporation would cease if it did not formally organize and commence the transaction of its business or the continuation of its works within two years from date of its incorporation. Section 20 expressly declared that "every

corporation formed under this Act, must within one month after the filing of the articles of incorporation with the SEC, adopt a code of by-laws." Under PD 902-A, it is now clear that the failure to file by-laws within the required period is only a ground for suspension or revocation of the certificate of registration of corporations. Section 6(i) of the said decree states that the SEC is empowered to "suspend or revoke the franchise or certificate of registration of a corporation" on the ground inter aliaof "failure to file by-laws within the required period. However, it requires that there must first be a hearing to determine the existence of the ground, and secondly, assuming such finding, the penalty is only suspension of the charter. In fact, under the rules and regulations of the SEC, failure to file the by-laws on time may be penalized merely with the imposition of an administrative fine without affecting the corporate existence. The adoption and filing of by-laws is also a condition subsequent for acquisition of corporate personality. In any case, the deficiency claimed by the petitioners was corrected when the new PBM adopted and filed its by-laws on September 6, 1981 thus rendering the third issue also moot and academic.

3. On the third issue, Section 5(d), PD 902-A, as amended by PD 1758 clearly does not allow a mere individual to file the petition which is limited to "corporations, partnerships or associations." Administrative agencies like the SEC are tribunals of limited jurisdiction and, as such, can exercise only those powers which are specifically granted to them by their enabling statutes. Hence, Alfredo Ching, as a mere individual, cannot be allowed as a co-petitioner in SEC Case No. 2250.

- Aguirre vs. FQB +7, Inc., G.R. No. 170770, January 9 2013

VITALIANO N. AGUIRRES II and FIDEL N. AGUIRRE, *Petitioner,* -versus - FQB+7, INC., NATHANIEL D. BOCOBO, PRISCILA BOCOBO and ANTONIO DE VILLA, *Respondent.*
G.R. No. 170770, SECOND DIVISION, January 09, 2013, DEL CASTILLO, *J.*

A corporation's board of directors is not rendered functus officio by its dissolution. Since Section 122 allows a corporation to continue its existence for a limited purpose, necessarily there must be a board that will continue acting for and on behalf of the dissolved corporation for that purpose. In fact, Section 122 authorizes the dissolved corporation's board of directors to conduct its liquidation within three years from its dissolution. Jurisprudence has even recognized the board's authority to act as trustee for persons in interest beyond the said three-year period. Thus, the determination of which group is the bona fide or rightful board of the dissolved corporation will still provide practical relief to the parties involved.

To be considered as an intra-corporate dispute, the case;(a) must arise out of intra-corporate or partnership relations, and (b) the nature of the question subject of the controversy must be such that it is intrinsically connected with the regulation of the corporation or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules of the corporation. So long as these two criteria are satisfied, the dispute is intra-corporate and the RTC, acting as a special commercial court, has jurisdiction over it.

FACTS

Vitaliano filed, in his individual capacity and on behalf of FQB+7, Inc. (FQB+7), a Complaint for intra-corporate dispute, injunction, inspection of corporate books and records, and damages, against respondents Nathaniel D. Bocobo (Nathaniel), Priscila D. Bocobo (Priscila), and Antonio De Villa

(Antonio). The Complaint alleged that FQB+7 was established in 1985 with the following directors and subscribers, as reflected in its Articles of Incorporation:

Directors Subscribers

1. Francisco Q. Bocobo	5. Victorino Santos
2. Fidel N. Aguirre	6. Vitaliano N. Aguirre II
3. Alfredo Torres	7. Alberto Galang
4. Victoriano Santos	8. Rolando B. Bechayda

To Vitaliano's knowledge, except for the death of Francisco Q. Bocobo and Alfredo Torres, there has been no other change in the above listings. Sometime in April 2004, Vitaliano discovered a General Information Sheet (GIS) of FQB+7, dated September 6, 2002, in the Securities and Exchange Commission (SEC) records. This GIS was filed by Francisco Q. Bocobo's heirs, Nathaniel and Priscila, as FQB+7's president and secretary/treasurer, respectively. It also stated FQB+7's directors and subscribers, as follows:

Directors Subscribers

1. Nathaniel D. Bocobo	4. Victorino7 Santos
2. Priscila D. Bocobo	5. Victorino Santos
3. Fidel N. Aguirre	6. Consolacion Santos

Further, the GIS reported that FQB+7's stockholders held their annual meeting on September 3, 2002. The substantive changes found in the GIS, respecting the composition of directors and subscribers of FQB+7, prompted Vitaliano to write to the "real" Board of Directors (the directors reflected in the Articles of Incorporation), represented by Fidel N. Aguirre (Fidel). In this letter11 dated April 29, 2004, Vitaliano questioned the validity and truthfulness of the alleged stockholders meeting held on September 3, 2002. He asked the "real" Board to rectify what he perceived as erroneous entries in the GIS, and to allow him to inspect the corporate books and records. The "real" Board allegedly ignored Vitaliano's request. On September 27, 2004, Nathaniel, in the exercise of his power as FQB+7's president, appointed Antonio as the corporation's attorney-in-fact, with power of administration over the corporation's farm in Quezon Province.12 Pursuant thereto, Antonio attempted to take over the farm, but was allegedly prevented by Fidel and his men.13 Characterizing Nathaniel's, Priscila's, and Antonio's continuous representation of the corporation as a usurpation of the management powers and prerogatives of the "real" Board of Directors, the Complaint asked for an injunction against them and for the nullification of all their previous actions as purported directors, including the GIS they had filed with the SEC. The Complaint also sought damages for the plaintiffs and a declaration of Vitaliano's right to inspect the corporate records. The case, docketed as SEC Case No. 04-111077, was assigned to Branch 24 of the RTC of Manila (Manila RTC), which was a designated special commercial court, pursuant to A.M. No. 03-03-03- SC.

The respondents failed, despite notice, to attend the hearing on Vitaliano's application for preliminary injunction. TC: issued the writ of preliminary injunction after Vitaliano filed an injunction bond. The respondents filed a Petition for Certiorari and Prohibition, docketed as CA-G.R. SP No. 87293, before the CA. They later amended their Petition by impleading Fidel, who allegedly shares Vitaliano's interest in keeping them out of the corporation, as a private respondent therein. The respondents sought, in their certiorari petition, the annulment of all the proceedings and issuances in SEC Case No. 04-11107722

The respondent argued that Branch 24 of the Manila RTC has no jurisdiction over the subject matter, which they defined as being an agrarian dispute. They theorized that Vitaliano's real goal in filing the Complaint was to maintain custody of the corporate farm in Quezon Province. Since this land is agricultural in nature, they claimed that jurisdiction belongs to the Department of Agrarian Reform (DAR), not to the Manila RTC. The respondents further informed the CA that the SEC had already revoked FQB+7's Certificate of Registration on September 29, 2003 for its failure to comply with the SEC reportorial requirements.

The CA determined that the corporation's dissolution was a conclusive fact after petitioners Vitaliano and Fidel failed to dispute this factual assertion. The CA held that Vitaliano only proved a future right in case he wins the suit. Since an injunction is not a remedy to protect future, contingent or abstract rights, then Vitaliano is not entitled to a writ. Moreober, the CA postulated that Section 122 of the Corporation Code allows a dissolved corporation to continue as a body corporate for the limited purpose of liquidating the corporate assets and distributing them to its creditors, stockholders, and others in interest. It does not allow the dissolved corporation to continue its business. That being the state of the law, the CA determined that Vitaliano's Complaint, being geared towards the continuation of FQB+7, Inc.'s business, should be dismissed because the corporation has lost its juridical personality. Furthermore, the CA held that the trial court does not have jurisdiction to entertain an intra-corporate dispute when the corporation is already dissolved.

ISSUE

1. Whether the Complaint seeks to continue the dissolved corporation's business.
2. Whether the RTC has jurisdiction over an intra-corporate dispute involving a dissolved corporation.

RULING

1. The Complaint does not seek to continue the dissolved corporation's business.The prayers of the complaint are as follows: After trial, judgment be rendered in favor of the plaintiffs and against the defendants, as follows:

a. Declaring defendant Bocobos as without any power and authority to represent or conduct themselves as members of the Board of Directors of plaintiff FQB, or as officers thereof.
b. Declaring that Vitaliano N. Aguirre II is a stockholder of plaintiff FQB owning fifty (50) shares of stock thereof.
c. Allowing Vitaliano N. Aguirre II to inspect books and records of the company.
d. Annulling the GIS, Annex "C" of the Complaint as fraudulent and illegally executed and filed.
e. Ordering the defendants to pay jointly and solidarily the sum of at least ₱200,000.00 as moral damages; at least ₱100,000.00 as exemplary damages; and at least ₱100,000.00 as and for attorney's fees and other litigation expenses.

The Court fails to find in the prayers any intention to continue the corporate business of FQB+7. The Complaint does not seek to enter into contracts, issue new stocks, acquire properties, execute business transactions, etc. Its aim is not to continue the corporate business, but to determine and vindicate an alleged stockholder's right to the return of his stockholdings and to participate in the election of directors, and a corporation's right to remove usurpers and strangers from its affairs. Neither are these issues mooted by the dissolution of the corporation. A corporation's board of directors is not rendered functus officio by its dissolution. Since Section 122 allows a corporation to continue its existence for a limited purpose, necessarily there must be a board that will continue acting for and on behalf of the dissolved corporation for that purpose. In fact, Section 122 authorizes the dissolved corporation's board of directors to conduct its liquidation within three years from its dissolution. Jurisprudence has even recognized the board's authority to act as trustee for persons in interest beyond the said three-year period. Thus, the determination of which group is the bona fide or rightful board of the dissolved corporation will still provide practical relief to the parties involved. The same is true with regard to Vitaliano's shareholdings in the dissolved corporation. A party's stockholdings in a corporation, whether existing or dissolved, is a property right which he may vindicate against another party who has deprived him thereof. The corporation's dissolution does not extinguish such property right. Section 145 of the Corporation Code ensures the protection of this right.

2. The RTC has jurisdiction over an intra-corporate dispute involving a dissolved corporation. Intra-corporate disputes remain even when the corporation is dissolved. Jurisdiction over the subject matter is conferred by law. R.A. No. 8799 conferred jurisdiction over intra-corporate controversies on courts of general jurisdiction or RTCs, to be designated by the Supreme Court. Thus, as long as the nature of the controversy is intra-corporate, the designated RTCs have the authority to exercise jurisdiction over such cases. A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main

consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to a consideration of the intracorporate relationship existing between or among the parties.

The types of relationships embraced under Section 5(b) were as follows:

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.

The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC now the RTC, regardless of the subject matter of the dispute. This came to be known as the relationship test. However, in the 1984 case of DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc., the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy 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. The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of Speed Distribution, Inc. v. Court of Appeals: 'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: a. the status or relationship of the parties, and b. the nature of the question that is the subject of their controversy. The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or associates, 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 it concerns the individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.'

Thus, to be considered as an intra-corporate dispute, the case:
(a) must arise out of intra-corporate or partnership relations, and
(b) the nature of the question subject of the controversy must be such that it is intrinsically connected with the regulation of the corporation or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules of the corporation.

So long as these two criteria are satisfied, the dispute is intra-corporate and the RTC, acting as a special commercial court, has jurisdiction over it. Examining the case before us in relation to these two criteria, the Court finds and so holds that the case is essentially an intra-corporate dispute. It obviously arose from the intra-corporate relations between the parties, and the questions involved pertain to their rights and obligations under the Corporation Code and matters relating to the regulation of the corporation. We further hold that the nature of the case as an intra-corporate dispute was not affected by the subsequent dissolution of the corporation. It bears reiterating that Section 145 of the Corporation Code protects, among others, the rights and remedies of corporate actors against other corporate actors. The statutory provision assures an aggrieved party that the corporation's dissolution will not impair, much less remove, his/her rights or remedies against the corporation, its stockholders, directors or officers. It also states that corporate dissolution will not extinguish any liability already incurred by the corporation, its stockholders, directors, or officers. In short, Section 145 preserves a corporate actor's cause of action and remedy against another corporate actor. In so doing, Section 145 also preserves the nature of the controversy between the parties as an intra-corporate dispute. The dissolution of the corporation simply prohibits it from continuing its business. However, despite such dissolution, the parties involved in the litigation are still corporate actors. The dissolution does not automatically convert the parties into total strangers or change their intra-corporate relationships. Neither does it change or terminate existing causes of action, which arose because of the corporate ties between the parties. Thus, a cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation.

- Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio, G.R. No. 187456, June 02, 2014

ALABANG DEVELOPMENT CORPORATION, *Petitioner,* -versus - ALABANG HILLS VILLAGE ASSOCIATION and RAFAEL TINIO, *Respondents.*
G.R. No. 187456, SECOND DIVISION, June 02, 2014, PERALTA, *J.*

ADC filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. To allow ADC to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation.

FACTS

The case traces its roots to the Complaint for Injunction and Damages filed with the RTC of Muntinlupa City on Alabang Development Corporation against Alabang Hills Village Association, Inc. and Rafael Tinio Tinio, President of AHVAI. The Complaint alleged that Alabang is the developer of Alabang Hills Village and still owns certain parcels of land therein that are yet to be sold, as well as those considered open spaces that have not yet been donated to the local government of Muntinlupa City or the Homeowner's Association. In September 2006, ADC learned that AHVAI started the construction of a multi-purpose hall and a swimming pool on one of the parcels of land still owned by ADC without the latter's consent and approval, and that despite demand, AHVAI failed to desist from constructing the said improvements. ADC thus prayed that an injunction be issued enjoining defendants from constructing the multi-purpose hall and the swimming pool at the Alabang Hills Village.

In its Answer With Compulsory Counterclaim, AHVAI denied ADC's asseverations and claimed that the latter has no legal capacity to sue since its existence as a registered corporate entity was revoked by the SEC on May 26, 2003; that ADC has no cause of action because by law it is no longer the absolute owner but is merely holding the property in question in trust for the benefit of AHVAI as beneficial owner thereof; and that the subject lot is part of the open space required by law to be provided in the subdivision. As counterclaim, it prayed that an order be issued divesting ADC of the title of the property and declaring AHVAI as owner thereof; and that ADC be made liable for moral and exemplary damages as well as attorney's fees. On January 4, 2007, the RTC of Muntinlupa City, rendered judgment dismissing ADC's complaint. ADC filed a Notice of Appeal of the RTC decision. The RTC approved ADC's notice of appeal but dismissed respondent AHVAI's counterclaim on the ground that it is dependent on ADC's complaint. Respondent AHVAI then filed an appeal with the CA. The CA dismissed both appeals of ADC and AHVAI, and affirmed the decision of the RTC. Thus, the instant petition.

ISSUE

1. Whether or not the Court of Appeals erred in relying on the case of "*Columbia Pictures, Inc. V. Court of appeals*" in resolving ADC'slack of capacity.
2. Whether or not the Court of Appeals erred in finding lack of capacity of the ADC in filing the case contrary to the earlier rulings of this honorable court.

RULING

1. **NO** the CA did not err. The Court does not agree that the CA erred in relying on the case of Columbia Pictures, Inc. v. Court of Appeals. The CA cited the case for the purpose of restating and distinguishing the jurisprudential definition of the terms "lack of capacity to sue" and "lack of personality to sue;" and of applying these definitions to the present case. Unlike in the instant case, the corporations involved in the Columbia case were foreign corporations is of no moment. The definition of the term "lack of capacity to sue" enunciated in the said case still applies to the case at bar. Indeed, as held by this Court and as correctly cited by the CA in the case of Columbia: "lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims; 'lack of capacity to sue' refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party.

In the instant case, petitioner lacks capacity to sue because it no longer possesses juridical personality by reason of its dissolution and lapse of the three-year grace period provided under Section 122 of the Corporation Code.

2. As provided by Section 122 of the Corporation Code. It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to

reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 may sue and be sued as such in all matters connected with the liquidation. Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, might make proper representations with the SEC which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns. In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26, 2003. Based on law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation. It is not disputed that the subject complaint was filed by ADC and not by its directors or trustees.

In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code.

- Rich v. Paloma III, G.R. No. 210538, [March 7, 2018]

DR. GIL J. RICH, *Petitioners,* -versus - GUILLERMO PALOMA III, ATTY. EVARISTA TARCE AND ESTER L. SERVACIO, *Respondents.*

G.R. No. 210538, SECOND DIVISION, March 07, 2018, REYES, *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. 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. Thus rendering the agreement void as MTLC could not have been a corporate party to the same.

FACTS

Petitioner Dr. Gil Rich (Rich) 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 by respondent Guillermo Paloma III (Paloma), Sheriff IV of the RTC. Rich was declared the highest bidder, and subsequently, was issued a Certificate of Sale as purchaser/mortgagee.
However, and prior to the foreclosure, it appeared from the records that 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. According to MTLC, it exercised equitable redemption after the foreclosure proceedings. It tendered the amount of the redemption money in the extra-judicial foreclosure sale. Consequently, Paloma 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 Rich.

According to Rich, MTLC no longer has juridical personality to effect the equitable redemption as it has already been dissolved by the Securities and Exchange Commission. On the basis of the evidence presented by the petitioner, the Regional Trial Court (RTC) rendered a Decision in favor of Rich declaring the Real Estate Mortgage between Estanislao Rich and MLTC as null and void.

ISSUE

Whether or not a corporation not invested with corporate personality at the time of redemption may redeem a property.

RULING: NO.

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 corporate by-laws and this would prevail unless it is inconsistent with law."

The pronouncement draws its 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."

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.
Consequently, any redemption exercised by MTLC pursuant to this void real estate mortgage is likewise void, and could not be given any effect.

1. Modes of Dissolution

a. Voluntary

i. Where No Creditors Are Affected

- Teodoro B. Vesagas and Wilfred D. Asis vs. the Honorable Court of Appeals and Delfino Raniel and Helenda Raniel, G.R. No. 142924, December 5, 2001

TEODORO B. VESAGAS AND WILFRED D. ASIS, *Petitioners,* -versus - THE HONORABLE COURT OF APPEALS AND DELFINO RANIEL AND HELENDA RANIEL, *Respondents.*
G.R. No. 142924, FIRST DIVISION, December 05, 2001, PUNO, *J.*

The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation, does not necessarily place the dispute within the loop of jurisdiction of the SEC.

Jurisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.

The parties here involved are officers and members of the club. More significantly, the present conflict relates to, and in fact arose from, this relation between the parties. The subject of the complaint, namely, the legality of the expulsion from membership of the respondents and the validity of the amendments in the clubs by-laws are, furthermore, within the Commissions jurisdiction.

FACTS

The respondent spouses are members in good standing of the Luz Village Tennis Club, Inc. (club). They alleged that petitioner Teodoro B. Vesagas, who claims to be the clubs duly elected president, in conspiracy with petitioner Wilfred D. Asis, who, in turn, claims to be its duly elected vice-president and legal counsel, summarily stripped them of their lawful membership, without due process of law. They filed a Complaint with the SEC on against the petitioners, asking the Commission to declare as illegal their expulsion from the club as it was allegedly done in utter disregard of the provisions of its by-laws as well as the requirements of due process.

They also sought the annulment of the amendments to the by-laws, changing the annual meeting of the club, and increasing the number of trustees from nine to fifteen. They prayed for the issuance of a TRO and Writ of Preliminary Injunction. The application for TRO was denied by SEC Hearing Officer. Petitioners filed a motion to dismiss on the ground that the SEC lacks jurisdiction over the subject matter of the case. The motion was denied. Their MR was likewise denied. They filed a petition for certiorari with the SEC En Banc seeking a review of the hearing officers' orders. The petition and their MR were denied.

Petitioners promptly sought relief with the CA contesting the ruling of the Commission en banc. The CA dismissed the petition for lack of merit. The subsequent motion for reconsideration was also denied.

ISSUES

Whether the SEC has jurisdiction over the case.

RULING

Clearly, the Commission has jurisdiction over the said association.

The finding of the Commission, as the administrative agency tasked with among others the function of registering and administering corporations, is given great weight and accorded high respect. We therefore have no reason to disturb this factual finding relating to the clubs registration and incorporation.

In order that the commission can take cognizance of a case, the controversy must pertain to any of the following relationships:

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.

The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation, does not necessarily place the dispute within the loop of jurisdiction of the SEC.

Jurisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.

We rule that the present dispute is intra-corporate in character. In the first place, the parties here involved are officers and members of the club. Respondents claim to be members of good standing of the club until they were purportedly stripped of their membership in illegal fashion. Petitioners, on the other hand, are its President and Vice-President, respectively. More significantly, the present conflict relates to, and in fact arose from, this relation between the parties. The subject of the complaint, namely, the legality of the expulsion from membership of the respondents and the validity of the amendments in the clubs by-laws are, furthermore, within the Commissions jurisdiction.

The original complaint was filed at the SEC. Hence, the SEC still exercised quasi-judicial functions over this type of suits. It is axiomatic that jurisdiction is conferred by the Constitution and by the laws in force at the time of the commencement of the action.

In particular, the Commission was thereupon empowered, under Sec. 5 of P.D. 902-A, to hear and decide cases involving intra-corporate disputes, thus:
SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of association registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are the stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

x x x.

The enactment of R.A. 8799, otherwise known as the Securities Regulation Code, however, transferred the jurisdiction to resolve intra-corporate controversies to courts of general jurisdiction or the appropriate Regional Trial Courts, thus:

5.2. The Commissions jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

On August 22, 2000, The SC issued a resolution, in A.M. No. 00-8-10-SC, Directing the Court Administrator and the Securities and Exchange Commission to cause the actual transfer of the records of such cases and all other SEC cases affected by R.A. No. 8799 to the appropriate Regional Trial Courts x x x.

The SC also issued another resolution designating certain branches of the Regional Trial Court to try and decide cases formerly cognizable by the SEC. Consequently, the case at bar should now be referred to the appropriate Regional Trial Court.

ii. Where Creditors Are Affected

iii. By Shortening of Corporate Term

b. Involuntary

i. By Expiration of Corporate Term

- Philippine National Bank vs. Court of First Instance of Rizal, Pasig, et al., G.R. No. 63201, May 27, 1992

PHILIPPINE NATIONAL BANK, *Petitioner,* -versus - THE COURT OF FIRST INSTANCE OF RIZAL, PASIG — BRANCH XXI, PRESIDED BY JUDGE GREGORIO G. PINEDA, CHUNG SIONG PEK @ BONIFACIO CHUNG SIONG PEK AND VICTORIA CHING GENG TY @ VICTORIA CHENG GENG TY, and THE REGISTER OF DEEDS OF RIZAL, PASIG, METRO MANILA AND/OR HIS DEPUTIES AND AGENTS, *Respondents.*
G.R. No. 63201, FIRST DIVISION, May 27, 1992, MEDIALDEA, *J.*

There is no need for the SEC to make an involuntary dissolution of a corporation whose corporate term had ended because its articles of incorporation had in effect expired by its own limitation.

Considering the foregoing in relation to the contract of lease between the parties herein, when PBM's corporate life ended on January 19, 1977 and its 3-year period for winding up and liquidation expired *on January 19, 1980, the option of extending the lease was likewise terminated on January 19, 1977 because PBM failed to renew or extend its corporate life in accordance with law. From then on, the respondents can exercise their right to terminate the lease pursuant to the stipulations in the contract.*

FACTS

Private respondents are the registered owners of three parcels of land in Pasig, Metro Manila covered by OCT No. 853, TCT Nos. 32843 and 32897 of the Registry of Deeds of Rizal.

On March 1, 1954, private respondents entered into a contract of lease with Philippine Blooming Mills, Co., Inc., (PBM for brevity) whereby the latter shall lease the aforementioned parcels of land as factory site. PBM was duly organized and incorporated on January 19, 1952 with a corporate term of twenty-five (25) years. This leasehold right of PBM covering the parcels of land was duly annotated at the back of the above stated certificates of title as Entry No. 9367/T-No. 32843.

The contract of lease provides that the term of the lease is for twenty years beginning from the date of the contract and "is extendable for another term of twenty years at the option of the LESSEE should its term of existence be extended in accordance with law. The contract also states that the lessee agrees to "use the property as factory site and for that purpose to construct whatever buildings or improvements may be necessary or convenient and/or x x x for any purpose it may deem fit; and before the termination of the lease to remove all such buildings and improvements."

In accordance with the contract, PBM introduced on the land, buildings, machineries and other useful improvements. These constructions and improvements were registered with the Registry of Deeds of Rizal and annotated at the back of the respondents' certificates of title.

On October 11, 1963, PBM executed in favor of Philippine National Bank (PNB) petitioner herein, a deed of assignment, conveying and transferring all its rights and interests under the contract of lease which it executed with private respondents. The assignment was for and in consideration of the loans granted by PNB to PBM. The deed of assignment was registered and annotated at the back of the private respondents' certificates of title.

On November 6, 1963 and December 23, 1963 respectively, PBM executed in favor of PNB a real estate mortgage for a loan of P100,000.00 and an addendum to real estate mortgage for another loan of P1,590,000.00, covering all the improvements constructed by PBM on the leased premises. These mortgages were registered and annotated at the back of respondents' certificates of title.

PBM filed a petition for registration of improvements in the titles of real property owned by private respondents. On October 7, 1981, private respondents filed a motion in the same proceedings which was given a different case number because of the payment of filing fees for the motion. The motion sought to cancel the annotations on respondents' certificates of title pertaining to the assignment by PBM to PNB of the former's leasehold rights, inclusion of improvements and the real estate mortgages made by PBM in favor of PNB, on the ground that the contract of lease entered into between PBM and respondents-movants had already expired by the failure of PBM and/or its assignee to exercise the option to renew the second 20-year lease commencing on March 1, 1974 and also by the failure of PBM to extend its corporate existence in accordance with law. On April 22, 1982, respondent court issued an order directing the cancellation of the inscriptions on respondents' certificates of title.

Petitioner PNB filed a motion for reconsideration of the above order of the respondent court but the latter denied it on June 28, 1982. On August 25, 1982, private respondents filed a motion for entry of final judgment and issuance of a writ of execution of the order of April 22, 1982. On September 14, 1982, respondent court granted the aforesaid motion for entry of final judgment and ordered to the Register of Deeds of Pasig, Rizal to cancel the entries on respondents' certificates of title stated in the order of April 22, 1982.

Petitioner PNB filed an omnibus motion to set aside the entry of judgment as ordered by the respondent court on the ground that it has no prior notice or knowledge of the order of respondent court dated June 28, 1982 which denied its motion for reconsideration of the order of April 22, 1982 and that while there was a certification from the Bureau of Posts that three registry notices were sent to petitioner's counsel, there was no allegation or certification whatsoever that said notices were actually received by the addressee. On January 12,1983, the respondent court denied the omnibus motion.

Hence, this petition. Petitioner alleges that it is not the respondent court but the Securities and Exchange Commission which has jurisdiction over the private respondents' motion, which raised as issue the corporate existence of PBM.

ISSUE

1. Whether or not the SEC has jurisdiction over the case.
2. Whether or not the contract of lease may be extended after PBM's corporate life.

RULING

1. NO. The Court held that to set aside the questioned orders directing the entry of finality of the order cancelling entries in the titles, petitioner's case must still fail on the merits.

Private respondent's motion with the respondent court was for the cancellation of the entries on their titles on the ground that the contract of lease executed between them and PBM had expired. This action is civil in nature and is within the jurisdiction of the respondent court. The circumstance that PBM as one of the contracting parties is a corporation whose corporate term had expired and which fact was made the basis for the termination of the lease is not sufficient to confer jurisdiction on the Securities and Exchange Commission over the case. Presidential Decree No. 902-A, as amended, enumerates the cases over which the SEC has exclusive jurisdiction and authority to resolve. The case at bar is not covered by the enumeration.

2. **NO.** Anent the issue of whether the cancellation of the entries on respondent's certificates of title is valid and proper, the Court found that the respondent court did not act in excess of its jurisdiction, in ordering the same.

The contract of lease expressly provides that the term of the lease shall be twenty years from the execution of the contract but can be extended for another period of twenty years at the option of the lessee should the corporate term be extended in accordance with law. Clearly, the option of the lessee to extend the lease for another period of twenty years can be exercised only if the lessee as corporation renews or extends its corporate term of existence in accordance with the Corporation Code which is the applicable law. Contracts are to be interpreted according to their literal meaning and should not be interpreted beyond their obvious intendment. Thus, in the instant case, the initial term of the contract of lease which commenced on March 1, 1954 ended on March 1, 1974. PBM as lessee continued to occupy the leased premises beyond that date with the acquiescence and consent of the respondents as lessor. Records show however, that PBM as a corporation had a corporate life of only twenty-five (25) years which ended on January 19, 1977. It should be noted however that PBM allowed its corporate term to expire without complying with the requirements provided by law for the extension of its corporate term of existence.

Section 11 of Corporation Code provides that a corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. Upon the expiration of the period fixed in the articles of incorporation in the absence of compliance with the legal requisites for the extension of the period, the corporation ceases to exist and is dissolved ipso facto .When the period of corporate life expires, the corporation ceases to be a body corporate for the purpose of continuing the business for which it was organized. But it shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its assets . There is no need for the institution of a proceeding for quo warranto to determine the time or date of the dissolution of a corporation because the period of corporate existence is provided in the articles of incorporation. When such period expires and without any extension having been made pursuant to law, the corporation is dissolve automatically insofar as the continuation of its business is concerned. The quo warranto proceeding under Rule 66 of the Rules of Court, as amended, may be instituted by the Solicitor General only for the involuntary dissolution of a corporation on the following grounds: a) when the corporation has offended against a provision of an Act for its creation or renewal; b) when it has forfeited its privileges and franchises by non-user; c) when it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges or franchises; d) when it has misused a right, privilege or franchise conferred upon it by law, or when it has exercised a right, privilege or franchise in contravention of law. Hence, there is no need for the SEC to make an involuntary dissolution of a corporation whose corporate term had ended because its articles of incorporation had in effect expired by its own limitation.

Considering the foregoing in relation to the contract of lease between the parties herein, when PBM's corporate life ended on January 19, 1977 and its 3-year period for winding up and liquidation expired on January 19, 1980, the option of extending the lease was likewise terminated on January 19, 1977 because PBM failed to renew or extend its corporate life in accordance with law. From then on, the respondents can exercise their right to terminate the lease pursuant to the stipulations in the contract.

ii. Failure to Organize and Commence Business Within 2 Years from Incorporation

iii. Legislative Dissolution

iv. Dissolution by the SEC on Grounds under Existing Laws

- PDIC vs. BIR, G.R. No. 158261, December 18, 2006

IN RE: PETITION FOR ASSISTANCE IN THE LIQUIDATION OF THE RURAL BANK OF BOKOD (BENGUET), INC., PHILIPPINE DEPOSIT INSURANCE CORPORATION, *Petitioner,* -versus - BUREAU OF INTERNAL REVENUE, *Respondent.*
G.R. No. 158261, FIRST DIVISION, December 18, 2006, CHICO-NAZARIO, *J.*

It should be noted that there are substantial differences in the procedure for involuntary dissolution and liquidation of a corporation under the Corporation Code, and that of a banking corporation under the New Central Bank Act, so that the requirements in one cannot simply be imposed in the other. What the BIR should have requested from the RTC, and what was within the discretion of the RTC to grant, is not an order for PDIC, as liquidator of RBBI, to secure a tax clearance; but, rather, for it to submit the final return of RBBI. The first paragraph of Section 30(C) of the Tax Code of 1997, read in conjunction with Section 54 of the same Code, clearly imposes upon PDIC, as the receiver and liquidator of RBBI, the duty to file such a return.

FACTS:

In 1986, a special examination of RBBI was conducted by the Supervision and Examination Sector (SES) Department III of what is now the Bangko Sentral ng Pilipinas (BSP), wherein various loan irregularities were uncovered. In a letter, dated 20 May 1986, the SES Department III required the RBBI management to infuse fresh capital into the bank, within 30 days from date of the advice, and to correct all the exceptions noted. However, up to the termination of the subsequent general examination conducted by the SES Department III, no concrete action was taken by the RBBI management. In view of the irregularities noted and the insolvent condition of RBBI, the members of the RBBI Board of Directors were called for a conference at the BSP on 4 August 1986. Only one RBBI Director, a certain Mr. Wakit, attended the conference, and the examination findings and related recommendations were discussed with him. In a letter, dated 4 August 1986, receipt of which was acknowledged by Mr. Wakit, the SES Department III warned the RBBI Board of Directors that, unless substantial remedial measures are taken to rehabilitate the bank, it will recommend that the bank be placed under receivership. In a subsequent letter, dated 17 November 1986, a copy of which was sent to every member of the RBBI Board of Directors via registered mail, the SES Department III reiterated its warning that it would recommend the closure of the bank, unless the needed fresh capital was immediately infused. Despite these notices, the SES Department III received no word from RBBI or from any of its Directors as of 28 November 1986.

Subsequently, Rural Bank of Bokod (RBBI) was placed under receivership following the special examination conducted by the BSP wherein various loan irregularities were uncovered. It was later then concluded that RBBI remained in insolvent financial condition and can no longer safely resume into business hence its liquidation ordered. Subsequently, the Monetary Board transferred to herein petitioner PDIC the receivership/liquidation of RBBI. PDIC then filed a Motion for Approval of Project Distribution before the RTC.

Respondent BIR manifested that PDIC should first secure a tax clearance certificate before it could proceed with the dissolution of RBBI. RTC ruled in favor of BIR. Hence, PDIC filed the present Petition for Review on Certiorari, under Rule 45 of the revised Rules of Court, raising pure questions of law.
PDIC argues that the closure of banks under Section 30 of the New Central Bank Act is summary in nature and procurement of tax clearance as required under Section 52(C) of the Tax Code of 1997 is not a condition precedent thereto; that under Section 30, in relation to Section 31, of the New Central Bank Act, asset distribution of a closed bank requires only the approval of the liquidation court; and

that the BIR is not without recourse since, subject to the applicable provisions of the Tax Code of 1997, it may therefore assess the closed RBBI for tax liabilities, if any.

ISSUE

Whether or not a bank placed under receivership still needs to secure a tax clearance certificate before its project of distribution of assets is approved.

RULING: NO.

First, Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1 regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. In Spec. Proc. No. 91-SP-0060 pending before the RTC, RBBI was placed under receivership and ordered liquidated by the BSP, not the SEC; and the SEC is not even a party in the said case, although the BIR is. This Court cannot find any basis to extend the SEC requirements for dissolution of a corporation to the liquidation proceedings of RBBI before the RTC when the SEC is not even involved therein.

Section 30 of the New Central Bank Act lays down the proceedings for receivership and liquidation of a bank. The said provision is silent as regards the securing of a tax clearance from the BIR. The omission, nonetheless, cannot compel this Court to apply by analogy the tax clearance requirement of the SEC, as stated in Section 52(C) of the Tax Code of 1997 and BIR-SEC Regulations No. 1, since, again, the dissolution of a corporation by the SEC is a totally different proceeding from the receivership and liquidation of a bank by the BSP. This Court cannot simply replace any reference by Section 52(C) of the Tax Code of 1997 and the provisions of the BIR-SEC Regulations No. 1 to the "SEC" with the "BSP." To do so would be to read into the law and the regulations something that is simply not there, and would be tantamount to judicial legislation.

It should be noted that there are substantial differences in the procedure for involuntary dissolution and liquidation of a corporation under the Corporation Code, and that of a banking corporation under the New Central Bank Act, so that the requirements in one cannot simply be imposed in the other.

The Court held that what the BIR should have requested from the RTC, and what was within the discretion of the RTC to grant, is not an order for PDIC, as liquidator of RBBI, to secure a tax clearance; but, rather, for it to submit the final return of RBBI. The first paragraph of Section 30(C) of the Tax Code of 1997, read in conjunction with Section 54 of the same Code, clearly imposes upon PDIC, as the receiver and liquidator of RBBI, the duty to file such a return.

The Government, in this case, cannot generally claim preference of credit, and receive payment ahead of the other creditors of RBBI. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, will come only in ninth place in the order of preference.

Thus, the recourse of the BIR, after assessing the final return and examining all other pertinent documents of RBBI, and making a determination of the latter's outstanding tax liabilities, is to present its claim, on behalf of the National Government, before the RTC during the liquidation proceedings. The BIR is expected to prove and substantiate its claim, in the same manner as the other creditors. It is only after the RTC allows the claim of the BIR, together with the claims of the other creditors, can a Project for Distribution of the assets of RBBI be finalized and approved. PDIC, then, as liquidator, may proceed with the disposition of the assets of RBBI and pay the latter's financial obligations, including its outstanding tax liabilities. And, finally, only after such payment, can the BIR issue a certificate of tax clearance in the name of RBBI.

2. **Methods of Liquidation**

a. By the Corporation Itself

- Yu vs. Yukayguan, G.R. No. 177549, June 18, 2009

ANTHONY S. YU, ROSITA G. YU and JASON G. YU, *Petitioner,* -versus - JOSEPH S. YUKAYGUAN, NANCY L. YUKAYGUAN, JERALD NERWIN L. YUKAYGUAN, and JILL NESLIE L. YUKAYGUAN, [on their own behalf and on behalf of] WINCHESTER INDUSTRIAL SUPPLY, INC., *Respondents.*
G.R. No. 177549, THIRD DIVISION, June 18, 2009, CHICO-NAZARIO, *J.*

FACTS

Petitioners are members of the Yu Family. Respondents composed the Yukayguan Family. Petitioner Anthony Yu is the older half-brother of respondent Joseph Yukayguan. Petitioners and the respondents were all stockholders of Winchester Industrial Supply, Inc. Repondents filed against petitioners a verified Complaint for Accounting, Inspection of Corporate Books and Damages through Embezzlement and falsification of Corporate Records and Accounts before the RTC. The said complaint was filed by the respondents, in their own behalf and as a derivative suit on behalf of Winchester, Inc. According to respondents, petitioner Anthony Yu was one of the incorporators of Winchester, holding 1,000 shares of stock worth P100,000.00. Petitioner Athony paid for the said shares of stock with repondent Joseph's money, thus, making the former a mere trustee of the shares for the latter. Petitioner Anthony then ceded 800 of his 1,000 shares of stock in Winchester, Inc. to respondent Joseph. Petitioner Anthony remained as trustee for repondent Joseph of the 200 shares of stock in Winchester, Inc., still in petitioner Anthony's name. Respondents then alleged that Winchester, Inc. bought from its incorporators, excluding petitioner Anthony, their accumulated 8,500 shares in the corporation. Subsequently, Winchester, Inc. sold the same 8,500 shares to other persons, who included petitioners Rosita Yu and Jason Yu. Respondents further averred that although respondent Joseph appeared as the Secretary and Treasurer in the corporate records of Winchester, Inc. petitioners actually controlled and ran the said corporation as if it were their own family business. Petitioners were also misappropriating the funds and properties of Winchester, Inc. by charging their personal and family expenses to the said corporation , and withdrawing stocks for their personal use without paying for the same. Respondents, therefore, prayed that respondent Joseph be declared the owner of the 200 shares of stock in petitioner Anthony's name. Later on, the parties had an amicable settlement. The stocks in trade and real properties of Winchester, Inc. were equally distributed among petitioners and respondents. As a result, the stockholders and members of the Board of Directors of Winchester, Inc. passed a unanimous Resolution dissolving the corporation. However, the CA remanded the case to the RTC so that all the corporate concerns between the parties regading Winchester, Inc. could be resolved towards final settlement. In one stoke, with the use of sweeping language, which utterly lacked support, the Court of Appeals converted the derivative suit between the parties into liquidation proceedings.

The RTC declared that respondents failed to show that they had complied with the essential requisites for filing a derivative suit as set forth in Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies. The Court of Appeals at first dismissed the complaint and affirmed in toto the RTC decision. Respondent then filed for a Motion for Reconsideration. The Court of Appeals later on urged the parties to again strive to reach an amicable settlement of their dispute, but the parties were unable to do so. The parties were not able to submit to the appellate court, within the given period, any amicable settlement; and filed, instead, their Position Papers. In accordance with respondents allegation in their Position Paper that the parties subsequently filed with the SEC, and the SEC already approved, a petition for dissolution of Winchester, Inc., the Court of Appeals remanded the case to the RTC so that all the corporate concerns between the parties regarding Winchester, Inc. could be resolved towards final settlement.

ISSUE

Whether or not respondents exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing Winchester, Inc. to obtain the relief they desire.

RULING: No.

A derivative suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholders suit is always one in equity. However, it cannot prosper without first cimplying with the legal requisites for its institution. Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra- Corporate Controversies lays down the following requirements which a stockholder must comply with in filing a derivative suit: Sec 1. Derivative action. A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided that:

1. He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

2. He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

3. No appraisal rights are available for the act or acts complained of; and

4. The suit is not a nuisance or harassment suit.

A perusal of respondents Complaint before the RTC would reveal that the same did not allege with articles of incorporation, by-laws, laws or rules governing Winchester, Inc. to obtain the relief they desire. The second paragraph requires that the stockholder filing a derivative suit should have exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires and to allege such fact with particularity in the complaint. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder after all other remedies to obtain the relief sought had failed. The allegation of the respondent Joseph in his Affidavit of his repeated attempts to talk to petitioner Anthony regarding their dispute hardly constitutes all reasonable efforts to exhaust all remedies available. Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester, Inc. available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. The Court is not prepared to conclude that the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies. The fact that Winchester, Inc. is a family corporation should not in any way exempt respondents from complying with the clear requirements and formalities of the rules for filing a derivative suit.

b. Conveyance to a Trustee within a Three-Year Period

- Carlos Gelano and Guillermina Mendoza De Gelano vs. the Honorable Court of Appeals and Insular Sawmill, Inc., G.R. No. L-39050 February 24, 1981

CARLOS GELANO and GUILLERMINA MENDOZA DE GELANO, *Petitioners*, -versus - THE HONORABLE COURT OF APPEALS and INSULAR SAWMILL, INC., *Respondents.*
G.R. No. L-39050, FIRST DIVISION, February 24, 1981, DE CASTRO, J.

After the expiration of said period, the corporation ceased to exist for all purposes and it can no longer sue or be sued. However, a corporation that has a pending action and which cannot be terminated within the three year period after its dissolution is authorized under Section 78 to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the Three-year period although private respondent did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only.

FACTS

Private respondent Insular Sawmill, Inc. is a corporation organized on September 17, 1945 with a corporate life of fifty (50) years, or up to September 17, 1995, with the primary purpose of carrying on a general lumber and sawmill business. To carry on this business, private respondent leased the paraphernal property of petitioner-wife Guillermina M. Gelano for P1,200.00 a month. Petitioner Carlos Gelano obtained from private respondent cash advances of P25,950.00 on the agreement that private respondent could deduct the same from the monthly rentals of the leased premises until said cash advances are fully paid. Out of the aforementioned cash advances, petitioner Carlos Gelano was able to pay only P5,950.00 thereby leaving an unpaid balance of P20,000.00 which he refused to pay despite repeated demands by private respondent. Petitioners made credit purchases of lumber materials from private respondent with a total price of P1,120.46 in connection with the repair and improvement of petitioners' residence. Partial payment was made by petitioner. In order to accommodate petitioners renew previous loans obtained by them from the China Banking Corporation, private respondent, executed a joint and several promissory note with Carlos Gelano in favor of said bank in the amount of P8,000.00 payable in sixty (60) days. For failure of Carlos Gelano to pay the promissory note upon maturity, the bank collected from the respondent corporation the amount of P9,106.00 including interests, by debiting it from the corporation's current account with the bank. Petitioner Carlos Gelano was able to pay private respondent the amount of P5,000.00 but the balance of P4,106.00 remained unsettled. The corporation, thru Atty. German Lee, filed a complaint for collection against herein petitioners. In the meantime, private respondent amended its Articles of Incorporation to shorten its term of existence up to December 31, 1960 only. The amended Articles of Incorporation was filed with, and approved by the Securities and Exchange Commission, but the trial court was not notified of the amendment shortening the corporate existence and no substitution of party was ever made. On November 20, 1964 and almost four (4) years after the dissolution of the corporation, the trial court rendered a decision in favor of private respondent

The Court of Appeals rendered a decision modifying the judgment of the trial court by holding petitioner spouses jointly and severally liable on private respondent's claim and increasing the award of P4, 106.00. After petitioners received a copy of the decision they came to know that the Insular Sawmill Inc. was dissolved way back on December 31, 1960. Hence, petitioners filed a motion to dismiss the case and/or reconsideration of the decision of the Court of Appeals on grounds that the case was prosecuted even after dissolution of private respondent as a corporation and that a defunct corporation cannot maintain any suit for or against it without first complying with the requirements of the winding up of the affairs of the corporation and the assignment of its property rights within the required period.

ISSUE

Whether or not a corporation, whose corporate life had ceased by the expiration of its term of existence, could still continue prosecuting and defending suits after its dissolution and beyond the period of three years provided for under Act No. 1459.
RULING: YES.

Section 77 of the Corporation Law provides that the corporation shall "be continued as a body corporate for three (3) years after the time when it would have been ... dissolved, for the purpose of prosecuting and defending suits By or against it ...," so that, thereafter, it shall no longer enjoy corporate existence for such purpose. For this reason, Section 78 of the same law authorizes the corporation, "at any time during said three years ... to convey all of its property to trustees for the benefit of members, Stockholders, creditors and other interested," evidently for the purpose, among others, of enabling said trustees to prosecute and defend suits by or against the corporation begun before the expiration of said period. When Insular Sawmill, Inc. was dissolved on December 31, 1960, under Section 77 of the Corporation Law, it still has the right until December 31, 1963 to prosecute in its name the present case. After the expiration of said period, the corporation ceased to exist for all purposes and it can no longer sue or be sued. However, a corporation that has a pending action and which cannot be terminated within the three year period after its dissolution is authorized under Section 78 to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the Three-year period although private respondent did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only. Said counsel had been handling the case when the same was pending before the trial court until it was appealed before the Court of Appeals and finally to this Court. We therefore hold that there was a substantial compliance with Section 78 of the Corporation Law and as such, private respondent Insular Sawmill, Inc. could still continue prosecuting the present case even beyond the period of three (3) years from the time of its dissolution.

- Rene Knecht and Knecht, Inc. vs. United Cigarette Corp., represented by Encarnacion Gonzales Wong, and Eduardo Bolima, Sheriff, Regional Trial Court, Branch 151, Pasig City, G.R. No. 139370, July 4, 2002

RENE KNECHT and KNECHT, INC., *Petitioners,* -versus - UNITED CIGARETTE CORP., represented by ENCARNACION GONZALES WONG, and EDUARDO BOLIMA, Sheriff, Regional Trial Court, Branch 151, Pasig City, *Respondents.*
G.R. No. 139370, THIRD DIVISION, July 04, 2002, SANDOVAL-GUTIERREZ, *J.*

The trustee (of a dissolved corporation) may commence a suit which can proceed to final judgment even beyond the three-year period (of liquidation). No reason can be conceived why a suit already commenced by the corporation itself during its existence, not by a mere trustee who, by fiction, merely continues the legal personality of the dissolved corporation, should not be accorded similar treatment – to proceed to final judgment and execution thereof anchored on Sec. 145 of the Corporation Code.

FACTS:

Rose Packing Company Inc. owns 3 parcels of land in Rizal. The largest was covered by a TCT and is mortgaged with PCIB, while the remaining 2 are unregistered. Rose Packing, through its President Rene Knecht, sold to the United Cigarette Corporation, the said parcels of land for P800,000. It made a warranty that the lots are free from all liens and encumbrances, except the real estate mortgage with PCIB. For its part, UCC promised to pay the purchase price subject to the terms and conditions. To secure the deal, UCC paid Rose Packing P80,000.00 as earnest money.

Before the deed of sale could be executed, the parties found that Rose Packing's actual obligation with the PCIB far exceeded the P250,000.00 which the UCC assumed to pay under the agreement. PCIB demanded additional collateral for the approval of the sale of the mortgaged property. UCC did not comply. Meanwhile, Rose Packing again offered to sell the same lots to other buyers without the knowledge of UCC and without returning to the earnest money.

Aggrieved, UCC filed a complaint against Rose Packing and Rene Knecht for specific performance and recovery of damages.

The Regional trial Court ruled that Rose Packing was in bad faith when it did not inform UCC the amount of its actual obligation with PCIB. UCC cannot be compelled to assume the excess obligation. Rose Packing appealed to the Court of Appeals. During the pendency of this appeal, UCC's corporate life expired. Alberto Wong, one of UCC's major stockholders, was appointed trustee/liquidator of the dissolved corporation. The appellate court affirmed the decision.

Like UCC, Rose Packing had been dissolved with the expiration of its corporate charter. Thereupon, Knecht Inc., undertook the liquidation of Rose Packing's assets as well as the winding-up of its pending affairs.

Subsequently, UCC, through its liquidator Alberto Wong, filed a complaint-in-intervention. It sought to compel Rose Packing to comply with the Decision and payed that a writ of execution be issued.

Knecht Inc. opposed the motion claiming that the Decision can no longer be enforced since more than ten (10) years had elapsed from its finality. The court issued a writ of execution in favor of UCC.

Knecht Inc. and Rene Knecht, claiming that they hd just discovered UCC's dissolution on April 10, 1973 and that the three-year period to liquidate its affairs had already expired, again questioned before the RTC, the validity of the granting of the writ of execution. They averred that upon its dissolution, UCC may no longer move for execution. All in all, a total of 8 appeals and/or petition filed (including the present petition) with this Court and the CA, all geared towards frustrating the execution of the judgment in Civil Case No. 9165. Petitioners' basis in filing these multiple petitions is the expiration of UCC's corporate existence.

ISSUE

Whether or not UCC may commence suit even beyond the three-year period of liquidation without statutory authority extending its corporate life.

RULING: YES.

In Reburiano vs. Court of Appeals, a case with similar facts, this Court held:

"the trustee (of a dissolved corporation) may commence a suit which can proceed to final judgment even beyond the three-year period (of liquidation) x x x, no reason can be conceived why a suit already commenced by the corporation itself during its existence, not by a mere trustee who, by fiction, merely continues the legal personality of the dissolved corporation, should not be accorded similar treatment – to proceed to final judgment and execution thereof."

Indeed, the rights of a corporation (dissolved pending litigation) are accorded protection by law. This is clear from Section 145 of the Corporation Code, thus:

"Section 145. Amendment or repeal. No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof."

The dissolution of UCC itself, or the expiration of its three-year liquidation period, should not be a bar to the enforcement of its rights as a corporation. One of these rights, to be sure, includes the UCC's right to seek from the court the execution of a valid and final judgment in Civil Case No. 9165 – through its trustee/liquidator Encarnacion Gonzales Wong – for the benefit of its stockholders, creditors and any other person who may have legal claims against it. To hold otherwise would be to allow petitioners to unjustly enrich themselves at the expense of UCC. This, in effect, renders nugatory all the efforts and expenses of UCC in its quest to secure justice, not to mention the undue delay in disposing of this case prejudicial to the administration of justice.

c. By Management Committee or Rehabilitation Receiver

- Alemar's Sibal & Sons, Inc. vs. Honorable Jesus M. Elbinias, in his capacity as the Presiding Judge of Regional Trial Court, National Capital Region, Branch CXLI (141), Makati, and G.A. Yupangco& Co., Inc., G.R. No. 75414 June 4, 1990

ALEMAR'S SIBAL & SONS, INC., *Petitioner,* -versus - HONORABLE JESUS M. ELBINIAS, in his capacity as the Presiding Judge of Regional Trial Court, National Capital Region, Branch CXLI (141), Makati, and G.A. YUPANGCO & CO., INC., *Respondents.*
G.R. No. 75414 , THIRD DIVISION, June 04, 1990, FERNAN,C.*J.*

FACTS

Private respondent G.A. Yupangco and Co. Inc. (G.A. Yupangco) filed an action with respondent trial court for collection of a sum of money with prayer for damages and preliminary attachment against Alemar's Bookstore, a business entity owned and managed by petitioner Alemar's Sibal & Sons, Inc. (Alemar's). Respondent court rendered its decision in favor of private respondent. Subsequently, Ledesma, Saludo and Associates, as intervenor-movant, filed an omnibus motion informing the respondent trial court that the petitioner Alemar's has been placed under rehabilitation receivership by the Securities and Exchange Commission and that movant has been appointed as its receiver. It prayed that it be allowed to intervene, that the decision be set aside and that further proceedings in this case be suspended. In its opposition, G.A. Yupangco maintained that it received notice of the receivership only on a month after the collection suit. It further averred that the motion to intervene by the receiver was not seasonably made.

Accordingly, respondent court denied the motion for intervention; however, movant's motion to suspend the proceedings is granted as plaintiff may present said judgment by default to the receiver as the basis for the settlement of its claim defendant. G.A. Yupangco urged the issuance of a writ of execution to implement the August 30, 1985 default judgment which had become final and executory, there being no motion for reconsideration or appeal. On January 31, 1986, the branch manager of the Bank of the Philippine Islands, after having previously stopped payment of the cashier's check issued to satisfy the August 30, 1985 money judgment, allowed the encashment of said check in the amount of P62,240.00. And in compliance with a subsequent order of the respondent court, BPI also compensated G.A. Yupangco for the delay in payment in an amount equivalent to the interest of P62,240.00 from January 17, 1986 to January 31, 1986 or a total of 14 days. Petitioner filed a supplement to its motion to discharge the writ of execution praying that the aforesaid payment be returned to petitioner or to its account with the BPI, which the respondent court denied.

ISSUE

Whether or not respondent court can validly proceed with the execution of a final decision for the payment of a sum of money despite the fact that the judgment debtor has been placed under receivership.

RULING: NO.

It is the general rule that once a decision becomes final and executory, its enforcement becomes the ministerial duty of the court. Equally settled is that the rule admits of certain exceptions, one of which is where it becomes imperative in the higher interest of justice to direct the deferment of execution. In the instant case, the stay of execution is warranted by the fact that petitioner Alemar's has been placed under "rehabilitation receivership". For one thing, the SEC has expressly decreed that "all actions for claims against the corporation pending before any court ... are suspended accordingly". Respondent court apparently demurred to the SEC action when it granted petitioner's motion to suspend its own proceedings. It even went as far as to suggest to the creditor to present the "judgment by default to the receiver as the basis for settlement of its claim against defendant". So when respondent court ordered the execution of its August 30, 1985 judgment, it assumed a rather myopic view of its own suspension order. Verily, the proceedings sought to be suspended by the order of October 29, 1985 necessarily includes the issuance of the writ of execution. The cases of Central Bank vs. Morfe, and Lipana vs. Development Bank of Rizal, are most enlightening on why an execution in this particular instance could be legally held in abeyance despite a final judgment. In both cases, there was an attempt by a creditor to enforce payment against a bank (which was either declared insolvent or placed under receivership) by obtaining a favorable judgment in the regular court and insisting upon its execution on the ground that the courts cannot validly obstruct the enforcement of judgments that have become final and executory. It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors. During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. As between creditors, the key phrase is "equality is equity." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC. When respondent court ruled in favor of G.A. Yupangco in the collection case, it only determined the exact extent of petitioner's indebtedness and in no way gave G.A. Yupangco a priority over the other creditors. However, it clearly exceeded its jurisdiction when it allowed G.A. Yupangco to encash the check of P 62,240.00 pursuant to the writ of execution. In so doing, respondent court gave G.A. Yupangco an undue preference by reducing the assets of the petitioner corporation for its sole benefit to the grave damage and prejudice of the other creditors, and thus frustrating the very purpose for which petitioner has been placed under receivership.

- Alfredo Villamor Jr. vs. John S. Umale in Substitution of Hernando Balmores, G.R. No. 172843, September 24, 2014

ALFREDO L. VILLAMOR, JR., ***Petitioner,*** **-versus - JOHN S. UMALE, in substitution of HERNANDO F. BALMORES,** ***Respondent.***

G.R. No. 172843, SECOND DIVISION, September 24, 2014, LEONEN, *J.*

Derivative Suit: The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection.

Management committees: Management committees and receivers are appointed when the corporation is in imminent danger of (1) dissipation, loss, wastage or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to' the interest of the minority stockholders, parties-litigants, or the general public." Applicants for the appointment of a receiver or management committee need to establish the confluence of these two requisites. This is because appointed receivers and management committees will immediately take over themanagement of the corporation and will have the management powers specified in law. Jurisdiction to appoint receiver: The Court of Appeals has no power to appoint a receiver or management committee. The Regional Trial Court has original and exclusive jurisdiction to hear and decide intra-corporate controversies, including incidents of such controversies. These incidents include applications for the appointment of receivers or management committees.

FACTS

MC Home Depot occupied a prime property (Rockland area) in Pasig. The property was part of the area owned by Mid-Pasig Development Corporation. Pasig Printing Corporation (PPC) obtained an option to lease portions of Mid-Pasig's property, including the Rockland area. PPC's board of directors issued a resolution waiving all its rights, interests, and participation in the option to lease contract in favor of the law firm of Atty. Villamor. PPC, represented by Villamor, entered into a memorandum of agreement with MC Home Depot. Under the MOA, MC Home Depot would continue to occupy the area as PPC's sub-lessee for 4 years, renewable for another 4 years, at a monthly rental of P4,500,000.00 plus goodwill of P18,000,000.00.

In compliance with the terms of the MOA, MC Home Depot issued 20 post-dated checks representing rental payments for one year and the goodwill money. The checks were given to Villamor who did not turn these or the equivalent amount over to PPC, upon encashment Hernando Balmores, stockholder and director of PPC, wrote a letter addressed to PPJC's directors informing them that Villamor should be made to deliver to PPC and account for MC Home Depot's checks or their equivalent value. Due to the alleged inaction of the directors, respondent Balmores filed with the RTC an intra-corporate controversy complaint against petitioners for their alleged devices or schemes amounting to fraud or misrepresentation. Respondent Balmores alleged that because of petitioners' actions, PPC's assets were ". . . not only in imminent danger, but have actually been dissipated, lost, wasted and destroyed." Respondent Balmores prayed that a receiver be appointed from his list of nominees. He also prayed for petitioners' prohibition from "selling, encumbering, transferring or disposing in any manner any of PPC's properties, including the MC Home Depot checks and/or their proceeds." He prayed for the accounting and remittance to PPC of the MC Home Depot checks or their proceeds and for the annulment of the board's resolution "waiving PPC's rights in favor of Villamor's law firm.

The RTC denied respondent Balmores' prayer for the appointment of a receiver or the creation of a management committee. According to it, PPC's entitlement to the checks was doubtful. The resolution issued by PPC's board of directors; waiving its rights to the option to lease contract in favor of Villamor's law firm, must be accorded prima facie validity. Balmores filed with CA a petition for certiorari which was given due course. It reversed the trial court's decision, and issued a new order placing PPC under receivership and creating an interim management committee. The CA considered the danger of dissipation, wastage, and loss of PPC's assets if the review of the trial court's judgment would be delayed. It stated that the board's waiver of PPC's rights in favor of Villamor's law firm without any consideration and its inaction on Villamor's failure to turn over the proceeds of rental payments to PPC warrant the creation of a management committee. Also, the CA ruled that the case filed by respondent Balmores with the trial court "was a derivative suit because there were allegations of fraud or ultra vires acts ... by PPC's directors."

ISSUES

1. Whether the Court of Appeals correctly characterized respondent Balmores' action as a derivative suit.
2. Whether the Court of Appeals properly placed PPC under receivership and created a receiver or management committee.

RULING:

1. **NO.**
The requisites of a derivative suit are as follows:
a. He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
b. He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

c. No appraisal rights are available for the act or acts complained of; and d. The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case. Balmores' action in the trial court failed to satisfy all the requisites of a derivative suit. Balmores failed to exhaust all available remedies to obtain the reliefs he prayed for. Though he tried to communicate with PPC's directors about the checks in Villamor's possession before he filed an action with the trial court, Balmores was not able to show that this comprised -all the remedies available under the articles of incorporation, bylaws, laws, or rules governing PPC. Neither did respondent Balmores implead PPC as party in the case nor did he allege that he was filing on behalf of the corporation. The non-derivative character of Balmores' action may also be gleaned from his allegations in the trial court complaint. In the complaint, he described the nature of his action as an action under Rule 1, Section l(a)(l) of the Interim Rules, and not an action under Rule 1, Section l(a)(4) of the Interim Rules, which refers to derivative suits. Respondent Balmores filed an individual suit. His intent was very clear from his manner of describing the nature of his action as being based on Rule 1, Sec. 1(a)(1) of the Interim Rules, "involving devices or schemes employed by, or acts of, the petitioners as board of directors, business associates and officers of PPC, amounting to fraud or misrepresentation, which are detrimental to the interest of the plaintiff as stockholder of PPC."

Balmores did not bring the action for the benefit of the corporation. Instead, he was alleging that the acts of PPC's directors, specifically the waiver of rights in favor of Villamor's law firm and their failure to take back the MC Home Depot checks from Villamor, were detrimental to his individual interest as a stockholder. In filing an action, therefore, his intention was to vindicate his individual interest and not PPC's or a group of stockholders'.

2. **NO.**

The CA still erred in placing PPC under receivership and in creating and appointing a management committee. A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court. Management committees and receivers are appointed when the corporation is in imminent danger of (1) dissipation, loss, wastage or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to' the interest of the minority stockholders, parties-litigants, or the general public." PPC waived its rights, without any consideration in favor of Villamor.

The checks were already in Villamor's possession. Some of the checks may have already been encashed. It is, therefore, enough to constitute loss or dissipation of assets under the Interim Rules. Balmores, however, failed to show that there was an imminent danger of paralysis of PPC's business operations. Apparently, PPC was- earning substantial amounts from its other sub-lessees. Balmores did not prove otherwise. He, therefore, failed to show at least one of the requisites for appointment of a receiver or management committee.

- SPS. AURELIO HITEROZA and CYNTHIA HITEROZA, Petitioners, - versus - CHARITO S. CRUZADA, President and Chairman, CHRIST'S ACHIEVERS MONTESSORI, INC., and CHRIST'S ACHIEVERS MONTESSORI, INC., Respondents. (G.R. No. 203527, June 27, 2016, SECOND DIVISION, BRION J)

SPS. AURELIO HITEROZA and CYNTHIA HITEROZA, Petitioners, -versus - CHARITO S. CRUZADA, President and Chairman, CHRIST'S ACHIEVERS MONTESSORI, INC., and CHRIST'S ACHIEVERS MONTESSORI, INC., Respondents.
G.R. No. 203527, SECOND DIVISION, June 27, 2016, BRION, J.

Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the presentcase, may only be rendered after the parties' submission of their respective pre-trial briefs. Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference. Except in cases of default, Sections 1 and 4 of Rule 4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs before the court may render a judgment on intracorporate disputes.

In the case of Villamor, Jr. v. Umale, the Court recognized that Section 1, Rule 9 of the Interim Rulesapplies to both the appointment of a receiver and the creation of a management committee. Further, the Court held that there must be imminent danger of both the dissipation, loss, wastage, or destruction of assets or other properties; and paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public, before allowing the appointment of a receiver or the creation of a management committee.

The Court finds that the CA correctly ruled that RTC prematurely appointed a receiver considering that (1)the RTC explicitly stated in its May 14, 2010 decision that there was yet no evidence to support the Sps. Hiteroza's allegations on Charito's fraud and misrepresentation to justify the appointment of a receiver and (2)the appointment of the receiver was based on the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final Decision in this case dated May 14, 2010."

FACTS

Christ's Achievers Montessori Inc. is a non-stock, non-profit corporation that operates a school. The petitioner Sps. Hiteroza and the respondent Charito Cruzada (Charito) are the incorporators, members and trustees of the School. The Sps. Hiteroza filed a Complaint for a derivative suit with prayer for the creation of a management committee, the appointment of a receiver, and a claim for damages against Charito, the President and Chairman of the school. The Sps. Hiteroza alleged that Charito employed schemes and acts resulting in dissipation, loss, or wastage of the school's assets that, if left unchecked, would likely cause paralysis of the school operations, amounting to fraud and misrepresentation detrimental and prejudicial to the school's interests. The Sps. Hiteroza further alleged that they were denied the right to examine corporate and financial records of the schoold by Charito.

On May 14, 2010, the Regional Trial Court (RTC) rendered a decision (the May 14, 2010 RTC decision) directing Charito to allow the Sps. Hiteroza or their duly authorized representative to have access to, inspect, examine, and secure copies of books of accounts and other pertinent records of the school. The RTC, however, held that the allegations in the complaint do not amount to a derivative suit since any injury that may result from the claimed fraudulent acts of Charito will only affect the Sps. Hiteroza and not the school. The RTC also held that the prayer for the creation of a management committee or the appointment of a receiver was premature since there was yet no evidence in the complaint to support the Sps. Hiteroza's allegations of fraud or misrepresentation.

On January 17, 2011, the Sps. Hiteroza filed a Report on the Inspection of Corporate Documents and reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school. The Sps. Hiteroza alleged that Charito again refused to produce the school's main bank accounts records. The Sps. Hiteroza also alleged that their accountants found that, based on the declared amounts in the corporate books of accounts, the total unaccounted income of the School for the years 2000 to 2009 amounted to P27,446,989.35.

The RTC issued an Order, referring the dispute for mediation at the Philippine Mediation Center. The parties appeared for mediation as directed but no settlement was reached. On March 16, 2012, the RTC issued an Order (assailed RTC order) appointing Atty. Rafael Chris F. Teston as the school's receiver in view of the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the spouses Hiteroza that Charito has unjustifiably failed and refused to comply with the final decision in this case dated May 14, 2010."

Charito sought to nullify the assailed RTC order and filed a Petition for Certiorari before CA. CA granted Charito's petition and nullified the assailed RTC order on the appointment of a receiver.

The CA explained that the May 14, 2010 RTC decision already denied the Sps. Hiteroza's prayer for the creation of a management committee or the appointment of a receiver for lack of evidence and for being premature. The May 14, 2010 RTC decision eventually became final and executory since no appeal was filed.

The CA also held that there was noncompliance with the requisites for the appointment of a receiver under Section 1, Rule 9 of the Interim Rules. The CA declared that the allegations on the school's dissipation of assets and funds have yet to be proven and that the RTC was still in the process of ascertaining the veracity of the Sps. Hiteroza's claims. Further, there is no showing that the school is in imminent danger of paralysation of its business operations.

ISSUES

1. Whether the May 14, 2010 RTC Decision is a final judgment; and
2. Whether the CA correctly nullified the assailed RTC Order which directed the appointment of a receiver.

RULING

1. The May 14, 2010 RTC decision is not a final judgment since the case is not ripe for decision. No pre-trial has been conducted pursuant to the Interim Rules and the parties have not submitted their pre-trial briefs. Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the present case, may only be rendered after the parties' submission of their respective pre-trial briefs. Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference. Except in cases of default, Sections 1 and 4 of Rule 4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs before the court may render a judgment on intracorporate disputes. Rule 7 of the Interim Rules (Inspection of Corporate Books and Records) dispenses with the need for a pre-trial conference or the submission of a pre-trial brief before the court may render a judgment. This Rule, however, applies only to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation.

In the present case, Rule 7 of the Interim Rules does not apply since the Sps. Hiteroza's complaint did not exclusively involve the denial of the Sps. Hiteroza's right to inspect the school's records, but also several other allegations of Charito's fraud and misrepresentation in the School's management. There has been no conduct of a pre-trial conference or the submission of the parties' respective pre-trial briefs before the issuance of the May 14, 2010 RTC decision. The issuance of the May 14, 2010 RTC decision was, thus, premature.

2. The CA correctly nullified the assailed RTC Order which directed the appointment of a receiver.

The requirements in Section 1, Rule 9 of the Interim Rules apply to both the creation of a management committee and/or the appointment of a receiver. Section 1, Rule 9 of the Interim Rules provides:

SECTION 1. Creation of a management committee. — As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:

(1) Dissipation, loss, wastage, or destruction of assets or other properties; and
(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public.
Section 2, Rule 9 of the Interim Rules, on the other hand, provides for the appointment of a receiver, to quote:

SEC. 2. Receiver. — In the event the court finds the application to be sufficient in form and substance, the court shall issue an order: (a) appointing a receiver x x x x .

While the caption of Section 1, Rule 9 states "the creation of a management committee," the requirements stated in Section 1 apply to both the creation of a management committee and the appointment of a receiver, as can be gleaned from Section 2, Rule 9 which refers to "the application sufficient in form and substance." The "application" referred to in Section 2 on Receiver is the same application referred to in Section 1 of Rule 9. In the case of Villamor, Jr. v. Umale, the Court recognized that Section 1, Rule 9 of the Interim Rules applies to both the appointment of a receiver and the creation of a management committee. Further, the Court held that there must be imminent danger of both the dissipation, loss, wastage, or destruction of assets or other properties; and paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public, before allowing the appointment of a receiver or the creation of a management committee. Considering the requirements for the appointment of a receiver, the Court finds that the CA correctly attributed grave abuse of discretion on the part of the RTC when the RTC prematurely appointed a receiver without sufficient evidence to show that there is an imminent danger of: (1) dissipation, loss, wastage, or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. The RTC explicitly stated in its May 14, 2010 decision that there was yet no evidence to support the Sps. Hiteroza's allegations on Charito's fraud and misrepresentation to justify the appointment of a receiver.

Further, the appointment of the school's receiver was not based on the presence of the requirements of Section 1, Rule 9 of the Interim Rules, but based on the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the spouses Hiteroza that Charito has unjustifiably failed and refused to comply with the final Decision in this case dated May 14, 2010.

d. Liquidation after Three Years

- National Abaca & Other Fibers Corporation vs. Pore, 2 SCRA 989 (1961). See, however, Gelano and Reburiano cases, *infra*

NATIONAL ABACA AND OTHER FIBERS CORPORATION, *Petitioners,* -versus - APOLONIA PORE, *Respondent.*

G.R. No. L-16779, EN BANC, August 16, 1961, CONCEPCION, *J.*

It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but that there is no time limited within the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued but trustees to whom the corporate assets have been conveyed pursuant to the authority of section 78 may used and be sued as such in all matters connected with the liquidation. By the terms of the statute the effect of the conveyance is to make the trustees the legal owners of the property conveyed, subject to the beneficial interest therein of creditors and stockholders.

FACTS

On November 14, 1953, plaintiff filed with the Municipal Court of Tacloban, Leyte, a complaint, against defendant Apolonia Pore, for the recovery of P1,213.34, allegedly advanced to her for the purchase of hemp for the account of the former and for which she had allegedly failed to account. In her answer, defendant alleged that she had accounted for all cash advances received by her for the aforementioned purpose from the plaintiff. In due course, said court rendering judgment finding that the defendant had not accounted for cash advances which she was, accordingly, sentenced to pay to the plaintiff. Said court having subsequently denied a reconsideration of this decision, as well a new trial prayed for the plaintiff, the latter appealed to the Court of First Instance of Leyte, in which defendant moved to dismiss the complaint upon the ground that plaintiff has no legal capacity to sue, it having abolished by Executive Order No. 372 of the President of the Philippines, dated November 24, 1950. Plaintiff objected there to upon the ground that pursuant to said executive order, plaintiff "shall nevertheless be continued as a body corporate for a period of three (3) years from the effective date" of said executive order, which was November 30, 1950, "for the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators - thereby created — "gradually to settle and close its affairs", . . . and that this case was begun on November 14, 1953, or before the expiration of the period aforementioned. After due hearing, the court of first instance issued an order directing plaintiff to amend the complaint, within ten (10) days from notice, by including the Board of Liquidators as co-party plaintiff, with the admonition that otherwise the case would be dismissed. Hence, an appeal by plaintiff National Abaca and other Fibers Corporation, from two (2) orders of the Court of First Instance of Leyte.

ISSUE

Whether or not an action, commenced within three (3) years after the abolition of plaintiff, as a corporation, may be continued by the same after the expiration of said period.

HELD: NO.

The rule appears to be well settled that, in the absence of statutory provision to the contrary, pending actions by or against a corporation are abated upon expiration of the period allowed by law for the liquidation of its affairs. Our Corporation Law contains no provision authorizing a corporation, after three (3) years from the expiration of its lifetime, to continue in its corporate name actions instituted by it within said period of three(3) years. in fact, section 77 of said law provides that the corporation shall "be continued as a body corporate for three (3) years after the time when it would have been . . . dissolved, for the purposed of prosecuting and defending suits by or against it . . .", so that, thereafter, it shall no longer enjoy corporate existence for such purpose. For this reason, section 78 of the same law authorizes the corporation, "at any time during said three years . . . to convey all of its property to trustees for the benefit of members, stockholders, creditors and other interested", evidently for the purpose, among others, of enabling said trustees to prosecute and defend suits by or against the corporation begun before the expiration of said period. Obviously, the complete loss of plaintiff's corporate existence after the expiration of the period of three (3) years for the settlement of its affairs is what impelled the President to create a Board of Liquidators, to continue the management of such matters as may then be pending. The first question must, therefore, be answered in the negative.

- Clemente vs. Court of Appeals, 242 SCRA 717 (1995) . See also Reburiano vs. Court of Appeals, 301 SCRA 342 (1999)

LUIS C. CLEMENTE, LEONOR CLEMENTE DE ELEPAÑO, HEIRS OF ARCADIO C. OCHOA, represented by FE O. OCHOA-BAYBAY, CONCEPCION, MARIANO, ARTEMIO, VICENTE, ANGELITA, ROBERTO, HERNANDO AND LOURDES, all surnamed ELEPAÑO, *Petitioners,* - versus - THE HON. COURT OF APPEALS, ELVIRA PANDINCO-CASTRO AND VICTOR CASTRO, *Respondents.*

G.R. No. 82407 , THIRD DIVISION, March 27, 1995, VITUG, *J.*

The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and neither liabilities of such entity nor those of its owners and creditors. If the three-year extended life has expired without a trustee or receiver. having been expressly designated by the corporation within that period, the board of directors (or trustees) itself, following the rationale of the Supreme Court's decision in Gelano vs. Court of Appeals(103 SCRA 90) may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation.

FACTS

The plaintiffs (herein petitioners) sought to be declared the owners of a piece of land so situated in the Barrio of Lecheria, Municipality o Calamba, Province of Laguna. The complaint prayed that judgment be rendered declaring the plaintiffs to be owners of the property in the proportion of their respective stockholdings and ordering the distribution of the rentals and other fruits of the property to the plaintiffs also in the proportion of their ownership. The defendants (herein private respondents), in their answer; likewise claimed ownership of the property by virtue of acquisitive prescription. During the hearing, only the plaintiffs came forward to prove their allegations, the defendants did not present any evidence despite the several opportunities accorded to them by the trial court. Predicating itself on the averments of the complaint and assessing solely the evidence that had been submitted to it by the plaintiffs, the trial court stated its findings.

The trial court dismissed the complaint not merely on what it apparently perceived to be an insufficiency of the evidence that firmly could establish plaintiffs' claim of ownership over the property in dispute but also on its thesis that, absent a corporate liquidation, it is the corporation, not the stockholders, which can assert, if at all, any title to the corporate assets. The court, even then, expressed some reservations on the corporation's being able to still validly pursue such a claim. It said: The evidence presented so far, indicates that Lot No. 148-New although purchased on installment on June 8, 1911, was finally acquired by the "sociedad" on August 5, 1936 (Exh. "A"). It was declared for tax purposes in the name of the "sociedad" (Exh. "C"). Strangely however, no proof was offered showing that taxes were paid on its (sic) by the "sociedad," and neither were there efforts exerted by the latter to consolidate title over the property. In fact, no explanation was offered as to how and when the property came to the possession of the defendants. This simply means that the "sociedad" never asserted ownership over Lot No. 148-New. Basic is the rule that one asserting a right has the burden of proving it and the fact is, no proof was introduced demonstrating that the "sociedad" ever asserted its-right of ownership over the property during the period of its existence. The presumption is, "that a person takes ordinary care of his concern." (Rule 131, Sec. 5 (a), Rules of Court). In sustaining the dismissal of the complaint, as well' as the counterclaim, the Court of Appeals, in part, said: Even assuming that their parents were the only stockholders of Sociedad, and assuming further that Sociedad has ceased to exist, these do not ipso facto vest ownership over the property in the hands of plaintiffs-appellants. Again, assuming that sociedad is a duly-organized entity, under the laws of the Philippines, its corporate existence is separate and distinct from its stockholders and from other corporations to which it may be connected (Yutive Sons Hardware Co. vs. Court of Tax Appeals, 1 SCRA 161, 165). If it was not organized and registered under Philippine laws as a private corporation, it is a de facto corporation, as found by the court below, with the right to exercise corporate powers, and thus it is imperative that any of the modes of transferring ownership from said entity must be shown. In a reinvindicatory action, the, plaintiff has the burden of establishing his case by more than more (sic) preponderance of evidence. This the plaintiff has not satisfactorily done in this case.

ISSUE

Whether or not petitioners can be held, given their submissions, to have succeeded in establishing for themselves a firm title to the property in question.

RULING: NO.

The Court found the petitioners' evidence to be direly wanting; all that appear to be certain are that the "Sociedad Popular Calambeña," believed to be a "sociedad anonima" and for a while engaged in the operation and management of a cockpit, has existed sometime in the past; that it has acquired the parcel of land here involved; and that the plaintiffs' predecessors, Mariano Elepaño and Pablo Clemente, had been original stockholders of the sociedad. Except in showing that they are the successors-in-interest of Elepaño and Clemente, petitioners have been unable to come up with any evidence to substantiate their claim of ownership of the corporate asset. If, indeed, the sociedad has long become defunct, it should behoove petitioners, or anyone else who may have any interest in the corporation, to take appropriate measures before a proper forum for a peremptory settlement of its affairs. We might invite attention to the various modes provided by the Corporation Code (see Sees. 117- 122) for dissolving, liquidating or winding up, and terminating the life of the corporation. Among the causes for such dissolution are when the corporate term has expired or when, upon a verified complaint and after notice and hearing, the Securities and Exchange Commission orders the dissolution of a corporation for its continuous inactivity for at least five (5) years. The corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. It may, during the three-year term, appoint a trustee or a receiver who may act beyond that period. The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and neither liabilities of such entity nor those of its owners and creditors. If the three-year extended life has expired without a trustee or receiver. having been expressly designated by the corporation within that period, the board of directors (or trustees) itself, following the rationale of the Supreme Court's decision in Gelano vs. Court of Appeals(103 SCRA 90) may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation. Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, might make proper representations with the Securities and Exchange commission, which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns.

- Philippine National Bank vs. Bitulok Sawmill Inc., SCRA 269.

PHILIPPINE NATIONAL BANK, *Petitioner,* -versus - BITULOK SAWMILL, INC., DINGALAN LUMBER CO., INC., SIERRA MADRE LUMBER CO., INC., NASIPIT LUMBER CO., INC., WOODWORKS, INC., GONZALO PUYAT, TOMAS B. MORATO, FINDLAY MILLAR LUMBER CO., INC., ET AL., INSULAR LUMBER CO., ANAKAN LUMBER CO., AND CANTILAN LUMBER CO., INC., *Respondents.*
G.R. No. L-24177-85, EN BANC , June 29, 1968, FERNANDO, *J.*

It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt.... A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation.

FACTS

The Philippine National Bank, as creditor, and therefore the real party in interest, was allowed by the lower court to substitute the receiver of the Philippine Lumber Distributing Agency in these respective actions for the recovery from defendant lumber producers the balance of their stock subscriptions. There are several amounts sought to be collected from defendants-appellees Bitulok Sawmill, Inc., Dingalan Lumber Co., Inc., and Sierra Madre Lumber Co., Inc., including interest at the legal rate from the filing of the suits and the costs of the suits comprised all nine (9) cases filed.

The Philippine Lumber Distributing Agency, Inc. was organized sometime in the early part of 1947 upon the initiative and insistence of the late President Manuel Roxas of the Republic of the Philippines who for the purpose had called several conferences between him and the subscribers and organizers of the Philippine Lumber Distributing Agency, Inc." The purpose was praiseworthy, to insure a steady supply of lumber, which could be sold at reasonable prices to enable the war sufferers to rehabilitate their devastated homes. He convinced the lumber producers to form a lumber cooperative and to pool their sources together in order to wrest, particularly, the retail trade from aliens who were acting as middlemen in the distribution of lumber. At the beginning, the lumber producers were reluctant to organize the cooperative agency as they believed that it would not be easy to eliminate from the retail trade the alien middlemen who had been in this business from time immemorial, but because the late President Roxas made it clear that such a cooperative agency would not be successful without a substantial working capital which the lumber producers could not entirely shoulder, and as an inducement he promised and agreed to finance the agency by making the Government invest P9.00 by way of counterpart for every peso that the members would invest therein,...."

This was the assurance relied upon according to the decision, which stated that the amount thus contributed by such lumber producers was not enough for the operation of its business especially having in mind the primary purpose of putting an end to alien domination in the retail trade of lumber products. Nor was there any appropriation by the legislature of the counterpart fund to be put up by the Government, namely, P9.00 for every peso invested by defendant lumber producers. Accordingly, "the late President Roxas instructed the Hon. Emilio Abello, then Executive Secretary and Chairman of the Board of Directors of the Philippine National Bank, for the latter to grant said agency an overdraft in the original sum of P250,000.00 which was later increased to P350,000.00, which was approved by said Board of Directors of the Philippine National Bank on July 28, 1947, payable on or before April 30, 1958, with interest at the rate of 6% per annum, and secured by the chattel mortgages on the stock of lumber of said agency. The Philippine Government did not invest the P9.00 for every peso coming from defendant lumber producers. The loan extended to the Philippine Lumber Distributing Agency by the Philippine National Bank was not paid. Hence, these suits.

ISSUE

Whether or not PNB may still collect the unpaid balance on subscriptions from the defendants.

RULING: YES.

In Philippine Trust Co. v. Rivera, citing the leading case of Velasco v. Poizat, this Court held: "It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt.... A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation. Moreover, strict compliance with the statutory regulations is necessary...." The Poizat doctrine found acceptance in later cases. One of the latest cases, Lingayen Gulf Electric Power v. Baltazar, speaks to this effect: "In the case of Velasco v. Poizat, the corporation involved was insolvent, in which case all unpaid stock subscriptions become payable on demand and are immediately recoverable in an action instituted by the assignee." It would be unwarranted to ascribe to the late President Roxas the view that the payment of the stock subscriptions, as thus required by law, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. Even if such were the case, however, and such a promise were in fact made, to further the laudable purpose to which the proposed corporation would be devoted and the possibility that the lumber producers would lose money in the process, still the plain and specific wording of the applicable legal provision as interpreted by this Court must be controlling. It is a well-settled principle that with all the vast powers lodged in the Executive, he is still devoid of the prerogative of suspending the operation of any statute or any of its terms.

- Paramount Insurance Corp. vs. A.C. Ordoñez Corporation and Franklin Suspine, G.R. No. 175109, August 6, 2008

PARAMOUNT INSURANCE CORP., *Petitioner*, -versus - A.C. ORDOÑEZ CORPORATION and FRANKLIN SUSPINE, *Respondents.*

G.R. No. 175109, THIRD DIVISION, August 06, 2008, YNARES-SANTIAGO, *J.*

FACTS

Petitioner Paramount Insurance Corp. is the subrogee of Maximo Mata, the registered owner of a Honda City sedan involved in a vehicular accident with a truck mixer owned by respondent corporation and driven by respondent Franklin A. Suspine. Petitioner filed before the Metropolitan Trial Court of Makati City, a complaint for damages against respondents. Summons remained unserved on respondent Suspine, while it was served on respondent corporation and received by

Samuel D. Marcoleta. Petitioner filed a Motion to Declare Defendants in Default; however, respondent corporation filed an Omnibus Motion (And Opposition to Plaintiff's Motion to Declare Defendant in Default) alleging that summons was improperly served upon it because it was made to a secretarial staff who was unfamiliar with court processes; and that the summons was received by Mr. Armando C. Ordonez, President and General Manager of respondent corporation. Respondent corporation asked for an extension of 15 days within which to file an Answer. Respondent corporation filed a Motion to Admit Answer alleging honest mistake and business reverses that prevented them from hiring a lawyer as well as justice and equity. The Answer with Counterclaim specifically denied liability, averred competency on the part of respondent Suspine, and due selection and supervision of employees on the part of respondent corporation, and argued that it was Maximo Mata who was at fault.

Metropolitan Trial Court issued an Order admitting the answer and setting the case for pre-trial. Petitioner moved for reconsideration but it was denied. Thus, it filed a petition for certiorari and mandamus with prayer for preliminary injunction and temporary restraining order before the Regional Trial Court of Makati City. Petitioner claimed that the Metropolitan Trial Court gravely abused its discretion in admitting the answer which did not contain a notice of hearing, contrary to Sections 4 and 5, Rule 15 of the Rules of Court. It also assailed respondent corporation's Omnibus Motion for being violative of Section 9, Rule 15 because while it sought leave to file an answer, it did not attach said answer but only asked for a 15-day extension to file the same. Petitioner also averred that assuming the Omnibus Motion was granted, the Motion to Admit Answer and the Answer with Counterclaim were filed 26 days beyond the extension period it requested. The Regional Trial Court granted the said petition. Respondent corporation moved for reconsideration but it was denied; hence, it appealed to the Court of Appeals which also affirmed the decision of the lower court.

ISSUE

1. Whether or not there was a valid service of summons on defendant corporation.
2. Whether or not a party without a corporate existence may file an appeal.

RULING

1. **NO.** Section 11, Rule 14 of the Rules of Court sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid. We have ruled that the new rule, as opposed to Section 13, Rule 14 of the 1964 Rules of Court, is restricted, limited and exclusive, following the rule in statutory construction that expressio unios est exclusio alterius. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have done so in clear and concise language. Absent a manifest intent to liberalize the rule, strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure is required. Thus, the service of summons to respondent corporation's Receiving Section through Samuel D. Marcoleta is defective and not binding to said corporation. Consequently, the motions for declaration of default filed on May 19, 2000 and June 30, 2000 were both premature. Thus, there was no grave abuse of discretion when the Metropolitan Trial Court admitted respondent corporation's Answer. Although it was filed beyond the extension period requested by respondent corporation, however, Sec. 11, Rule 11 grants discretion to the trial court to allow an answer or other pleading to be filed after the reglementary period, upon motion and on such terms as may be just. An answer should be admitted where it had been filed before the defendant was declared in default and

no prejudice is caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.

2. **YES.** There is likewise no merit in petitioner's claim that respondent corporation lacks legal personality to file an appeal. Although the cancellation of a corporation's certificate of registration puts an end to its juridical personality, Sec. 122 of the Corporation Code, however provides that a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three years after its dissolution for purposes of prosecuting and defending suits by and against it and to enable it to settle and close its affairs. Moreover, the rights of a corporation, which is dissolved pending litigation, are accorded protection by law pursuant to Sec. 145 of the Corporation Code, to wit: Section 145. Amendment or repeal. No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof. Dissolution or even the expiration of the three-year liquidation period should not be a bar to a corporation's enforcement of its rights as a corporation.

- Lucia Barramedavda. de Ballesteros vs. Rural Bank of Canaman, Inc., represented by its liquidator, the Philippine Deposit Insurance Corporation, G.R. No. 176260, November 24, 2010

LUCIA BARRAMEDA VDA. DE BALLESTEROS, *Petitioner,* -versus - RURAL BANK OF CANAMAN INC., represented by its Liquidator, the Philippine Deposit Insurance Corporation, *Respondents.*

G.R. No. 176260, SECOND DIVISION, November 24, 2010, MENDOZA, *J.*

The requirement that all claims against the bank be pursued in the liquidation proceedings filed by the Central Bank is intended to prevent multiplicity of actions against the insolvent bank and designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness. The law-making body contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate his operations.

FACTS

Petitioner Lucia Barrameda Vda. De Ballesteros (Lucia) filed a complaint for Annulment of Deed of Extrajudicial Partition, Deed of Mortgage and Damages with prayer for Preliminary Injunction against her children, Roy, Rito, Amy, Arabel, Rico, Abe, Ponce Rex and Adden, all surnamed Ballesteros, and the Rural Bank of Canaman, Inc., Baao Branch (RBCI) before the RTC Iriga. The case was docketed as Civil Case No. IR-3128. In her complaint, Lucia alleged that her deceased husband, Eugenio, left two (2) parcels of land; that on March 6, 1995, without her knowledge and consent, her children executed a deed of extrajudicial partition and waiver of the estate of her husband wherein all the heirs, including Lucia, agreed to allot the two parcels to Rico Ballesteros (Rico); that, still, without her knowledge and consent, Rico mortgaged Parcel B of the estate in favor of RBCI which mortgage was being foreclosed for failure to settle the loan secured by the lot; and that Lucia was occupying Parcel B and had no other place to live. She prayed that the deed of extrajudicial partition and waiver, and the subsequent mortgage in favor of RBCI be declared null and void having been executed without her knowledge and consent. She also prayed for damages. In its Answer, RBCI claimed that in 1979, Lucia sold one of the two parcels to Rico which represented her share in the estate of her husband. The extrajudicial partition, waiver and mortgage were all executed with the knowledge and consent of Lucia although she was not able to sign the document. RBCI further claimed that Parcel B had already been foreclosed way back in 1999 which fact was known to Lucia through the auctioning notary public. Attorney's fees were pleaded as counterclaim.

During the pre-trial, RBCI's counsel filed a motion to withdraw after being informed that Philippine Deposit Insurance Corporation (PDIC) would handle the case as RBCI had already been closed and placed under the receivership of the PDIC. Consequently, on February 4, 2002, the lawyers of PDIC took over the case of RBCI. On May 9, 2003, RBCI, through PDIC, filed a motion to dismiss on the ground that the RTC-Iriga has no jurisdiction over the subject matter of the action. RBCI stated that pursuant to Section 30, Republic Act No. 7653 (RA No. 7653),otherwise known as the "New Central Bank Act," the RTCMakati, already constituted itself, per its Order dated August 10, 2001, as the liquidation court to assist PDIC in undertaking the liquidation of RBCI. Thus, the subject matter of Civil Case No. IR- 3128 fell within the exclusive jurisdiction of such liquidation court. Lucia opposed the motion. On July 29, 2003, the RTC-Iriga issued an order granting the Motion to Dismiss and ruled that the liquidation court shall have jurisdiction to adjudicate all claims against the bank whether they be against assets of the insolvent bank, for Specific Performance, Breach of Contract, Damages or whatever. On August 15, 2006, the CA rendered the questioned decision ordering the consolidation of Civil Case No. IR-3128 and the liquidation case pending before RTC-Makati to avoid multiplicity of suits and to save unnecessary cost and expense. Lucia filed a motion for reconsideration but it was denied by the CA. Hence, the present petition for review on certiorari. Petitioner further argues that the consolidation of the two cases is improper. Her case, which is for annulment of deed of partition and waiver, deed of mortgage and damages, cannot be legally brought before the RTC-Makati with the liquidation case considering that her cause of action against RBCI is not a simple claim arising out of a creditor-debtor relationship, but one which involves her rights and interest over a certain property irregularly acquired by RBCI. Neither is she a creditor of the bank, as only the creditors of the insolvent bank are allowed to file and ventilate claims before the liquidator.

ISSUE

Whether or not a liquidation court can take cognizance of a case wherein the main cause of action is not a simple money claim against a bank ordered closed, placed under receivership of the PDIC, and undergoing liquidation proceeding.

RULING: YES.

The requirement that all claims against the bank be pursued in the liquidation proceedings filed by the Central Bank is intended to prevent multiplicity of actions against the insolvent bank and designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness. The law-making body contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate his operations. Moreover, the complaint of the petitioner involving annulment of deed of mortgage with damages falls within the purview of "disputed claims" under Section 30 of RA 7653. "Disputed claims" refers to all claims, whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever. Lucia's action being a claim against RBCI can properly be consolidated with the liquidation proceedings before the RTC-Makati. All claims against the insolvent are required to be filed with the liquidation court. Although the claims are litigated in the same proceeding, the treatment is individual. Each claim is heard separately. And the Order issued relative to a particular claim applies only to said claim, leaving the other claims unaffected, as each claim is considered separate and distinct from the others. It is clear, therefore, that the liquidation court has jurisdiction over all claims, including that of Lucia against the insolvent bank. Regular courts do not have jurisdiction over actions filed by claimants against an insolvent bank, unless there is a clear showing that the action taken by the BSP, through the Monetary Board, in the closure of financial institutions was in excess of jurisdiction, or with grave abuse of discretion. The same is not obtaining in this present case. The power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. In sum, this Court holds that the consolidation is proper considering that the liquidation court has jurisdiction over Lucia's action. It would be more in keeping with law and equity if Lucia's case is consolidated with the liquidation case in order to expeditiously determine whether she is entitled to recover the property subject of mortgage from RBCI and, if so, how much she is entitled to receive from the remaining assets of the bank.

- Vigilla vs. Philippine College of Criminology, GR No. 200094, June 10, 2013

BENIGNO M. VIGILLA, ALFONSO M. BONGOT, ROBERTO CALLESA, LINDA C. CALLO, NILO B. CAMARA, ADELIA T. CAMARA, ADOLFO G. PINON, JOHN A. FERNANDEZ, FEDERICO A. CALLO, MAXIMA P. ARELLANO, JULITO B. COST ALES, SAMSON F. BACHAR, EDWIN P. DAMO, RENA TO E. FERNANDEZ, GENARO F.CALLO, JIMMY C. ALETA, and EUGENIO SALINAS, *Petitioners,* - versus - PHILIPPINE COLLEGE OF CRIMINOLOGY INC. and/or GREGORY ALAN F. BAUTISTA, *Respondents.*

G.R. No. 200094, THIRD DIVISION, June 10, 2013, MENDOZA, *J.*

Section 122 of the Corporation Code provides for a three-year winding up period (or in recent jurisprudence even longer) for a corporation whose charter is annulled by forfeiture or otherwise to continue as a body corporate for the purpose, among others, of settling and closing its affairs. Furthermore, Section 145 of the Corporation Code also provides that no right or remedy (as well as liability) in favor of or against any corporation, its stockholders, members, directors, trustees, or officers incurred shall be removed or impaired because of the subsequent dissolution of said corporation.

FACTS

Philippine College of Criminology (PCCr) is a non-stock educational institution, while the petitioners were janitors, janitresses and supervisor in the Maintenance Department of PCCR under the supervision and control of Atty. Florante A. Seril. The petitioners, however, were made to understand, upon application with respondent school, that they were under MBMSI, a corporation engaged in providing janitorial services to clients. Atty. Seril is also the President and General Manager of MBMSI. Sometime in 2008, PCCr discovered that the Certificate of Incorporation of MBMSI had been revoked as of July 2, 2003. On March 16, 2009, PCCr, through its President, respondent Gregory Alan F. Bautista , citing the revocation, terminated the school's relationship with MBMSI, resulting in the dismissal of the employees. As a consequence, the dismissed employees filed their respective complaints for illegal dismissal against PCCR alleging that that the latter was their employer since MBMSI's certification had been revoked and PCCr had direct control over MBMSI's operations. On the other hand, PCCr and Bautista contended it was not their direct employer. PCCr also submitted releases, waivers and quitclaims in favor of MBMSI executed by the complainants to prove that they were employees of MBMSI and not PCCr. The said documents appeared to have been notarized. The LA handed down his decision, finding that PCCr was the real principal employer of the complainants and MBMSI was a mere adjunct or alter ego/labor-only contractor. Despite the presentation by the respondents of the releases, waivers and quitclaims executed by petitioners in favor of MBMSI, the LA did not discuss the effects of such releases nor its authenticity. On appeal, NLRC affirmed the LA's decision however made a pronouncement that PCCR is not liable anymore since the awards had been superseded by their respective releases, waivers and quitclaims. CA agreed with the NLRC adding that applying Article 1217 of the New Civil Code, petitioners' respective releases, waivers and quitclaims in favor of MBMSI and Atty. Seril redounded to the benefit of the respondents.

ISSUE

Whether or not the claims of the dismissed employees against the respondents were amicably settled by virtue of the releases, waivers and quitclaims which they had executed in favor of MBMSI.

RULING

The petition is denied.

Petitioners argue that MBMSI had no legal personality to incur civil liabilities as it did not exist as a corporation on account of the fact that its Certificate of Incorporation had been revoked on July 2, 2003. Petitioners ask this Court to exempt MBMSI from its liabilities because it does no longer exist as a corporation. The Court did not agree. The Court held that the executed releases, waivers and quitclaims are valid and binding notwithstanding the revocation of MBMSI's Certificate of Incorporation. The revocation does not result in the termination of its liabilities. Section 122 of the Corporation Code provides for a three year winding up period for a corporation whose charter is annulled by forfeiture or otherwise to continue as a body corporate for the purpose, among others, of settling and closing its affairs. The three year winding up period may even be extended in accordance with the ruling in Premiere Development Bank v. Flores. Furthermore, Section 145 of the Corporation Code clearly provides that "no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation." Even if no trustee is appointed or designated during the three-year period of the liquidation of the corporation, the Court has held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication. In the case, even if said documents were executed in 2009, six (6) years after MBMSI's dissolution in 2003, the same are still valid and binding upon the parties and the dissolution will not terminate the liabilities incurred by the dissolved corporation pursuant to Sections 122 and 145 of the Corporation Code.

- ALABANG DEVELOPMENT CORPORATION vs. ALABANG HILLS VILLAGE ASSOCIATION and RAFAEL TINIO, G.R. No. 187456, June 2, 2014, J. Peralta

ALABANG DEVELOPMENT CORPORATION, *Petitioner,* -versus - ALABANG HILLS VILLAGE ASSOCIATION and RAFAEL TINIO, *Respondents.*

G.R. No. 187456, SECOND DIVISION, June 02, 2014, PERALTA, *J.*

ADC filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. To allow ADC to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation.

FACTS

The case traces its roots to the Complaint for Injunction and Damages filed with the RTC of Muntinlupa City on Alabang Development Corporation against Alabang Hills Village Association, Inc. and Rafael Tinio Tinio, President of AHVAI. The Complaint alleged that Alabang is the developer of Alabang Hills Village and still owns certain parcels of land therein that are yet to be sold, as well as those considered open spaces that have not yet been donated to the local government of Muntinlupa City or the Homeowner's Association. In September 2006, ADC learned that AHVAI started the construction of a multi-purpose hall and a swimming pool on one of the parcels of land still owned by ADC without the latter's consent and approval, and that despite demand, AHVAI failed to desist from constructing the said improvements. ADC thus prayed that an injunction be issued enjoining defendants from constructing the multi-purpose hall and the swimming pool at the Alabang Hills Village.

In its Answer With Compulsory Counterclaim, AHVAI denied ADC's asseverations and claimed that the latter has no legal capacity to sue since its existence as a registered corporate entity was revoked by the SEC on May 26, 2003; that ADC has no cause of action because by law it is no longer the absolute owner but is merely holding the property in question in trust for the benefit of AHVAI as beneficial owner thereof; and that the subject lot is part of the open space required by law to be provided in the subdivision. As counterclaim, it prayed that an order be issued divesting ADC of the title of the property and declaring AHVAI as owner thereof; and that ADC be made liable for moral and exemplary damages as well as attorney's fees. On January 4, 2007, the RTC of Muntinlupa City, rendered judgment dismissing ADC's complaint. ADC filed a Notice of Appeal of the RTC decision. The RTC approved ADC's notice of appeal but dismissed respondent AHVAI's counterclaim on the ground that it is dependent on ADC's complaint. Respondent AHVAI then filed an appeal with the CA. The CA dismissed both appeals of ADC and AHVAI, and affirmed the decision of the RTC. Thus, the instant petition.

In its Answer With Compulsory Counterclaim, AHVAI denied ADC's asseverations and claimed that the latter has no legal capacity to sue since its existence as a registered corporate entity was revoked by the SEC on May 26, 2003; that ADC has no cause of action because by law it is no longer the absolute owner but is merely holding the property in question in trust for the benefit of AHVAI as beneficial owner thereof; and that the subject lot is part of the open space required by law to be provided in the subdivision. As counterclaim, it prayed that an order be issued divesting ADC of the title of the property and declaring AHVAI as owner thereof; and that ADC be made liable for moral and exemplary damages as well as attorney's fees. On January 4, 2007, the RTC of Muntinlupa City, rendered judgment dismissing ADC's complaint. ADC filed a Notice of Appeal of the RTC decision. The RTC approved ADC's notice of appeal but dismissed respondent AHVAI's counterclaim on the ground that it is dependent on ADC's complaint. Respondent AHVAI then filed an appeal with the CA. The CA

dismissed both appeals of ADC and AHVAI, and affirmed the decision of the RTC. Thus, the instant petition.

ISSUE

1. Whether or not the Court of Appeals erred in relying on the case of "*Columbia Pictures, Inc. V. Court of appeals*" in resolving ADC's lack of capacity.
2. Whether or not the Court of Appeals erred in finding lack of capacity of the ADC in filing the case contrary to the earlier rulings of this honorable court.

RULING

1. **NO**, the CA did not err. The Court does not agree that the CA erred in relying on the case of Columbia Pictures, Inc. v. Court of Appeals. The CA cited the case for the purpose of restating and distinguishing the jurisprudential definition of the terms "lack of capacity to sue" and "lack of personality to sue;" and of applying these definitions to the present case. Unlike in the instant case, the corporations involved in the Columbia case were foreign corporations is of no moment. The definition of the term "lack of capacity to sue" enunciated in the said case still applies to the case at bar. Indeed, as held by this Court and as correctly cited by the CA in the case of Columbia: "lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims; 'lack of capacity to sue' refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party. In the instant case, petitioner lacks capacity to sue because it no longer possesses juridical personality by reason of its dissolution and lapse of the three-year grace period provided under Section 122 of the Corporation Code.

2. As provided by Section 122 of the Corporation Code. It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 may sue and be sued as such in all matters connected with the liquidation. Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, might make proper representations with the SEC which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns. In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26, 2003. Based on law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation. It is not disputed that the subject complaint was filed by ADC and not by its directors or trustees.

In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code.

Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code.

- Reyes v. Bancom Development Corp., G.R. No. 190286, [January 11, 2018]

RAMON E. REYES and CLARA R. PASTOR, *Petitioners,* -versus - BANCOM DEVELOPMENT CORP., *Respondent.*
G.R. No. 190286, FIRST DIVISION, January 11, 2018, SERENO, C. J.

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.

K. Other Corporations

1. Close Corporations

a. Characteristics of a Close Corporation

- Manuel R. Dulay Enterprises, Inc. vs. Court of Appeals, 225 SCRA 678 (1993)

MANUEL R. DULAY ENTERPRISES, INC., VIRGILIO E. DULAY AND NEPOMUCENO REDOVAN, ***Petitioners,*** **-versus - THE HONORABLE COURT OF APPEALS, EDGARDO D. PABALAN, MANUEL A. TORRES, JR., MARIA THERESA V. VELOSO AND CASTRENSE C. VELOSO,** ***Respondents.***
G.R. No. 91889, SECOND DIVISION, August 27, 1993, NOCON, *J.*

Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if: (1) Before or after such action is taken, written consent thereto is signed by all the directors; or (2) All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or (3) The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or (4) All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing. If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof.

FACTS

Petitioner Manuel R. Dulay Enterprises, Inc, a domestic corporation with the following as members of its Board of Directors: Manuel R. Dulay with 19,960 shares and designated as president, treasurer and general manager, Atty. Virgilio E. Dulay with 10 shares and designated as vice-president; Linda E. Dulay with 10 shares; Celia Dulay-Mendoza with 10 shares; and Atty. Plaridel C. Jose with 10 shares and designated as secretary, owned a property covered by TCT No. 17880 4and known as Dulay Apartment consisting of sixteen (16) apartment units on a six hundred eighty-nine (689) square meters lot, more or less. Petitioner corporation through its president, Manuel Dulay, obtained various loans for the construction of its hotel project, Dulay Continental Hotel (now Frederick Hotel). It even had to borrow money from petitioner Virgilio Dulay to be able to continue the hotel project. As a result of said loan, petitioner Virgilio Dulay occupied one of the unit apartments of the subject property since property since 1973 while at the same time managing the Dulay Apartment at his shareholdings in the corporation was subsequently increased by his father. On December 23, 1976, Manuel Dulay by virtue of Board Resolution No 18 6of petitioner corporation sold the subject property to private respondents spouses Maria Theresa and Castrense Veloso in the amount of P300,000.00 as evidenced by the Deed of Absolute Sale. 7Thereafter, TCT No. 17880 was cancelled and TCT No. 23225 was issued to private respondent Maria Theresa Veloso. 8 Subsequently, Manuel Dulay and private respondents spouses Veloso executed a Memorandum to the Deed of Absolute Sale of December 23, 1976 giving Manuel Dulay within (2) years or until December 9, 1979 to repurchase the subject property for P200,000.00 which was, however, not annotated. On December 24, 1976, private respondent Maria Veloso, without the knowledge of Manuel Dulay, mortgaged the subject property to private respondent Manuel A. Torres for a loan of P250,000.00 which was duly annotated as Entry No. 68139 in TCT No. 23225. Upon the failure of private respondent Maria Veloso to pay private respondent Torres, the subject property was sold on April 5, 1978 to private respondent Torres as the highest bidder in an extrajudicial foreclosure sale as evidenced by the Certificate of Sheriff's Sale 11issued on April 20, 1978. On July 20, 1978, private respondent Maria Veloso executed a Deed of Absolute Assignment of the Right to Redeem 12in favor of Manuel Dulay assigning her right to repurchase the subject property from private respondent Torres as a result of the extra sale held on April 25, 1978. As neither private respondent Maria Veloso nor her assignee Manuel Dulay was able to redeem the subject property within the one year statutory period for redemption, private respondent Torres filed an Affidavit of Consolidation of Ownership with the Registry of Deeds of Pasay City. Title was subsequently issued to private respondent Manuel Torres on April 23, 1979.

On October 1, 1979, private respondent Torres filed a petition for the issuance of a writ of possession against private respondents spouses Veloso and Manuel Dulay in LRC Case No. 1742- P. However, when petitioner Virgilio Dulay was never authorized by the petitioner corporation to sell or mortgage the subject property, the trial court ordered private respondent Torres to implead petitioner corporation as an indispensable party but the latter moved for the dismissal of his petition which was granted in an Order dated April 8, 1980. On June 20, 1980, private respondent Torres and Edgardo Pabalan, real estate administrator of Torres, filed an action against petitioner corporation, Virgilio Dulay and Nepomuceno Redovan, a tenant of Dulay Apartment Unit No. 8-A for the recovery of possession, sum of money and damages with preliminary injunction in Civil Case, No. 8198-P with the then Court of First Instance of Rizal. On July 21, 1980, petitioner corporation filed an action against private respondents spouses Veloso and Torres for the cancellation of the Certificate of Sheriff's Sale and TCT No. 24799 in Civil Case No. 8278-P with the then Court of First Instance of Rizal. On January 29, 1981, private respondents Pabalan and Torres filed an action against spouses Florentino and Elvira Manalastas, a tenant of Dulay Apartment Unit No. 7-B, with petitioner corporation as intervenor for ejectment in Civil Case No. 38-81 with the Metropolitan Trial Court of Pasay City. Thereafter or on May 17, 1985, petitioner corporation and Virgilio Dulay filed an action against the presiding judge of the Metropolitan Trial Court of Pasay City, private respondents Pabalan and Torres for the annulment of said decision with the Regional Trial Court of Pasay in Civil Case No. 2880-P. Thereafter, the three (3) cases were jointly tried and the trial court rendered a decision in favor of private respondents. Not satisfied with said decision, petitioners appealed to the Court of Appeals. During the pendency of this petition, private respondent Torres died on April 3, 1991 as shown in his death certificate and named Torres-Pabalan Realty & Development Corporation as his heir in his holographic will dated October 31, 1986.

ISSUE

Whether the sale of the subject property between spouses Veloso and Manuel Dulay has no binding effect on the corporation as Board Resolution which authorized the sale of the subject property was resolved without the approval of all the members of the board of directors and said Board Resolution was prepared by a person not designated by the corporation to be its secretary.

RULING: NO.

The sale binds the corporation. Section 101 of the Corporation Code of the Philippines provides that "When board meeting is unnecessary or improperly held. Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if: (1) Before or after such action is taken, written consent thereto is signed by all the directors; or (2) All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or (3) The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or (4) All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing. If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof." Herein, the corporation is classified as a close corporation and consequently a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president. At any rate, a corporate action taken at a board meeting without proper call or notice in a close corporation is deemed ratified by the absent director unless the latter promptly files his written objection with the secretary of the corporation after having knowledge of the meeting which, in this case, Virgilio Dulay failed to do. The corporation's claim that the sale of the subject property by its president, Manuel Dulay, to spouses Veloso is null and void as the alleged Board Resolution 18 was passed without the knowledge and consent of the other members of the board of directors cannot be sustained. Virgilio E. Dulay's protestations of complete innocence to the effect that he never participated nor was even aware of any meeting or resolution authorizing the mortgage or sale of the subject premises is difficult to believe. On the contrary, he is very much privy to the transactions involved. To begin with, he is an incorporator and one of the board of directors designated at the time of the organization of Manuel R. Dulay Enterprises, Inc. In ordinary parlance, the said entity is loosely referred to as a "family corporation." The nomenclature, if imprecise, however, fairly reflects the cohesiveness of a group and the parochial instincts of the individual members of such an aggrupation of which Manuel R. Dulay Enterprises, Inc. is typical: four-fifths of its incorporators being close relatives namely, 3 children and their father whose name identifies their corporation. Besides, the fact that Virgilio Dulay on 24 June 1975 executed an affidavit that he was a signatory witness to the execution of the post-dated Deed of Absolute Sale of the subject property in favor of Torres indicates that he was aware of the transaction executed between his father and Torres and had, therefore, adequate knowledge about the sale of the subject property to Torres. Consequently, the corporation is liable for the act of Manuel Dulay and the sale of the subject property to Torres by Manuel Dulay is valid and binding.

- San Juan Structural and Steel Fabricators, Inc. vs. Court of Appeals, Motorich Sales Corporation, Nenita Lee Gruenberg, ACL Development Corp. and JNM Realty and Development Corp., G.R. No. 129459, September 29, 1998

SAN JUAN STRUCTURAL AND STEEL FABRICATORS, INC., ***Petitioners,*** **-versus - COURT OF APPEALS, MOTORICH SALES CORPORATION, NENITA LEE GRUENBERG, ACL DEVELOPMENT CORP. and JNM REALTY AND DEVELOPMENT CORP.,** ***Respondents.***
G.R. No. 129459, FIRST DIVISION, September 29, 1998, PANGANIBAN, *J.*

A corporation is a juridical person separate and distinct from its stockholders or members. Accordingly, the property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without express authorization from the corporation's board of directors.

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.

FACTS

San Juan Structural and Steel Fabricators entered into an agreement with defendant-appellee Motorich Sales Corporation for the transfer to it of a parcel of land in Quezon City containing an area of Four Hundred Fourteen (414) square meters . San Juan paid the downpayment in the sum P100,000. Motorich Sales Corporation were supposed to meet in the office of plaintiff-appellant but defendant-appellee's treasurer, Nenita Lee Gruenberg, did not appear; that defendant-appellee Motorich Sales Corporation despite repeated demands and in utter disregard of its commitments had refused to execute the Transfer of Rights/Deed of Assignment which is necessary to transfer the certificate of title. In its answer, Motorich Sales Corporation and Nenita Lee Gruenberg interposed as affirmative defense that the President and Chairman of Motorich did not sign the agreement; that

Mrs. Gruenberg's signature on the agreement (ref: par. 3 of Amended Complaint) is inadequate to bind Motorich. The other signature, that of Mr. Reynaldo Gruenberg, President and Chairman of Motorich, is required: that plaintiff knew this from the very beginning as it was presented a copy of the Transfer of Rights (Annex B of amended complaint) at the time the Agreement (Annex B of amended complaint) was signed.

The RTC dismissed both the complaint and the counterclaim filed by the parties. The CA affirmed the decision of the RTC with modification that Respondent Nenita Lee Gruenberg was ordered to refund P100,000 to petitioner, the amount remitted as "downpayment" or "earnest money." Hence, this petition.

ISSUE

Whether or not there was a valid contract of sale between the petitioner and Motorich considering that it was only Mrs. Gruenberg who signed the agreement.

RULING

The contract of sale is not valid. Such contract, cannot bind Motorich, because it never authorized or ratified such sale. A corporation is a juridical person separate and distinct from its stockholders or members. Accordingly, the property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without express authorization from the corporation's board of directors. Section 23 of BP 68, otherwise known as the Corporation Code of the Philippines, provides:

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 to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. This Court has held that "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." Unless duly authorized, a treasurer, whose powers are limited, cannot bind the corporation in a sale of its assets. In the case at bar, Respondent Motorich categorically denies that it ever authorized Nenita Gruenberg, its treasurer, to sell the subject parcel of land. Consequently, petitioner had the burden of proving that Nenita Gruenberg was in fact authorized to represent and bind Motorich in the transaction. Because Motorich had never given a written authorization to Respondent Gruenberg to sell its parcel of land, we hold that the February 14, 1989 Agreement entered into by the latter with petitioner is void under Article 1874 of the Civil Code. Being inexistent and void from the beginning, said contract cannot be ratified. The petition was denied.

- Sergio F. Naguiat, doing business under the name and style Sergio F. NaguiatEnt., Inc., & Clark Field Taxi, Inc.,*vs.* National Labor Relations Commission (Third Division), National

Organization Of Workingmen and its members, Leonardo T. Galang, *et al.*, G.R. No. 116123, March 13, 1997

SERGIO F. NAGUIAT, doing business under the name and style SERGIO F. NAGUIAT ENT., INC., & CLARK FIELD TAXI, INC., -versus - NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), NATIONAL ORGANIZATION OF WORKINGMEN and its members, LEONARDO T. GALANG, et al., *Respondents.*

G.R. No. 116123, THIRD DIVISION, March 13, 1997, PANGANIBAN, *J.*

Applying the ruling in A.C. Ransom, Naguiat falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees. Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations" owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states: (5) To the extent that the stockholders are actively engage(d) in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate tortsunless the corporation has obtained reasonably adequate liability insurance. Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort.

FACTS

Petitioner CFTI held a concessionaire's contract with the Army Air Force Exchange Services ("AAFES") for the operation of taxi services within Clark Air Base. Sergio F. Naguiat was CFTI's president, while Antolin T. Naguiat was its vice-president. Like Sergio F. Naguiat Enterprises, Incorporated ("Naguiat Enterprises"), a trading firm, it was a family-owned corporation. Individual respondents were previously employed by CFTI as taxicab drivers. During their employment, they were required to pay a daily "boundary fee" in the amount of US$26.50 for those working from 1:00 a.m. to 12:00 noon, and US$27.00 for those working from 12:00 noon to 12:00 midnight. All incidental expenses for the maintenance of the vehicles they were driving were accounted against them, including gasoline expenses. The drivers worked at least three to four times a week, depending on the availability of taxicabs. They earned not less than US$15.00 daily. In excess of that amount, however, they were required to make cash deposits to the company, which they could later withdraw every fifteen days. Due to the phase-out of the US military bases in the Philippines, from which Clark Air Base was not spared, the AAFES was dissolved, and the services of individual respondents were officially terminated on November 26, 1991. The AAFES Taxi Drivers Association ("drivers' union"), through its local president, Eduardo Castillo, and CFTI held negotiations as regards separation benefits that should be awarded in favor of the drivers. They arrived at an agreement that the separated drivers will be given P500.00 for every year of service as severance pay. Most of the drivers accepted said amount in December 1991 and January 1992. However, individual respondents herein refused to accept theirs.
A complaint was filed against "Sergio F. Naguiat doing business under the name and style Sergio F. Naguiat Enterprises, Inc., Army-Air Force Exchange Services (AAFES) with Mark Hooper as Area Service Manager, Pacific Region, and AAFES Taxi Drivers Association with Eduardo Castillo as President," for payment of separation pay due to termination/phase-out. Said complaint was later amendedto include additional taxi drivers who were similarly situated as complainants, and CFTI with Antolin T. Naguiat as vice president and general manager, as party respondent. In their

complaint, herein private respondents alleged that they were regular employees of Naguiat Enterprises, although their individual applications for employment were approved by CFTI. They claimed to have been assigned to Naguiat Enterprises after having been hired by CFTI, and that the former thence managed, controlled and supervised their employment. They averred further that they were entitled to separation pay based on their latest daily earnings of US$15.00 for working sixteen (16) days a month. In their position paper submitted to the labor arbiter, herein petitioners claimed that the cessation of business of CFTI on November 26, 1991, was due to "great financial losses and lost business opportunity" resulting from the phase-out of Clark Air Base brought about by the Mt. Pinatubo eruption and the expiration of the RP-US military bases agreement. They admitted that CFTI had agreed with the drivers' union, through its President Eduardo Castillo who claimed to have had blanket authority to negotiate with CFTI in behalf of union members, to grant its taxi driveremployees separation pay equivalent to P500.00 for every year of service. The labor arbiter, finding the individual complainants to be regular workers of CFTI, ordered the latter to pay them P1,200.00 for every year of service "for humanitarian consideration," setting aside the earlier agreement between CFTI and the drivers' union of P500.00 for every year of service. The labor arbiter rejected the allegation of CFTI that it was forced to close business due to "great financial losses and lost business opportunity" since, at the time it ceased operations, CFTI was profitably earning and the cessation of its business was due to the untimely closure of Clark Air Base. In not awarding separation pay in accordance with the Labor Code, the labor arbiter explained: Herein individual private respondents appealed to the NLRC. In its Resolution, the NLRC modified the decision of the labor arbiter by granting separation pay to the private respondents. As mentioned earlier, the motion for reconsideration of herein petitioners was denied by the NLRC. Hence, this petition with prayer for issuance of a temporary restraining order. Upon posting by the petitioners of a surety bond, a temporary restraining order was issued by this Court enjoining execution of the assailed Resolutions.

ISSUE

Whether or not Naguiat enterprise is liable.

RULING

Based on factual submissions of the parties, the labor arbiter, however, found that individual respondents were regular employees of CFTI who received wages on a boundary or commission basis. We find no reason to make a contrary finding. Labor-only contracting exists where:

(1) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, and work premises, among others; and

(2) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.

Independent contractors, meanwhile, are those who exercise independent employment, contracting to do a piece of work according to their own methods without being subject to control of their employer except as to the result of their Work. From the evidence proffered by both parties, there is no substantial basis to hold that Naguiat Enterprises is an indirect employer of individual respondents much less a labor only contractor. On the contrary, petitioners submitted documents such as the drivers' applications for employment with CFTI, and social security remittances and payroll of Naguiat Enterprises showing that none of the individual respondents were its employees. Moreover, in the contract between CFTI and AAFES, the former, as concessionaire, agreed to purchase from AAFES for a certain amount within a specified period a fleet of vehicles to be "ke(pt) on the road" by CFTI, pursuant to their concessionaire's contract. This indicates that CFTI became the owner of the taxicabs which became the principal investment and asset of the company. Private respondents failed to substantiate their claim that Naguiat Enterprises managed, supervised and controlled their employment. It appears that they were confused on the personalities of Sergio F. Naguiat as an individual who was the president of CFTI, and Sergio F. Naguiat Enterprises, Inc., as a separate corporate entity with a separate business. They presumed that Sergio F. Naguiat, who was at the same time a stockholder and director of Sergio F. Naguiat Enterprises, Inc., was managing and controlling the taxi business on behalf of the latter. A closer scrutiny and analysis of the records, however, evince the truth of the matter: that Sergio F. Naguiat, in supervising the taxi drivers and determining their employment terms, was rather carrying out his responsibilities as president of CFTI. Hence, Naguiat Enterprises as a separate corporation does not appear to be involved at all in the taxi business. Sergio F. Naguiat, admittedly, was the president of CFTI who actively managed the business. Thus, applying the ruling in A.C. Ransom, he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees. Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations" owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states: (5) To the extent that the stockholders are actively engage(d) in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate tortsunless the corporation has obtained reasonably adequate liability insurance. Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort. Our jurisprudence is wanting as to the definite scope of "corporate tort." Essentially, "tort" consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty. Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable. As pointed out earlier, the fifth paragraph of Section 100 of the Corporation Code specifically imposes personal liability upon the stockholder actively managing or operating the business and affairs of the close corporation. In fact, in posting the surety bond required by this Court for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, only Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation thereunder, i.e., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto.

- Bustos v. Millians Shoe, Inc., G.R. No. 185024, April 24, 2017, SERENO, C.J.

JOSELITO HERNAND M. BUSTOS, *Petitioner*, -versus - MILLIANS SHOE, INC., SPOUSES FERNANDO AND AMELIA CRUZ, and the REGISTER OF DEEDS OF MARIKINA CITY, *Respondents.*

G.R. No. 185024, FIRST DIVISION, April 04, 2017, SERENO, *J.*

To be considered a close corporation, an entity must abide by the requirements laid out in Section 96 of the Corporation Code. The CA and the RTC deemed MSI a close corporation based on the allegation of Spouses Cruz that it was so. However, mere allegation is not evidence and is not equivalent to proof. The CA rulings should be set aside.

We thus apply the general doctrine of separate juridical personality, which provides that a corporation has a legal personality separate and distinct from that of people comprising it. By that doctrine, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder. Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation. In rehabilitation proceedings, claims of creditors are limited to demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

FACTS

Spouses Fernando and Amelia Cruz owned a 464-square-meter lot covered by Transfer Certificate of Title No. N-126668. The City Government of Marikina levied the property for nonpayment of real estate taxes. The City Treasurer of Marikina auctioned off the property, with petitioner Joselito Hernand M. Bustos emerging as the winning bidder. Petitioner then applied for the cancellation of TCT No. N-126668. The Regional Trial Court rendered a final and executory Decision ordering the cancellation of the previous title and the issuance of a new one under the name of petitioner. Meanwhile, notices of lis pendens were annotated on TCT No. N-126668. These markings indicated that SEC Corp. Case No. 036-04, which was filed before the RTC and involved the rehabilitation proceedings for MSI, covered the subject property and included it in the Stay Order issued by the RTC. Petitioner moved for the exclusion of the subject property from the Stay Order. He claimed that the lot belonged to Spouses Cruz who were mere stockholders and officers of MSI. He further argued that since he had won the bidding of the property before the annotation of the title, the auctioned property could no longer be part of the Stay Order.

The RTC denied the entreaty of petitioner. It ruled that because the period of redemption had not yet lapsed at the time of the issuance of the Stay Order, the ownership thereof had not yet been transferred to petitioner. Petitioner moved for reconsideration, but to no avail. He then filed an action for certiorari before the CA. The CA ruled that delinquent tax payers were the Cruz Spouses who were the registered owners of the said parcel of land at the time of the delinquency sale. The Cruz Spouses were still the owners of the land at the time of the issuance of the stay order. The said parcel of land which secured several mortgage liens for the account of MSI remains to be an asset of the Cruz Spouses, who are the stockholders and/or officers of MSI, a close corporation. Incidentally, as an exception to the general rule, in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations. Thus, the Cruz Spouses being stockholders of MSI are personally liable for the latter's debt and obligations. Petitioner unsuccessfully moved for reconsideration. The CA maintained its ruling and even held that his prayer to exclude the property was time-barred by the 10-day reglementary period to oppose rehabilitation petitions under Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation. In their Comment, respondents do not contest that Spouses Cruz own the subject property. Rather, respondents assert that as stockholders and officers of a close corporation, they are personally liable for its debts and obligations. Furthermore, they argue that since the Rehabilitation Plan of MSI has been approved, petitioner can no longer assail the same.

ISSUE

1. Whether or not MSI is a close corporation.
2. Whether or not the properties of Spouses Cruz are considered answerable for the obligations of MSI
3. Whether or not the time-bar rule applies to the petitioner.

RULING

1. **NO**, MSI is not a close corporation. To be considered a close corporation, an entity must abide by the requirements laid out in Section 96 of the Corporation Code, which reads:

Sec. 96. Definition and applicability of Title. - A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.

Here, neither the CA nor the RTC showed its basis for finding that MSI is a close corporation. The courts a quo did not at all refer to the Articles of Incorporation of MSI. The Petition submitted by respondent in the rehabilitation proceedings before the RTC did not even include those Articles of Incorporation among its attachments. In effect, the CA and the RTC deemed MSI a close corporation based on the allegation of Spouses Cruz that it was so. However, mere allegation is not evidence and is not equivalent to proof. The CA rulings should be set aside.

2. **NO**, the properties of Spouses Cruz are not considered answerable for the obligations of MSI. The CA seriously erred in portraying the import of Section 97 of the Corporation Code. The CA concluded that "in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations." However, Section 97 of the Corporation Code only specifies that "the stockholders of the corporation shall be subject to all liabilities of directors." Nowhere in that provision do we find any inference that stockholders of a close corporation are automatically liable for corporate debts and obligations. Parenthetically, only Section 100, paragraph 5, of the Corporation Code explicitly provides for personal liability of stockholders of close corporation, viz:

Sec. 100. Agreements by stockholders. – 5. To the extent that the stockholders are actively engaged in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance. Several requisites must be present for its applicability.

None of these were alleged in the case of Spouses Cruz. Neither did the RTC or the CA explain the factual circumstances for this Court to discuss the personally liability of respondents to their creditors because of "corporate torts." We thus apply the general doctrine of separate juridical personality, which provides that a corporation has a legal personality separate and distinct from that of people comprising it. By that doctrine, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder. Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation. In rehabilitation proceedings, claims of creditors are limited to demands of whatever nature or character against a debtor or its property, whether for money or otherwise. In several cases, we have already held that stay orders should only cover those claims directed against corporations or their properties, against their guarantors, or their sureties who are not solidarily liable with them, to the exclusion of accommodation mortgagors. To repeat, properties merely owned by stockholders cannot be included in the inventory of assets of a corporation under rehabilitation.

3. No, the time-bar rule does not apply to petitioner. Given that the true owner the subject property is not the corporation, petitioner cannot be considered a creditor of MSI but a holder of a claim against respondent spouses. Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation, directs creditors of the debtor to file an opposition to petitions for rehabilitation within 10 days before the initial hearing of rehabilitation proceedings. Since petitioner does not hold any claim over the properties owned by MSI, the time-bar rule does not apply to him.

b. When Board Meeting is Unnecessary or Improperly Held

- Manuel R. Dulay Enterprises, Inc., Virgilio E. Dulay and Nepomuceno Redovan vs. the Honorable Court of Appeals, G.R. No. 91889 August 27, 1993

MANUEL R. DULAY ENTERPRISES, INC., VIRGILIO E. DULAY AND NEPOMUCENO REDOVAN, *Petitioners,* -versus - THE HONORABLE COURT OF APPEALS, EDGARDO D. PABALAN, MANUEL A. TORRES, JR., MARIA THERESA V. VELOSO AND CASTRENSE C. VELOSO, *Respondents.*
G.R. No. 91889, SECOND DIVISION, August 27, 1993, NOCON, *J.*

Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if: (1) Before or after such action is taken, written consent thereto is signed by all the directors; or (2) All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or (3) The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or (4) All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing. If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof.

FACTS

Petitioner Manuel R. Dulay Enterprises, Inc, a domestic corporation with the following as members of its Board of Directors: Manuel R. Dulay with 19,960 shares and designated as president, treasurer and general manager, Atty. Virgilio E. Dulay with 10 shares and designated as vice-president; Linda E. Dulay with 10 shares; Celia Dulay-Mendoza with 10 shares; and Atty. Plaridel C. Jose with 10 shares and designated as secretary, owned a property covered by TCT No. 17880 4and known as Dulay Apartment consisting of sixteen (16) apartment units on a six hundred eighty-nine (689) square meters lot, more or less. Petitioner corporation through its president, Manuel Dulay, obtained various loans for the construction of its hotel project, Dulay Continental Hotel (now Frederick Hotel). It even had to borrow money from petitioner Virgilio Dulay to be able to continue the hotel project. As a result of said loan, petitioner Virgilio Dulay occupied one of the unit apartments of the subject property since property since 1973 while at the same time managing the Dulay Apartment at his shareholdings in the corporation was subsequently increased by his father. On December 23, 1976, Manuel Dulay by virtue of Board Resolution No 18 6of petitioner corporation sold the subject property to private respondents spouses Maria Theresa and Castrense Veloso in the amount of P300,000.00 as evidenced by the Deed of Absolute Sale. 7Thereafter, TCT No. 17880 was cancelled and TCT No. 23225 was issued to private respondent Maria Theresa Veloso. 8 Subsequently, Manuel Dulay and private respondents spouses Veloso executed a Memorandum to the Deed of Absolute Sale of December 23, 1976 giving Manuel Dulay within (2) years or until December 9, 1979 to repurchase the subject property for P200,000.00 which was, however, not annotated. On December 24, 1976, private respondent Maria Veloso, without the knowledge of Manuel Dulay, mortgaged the subject property to private respondent Manuel A. Torres for a loan of P250,000.00 which was duly annotated as Entry No. 68139 in TCT No. 23225. Upon the failure of private respondent Maria Veloso to pay private respondent Torres, the subject property was sold on April 5, 1978 to private respondent Torres as the highest bidder in an extrajudicial foreclosure sale as evidenced by the Certificate of Sheriff's Sale 11issued on April 20, 1978. On July 20, 1978, private respondent Maria Veloso executed a Deed of Absolute Assignment of the Right to Redeem 12in favor of Manuel Dulay assigning her right to repurchase the subject property from private respondent Torres as a result of the extra sale held on April 25, 1978. As neither private respondent Maria Veloso nor her assignee Manuel Dulay was able to redeem the subject property within the one year statutory period for redemption, private respondent Torres filed an Affidavit of Consolidation of Ownership with the Registry of Deeds of Pasay City. Title was subsequently issued to private respondent Manuel Torres on April 23, 1979.

On October 1, 1979, private respondent Torres filed a petition for the issuance of a writ of possession against private respondents spouses Veloso and Manuel Dulay in LRC Case No. 1742- P. However, when petitioner Virgilio Dulay was never authorized by the petitioner corporation to sell or mortgage the subject property, the trial court ordered private respondent Torres to implead petitioner corporation as an indispensable party but the latter moved for the dismissal of his petition which was granted in an Order dated April 8, 1980. On June 20, 1980, private respondent Torres and Edgardo Pabalan, real estate administrator of Torres, filed an action against petitioner corporation, Virgilio Dulay and Nepomuceno Redovan, a tenant of Dulay Apartment Unit No. 8-A for the recovery of possession, sum of money and damages with preliminary injunction in Civil Case, No. 8198-P with the then Court of First Instance of Rizal. On July 21, 1980, petitioner corporation filed an action against private respondents spouses Veloso and Torres for the cancellation of the Certificate of Sheriff's Sale and TCT No. 24799 in Civil Case No. 8278-P with the then Court of First Instance of Rizal. On January 29, 1981, private respondents Pabalan and Torres filed an action against spouses Florentino and Elvira Manalastas, a tenant of Dulay Apartment Unit No. 7-B, with petitioner corporation as intervenor for ejectment in Civil Case No. 38-81 with the Metropolitan Trial Court of Pasay City. Thereafter or on May 17, 1985, petitioner corporation and Virgilio Dulay filed an action against the presiding judge of the Metropolitan Trial Court of Pasay City, private respondents Pabalan and Torres for the annulment of said decision with the Regional Trial Court of Pasay in Civil Case No. 2880-P. Thereafter, the three (3) cases were jointly tried and the trial court rendered a decision in favor of private respondents. Not satisfied with said decision, petitioners appealed to the Court of Appeals. During the pendency of this petition, private respondent Torres died on April 3, 1991 as shown in his death certificate and named Torres-Pabalan Realty & Development Corporation as his heir in his holographic will dated October 31, 1986.

ISSUE

Whether the sale of the subject property between spouses Veloso and Manuel Dulay has no binding effect on the corporation as Board Resolution 18 which authorized the sale of the subject property was resolved without the approval of all the members of the board of directors and said Board Resolution was prepared by a person not designated by the corporation to be its secretary.

RULING: NO.

The sale binds the corporation. Section 101 of the Corporation Code of the Philippines provides that "When board meeting is unnecessary or improperly held. Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if: (1) Before or after such action is taken, written consent thereto is signed by all the directors; or (2) All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or (3) The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or (4) All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing. If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof." Herein, the corporation is classified as a close corporation and consequently a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president. At any rate, a corporate action taken at a board meeting without proper call or notice in a close corporation is deemed ratified by the absent director unless the latter promptly files his written objection with the secretary of the corporation after having knowledge of the meeting which, in this case, Virgilio Dulay failed to do. The corporation's claim that the sale of the subject property by its president, Manuel Dulay, to spouses Veloso is null and void as the alleged Board Resolution 18 was passed without the knowledge and consent of the other members of the board of directors cannot be sustained. Virgilio E. Dulay's protestations of complete innocence to the effect that he never participated nor was even aware of any meeting or resolution authorizing the mortgage or sale of the subject premises is difficult to believe. On the contrary, he is very much privy to the transactions involved. To begin with, he is an incorporator and one of the board of directors designated at the time of the organization of Manuel R. Dulay Enterprises, Inc. In ordinary parlance, the said entity is loosely referred to as a "family corporation." The nomenclature, if imprecise, however, fairly reflects the cohesiveness of a group and the parochial instincts of the individual members of such an aggrupation of which Manuel R. Dulay Enterprises, Inc. is typical: four-fifths of its incorporators being close relatives namely, 3 children and their father whose name identifies their corporation. Besides, the fact that Virgilio Dulay on 24 June 1975 executed an affidavit that he was a signatory witness to the execution of the post-dated Deed of Absolute Sale of the subject property in favor of Torres indicates that he was aware of the transaction executed between his father and Torres and had, therefore, adequate knowledge about the sale of the subject property to Torres. Consequently, the corporation is liable for the act of Manuel Dulay and the sale of the subject property to Torres by Manuel Dulay is valid and binding.

e. Pre-Emptive Right

f. Amendment of Articles of Incorporation

g. Deadlocks

2. Non-Stock Corporations

a. Treatment of Profits

b. Distribution of Assets upon Dissolution

- Ao-As vs. CA 491 SCRA 339 (2006)

REV. LUIS AO-AS, REV. JOSE LAKING, EUSQUICIO GALANG, REV. ISABELO MONONGGIT, REV. EDWINO MERCADO, REV. DANIEL PONDEVIDA, REV. TEODORICO TARAN and DR. BENJAMIN GALAPIA., *Petitioners,* -versus HON. COURT OF APPEALS, THOMAS P. BATONG, JUANITO BASALONG, AUGUSTO CATANGI, PAUL GARCIA, QUIDO RIVERA, VICTORIO Y. SAQUILAYAN and DANILO ZAMORA, *Respondents.*
G.R. No. 128464, FIRST DIVISION, June 20, 2006, CHICO-NAZARIO, *J.*

Bad judgment by directors, or even unauthorized use and misapplication of the company's funds, will not justify the appointment of a receiver for the corporation if appropriate relief can otherwise be had.

FACTS

The Lutheran Church of the Philippines (LCP) is a religious organization duly registered with the SEC. Its members are comprised of Lutheran clergymen and local Lutheran congregations in the Philippines: the North Luzon District (NLD); the South Luzon District (SLD); and the Mindanao district (MDD).

The governing body of LCP were composed of 7 Board of Directors (BOD) serving a term of 2 years. Six members of the LCP Board are elected separately in district conferences held in each district, with two members representing each district and the seventh member of the Board is the National President of the LCP who is elected at large in a national convention held in October of every even-numbered year.

A resolution was passed, dividing the NLD into two separate districts: NLD Highland District and NLD Lowland District thereby increasing the BOD from 7 to 9. Another resolution was passed creating another district, Visayan Islands District (VLD), thereby increasing the number of BOD further to 11.

The BOD managed the LCP without any challenge from the membership until several years later when certain controversies arose involving the resolutions of the Board terminating the services of the LCP business manager and corporate treasurer since 1979, Mr. Eclesio Hipe. The said termination sparked several intra corporate complaints and for the first time, the legality of the 11 BOD was put in issue for being in excess of the number of BOD provided in the AOI without it being amended to reflect the increase.

The members of the Batong group - RESPONDENTS are the duly elected board of directors of the LCP at the time of the Iling of SEC-SICD Case No. 3857. On the other hand, the Ao-As group - PETITIONERS have served in various capacities as directors or officers of the LCP.

The Ao-as group filed SEC-SICD Case No. 3857 for accounting and damages with prayer for preliminary injunction and appointment of a MANAGEMENT COMMITTEE. The grounds relied upon for the appointment of a management committee are:

1. The alleged anomaly concerning the sale of the land and the purchase of another land, both located in La Trinidad. The La Trinidad Land Transaction, the proceeds whereof were allegedly unliquidated, was testiIed to by petitioner Ao-As and Mr. Excelsio Hipe before the SEC-SICD in a hearing conducted on 11 September 1990.

2. Unliquidated cash advances and unaccounted funds. Petitioners presented evidence to prove the failure of respondent Batong to liquidate cash advances and account for P4,000,000 of LCP funds.

3. Purchase of Leyte Land in the name of respondent Saquilayan with LCP funds. Respondent LCP Vice-President Victorio Y. Saquilayan allegedly purchased a parcel of land in Albuera, Leyte in his name, using LCP funds. Respondent Saquilayan subsequently donated to the LCP, and explained that the purchase in his name was upon advice of LCP's lawyers to comply with the rulings in Republic of the Philippines v. Hon. Arsenio M. Gonong and Republic of the Philippines v. Iglesia Ni Cristo.

4. Severance of partner-church relationship between the LCP and the LCMS. Respondents issued LCP Board Resolution No. LCP-BD-28-90 severing all relations with the Lutheran Church-Missouri Synod (LCMS), allegedly in violation of LCP Board Resolution No. LCP-BD-33-70 which stated that "all actions taken by LCP in convention can only be amended, modified and changed by LCP in convention."

5. Taking of LCP Books of Account . Respondent Batong, accompanied by members of the LCP Board and about 15 armed security guards allegedly barged into the premises of the LCP in Old Sta. Mesa, Manila, and removed all of the official records and documents of the LCP (including the books of account, official receipts, check and journal vouchers, official papers and titles to property) and had the same relocated to his residence in Caloocan City and to the offices of Immanuel Lutheran Church in Malabon.

During the hearings, the Batong group filed an Urgent Motion to Suspend the Proceedings in view of an amicable settlement between them entitled "A FORMULA FOR CONCORD". However, the SEC did not suspend the proceedings.

Subsequently an order creating a management committee was issued to undertake the management of the Lutheran Church until such time as the new BOD shall have been elected.
However, even before the creation of the management committee, the LCP national convention called by the Batong group had already been called and held at the Lutheran Hospice, Quezon City.

ISSUE

Whether the Ao-As group is entitled to an accounting and to the creation of a management committee due to the Batong group's alleged dissipation and waste of the assets of the LCP?

RULING: NO.

The creation of a management committee is not warranted as shown by the facts of the case.

"It is the general rule that a receiver (or a management committee) will not be appointed unless it appears that the appointment is necessary either to prevent fraud, or to save the property from fraud or threatened destruction, or at least in case of solvent corporation . . . . The burden of proof is a heavy one which requires a clear showing that an emergency exists. ". . . Similarly, a receiver (or a management committee) should not be appointed in an action by a minority stockholder against corporate officers for an accounting where the corporation is solvent and going concern and a receiver is not necessary to preserve the corporate property pending the accounting". Furthermore, a management committee should not be created when there was an adequate remedy available to private respondents for the liquidation of unaccounted funds.

The Court of Appeals ruled that the members of the Ao-As group "have not positively shown that the said funds are unaccounted for," and analyzed the evidence presented by the Ao-As group to illustrate that the unaccounted funds were only P1,572.43, "which may be attributable to adjustment errors but certainly not a case of misappropriation or misuse.

Even without delving into the analysis of the prosecution evidence concerning the six causes of action and the alleged acts subsequent to these five causes of action, it is already appropriate for us to rule that the facts as they appear to us now do not warrant the creation of a management committee.

Refusal to allow stockholders (or members of a non-stock corporation) to examine books of the company is not a ground for appointing a receiver (or creating a management committee) since there are other adequate remedies, such as a writ of mandamus. Misconduct of corporate directors or other officers is not a ground for the appointment of a receiver where there are one or more adequate legal action against the officers, where they are solvent, or other remedies.

The appointment of a receiver for a going corporation is a last resort remedy, and should not be employed when another remedy is available. Relief by receivership is an extraordinary remedy and is never exercised if there is an adequate remedy at law or if the harm can be prevented by an injunction or a restraining order. **Bad judgment by directors, or even unauthorized use and misapplication of the company's funds, will not justify the appointment of a receiver for the corporation if appropriate relief can otherwise be had.**

- Petronilo J. Barayuga vs. Adventist University of the Philippines, through its Board of Trustees, represented by its Chairman, Nestor D. Dayson, G.R. No. 168008, August 17, 2011

PETRONILO J. BARAYUGA., *Petitioner,* -versus – ADVENTIST UNIVERSITY OF THE PHILIPPINES, THROUGH ITS BOARD OF TRUSTEES, REPRESENTED BY ITS CHAIRMAN, NESTOR D. DAYSON, *Respondents.*

G.R. No. 168008, FIRST DIVISION, August 17, 2011, BERSAMIN, *J.*

Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. ***Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years****.*

FACTS

AUP, a non-stock and non-profit domestic educational institution incorporated under Philippine laws, was directly under the North Philippine Union Mission (NPUM) of the Southern Asia Pacific Division of the Seventh Day Adventists. During the 3rd Quinquennial Session of the General Conference of Seventh Day Adventists held from November 27, 2000 to December 1, 2000, the NPUM Executive Committee elected the members of the Board of Trustees of AUP, including the Chairman and the Secretary. Respondent Nestor D. Dayson was elected Chairman while the petitioner was chosen Secretary.

On January 23, 2001, almost two months following the conclusion of the 3rd Quinquennial Session, the Board of Trustees appointed the petitioner President of AUP. During his tenure, a group from the NPUM conducted an external performance audit. The audit revealed the petitioner's autocratic management style, like making major decisions without the approval or recommendation of the proper committees, including the Finance Committee; and that he had himself done the canvassing and purchasing of materials and made withdrawals and reimbursements for expenses without valid supporting receipts and without the approval of the Finance Committee. The audit concluded that he had committed serious violations of fundamental rules and procedure in the disbursement and use of funds.

The NPUM Executive Committee and the Board of Trustees decided to immediately request the services of the General Conference Auditing Service (GCAS) to determine the veracity of the audit findings. On December 20, 2002, CGAS auditors reported the results of their review, and submitted their observations and recommendations to the Board of Trustees. Upon receipt of the CGAS report that confirmed the initial findings of the auditors on January 8, 2003, the NPUM informed the petitioner of the findings and required him to explain. On January 15, 2003, Chairman Dayson and the NPUM Treasurer likewise informed the petitioner inside the NPUM office on the findings of the auditors in the presence of the AUP Vice-President for Financial Affairs, and reminded him of the possible consequences should he fail to satisfactorily explain the irregularities cited in the report. He replied that he had already prepared his written explanation.

The Board of Trustees set a special meeting. Being the Secretary, the petitioner himself prepared the agenda and included an item on his case. In that meeting, he provided copies of the auditors' report and his answers to the members of the Board of Trustees. After hearing his explanations and oral answers to the questions raised on issues arising from the report, the members of the Board of Trustees requested him to leave to allow them to analyze and evaluate the report and his answers. The members of the Board of Trustees decided to adjourn that night and to set another meeting in the following week considering that the meeting had not been specifically called for the purpose of deciding his case Chairman Dayson indicated that some sectors in the campus had not been properly represented in the January 22, 2003 special meeting, and requested the petitioner as Secretary to ensure that all sectors are duly represented in the next meeting of the Board of Trustees.

In the January 27, 2003 special meeting, the petitioner sent a letter to the Board of Trustees. The members, by secret ballot, voted to remove him as President because of his serious violations of fundamental rules and procedures in the disbursement and use of funds as revealed by the special audit; to appoint an interim committee consisting of three members to assume the powers and functions of the President; and to recommend him to the NPUM for consideration as Associate Director for Secondary Education.

On January 28, 2003, the petitioner was handed inside the NPUM office a letter, together with a copy of the minutes of the special meeting held the previous day. In turn, he handed to Chairman Dayson a letter requesting two weeks within which to seek a reconsideration, stating that he needed time to obtain supporting documents because he was then attending to his dying mother.

In the evening of January 28, 2003, the Board of Trustees, most of whose members had not yet left Cavite, reconvened to consider and decide the petitioner's request for reconsideration. During the meeting, he made an emotional appeal to allow him to continue as President, promising to immediately vacate his office should he again commit any of the irregularities cited in the auditors' report. He added that should the Board of Trustees not favor his appeal, he would settle for a retirement package for him and his wife and would leave the church.

The Board of Trustees denied the petitioner's request for reconsideration because his reasons were not meritorious. Board Member Elizabeth Role served the notice of the denial on him the next day, but he refused to receive the notice, simply saying Alam ko na yan. The petitioner later obtained a copy of the inter-school memorandum dated January 31, 2003 informing AUP students, staff, and faculty members about his relief as President and the appointment of an interim committee to assume the powers and duties of the President. The petitioner brought his suit for injunction and damages in the RTC, with prayer for the issuance of a temporary restraining order (TRO), impleading AUP and its Board of Trustees, represented by Chairman Dayson, and the interim committee. His complaint alleged that the Board of Trustees had relieved him as President without valid grounds despite his five-year term; that the Board of Trustees had thereby acted in bad faith; and that his being denied ample and reasonable time to present his evidence deprived him of his right to due process.

In their answer with counterclaim, the respondents denied the allegations of the petitioner, and averred that he had been validly removed for cause; and that he had been granted ample opportunity to be heard in his defense.

On March 21, 2003, after summary hearing, the RTC issued the TRO enjoining the respondents and persons acting for and in their behalf from implementing the resolution removing him as President issued by the Board of Trustees and enjoining the interim committee from performing the functions of President of AUP.

After further hearing, the RTC issued on April 25, 2003 its controversial order, granting the petitioner's application for a writ of preliminary injunction. It thereby resolved three issues, namely: (a) whether the special board meetings were valid; (b) whether the conflict-of-interest provision in the By-Laws and Working Policy was violated; and (c) whether the petitioner was denied due process. It found for the petitioner upon all the issues. On the first issue, it held that there was neither a written request made by any two members of the Board of Trustees nor proper notices sent to the members as required by AUP's By-Laws. Anent the second issue, it ruled that the purchase of coco lumber from his balae (i.e., mother-in-law of his son) was not covered by the conflict-of-interest provision, for AUP's Model Statement of Acceptance form mentioned only the members of the immediate family and did not extend to the relationship between him and his balae.

On the third issue, it concluded that he was deprived of due process when the Board of Trustees refused to grant his motion for reconsideration and his request for additional time to produce his evidence, and instead immediately implemented its decision by relieving him from his position without according him the treatment befitting a university President. Proceedings in the CA The respondents filed a petition for certiorari in the CA, contending that the petitioner's complaint did not meet the requirement that an injunctive writ should be anchored on a legal right; and that he had been merely appointed, not elected, as President for a term of office of only two years, not five years, based on AUP's amended By-Laws.

The petitioner filed a supplemental petition in the CA, alleging that after the commencement of his action, he filed in the RTC an urgent motion for the issuance of a second TRO to enjoin the holding of an AUP membership meeting and the election of a new Board of Trustees, capitalizing on the admission in the respondents' answer that he had been elected in 2001 to a five-year term of office. He argued that the admission estopped the respondents from insisting to the contrary. The respondents filed in the CA a verified urgent motion for a TRO and to set a hearing on the application for preliminary injunction to enjoin the RTC from implementing the assailed order. The petitioner sought a clarification of the TRO issued by the CA, considering that his cause of action in his petitions to cite the respondents in indirect contempt dated March 5, 2004 and March 16, 2004 filed in the RTC involved the election of a certain Robin Saban as the new President of AUP in blatant and malicious violation of the writ of preliminary injunction issued by the RTC.

The CA rendered its decision nullifying the RTC's writ of preliminary injunction. It rejected the petitioner's argument that Article IV, Section 3 of AUP's Constitution and By-Laws and Working Policy of the Conference provided a five-year term for him, because the provision was inexistent. It ruled that the petitioner's term of office had expired on January 22, 2003, or two years from his appointment, based on AUP's amended By-Laws; that, consequently, he had been a mere de facto officer appointed by the members of the Board of Trustees; and that he held no legal right warranting the issuance of the writ of preliminary injunction.

The petitioner brought his suit for injunction and damages in the RTC, with prayer for the issuance of a temporary restraining order (TRO). The RTC issued granting the petitioner's application for a writ of preliminary injunction. The respondents filed a petition for certiorari in the CA which it nullified the RTC's writ of preliminary injunction.

ISSUE

Whether or not petitioner is entitled to a five-year term

RULING: NO.

Section 108 of the Corporation Code determines the membership and number of trustees in an educational corporation, viz:

Section 108. Board of trustees. – Trustees of educational institutions organized as educational corporations shall not be less than five (5) nor more than fifteen (15): Provided, however, That the number of trustees shall be in multiples of five (5). Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years. A majority of the trustees shall constitute a quorum for the transaction of business. The powers and authority of trustees shall be defined in the by-laws.

For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations. The second paragraph of the provision, although setting the term of the members of the Board of Trustees at five years, contains a proviso expressly subjecting the duration to what is otherwise provided in the articles of incorporation or by-laws of the educational corporation. That contrary provision controls on the term of office.

In AUP's case, its amended By-Laws provided the term of the members of the Board of Trustees, and the period within which to elect the officers, thusly:

Article I

Board of Trustees

Section 1. At the first meeting of the members of the corporation, and thereafter every two years, a Board of Trustees shall be elected. It shall be composed of fifteen members in good and regular standing in the Seventh-day Adventist denomination, each of whom shall hold his office for a term of two years, or until his successor has been elected and qualified. If a trustee ceases at any time to be a member in good and regular standing in the Seventh-day Adventist denomination, he shall thereby cease to be a trustee.

Article IV

Officers

Section 1. Election of officers. – At their organization meeting, the members of the Board of Trustees shall elect from among themselves a Chairman, a Vice-Chairman, a President, a Secretary, a Business Manager, and a Treasurer. The same persons may hold and perform the duties of more than one office, provided they are not incompatible with each other.

In light of foregoing, the members of the Board of Trustees were to serve a term of office of only two years; and the officers, who included the President, were to be elected from among the members of the Board of Trustees during their organizational meeting, which was held during the election of the Board of Trustees every two years. Naturally, the officers, including the President, were to exercise the powers vested by Section 2 of the amended By-Laws for a term of only two years, not five years.

Ineluctably, the petitioner, having assumed as President of AUP on January 23, 2001, could serve for only two years, or until January 22, 2003. By the time of his removal for cause as President on January 27, 2003, he was already occupying the office in a hold-over capacity, and could be removed at any time, without cause, upon the election or appointment of his successor. His insistence on holding on to the office was untenable, therefore, and with more reason when one considers that his removal was due to the loss of confidence on the part of the Board of Trustees.

3. Foreign Corporations

a. Bases of Authority over Foreign Corporations

i. Consent

- Eriks PTE. Ltd. vs. Court of Appeals, G.R. No. 118843, February 6, 1997

ERIKS PTE. LTD., *Petitioner*, -versus – COURT OF APPEALS and DELFIN F. ENRIQUEZ, JR., *Respondents.*
G.R. No. 118843, THIRD DIVISION, February 6, 1997, PANGANIBAN, *J.*

It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it.

FACTS

Petitioner Eriks Pte. Ltd. is a non-resident foreign corporation engaged in the manufacture and sale of elements used in sealing pumps, valves and pipes for industrial purposes. In its complaint, it alleged that: (I)t is a corporation duly organized and existing under the laws of the Republic of Singapore. It is not licensed to do business in the Philippines and i(s) not so engaged and is suing on an isolated transaction for which it has capacity to sue. On various dates, private respondent Delfin Enriquez, Jr., doing business under the name and style of Delrene EB Controls Center and/or EB Karmine Commercial, ordered and received from petitioner various elements used in sealing pumps, valves, pipes and control equipment, PVC pipes and fittings. The transfers of goods were perfected in Singapore, for private respondent's account, F.O.B. Singapore, with a 90-day credit term. Subsequently, demands were made by petitioner upon private respondent to settle his account, but the latter failed/refused to do so.

Petitioner Corporation filed with the Regional Trial Court of Makati for the recovery of S$41,939.63 or its equivalent in Philippine currency, plus interest thereon and damages. Private respondent responded with a Motion to Dismiss, contending that petitioner corporation had no legal capacity to sue. In an Order the trial court dismissed the action on the ground that petitioner is a foreign corporation doing business in the Philippines without a license. On appeal, respondent Court affirmed said order as it deemed the series of transactions between petitioner, corporation and private respondent not to be an "isolated or casual transaction." Thus, respondent Court likewise found petitioner to be without legal capacity to sue, and disposed of the appeal.

ISSUES

1. Whether or not petitioner's business with private respondent may be treated as isolated transactions.

2. Whether or not petitioner Corporation may maintain an action in Philippine courts considering that it has no license to do business in the country.

RULING

(1) **NO**, more than the sheer number of transactions entered into, a clear and unmistakable intention on the part of petitioner to continue the body of its business in the Philippines is more than apparent.

Thus, the sale by petitioner of the items covered by the receipts, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business, pure and simple. Further, its grant and extension of 90-day credit terms to private respondent for every purchase made, unarguably shows an intention to continue transacting with private respondent. What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization.

(2) **NO**, Sec. 133. No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. Petitioner must be held to be incapacitated to maintain the action a quo against private respondent.

The aforementioned provision prohibits, not merely absence of the prescribed license, but it also bars a foreign corporation "doing business" in the Philippines without such license access to our courts. A foreign corporation without such license is not ipso facto incapacitated from bringing an action. A license is necessary only if it is "transacting or doing business in the country.

It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it.

ii. Doctrine of "Doing Business" (related to definition under the Foreign Investments Act, R.A. No. 7042)

- Wang Laboratories, Inc., vs. Mendoza, 156 SCRA 44 (1987)

WANG LABORATORIES, INC ., *Petitioner,* -versus – THE HONORABLE RAFAEL T. MENDOZA, then Presiding Judge, Regional Trial Court, Branch CXXXIV, Makati, Metro Manila, THE HONORABLE BERNARDO ABESAMIS, incumbent Presiding Judge, Regional Trial Court, Branch CXX-XIV, Makati, Metro Manila, Public Respondents and ANGARA CONCEPCION REGALA & CRUZ LAW OFFICES , *Respondents.*

G.R. No. 72147, FIRST DIVISION, December 1, 1987, PARAS, *J.*

Indeed it has been held that "where a single act or transaction of a foreign corporation is not merely incidental or casual but is of such character as distinctly to indicate a purpose to do other business in the State, such act constitutes doing business within the meaning of statutes prescribing the conditions under which a foreign corporation may be served with summons.

FACTS

Petitioner is a corporation duly organized under the laws of the United States with principal address at One Industrial Avenue, Lowell, Massachusetts, U.S.A., engaged in the business of manufacturing and selling computers worldwide. In the Philippines, petitioner sells its products to EXXBYTE TECHNOLOGIES CORPORATION, hereinafter referred to as EXXBYTE, its exclusive distributor. EXXBYTE is a domestic corporation engaged in the business of selling computer products to the public in its own name for its own account.

Angara, Concepcion, Regala & Cruz Law Offices (hereinafter referred to as ACCRALAW for brevity) is a duly registered professional partnership. ACCRALAW entered into a contract with EXXBYTE for acquisition and installation of a Wang 2200 US Integrated Information System at the former's office. As stipulated in the above-said contract, a letter of credit for US$ 86,142.55 was thereafter opened by ACCRALAW in favor of petitioner herein to pay for the Wang 2200 US System. Sometime in May 1981, the hardware was delivered and installed by EXXBYTE in ACCRALAW's office .

ACCRALAW and EXXBYTE entered into another contract for the development of a data processing software program needed to computerize the ACCRALAW office . Subsequent thereto and for one reason or the other, the contract for the development of a data processing software program or ISLA was not implemented.

ACCRALAW filed a complaint for breach of contract with damages, replevin and attachment against herein petitioner. Petitioner filed a Motion to Dismiss the complaint on the ground that there was improper service of summons, hence, the court below had not obtained jurisdiction over the person of the petitioner. ACCRALAW filed an Ex-Abundante Cautela Motion for leave to Effect Extraterritorial Service of Summons on petitioner.

Respondent Judge Mendoza, among others, granted the Ex-Abundante Cautela Motion to Effect Extraterritorial Service of Summons, denied the petitioner's motion to dismiss on the ground that it had voluntarily submitted itself to the jurisdiction of the court, and thus declined to consider the legal and factual issues raised in the Motion to Dismiss. Hence, this petition.

Petitioner interposed that the court has no jurisdiction over its person primarily because it is a United States corporation with principal address at One Industrial Avenue, Lowell, Massachusetts, U.S.A., is not domiciled in the Philippines, does not have any office or place of business in the Philippines, is not licensed to engage and is not engaging in business here. EXXBYTE upon whom summons was served on behalf of this defendant is a local company entirely separate and distinct from and is not the representative of the defendant

ISSUE

Whether or not respondent Court has acquired jurisdiction over the person of the petitioner, a foreign corporation.

RULING

Respondent court has acquired jurisdiction over the person of the petitioner

Evidence presented by private respondent however, shows that contrary to petitioner's allegations, the various public advertisements of WANG and EXXBYTE clearly show that Wang has appointed EXXBYTE, which is domiciled in the Philippines, as its authorized exclusive representative in this country. In fact, WANG represents that its office in the Philippines is EXXBYTE, while the letterhead of EXXBYTE and its invoices show that it is WANG's representative. (Rollo, p. 65). Moreover, in its Reply to Opposition to Motion to Dismiss, WANG itself admitted that it deals exclusively with EXXBYTE in the sale of its products in the Philippines.

In the cases of *Mentholatum Co., Inc. v. Mangaliman* (72 Phil. 524 119411 and Topweld Manufacturing, Inc. v. Eced S.A. et al., 138 SCRA 118 [1985]), it was held that no general rule or governing principle can be laid down as to what constitutes doing or "engaging" or "trading" in business. Indeed each case must be judged in the light of its peculiar environmental circumstances; upon peculiar facts and upon the language of the Statute applicable (Far East Int'l. Import Export Corp. v. Nankai Kogyo, Co., Ltd. (6 SCRA 725 [1962]).

Under the circumstances; petitioner cannot unilaterally declare that it is not doing business in the Philippines. In fact, it has installed, at least 26 different products in several corporations in the Philippines since 1976 (Respondent's Brief, Rollo, p. 272). It has registered its trade name with the Philippine Patents Office (ibid) and Mr. Yeoh who is petitioner's controller in Asia has visited the office of its distributor for at least four times where he conducted training programs in the Philippines (Oral Deposition, pp. 16; 22-23, Rollo, pp. 335; 341-342, Annex "S" to Petitioner's Brief). Wang has allowed its registered logo and trademark to be used by EXXBYTE (Pran Deposition, p. 23, Rollo, p. 342) and made it known that there exists a designated distributor in the Philippines as published in its advertisements.

Indeed it has been held that "where a single act or transaction of a foreign corporation is not merely incidental or casual but is of such character as distinctly to indicate a purpose to do other business in the State, such act constitutes doing business within the meaning of statutes prescribing the conditions under which a foreign corporation may be served with summons (Far East Int'l. Import and Export Corp. v. Nankai Kogyo Co. Ltd., 6 SCRA 725 [1962]).

Be that as it may, the issue on the suability of foreign corporation whether or not doing business in the Philippines has already been laid to rest. The Court has categorically stated that although a foreign corporation is not doing business in the Philippines, it may be sued for acts done against persons in the Philippines. The Court has ruled as follows:

Indeed if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from courts in the Philippines, *a fortiori*, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines (Facilities Management Corporation v. De la Osa, 89 SCRA 131 [1979]).

- Marubeni Nederland B.V. vs. Tensuan, 190 SCRA 105 (1990)

MARUBENI NEDERLAND B.V ., *Petitioner,* -versus – THE HONORABLE JUDGE RICARDO P. TENSUAN, Presiding Judge of the Court of First Instance of Rizal, Branch IV, Quezon City and ARTEMIO GATCHALIAN, *Respondents.*

G.R. No. 61950, THIRD DIVISION, September 28, 1990, FERNAN, *C.J.*

Jurisdiction; Corporations; Actions; Solicitation of business contracts constitutes doing business in the Philippines.

Even assuming for the sake of argument that Marubeni Nederland B.V. is a different and separate business entity from Marubeni Japan and its Manila branch, in this particular transaction, at least, Marubeni Nederland B. V. through the foregoing acts, had effectively solicited "orders, purchases (sales) or service contracts" as well as constituted Marubeni Corporation, Tokyo, Japan and its Manila Branch as its representative in the Philippines to transact business for its account as principal. These circumstances, taken singly or in combination, constitute" doing business in the Philippines" within the contemplation of the law.

FACTS

On October 23, 1976, in Tokyo, Japan, petitioner Marubeni Nederland B.V. and D.B. Teodoro Development Corporation (DBT for short) entered into a contract whereby petitioner agreed to supply all the necessary equipment, machinery, materials, technical know-how and the general design of the construction of DBT's lime plant at the Guimaras Islands in Iloilo for a total contract price of US$5,400,000.00 on a deferred payment basis. Simultaneously with the supply contract, the parties entered into two financing contracts, namely a construction loan agreement in the amount of US$1,600,000.00 and a cash loan agreement for US$1,500,000.00. The obligation of DBT to pay the loan amortizations on their due dates under the three (3) contracts were absolutely and unconditionally guaranteed by the National Investment and Development Corporation (NIDC).

But before the first installment became due, DBT wrote a letter to the NIDC interposing certain claims against the petitioner and at the same time requesting NIDC for a revision of the repayment schedule and of the amounts due under the contracts on account of petitioner's delay in the performance of its contractual commitments. [1] In due time, the problems regarding the lime plant were ironed out and the parties signed a "Settlement Agreement" on July 2, 1981.

However, on May 14, 1982, DBT through counsel, informed petitioner that it was rejecting the lime plant on the ground that it has not been constructed in accordance with their agreement. DBT made a formal demand for indemnification in the total amount of P95,150,000. [3] In its letter dated June 1, 1982, petitioner refused to accept DBT's unilateral rejection of the plant and reasoned that the alleged operation and technical problems were "totally unrelated to the guaranteed capacity and specifications of the plant and definitely are not attributable to any fault or omission on the part of Marubeni."

Before the first installment under the "Settlement Agreement" could be paid, private respondent Artemio Gatchalian, a stockholder of DBT sued petitioner Marubeni for contractual breach before the then Court of First Instance of Rizal. Gatchalian impleaded DBT as an "unwilling plaintiff . . . for whose primary benefit th(e) action (wa)s being prosecuted" together with NIDC which, as pledgee of the voting shares in DBT has controlling interest in that corporation. [6] Gatchalian sought indemnification in the amount of P95,150,000.00 and further prayed for a writ of preliminary injunction to enjoin DBT and NIDC from making directly or indirectly any payment to Marubeni in connection with the contracts they had entered into.

Respondent judge issued a temporary restraining order directed against DBT and NIDC and set the injunction for hearing.

Petitioner Marubeni entered a limited and special appearance and sought the dismissal of the complaint on the ground that the court *a quo* had no jurisdiction over the person of petitioner since it is a foreign corporation neither doing nor licensed to do business in the Philippines. Private respondent opposed that motion. The lower court denied petitioner's motion to dismiss for lack of merit. Hence, this petition for *certiorari* and prohibition with prayer for a temporary restraining order.

ISSUE

Whether or not petitioner Marubeni Nederland B.V. can be considered as "doing business" in the Philippines and therefore subject to the jurisdiction of our courts.

RULING: YES.

Petitioner can be sued in the regular courts because it is doing business in the Philippines. The applicable law is Republic Act No. 5455 as implemented by the following rules and regulations of the Board of Investments which took effect on February 3, 1969. Thus:

xxx xxx xxx

(f) the performance within the Philippines of any act or combination of acts enumerated in Section 1 (1) of the Act shall constitute "doing business" therein. In particular, "doing business" includes:

1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm amounting to negotiation or fixing of the terms and conditions of sales or service contracts, regardless of whether the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines. . . .

2) Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, *i.e.*, it transacts business in its

name and for its own account, and not in the name or for the account of the principal. xxx xxx xxx

4) Opening offices whether called "liaison" offices, agencies or branches, unless proved otherwise. xxx xxx xxx

10) Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commercial gain or of the purpose and objective of the business organization.

It cannot be denied that petitioner had solicited the lime plant business from DBT through the Marubeni Manila branch. Records show that the "turn-key proposal for the . . . 300 T/D Lime Plant" was initiated by the Manila office through its Mr. T. Hojo. In a follow-up letter dated August 3, 1976, Hojo committed the firm to a price reduction of $200,000.00 and submitted the proposed contract forms. As reflected in the letterhead used, it was Marubeni Corporation, Tokyo, Japan which assumed an active role in the initial stages of the negotiation. Petitioner Marubeni Nederland B.V. had no visible participation until the actual signing of the October 28, 1976 agreement in Tokyo and even there, in the space reserved for petitioner, it was the signature. of "S. Adachi as General Manager of Marubeni Corporation, Tokyo on behalf of Marubeni Nederland B.V." which appeared. Even assuming for the sake of argument that Marubeni Nederland B.V. is a different and separate business entity from Marubeni Japan and its Manila branch, in this particular transaction, at least, Marubeni Nederland B.V. through the foregoing acts, had effectively solicited "orders, purchases (sales) or service contracts" as well as constituted Marubeni Corporation, Tokyo, Japan and its Manila Branch as its representative in the Philippines to transact business for its account as principal. These circumstances, taken singly or in combination, constitute "doing business in the Philippines" within the contemplation of the law.

At this juncture it must be emphasized that a foreign corporation doing business in the Philippines with or without license is subject to process and jurisdiction of the local courts. If such corporation is properly licensed, well and good. But it shall not be allowed, under any circumstances, to invoke its lack of license to impugn the jurisdiction of our courts.

- Merrill Lynch Futures, Inc. vs. Court of Appeals, 211 SCRA 824 (1992)

MERRILL LYNCH FUTURES, INC. . *Petitioner,* -versus – HON. COURT OF APPEALS, and the SPOUSES PEDRO M. LARA and ELISA G. LARA, *Respondents.*
G.R. No. 97816, SECOND DIVISION, July 24, 1992, NARVASA, *C.J.*

The doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations. The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it.

FACTS

On November 23, 1987, Merrill Lynch Futures, Inc. (ML) filed a complaint with the QC RTC against Spouses LARA for the recovery of a debt and interest thereon, damages, and attorney's fees.

In ML's complaint, it described itself as (a) a non-resident foreign corporation, not doing business in the Philippines and a (b) "futures commission merchant" duly licensed in the futures markets and exchanges in the United States. He essentially functions as a broker, executing orders to buy and sell futures contracts received from its customers on U.S. futures exchanges. A "futures contract" is a contractual commitment to buy and sell a standardized quantity of a particular item at a specified future settlement date and at a price agreed upon, with the purchase or sale being executed on a regulated futures exchange.

Petitioner alleges that on September 28, 1983 ML entered into a Futures Customer Agreement with the defendant spouses. Pursuant to the contract, Spouses transmitted orders to buy and sell futures contracts to ML through the facilities of Merrill Lynch Philippines, Inc., a Philippine corporation and a company servicing ML's customers. The Spouses knew and were duly advised that Merrill Lynch Philippines, Inc. was not a broker in futures contracts and that it did not have a license from the SEC to operate as a commodity trading advisor. The Spouses actively traded in futures contracts for four years there being regular accounting and corresponding remittances of money made between the parties.

Because of a loss amounting to US$160,749.69 incurred in respect of three (3) transactions, Spouses became indebted to ML FUTURES for US$84,836.27. The Lara Spouses however refused to pay alleging that the transactions were null and void because Merrill Lynch Philippines, Inc. had no license to operate as a 'commodity and/or financial futures broker.

In a motion to dismiss, the defendant spouses averred that: (a) ML is prohibited by law to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines because it described itself in the complaint as "not being licensed, but had been doing business in the Philippines at least for the last four (4) years; (b) they had never been informed that Merrill Lynch Philippines, Inc. was not licensed to do business in this country; and (c) all their transactions had actually been with MERRILL LYNCH PIERCE FENNER & SMITH, INC., and not with ML FUTURES.

RTC and CA: Dismissed the case because the plaintiff has no legal capacity to sue and that the complaint states no cause of action.

ISSUES

Whether Merrill Lynch Futures is prohibited from suing in Philippine Courts for doing business in the country without a license.

RULING: NO.

Remand to determine Spouses' liability. Despite having no license to transact business in the Philippines, the fact that the Lara Spouses had done business with ML in the Philippines through ML Philippines, the Spouses are now estopped to impugn ML's capacity to sue them in Philippine courts.

Under Sec. 133 of the Corporation Code, "no foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency in the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws."

However, one who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity. This principle will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract.

The Court is satisfied that the Spouses did transact business with ML through its agent corporation organized in the Philippines, and that on several occasions the latter received account documents and money in connection with those transactions. There would seem to be no question that the Spouses received benefits generated by their business relations with ML. Those business relations, spanned a period of 7 years; and they evidently found those relations to be of such profitability as warranted their maintaining them for that not insignificant period of time; otherwise, it is reasonably certain that they would have terminated their dealings with ML much, much earlier.

Considerations of equity dictate that, at the very least, the issue of whether the Spouses are in truth liable to ML and if so in what amount, and whether they were so far aware of the absence of the requisite licenses on the part of ML and its Philippine correspondent, as to be estopped from alleging that fact as defense to such liability, should be ventilated and adjudicated on the merits by the proper trial court.

WHEREFORE, the decision of the CA is REVERSED and SET ASIDE, and the RTC is ORDERED to reinstate Civil Case No. Q-52360 and conduct a hearing to adjudicate the issues set out on the merits.

- Philip Morris, Inc. vs. Court of Appeals, 224 SCRA 576 (1993)

PHILIP MORRIS, INC., BENSON & HEDGES (CANADA), INC., AND FABRIQUES OF TABAC REUNIES, S.A. . *Petitioner*, -versus – THE COURT OF APPEALS AND FORTUNE TOBACCO CORPORATION, *Respondents.*

G.R. No. 91332, THIRD DIVISION, July 16, 1993, MELO, *J.*

However, petitioners may have the capacity to sue for infringement irrespective of lack of business activity in the Philippines on account of Section 21-A of the Trademark Law but the question whether they have an exclusive right over their symbol as to justify issuance of the controversial writ will depend on actual use of their trademarks in the Philippines in line with Sections 2 and 2-A of the same law. It is thus incongruous for petitioners to claim that when a foreign corporation not licensed to do business in Philippines files a complaint for infringement, the entity need not be actually using its trademark in commerce in the Philippines. Such a foreign corporation may have the personality to file a suit for infringement but it may not necessarily be entitled to protection due to absence of actual use of the emblem in the local market. In view of the explicit representation of petitioners in the complaint that they are not engaged in business in the Philippines, it inevitably follows that no conceivable damage can be suffered by them not to mention the foremost consideration heretofore discussed on the absence of their "right" to be protected.

FACTS

Philip Morris, Incorporated is a corporation organized under the laws of the State of Virginia, United States of America, and does business at 100 Park Avenue, New York, New York, United States of America. The two other plaintiff foreign corporations, which are wholly-owned subsidiaries of Philip Morris, Inc., are similarly not doing business in the Philippines but are suing on an isolated transaction. As registered owners of "MARK VII", "MARK TEN", and "LARK" per certificates of registration issued by the Philippine Patent Office on April 26, 1973, May 28, 1964, and March 25, 1964, plaintiffs-petitioners asserted that defendant Fortune Tobacco Corporation has no right to manufacture and sell cigarettes bearing the allegedly identical or confusingly similar trademark "MARK" in contravention of Section 22 of the Trademark Law, and should, therefore, be precluded during the pendency of the case from performing the acts complained of via a preliminary injunction (p. 75, Court of Appeals Rollo in AC-G.R. SP No. 13132).

For its part, Fortune Tobacco Corporation admitted petitioners' certificates of registration with the Philippine Patent Office subject to the affirmative and special defense on misjoinder of party plaintiffs. Private respondent alleged further that it has been authorized by the Bureau of Internal Revenue to manufacture and sell cigarettes bearing the trademark "MARK", and that "MARK" is a common word which cannot be exclusively appropriated.

Petitioners' prayer for preliminary injunction was denied by the Presiding Judge of Branch 166 of the Regional Trial Court of the National Capital Judicial Region and held that the fact remains that with its pending application, defendant has embarked in the manufacturing, selling, distributing and advertising of "MARK" cigarettes. The question of good faith or bad faith on the part of defendant are matters which are evidentiary in character which have to be proven during the hearing on the merits; hence, until and unless the Director of Patents has denied defendant's application, the Court is of the opinion and so holds that issuance of a writ of preliminary injunction would not lie. Petitioners thereafter cited supervening events which supposedly transpired since when the trial court first declined issuing a writ of preliminary injunction, that could alter the results of the case in that Fortune's application had been rejected and that the application had been forfeited by abandonment, but the trial court nonetheless denied the second motion for issuance of the injunctive writ.

Confronted with this rebuff, petitioners filed a previous petition for certiorari before the Court, but the petition was referred to the Court of Appeals. The Court of Appeals initially issued a resolution which set aside the court of origin's order dated April 22,1987, and granted the issuance of a writ of preliminary injunction enjoining Fortune, its agents, employees, and representatives, from manufacturing, selling, and advertising "MARK" cigarettes.

After private respondent Fortune's motion for reconsideration was rejected, a motion to dissolve the disputed writ of preliminary injunction with offer to post a counterbond was submitted which was favorably acted upon by the Court of Appeals, premised on the filing of a sufficient counterbond to answer for whatever perjuicio petitioners may suffer as a result thereof.

Petitioners, in turn, filed their own motion for re-examination geared towards reimposition of the writ of preliminary injunction but to no avail. Hence, the instant petition casting three aspersions that respondent court gravely abused its discretion tantamount to excess of jurisdiction.

ISSUES

Whether or not the Petitioner, a foreign corporation not engaged in local commerce, sustain a successful prosecution of their suit for infringement.

RULING

Given these confluence of existing laws amidst the cases involving trademarks, there can be no disagreement to the guiding principle in commercial law that foreign corporations not engaged in business in the Philippines may maintain a cause of action for infringement primarily because of Section 21-A of the Trademark Law when the legal standing to sue is alleged, which petitioners have done in the case at hand.

However, petitioners may have the capacity to sue for infringement irrespective of lack of business activity in the Philippines on account of Section 21-A of the Trademark Law but the question whether they have an exclusive right over their symbol as to justify issuance of the controversial writ will depend on actual use of their trademarks in the Philippines in line with Sections 2 and 2-A of the same law. It is thus incongruous for petitioners to claim that when a foreign corporation not licensed to do business in Philippines files a complaint for infringement, the entity need not be actually using its trademark in commerce in the Philippines. Such a foreign corporation may have the personality to file a suit for infringement but it may not necessarily be entitled to protection due to absence of actual use of the emblem in the local market. In view of the explicit representation of petitioners in the complaint that they are not engaged in business in the Philippines, it inevitably follows that no conceivable damage can be suffered by them not to mention the foremost consideration heretofore discussed on the absence of their "right" to be protected.

- Signetics Corporation vs. Court of Appeals, 225 SCRA 737 (1993)

SIGNETICS CORPORATION. *Petitioner,* -versus – COURT OF APPEALS and FRUEHAUF ELECTRONICS PHILS. INC., *Respondents.*
G.R. No. 105141, THIRD DIVISION, August 31, 1993, VITUG, *J.*

The rule is that, a foreign corporation, although not engaged in business in the Philippines, may still look up to our courts for relief; reciprocally, such corporation may likewise be "sued in Philippine courts for acts done against a person or persons in the Philippines" (Facilities Management Corporation v. De la Osa), provided that, in the latter case, it would not be impossible for court processes to reach the foreign corporation, a matter that can later be consequential in the proper execution of judgment. Hence, a State may not exercise jurisdiction in the absence of some good basis (and not offensive to traditional notions of fair play and substantial justice) for effectively exercising it, whether the proceedings are in rem, quasi in rem or in personam.

FACTS

The petitioner, Signetics Corporation (Signetics), was organized under the laws of the United States of America. Through Signetics Filipinas Corporation (SigFil), a wholly-owned subsidiary, Signetics entered into lease contract over a piece of land with Fruehauf Electronics Phils., Inc. (Freuhauf).

In a complaint, Freuhauf sued Signetics for damages, accounting or return of certain machinery, equipment and accessories, as well as the transfer of title and surrender of possession of the buildings, installations and improvements on the leased land, before the Regional Trial Court.

Claiming that Signetics caused SigFil to insert in the lease contract the words "machineries, equipment and accessories," the defendants were able to withdraw these assets from the cost-free transfer provision of the contract.

On the basis of the allegation that Signetics is a "subsidiary of US PHILIPS CORPORATION, and may be served summons at Philips Electrical Lamps, Inc., Las Piñas, Metro Manila and/or c/o Technology Electronics Assembly & Management (TEAM) Pacific Corporation, Electronics Avenue, FTI Complex, Taguig, Metro Manila," service of summons was made on Signetics through TEAM Pacific Corporation.

By special appearance, a motion to dismiss the complaint on the ground of lack of jurisdiction over its person. Invoking Section 14, Rule 14, of the Rules of Court and the rule laid down in *Pacific Micronisian Line, Inc., v. Del Rosario and Pelington* to the effect that the fact of doing business in the Philippines should first be established in order that summons could be validly made and jurisdiction acquired by the court over a foreign corporation, Signetics moved to dismiss the complaint.

The trial court denied the motion to dismiss in an Order. CA affirmed, hence the petition.

The petitioner opines that the phrase, "(the) fact (of doing business in the Philippines) must first be established in order that summons be made and jurisdiction acquired," used in the above pronouncement, would indicate that a mere *allegation* to that effect in the complaint is not enough - there must instead be *proof* of doing business. In any case, the petitioner, points out, the allegations themselves did not sufficiently show the fact of its doing business in the Philippines.

ISSUES

Whether or not the lower court, had correctly assumed jurisdiction over the petitioner, a foreign corporation, on its claim in a motion to dismiss, that it had since ceased to do business in the Philippines.

RULING

Signetics cannot, at least in this early stage, assail, on the one hand, the veracity and correctness of the allegations in the complaint and proceed, on the other hand, to prove its own, in order to hasten a peremptory escape. As explained by the Court in Pacific Micronisian, summons may be served upon an agent of the defendant who may not necessarily be its "resident agent designated in accordance with law." The term "agent", in the context it is used in Section 14, refers to its general meaning, i.e., one who acts on behalf of a principal.

The allegations in the complaint have thus been able to amply convey that not only is TEAM Pacific the business conduit of the petitioner in the Philippines but that, also, by the charge of fraud, is none other than the petitioner itself.

The rule is that, a foreign corporation, although not engaged in business in the Philippines, may still look up to our courts for relief; reciprocally, such corporation may likewise be "sued in Philippine courts for acts done against a person or persons in the Philippines" (Facilities Management Corporation v. De la Osa*)*, provided that, in the latter case, it would not be impossible for court processes to reach the foreign corporation, a matter that can later be consequential in the proper execution of judgment. Hence, a State may not exercise jurisdiction in the absence of some good basis (and not offensive to traditional notions of fair play and substantial justice) for effectively exercising it, whether the proceedings are *in rem*, *quasi in rem* or *in personam*.

- George Grotjahn GBBH & Co. vs. Isnani, 235 SCRA 216 (1994)

GEORG GROTJAHN GMBH & CO.*Petitioner,* -versus – HON. LUCIA VIOLAGO ISNANI, Presiding Judge, Regional Trial Court, Makati, Br. 59; ROMANA R. LANCHINEBRE; and TEOFILO A. LANCHINEBRE., *Respondents.*

G.R. No. 109272, SECOND DIVISION, August 10, 1994, PUNO, *J.*

The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;" "one who has dealth with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity." The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract, . . . (Citations omitted.)

FACTS

Petitioner is a multinational company organized and existing under the laws of the Federal Republic of Germany. Petitioner filed an application with the Securities and Exchange Commission (SEC) for the establishment of a regional or area headquarters in the Philippines, pursuant to Presidential Decree No. 218. The application was approved by the Board of Investments (BOI). Consequently, the SEC issued a Certificate of Registration and License to petitioner.

Private respondent Romana R. Lanchinebre was a sales representative of petitioner from 1983 to mid-1992. She secured a loan of twenty-five thousand pesos (P25,000.00) from petitioner. She made additional cash advances in the sum of ten thousand pesos (P10,000.00). Of the total amount, twelve thousand one hundred seventy pesos and thirty-seven centavos (P12,170.37) remained unpaid. Despite demand, private respondent Romana failed to settle her obligation with petitioner.

Private respondent Romana Lanchinebre filed with the Arbitration Branch of the National Labor Relations Commission (NLRC) in Manila, a Complaint for illegal suspension, dismissal and non-payment of commissions against petitioner. Petitioner in turn filed against private respondent a Complaint for damages amounting to one hundred twenty thousand pesos (P120,000.00) also with the NLRC Arbitration Branch (Manila). The two cases were consolidated.

Petitioner filed another Complaint for collection of sum of money against private respondents spouses Romana and Teofilo Lanchinebre which was docketed as Civil Case No. 92-2486 and raffled to the sala of respondent judge. Instead of filing their Answer, private respondents moved to dismiss the Complaint. This was opposed by petitioner.

Respondent judge issued the first impugned Order, granting the motion to dismiss. She held that the regular courts have no jurisdiction over disputes between an employer and an employee involving the application purely of the general civil law and that petitioner has no capacity to sue and be sued in the Philippines.

The respondent judge issued a minute Order denying petitioner's Motion for Reconsideration. Hence, the petition.

ISSUES

1. Whether or not the trial court has jurisdiction over the case
2. Whether or not petitioner may validly sue in the Philippines

RULING

The trial court has jurisdiction over the case

Firstly, the trial court should not have held itself without jurisdiction over Civil Case No. 92-2486. It is true that the loan and cash advances sought to be recovered by petitioner were contracted by private respondent Romana Lanchinebre while she was still in the employ of petitioner. Nonetheless, it does not follow that Article 217 of the Labor Code covers their relationship.

Not every dispute between an employer and employee involves matters that only labor arbiters and the NLRC can resolve in the exercise of their adjudicatory or quasi-judicial powers. The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement.

Civil Case No. 92-2486 is a simple collection of a sum of money brought by petitioner, as creditor, against private respondent Romana Lanchinebre, as debtor. The fact that they were employer and employee at the time of the transaction does not negate the civil jurisdiction of the trial court. The case does not involve adjudication of a labor dispute but recovery of a sum of money based on our civil laws on obligation and contract.

Petitioner may validly sue in the Philippines

Secondly, the trial court erred in holding that petitioner does not have capacity to sue in the Philippines. It is clear that petitioner is a foreign corporation doing business in the Philippines. Petitioner is covered by the Omnibus Investment Code of 1987. Said law defines "doing business," as follows:

. . . shall include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

There is no general rule or governing principle as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. In the case at bench, petitioner does not engage in commercial dealings or activities in the country because it is precluded from doing so by P.D. No. 218, under which it was established. Nonetheless, it has been continuously, since 1983, acting as supervision, communications and coordination center for its home office's affiliates in Singapore, and in the process has named its local agent and has employed Philippine nationals like private respondent Romana Lanchinebre. From this uninterrupted performance by petitioner of acts pursuant to its primary purposes and functions as a regional/area headquarters for its home office, it is clear that petitioner is doing business in the country.

Moreover, private respondents are estopped from assailing the personality of petitioner. So we held in Merrill Lynch Futures, Inc. vs. Court of Appeals, 211 SCRA 824, 837 (1992):

The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;" "one who has dealth with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity." The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract.

- Litton Mill, Inc. vs. Court of Appeals, 256 SCRA 696 (1996)

LITTON MILLS, INC, *Petitioner*, -versus – THE COURT OFAPPEALS and GELHAAR UNIFORM COMPANY,INC., *Respondents.*
G.R. No. 94980 , SECOND DIVISION, May 15, 1996, MENDOZA , *J.*

A court need not go beyond the allegations in the complaint to determine whether or not a defendant foreign corporation is doing business for the purpose of Rule 14, §14. In the case at bar, the allegation that Empire, for and in behalf of Gelhaar, ordered 7,770 dozens of soccer jerseys from Litton and for this purpose Gelhaar caused the opening of an irrevocable letter of credit in favor of Litton is a sufficient allegation that Gelhaar was doing business in the Philippines.

FACTS

Petitioner Litton Mills, Inc. (Litton) entered into an agreement with Empire Sales Philippines Corporation (Empire), as local agent of private respondent Gelhaar Uniform Company (Gelhaar), a corporation organized under the laws of the United States, whereby Litton agreed to supply Gelhaar 7,770 dozens of soccer jerseys. The agreement stipulated that before it could collect from the bank on the letter of credit, Litton must present an inspection certificate issued by Gelhaar's agent in the Philippines, Empire Sales, that the goods were in satisfactory condition.

Litton sent four shipments totalling 4,770 dozens of the soccer jerseys between December 2 and December 30, 1983. A fifth shipment, consisting of 2,110 dozens of the jerseys, was inspected by Empire from January 9 to January 19, 1984, but Empire refused to issue the required certificate of inspection.

Alleging that Empire's refusal to issue a certificate was without valid reason, Litton filed a complaint with the Regional Trial Court for specific performance. Litton sought the issuance of a writ of preliminary mandatory injunction to compel Empire to issue the inspection certificate covering the 2,110 dozen jerseys.

The trial court issued the writ; consequently, Empire issued the inspection certificate, so that the cargo was shipped on time.

Atty. Remie Noval filed in behalf of the defendants a "Motion For Extension of Time To File An Answer/Responsive Pleading." And the same was granted.

The the law firm of Sycip, Salazar, Feliciano and Hernandez entered a special appearance for the purpose of objecting to the jurisdiction of the court over Gelhaar. It moved to dismiss the case and to quash the summons on the ground that Gelhaar was a foreign corporation not doing business in the Philippines, and as such, was beyond the reach of the local courts. It contended that Litton failed to allege and prove that Gelhaar was doing business in the Philippines, which they argued was required by the ruling in *Pacific Micronisian Lines, Inc. v. Del Rosario,*[1] before summons could be served under Rule 14.

Trial court issued an order denying for lack of merit Gelhaar's motion to dismiss and to quash the summons. It held that Gelhaar was doing business in the Philippines, and that the service of summons on Gelhaar was therefore valid. Gelhaar filed a motion for reconsideration, but its motion was denied.

Gelhaar then filed a special civil action of certiorari with the Court of Appeals. CA set aside the orders of the trial court. The appellate court held that proof that Gelhaar was doing business in the Philippines should have been presented because, under the doctrine of *Pacific Micronisian,* this is a condition *sine qua non* for the service of summons under Rule 14 of the Rules of Court, and that it was error for the trial court to rely on the mere allegations of the complaint. Consequently, the appellate court ordered the trial court to issue anew summons to be served on Empire Sales Philippines Corporation, after the allegation in the complaint that Gelhaar was doing business in the Philippines had been established. Hence, this petition.

ISSUE

1. WON jurisdiction over Gelhaar was acquired by the trial court by the service of summons through Gelhaar's agent (Empire)
2. And, at any rate, by the voluntary appearance of Atty. Noval as counsel of Gelhaar

RULING

Jurisdiction over Gelhaar was acquired by the trial court

A court need not go beyond the allegations in the complaint to determine whether or not a defendant foreign corporation is doing business for the purpose of Rule 14, §14. In the case at bar, the allegation that Empire, for and in behalf of Gelhaar, ordered 7,770 dozens of soccer jerseys from Litton and for this purpose Gelhaar caused the opening of an irrevocable letter of credit in favor of Litton is a sufficient allegation that Gelhaar was doing business in the Philippines.

Gelhaar contends that the contract with Litton was a single, isolated transaction and that it did not constitute "doing business." Reference is made to Pacific Micronisian in which the only act done by the foreign company was to employ a Filipino as a member of the crew on one of its ships. This court held that the act was an isolated, incidental or casual transaction, not sufficient to indicate a purpose to engage in business.

It is not really the fact that there is only a single act done that is material. The other circumstances of the case must be considered. Thus, in Wang Laboratories, Inc. v. Mendoza, it was held that where a single act or transaction of a foreign corporation is not merely incidental or casual but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, such act will be considered as constituting doing business.

This Court referred to acts which were in the ordinary course of business of the foreign corporation. In the case at bar, the trial court was certainly correct in holding that Gelhaar's act in purchasing soccer jerseys to be within the ordinary course of business of the company considering that it was engaged in the manufacture of uniforms. The acts noted above are of such a character as to indicate a purpose to do business.

Moreover, In accordance with Rule 14, Sec. 14, service upon Gelhaar could be made in three ways: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if there is no resident agent, by service on the government official designated by law to that effect; and (3) by serving on any officer or agent of said corporation within the Philippines. Here, service was made through Gelhaar's agent, the Empire Sales Philippines Corp. There was, therefore, a valid service of summons on Gelhaar, sufficient to confer on the trial court jurisdiction over the person of Gelhaar.

Atty. Noval voluntary appearance in behalf of Gelhaar was not binding on the latter

On the question, however, of whether the appearance of Atty. Noval in behalf of Gelhaar was binding on the latter, we hold that the CA correctly ruled that it was not. Atty. Noval admits that he was not appointed by Gelhaar as its counsel. What he claims is simply that Gelhaar knew of the filing of the case in the trial court and of his representation but Gelhaar did not object. Atty. Noval contends that there was thus a tacit confirmation of his authority. Gelhaar claims, however, that it was only sometime in December, 1994 when it found out that the answer which Atty. Noval had filed in June was also made in its behalf. Gelhaar in fact sent a telex message dated January 15, 1985 to its counsel, the Sycip law firm, stating:

WE NEVER AUTHORIZED THE RETENTION OF MR. NOVAL ON OUR BEHALF. WE HAVE NEVER EXCHANGED CORRESPONDENCE NOR HAD ANY TELEPHONE CONVERSATIONS WITH HIM RE ANY ASPECT OF THIS CASE, INCL. HIS FEES. WE ARE TOLD THAT HE HAS FILED AN ANSWER TO LTN'S (Litton's) COMPLT. PURPORTEDLY ON OUR BEHALF BUT HE HAS NEVER DISCUSSED THAT ANSWER WITH US NOR EVEN SENT US A DRAFT OR THE FINAL VERSION OF SUCH ANSWER. WE ARE SENDING SWORN AFFIDAVITS TO THIS EFFECT BY COURIER.

Atty. Noval has not denied any of these statements. Noval does not claim that he ever directly conferred with Gelhaar regarding the case. There is no evidence to show that he notified Gelhaar of his appearance in its behalf, or that he furnished Gelhaar with copies of pleadings or the answer which he filed in its behalf. No voluntary appearance by Gelhaar can, therefore, be inferred from the acts of Atty. Noval. Nor can Atty. Noval's representations in the answer he considered binding on Gelhaar. Gelhaar should be allowed a new period for filing its own answer.

- Communication Materials and Design, Inc. vs. Court of Appeals, 260 SCRA 673 (1996)

COMMUNICATION MATERIALS AND DESIGN, INC., ASPAC MULTI-TRADE, INC., (formerly ASPAC-ITEC PHILIPPINES, INC.) and FRANCISCO S. AGUIRRE,*Petitioners,* -versus - THE COURT OF APPEALS, ITEC INTERNATIONAL, INC., and ITEC, INC, *Respondents.*
G.R. No. 102223 , SECOND DIVISION, August 22, 1996, TORRES-JR. , *J.*

In Georg Grotjahn GMBH and Co. vs. Isnani, it was held that the uninterrupted performance by a foreign corporation of acts pursuant to its primary purposes and functions as a regional area headquarters for its home office, qualifies such corporation as one doing business in the country.

These foregoing instances should be distinguished from a single or isolated transaction or occasional, incidental, or casual transactions, which do not come within the meaning of the law, for in such case, the foreign corporation is deemed not engaged in business in the Philippines.

Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.

FACTS:

Petitioners COMMUNICATION MATERIALS AND DESIGN, INC., (CMDI, for brevity) and ASPAC MULTI-TRADE INC., (ASPAC, for brevity) are both domestic corporations, while petitioner Francisco S. Aguirre is their President and majority stockholder. Private Respondents ITEC, INC. and/or ITEC, INTERNATIONAL, INC. (ITEC, for brevity) are corporations duly organized and existing under the laws of the State of Alabama, United States of America. There is no dispute that ITEC is a foreign corporation not licensed to do business in the Philippines.

ITEC entered into a contract with petitioner ASPAC referred to as "Representative Agreement". Pursuant to the contract, ITEC engaged ASPAC as its "exclusive representative" in the Philippines for the sale of ITEC's products, in consideration of which, ASPAC was paid a stipulated commission.

Through a "License Agreement" entered into by the same parties, ASPAC was able to incorporate and use the name "ITEC" in its own name. Thus, ASPAC Multi-Trade, Inc. became legally and publicly known as ASPAC-ITEC (Philippines). By virtue of said contracts, ASPAC sold electronic products, exported by ITEC, to their sole customer, the Philippine Long Distance Telephone Company, (PLDT, for brevity).
One year into the second term of the parties' Representative Agreement, ITEC decided to terminate the same, because petitioner ASPAC allegedly violated its contractual commitment as stipulated in their agreements

ITEC charges the petitioners and another Philippine Corporation, DIGITAL BASE COMMUNICATIONS, INC. (DIGITAL, for brevity), the President of which is likewise petitioner Aguirre, of using knowledge and information of ITEC's products specifications to develop their own line of equipment and product support, which are similar, if not identical to ITEC's own, and offering them to ITEC's former customer.

ITEC then filed a complaint for preliminary injunction against DIGITAL, CMDI, and Aguirre, seeking to enjoin them from selling or attempting to sell to PLDT and to any other party, products which have been copied or manufactured "in like manner, similar or identical to the product equipment of ITEC", and to ASPAC to cease and decease from using its corporate name, letter heads, etc.

DIGITAL, et al filed a motion to dismiss on the ground that ITEC has no legal capacity to sue as it is a foreign corporation doing business without the required authority from BOI and SEC and for forum shopping. The court a quo denied the motion to dismiss and directed the issuance of writ of preliminary injunction. Court of Appeals affirmed on appeal, hence this petition.

ISSUE

1. Whether or not private respondent ITEC is an unlicensed corporation doing business in the Philippines,
2. And if it is, whether or not this fact bars it from invoking the injunctive authority of our courts.

RULING

Private respondent had been "engaged in" or "doing business" in the Philippines

In *Georg Grotjahn GMBH and Co*. *vs*. *Isnani*,[3] it was held that the uninterrupted performance by a foreign corporation of acts pursuant to its primary purposes and functions as a regional area headquarters for its home office, qualifies such corporation as one doing business in the country.

These foregoing instances should be distinguished from a single or isolated transaction or occasional, incidental, or casual transactions, which do not come within the meaning of the law, for in such case, the foreign corporation is deemed not engaged in business in the Philippines.

Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.

In the case, private respondent had been "engaged in" or "doing business" in the Philippines for some time now. This is the inevitable result after a scrutiny of the different contracts and agreements entered into by ITEC with its various business contacts in the country, particularly ASPAC and Telephone Equipment Sales and Services, Inc. (TESSI , for brevity). The latter is a local electronics firm engaged by I TEC to be its local technical representative, and to create a service center for I TEC products sold locally. Its arrangements, with these entities indicate convincingly ITEC's purpose to bring about the situation among its customers and the general public that they are dealing directly with ITEC and that I TEC is actively engaging in business in the country.

A perusal of the agreements between petitioner ASPAC and the respondents shows that there are provisions which are highly restrictive in nature, such as **to reduce petitioner ASPAC to a mere extension or instrument of the private respondent.** When ITEC entered into the disputed contracts with ASPAC and TESSI, they were carrying out the purposes for which it was created, i.e., ***to***

market electronics and communications products. The terms and conditions of the contracts as well as ITEC's conduct indicate that they established within our country a continuous business, and not merely one of a temporary character.

Notwithstanding such finding that ITEC is doing business in the country, petitioner is nonetheless estopped from raising this fact to bar ITEC from instituting this injunction case against it.

A foreign corporation doing business in the Philippines may sue in Philippine Courts although not authorized to do business here against a Philippine citizen or entity who had contracted with and benefited by said corporation. To put it in another way, ***a party is estopped to challenge the personality of a corporation after having acknowledged the same, by entering into a contract with it.*** And the doctrine of estoppel to deny corporate existence applies to a foreign as well as to domestic corporations. One who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity. The principle will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract.

The rule is deeply rooted in the time-honored axiom of Commodum ex injuria sua non habere debet — no person ought to derive any advantage of his own wrong. This is as it should be for as mandated by law, "every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

The doctrine of lack of capacity to sue based on the failure to acquire a local license is based on considerations of sound public policy. ***The license requirement was imposed to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts.*** *It* was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country.

On Rule of Forum Non Conveniens

Petitioner's insistence on the dismissal of this action due to the application, or non-application, of the private international law rule of forum non conveniens defies well-settled rules of fair play. According to petitioner, the Philippine Court has no venue to apply its discretion whether to give cognizance or not to the present action, because it has not acquired jurisdiction over the person of the plaintiff in the case, the latter allegedly having no personality to sue before Philippine Courts. ***This argument is misplaced because the court has already acquired jurisdiction over the plaintiff in the suit, by virtue of his filing the original complaint.*** And as we have already observed, petitioner is not at liberty to question plaintiff's standing to sue, having already acceded to the same by virtue of its entry into the Representative Agreement referred to earlier.Thus, having acquired jurisdiction, it is now for the Philippine Court, based on the facts of the case, whether to give due course to the suit or dismiss it, on the principle of forum non conveniens.

The Philippine Court may refuse to assume jurisdiction in spite of its having acquired jurisdiction. Conversely, the court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met:

1) That the Philippine Court is one to which the parties may conveniently resort to; 2) That the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and,
3) That the Philippine Court has or is likely to have power to enforce its decision.

- Columbia Pictures, Inc. vs. Court of Appeals, 261 SCRA 144 (1996)

COLUMBIA PICTURES, INC., ORION PICTURES CORPORATION, ET. AL., *Petitioners*, -versus- COURT OF APPEALS, SUNSHINE HOME VIDEO, INC. and DANILO A. PELINDARIO, *Respondents.*
G.R. No. 110318, EN BANC, August 28, 1996, REGALADO, *J.*

The obtainment of a license prescribed by Section 125 of the Corporation Code is not a condition precedent to the maintenance of any kind of action in Philippine courts by foreign corporation. However, under the aforequoted provision, no foreign corporation shall be permitted to transact business in the Philippines, as this phrase is understood under the Corporation Code, unless it shall have the license required by law, and until it complies with the law in transacting business here, it shall not be permitted to maintain any suit in local courts.

As thus interpreted, any foreign corporation not doing business in the Philippines may maintain an action in our courts upon any cause of action, provided that the subject matter and the defendant are within the jurisdiction of the court. It is not the absence of the prescribed license but "doing business" in the Philippines without such license which debars the foreign corporation from access to our courts. In other words, although a foreign corporation is without license to transact business in the Philippines, it does not follow that It has no capacity to bring an action. Such license is not necessary if it is not engaged in business in the Philippines.

Based on Article 133 of the Corporation Code and gauged by such statutory standards, petitioners are not barred from maintaining the present action. There is no showing that, under our statutory of case law, petitioners are doing, transacting, engaging in or carrying on business in the Philippines as would require obtention of a license before they can seek redress from our courts. No evidence has been offered to show that petitioners have performed any of the enumerated acts or any other specific act indicative of an intention to conduct or transact business in the Philippines.

FACTS

Complainants lodged a complaint with the NBI for violation of PD No. 49 and sought its assistance in their anti-film piracy drive. Agents of the NBI and private researchers made discreet surveillance on video establishments in Metro Manila including Sunshine Home Video Inc. owned and operated by Danilo A. Pelindario with address at No. 6 Mayfair Center, Magallanes, Makati, Metro Manila.

NBI Senior Agent Lauro C. Reyes applied for a search warrant with the court a quo against Sunshine seeking the seizure, among others, of pirated video tapes of copyrighted films all of which were enumerated in a list attached to the application; and, television sets, video cassettes and/or laser disc recordings equipment and other machines and paraphernalia used or intended to be used in the unlawful exhibition, showing, reproduction, sale, lease or disposition of videograms tapes in the premises above described. Search Warrant No. 87-053 for violation of Section 56 of PD No. 49, as amended, was issued by the court a quo. In the course of the search of the premises indicated in the search warrant, the NBI Agents found and seized various video tapes of duly copyrighted motion pictures/films owned or exclusively distributed by private complainants, and machines, equipment, television sets, paraphernalia, materials, accessories all of which were included in the receipt for properties accomplished by the raiding team.

On December 16, 1987, a "Return of Search Warrant" was filed with the Court. A "Motion To Lift the Order of Search Warrant" was filed but was later denied for lack of merit. A Motion for reconsideration of the Order of denial was filed. The court a quo granted the said motion for reconsideration.

Petitioners thereafter appealed the order of the trial court granting private respondents' motion for reconsideration, thus lifting the search warrant which it had theretofore issued, to the Court of Appeals. Said appeal was dismissed and the motion for reconsideration thereof was denied.

ISSUE

Whether or not the petitioner has legal standing to maintain the present action.

RULING

The Corporation Code provides: Sec. 133. Doing business without a license. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The obtainment of a license prescribed by Section 125 of the Corporation Code is not a condition precedent to the maintenance of any kind of action in Philippine courts by a foreign corporation. However, under the aforequoted provision, no foreign corporation shall be permitted to transact business in the Philippines, as this phrase is understood under the Corporation Code, unless it shall have the license required by law, and until it complies with the law in transacting business here, it shall not be permitted to maintain any suit in local courts. As thus interpreted, any foreign corporation not doing business in the Philippines may maintain an action in our courts upon any cause of action, provided that the subject matter and the defendant are within the jurisdiction of the court.

It is not the absence of the prescribed license but "doing business" in the Philippines without such license which debars the foreign corporation from access to our courts. In other words, although a foreign corporation is without license to transact business in the Philippines, it does not follow that it has no capacity to bring an action. Such license is not necessary if it is not engaged in business in the Philippines.

No general rule or governing principles can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances. The true tests, however, seem to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The Corporation Code does not itself define or categorize what acts constitute doing or transacting business in the Philippines. Jurisprudence has, however, held that the term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization. Accordingly, the certification issued by the Securities and Exchange Commission stating that its records do not show the registration of petitioner film companies either as corporations or partnerships or that they have been licensed to transact business in the Philippines, while undeniably true, is of no consequence to petitioners' right to bring action in the Philippines.

Verily, no record of such registration by petitioners can be expected to be found for, as aforestated, said foreign film corporations do not transact or do business in the Philippines and, therefore, do not need to be licensed in order to take recourse to our courts.

The fact that petitioners are admittedly copyright owners or owners of exclusive distribution rights in the Philippines of motion pictures or films does not convert such ownership into an indicium of doing business which would require them to obtain a license before they can sue upon a cause of action in local courts.

As a general rule, a foreign corporation will not be regarded as doing business in the State simply because it enters into contracts with residents of the State, where such contracts are consummated outside the State. In fact, a view is taken that a foreign corporation is not doing business in the State merely because sales of its product are made there or other business furthering its interests is transacted there by an alleged agent, whether a corporation or a natural person, where such activities are not under the direction and control of the foreign corporation but are engaged in by the alleged agent as an independent business.

- Hahn vs. Court of Appeals, 266 SCRA 537 (1997)

ALFRED HAHN, petitioner, vs. COURT OF APPEALS and BAYERSCHE MOTOREN WERKE AKTIENGSELLSCHAFT (BMW), respondents.
G.R. No. 113074, SECOND DIVISION, January 22, 1997, MENDOZA, *J.*

It is now settled that for purposes of having summons served on a foreign corporation in accordance with Rule 14, §14, it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction. A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to Rule 14, §14. Such determination does not foreclose a contrary finding should evidence later show that it is not transacting business in the country.

FACTS

Petitioner Alfred Hahn is a Filipino citizen doing business under the name and style "Hahn-Manila." On the other hand, private respondent Bayerische Motoren Werke Aktiengesellschaft (BMW) is a nonresident foreign corporation existing under the laws of the former Federal Republic of Germany, with principal office at Munich, Germany.

Petitioner executed in favor of private respondent a "Deed of Assignment with Special Power of Attorney. Per the agreement, the parties "continue[d] business relations as has been usual in the past without a formal contract." But on February 16, 1993, in a meeting with a BMW representative and the president of Columbia Motors Corporation (CMC), Jose Alvarez, petitioner was informed that BMW was arranging to grant the exclusive dealership of BMW cars and products to CMC, which had expressed interest in acquiring the same.

On February 24, 1993, petitioner received confirmation of the information from BMW which, in a letter, expressed dissatisfaction with various aspects of petitioner's business, mentioning among other things, decline in sales, deteriorating services, and inadequate showroom and warehouse facilities, and petitioner's alleged failure to comply with the standards for an exclusive BMW dealer.

Nonetheless, BMW expressed willingness to continue business relations with the petitioner on the basis of a "standard BMW importer" contract, otherwise, it said, if this was not acceptable to petitioner, BMW would have no alternative but to terminate petitioner's exclusive dealership effective June 30, 1993.

Petitioner protested, claiming that the termination of his exclusive dealership would be a breach of the Deed of Assignment. Hahn insisted that as long as the assignment of its trademark and device subsisted, he remained BMW's exclusive dealer in the Philippines because the assignment was made in consideration of the exclusive dealership. Because of Hahn's insistence on the former business relation, BMW withdrew on March 26, 1993 its offer of a "standard importer contract" and terminated the exclusive dealer relationship effective June 30, 1993.

At a conference of BMW Regional Importers held on April 26, 1993 in Singapore, Hahn was surprised to find Alvarez among those invited from the Asian region.

On April 29, 1993, BMW proposed that Hahn and CMC jointly import and distribute BMW cars and parts. V.

Hahn found the proposal unacceptable. On May 14, 1993, he filed a complaint for specific performance and damages against BMW to compel it to continue the exclusive dealership. Later he filed an amended complaint to include an application for temporary restraining order and for writs of preliminary, mandatory and prohibitory injunction to enjoin BMW from terminating his exclusive dealership.

Hahn, amended complaint alleged that Defendant [BMW] is a foreign corporation doing business in the Philippines with principal offices at Munich, Germany. It may be served with summons and other court processes through the Secretary of the Department of Trade and Industry of the Philippines.

MW moved to dismiss the case, contending that the trial court did not acquire jurisdiction over it through the service of summons on the Department of Trade and Industry, because it (BMW) was a foreign corporation and it was not doing business in the Philippines. It contended that the execution of the Deed of Assignment was an isolated transaction; that Hahn was not its agent because the latter undertook to assemble and sell BMW cars and products without the participation of BMW and sold other products; and that Hahn was an indentor or middleman transacting business in his own name and for his own account.

Petitioner Alfred Hahn opposed the motion. He argued that BMW was doing business in the Philippines through him as its agent, as shown by the fact that BMW invoices and order forms were used to document his transactions; that he gave warranties as exclusive BMW dealer; that BMW officials periodically inspected standards of service rendered by him; and that he was described in service booklets and international publications of BMW as a "BMW Importer" or "BMW Trading Company" in the Philippines.

ISSUE

Whether petitioner Alfred Hahn is the agent or distributor in the Philippines of private respondent BMW.

RULING

NO, Hahn is not the agent of BMW but an independent dealer, albeit of BMW cars and products, BMW, a foreign corporation, is not considered doing business in the Philippines within the meaning of the Foreign Investments Act of 1991 and the IRR, and the trial court did not acquire jurisdiction over it (BMW).

Rule 14, § 14 provides: §14. Service upon foreign corporations. If the defendant is a foreign corporation, or a nonresident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

What acts are considered "doing business in the Philippines" are enumerated in §3(d) of the Foreign Investments Act of 1991 (R.A. No. 7042) as follows: d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches, appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization:

Provided, however, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having, a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account. Thus, the phrase includes "appointing representatives or distributors in the Philippines" but not when the representative or distributor "transacts business in its name and for its own account."

In addition, Section 1(f)(1) of the Rules and Regulations implementing (IRR) the Omnibus Investment Code of 1987 (E.O. No. 226) provided: "(f) "Doing business" shall be any act or combination of acts, enumerated in Article 44 of the Code. In particular, "doing business" includes: (1).... A foreign firm which does business through middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines"

The fact that Hahn invested his own money to put up these service centers and showrooms does not necessarily prove that he is not an agent of BMW. For as already noted, there are facts in the record which suggest that BMW exercised control over Hahn's activities as a dealer and made regular inspections of Hahn's premises to enforce compliance with BMW standards and specifications. It is not true then that the question whether BMW is doing business could have been resolved simply by considering the parties' pleadings. There are genuine issues of facts which can only be determined on the basis of evidence duly presented. BMW cannot short circuit the process on the plea that to compel it to go to trial would be to deny its right not to submit to the jurisdiction of the trial court which precisely it denies.

Anyway, private respondent need not apprehend that by responding to the summons it would be waiving its objection to the trial court's jurisdiction. It is now settled that for purposes of having summons served on a foreign corporation in accordance with Rule 14, §14, it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction. A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to Rule 14, §14. Such determination does not foreclose a contrary finding should evidence later show that it is not transacting business in the country.

- Eriks Pte., Ltd. vs. Court of Appeals, 267 SCRA 567 (1997)

ERIKS PTE. LTD., *Petitioner*, *v.* COURT OF APPEALS and DELFIN F. ENRIQUEZ, JR., *Respondents*.

G.R. No. 118843, THIRD DIVISION, February 6, 1997, PANGANIBAN, *J.*

What is determinative of doing business is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase isolated transaction has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is doing business does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions.

FACTS

Petitioner Eriks Pte. Ltd. is a non-resident foreign corporation engaged in the manufacture and sale of elements used in sealing pumps, valves and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial uses. It is not licensed to do business in the Philippines and is not so engaged and is suing on an isolated transaction for which it has capacity to sue
On various dates covering the period January 17 -- August 16, 1989, private respondent Delfin Enriquez, Jr., doing business under the name and style of Delrene EB Controls Center and/or EB

Karmine Commercial, ordered and received from petitioner various elements used in sealing pumps, valves, pipes and control equipment, PVC pipes and fittings. The transfers of goods were perfected in Singapore, for private respondents account, F.O.B. Singapore, with a 90-day credit term. Subsequently, demands were made by petitioner upon private respondent to settle his account, but the latter failed/refused to do so.

On August 28, 1991, petitioner corporation filed a case for the recovery of S$41,939.63 or its equivalent in Philippine currency, plus interest thereon and damages. Private respondent responded with a Motion to Dismiss, contending that petitioner corporation had no legal capacity to sue. In an Order dated March 8, 1993, the trial court dismissed the action on the ground that petitioner is a foreign corporation doing business in the Philippines without a license.

On appeal, respondent Court affirmed said order as it deemed the series of transactions between petitioner corporation and private respondent not to be an isolated or casual transaction. Thus, respondent Court likewise found petitioner to be without legal capacity to sue, and disposed of the appeal as follows

ISSUE

Whether petitioner-corporation may maintain an action in Philippine courts considering that it has no license to do business in the country.

RULING

NO, petitioner-corporation may not maintain an action in Philippine courts considering that it is not involved in an isolated transaction and has no license to do business in the country.

The Corporation Code provides:

Sec. 133. Doing business without a license. - No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The aforementioned provision prohibits, not merely absence of the prescribed license, but it also bars a foreign corporation doing business in the Philippines without such license access to our courts. A foreign corporation without such license is not *ipso facto* incapacitated from bringing an action. A license is necessary only if it is *transacting or doing business* in the country.

However, there is no definitive rule on what constitutes doing, engaging in, or transacting business. The Corporation Code itself does not define such terms.

In the durable case of *The Mentholatum Co. vs. Mangaliman,* this Court discoursed on the test to determine whether a foreign company is doing business in the Philippines, thus: x x x The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.

The accepted rule in jurisprudence is that each case must be judged in the light of its own environmental circumstances. It should be kept in mind that the purpose of the law is to subject the foreign corporation doing business in the Philippines to the jurisdiction of our courts. It is not to prevent the foreign corporation from performing single or isolated acts, but to bar it from acquiring a domicile for the purpose of business without first taking the steps necessary to render it amenable to suits in the local courts.

The transactions which occurred between January to August 1989, constitute a single act or isolated business transaction, this being the ordinary business of appellant corporation, it can be said to be illegally doing or transacting business without a license. x x x Here it can be clearly gleaned from the four-month period of transactions between appellant and appellee that it was a continuing business relationship, which would, without doubt, constitute doing business without a license. For all intents and purposes, appellant corporation is doing or transacting business in the Philippines without a license and that, therefore, in accordance with the specific mandate of Section 144 of the Corporation Code, it has no capacity to sue.

More than the sheer number of transactions entered into, a clear and unmistakable intention on the part of petitioner to continue the body of its business in the Philippines is more than apparent. As alleged in its complaint, it is engaged in the manufacture and sale of elements used in sealing pumps, valves, and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial use. Thus, the sale by petitioner of the items covered by the receipts, which are part and parcel of its main product line, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business, pure and simple. Further, its grant and extension of 90-day credit terms to private respondent for every purchase made, unarguably shows an intention to continue transacting with private respondent, since in the usual course of commercial transactions, credit is extended only to customers in good standing or to those on whom there is an intention to maintain long-term relationship. This being so, the existence of a distributorship agreement between the parties, as alleged but not proven by private respondent, would, if duly established by competent evidence, be merely corroborative, and failure to sufficiently prove said allegation will not significantly affect the finding of the courts below.

Equally important is the absence of any fact or circumstance which might tend even remotely to negate such intention to continue the progressive prosecution of petitioner's business activities in this country. Had private respondent not turned out to be a bad risk, in all likelihood petitioner would have indefinitely continued its commercial transactions with him, and not surprisingly, in ever increasing volumes.

Thus, the Court holds that the series of transactions in question could not have been isolated or casual transactions. What is determinative of doing business is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase isolated transaction has a definite and fixed meaning, *i.e.* a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is doing business does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions.

It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it.

The requirement of a license is not meant to put foreign corporations at a disadvantage. Rather, the doctrine of lack of capacity to sue is based on considerations of sound public policy.

- Avon Insurance PLC vs. Court of Appeals, 278 SCRA 312 (1997)

AVON INSURANCE PLC, ET. AL., *Petitioners, v.* COURT OF APPEALS, ET. AL., *Respondents*.
G.R. No. 97642, SECOND DIVISION, August 29, 1997, TORRES, JR., *J.*:

There is no exact rule of governing principle as to what constitutes doing or engaging in or transacting business. Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized.

FACTS

Respondent Yupangco Cotton Mills filed a complaint against several foreign reinsurance companies (among which are petitioners) to collect their alleged percentage liability under contract treaties between the foreign insurance companies and the international insurance broker C.J. Boatright, acting as agent for respondent Worldwide Surety and Insurance Company. Inasmuch as petitioners are not engaged in business in the Philippines with no offices, places of business or agents in the Philippines, the reinsurance treaties having been rendered abroad, service of summons upon motion of respondent Yupangco, was made upon petitioners through the office of the Insurance Commissioner. Petitioners, by counsel on special appearance, seasonably filed motions to dismiss disputing the jurisdiction of respondent Court and the extra-territorial service of summons. Respondent Yupangco filed its opposition to the motion to dismiss, petitioners filed their reply, and respondent Yupangco filed its rejoinder. The respondent Court denied the motions to dismiss and directed petitioners to file their answer. Petitioners filed their notice of appeal. Subsequently, respondent court denied due course to the appeal.

Yupangco Cotton Mills engaged to secure with Worldwide Security and Insurance Co. Inc., several of its properties for the periods July 6, 1979 to July 6, 1980 for a coverage of ₱100,000,000.00 and from October 1, 1980 to October 1, 1981, also for ₱100,000,000.00. Both contracts were covered by reinsurance treaties between Worldwide Surety and Insurance and several foreign reinsurance companies, including the petitioners. The reinsurance arrangements had been made through international broker C.J. Boatright and Co. Ltd., acting as agent of Worldwide Surety and Insurance.

As fate would have it, on December 16, 1979 and May 2, 1981, with in the respective effectivity periods of Policies the properties therein insured were razed by fire, thereby giving rise to the obligation of the insurer to indemnify the Yupangco Cotton Mills. Partial payments were made by Worldwide Surety and Insurance and some of the reinsurance companies.

On May 2, 1983, Worldwide Surety and Insurance, in a deed of Assignment, acknowledge a remaining balance of ₱19,444,447.75 still due Yupangco Cotton Mills, and assigned to the latter all reinsurance proceeds still collectible from all the foreign reinsurance companies. Thus, in its interest as assignee and original insured, Yupangco Cotton Mills instituted this collection suit against the petitioners.

In a Petition for *Certiorari* filed with the Court of Appeals, petitioners submitted that respondent Court has no jurisdiction over them, being all foreign corporations not doing business in the Philippines with no office, place of business or agents in the Philippines. The remedy of *Certiorari* was resorted to by petitioners on the premise that if petitioners had filed an answer to the complaint as ordered by the respondent court, they would risk abandoning the issue of jurisdiction. Moreover, extra-territorial service of summons on petitioners is null and void because the complaint for collection is not one affecting plaintiff's status and not relating to property within the Philippines.

ISSUE

Whether the petitioner had been doing business in the Philippines, and can the trial court assume jurisdiction over it.

RULING

NO, the petitioner is not doing business in the Philippines and beyond the ambit of court's jurisdiction.

To qualify the petitioners business of reinsurance within the Philippine forum, resort must be made to established principles in determining what is meant by doing business in the Philippines. In Communication Materials and Design, Inc. *et. al v.* Court of Appeals, it was observed that.

There is no exact rule of governing principle as to what constitutes doing or engaging in or transacting business. Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized.

The term ordinarily implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.

A single act or transaction made in the Philippines, however, could not qualify a foreign corporation to be doing business in the Philippines, if such singular act is not merely incidental or casual, but indicates the foreign corporation's intention to do business in the Philippines.

There is no sufficient basis in the records which would merit the institution of this collection suit in the Philippines. More specifically, there is nothing to substantiate the private respondent's submission that the petitioners had engaged in business activities in this country. This is not an instance where the erroneous service of summons upon the defendant can be cured by the issuance and service of alias summons, as in the absence of showing that petitioners had been doing business in the country, they cannot be summoned to answer for the charges leveled against them.

The Court is cognizant of the doctrine is Signetics Corp. *v.* Court of Appeals that for the purpose of acquiring jurisdiction by way of summons on a defendant foreign corporation, there is no need to prove first the fact that defendant is doing business in the Philippines. The plaintiff only has to allege in the complaint that the defendant has an agent in the Philippines for summons to be validly served thereto, even without prior evidence advancing such factual allegation.

As it is, private respondent has made no allegation or demonstration of the existence of petitioners domestic agent, but avers simply that they are doing business not only abroad but in the Philippines as well. It does not appear at all that the petitioners had performed any act which would give the general public the impression that it had been engaging, or intends to engage in its ordinary and usual business undertakings in the country. The reinsurance treaties between the petitioners and Worldwide Surety and Insurance were made through an international insurance brokers, and not through any entity of means remotely connected with the Philippines. Moreover there is authority to the effect that a reinsurance company is not doing business in a certain state merely because the property of lives which are insured by the original insurer company are located in that state. The reason for this is that a contract or reinsurance is generally a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement. Hence, the original insured has generally no interest in the contract of reinsurance.

As the Court has found, there is no showing that petitioners had performed any act in the country that would place it within the sphere of the courts jurisdiction. A general allegation standing alone, that a party is doing business in the Philippines does not make it so. A conclusion of fact or law cannot be derived from the unsubstantiated assertions of parties notwithstanding the demands of convenience or dispatch in legal actions, otherwise, the Court would be guilty of sorcery; extracting substance out of nothingness. In addition, the assertion that a resident of the Philippines will be inconvenienced by an out-of-town suit against a foreign entity, is irrelevant and unavailing to sustain the continuance of a local action, for jurisdiction is not dependent upon the convenience or inconvenience of a party.

- Hutchison Ports Philippines Limited vs. Subic Bay Metropolitan Authority, 339 SC RA 34 (2000)

HUTCHISON PORTS PHILIPPINES LIMITED, petitioner, vs.
SUBIC BAY METROPOLITAN AUTHORITY, INTERNATIONAL CONTAINER TERMINAL SERVICES INC., ROYAL PORT SERVICES INC. and the EXECUTIVE SECRETARY, respondents.
G.R. No. 131367, FIRST DIVISION, August 31, 2000, YNARES-SANTIAGO, *J.:*

Participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation's reason for creation or existence. Thus, it has been held that "a foreign *company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required."*

FACTS

Subic Bay Metropolitan Authority (or SBMA) advertised in leading national daily newspapers and in one international publication, an invitation offering to the private sector the opportunity to develop and operate a modern marine container terminal within the Subic Bay Freeport Zone.

Out of seven bidders who responded to the published invitation, three were declared by the SBMA as qualified bidders after passing the pre-qualification evaluation conducted by the SBMA's Technical Evaluation Committee (or SBMA-TEC). These are: (1) International Container Terminal Services, Inc. (or ICTSI); (2) a consortium consisting of Royal Port Services, Inc. and HPC Hamburg Port Consulting GMBH (or RPSI); and (3) Hutchison Ports Philippines Limited (or HPPL), representing a consortium composed of HPPL, Guoco Holdings (Phils.), Inc. and Unicol Management Services, Inc. All three qualified bidders were required to submit their respective formal bid package on or before July 1, 1996 by the SBMA's Pre-qualification, Bids and Awards Committee (or SBMA-PBAC).

Thereafter, the services of three (3) international consultants recommended by the World Bank for their expertise were hired by SBMA to evaluate the business plans submitted by each of the bidders, and to ensure that there would be a transparent and comprehensive review of the submitted bids. All the consultants, after such review and evaluation unanimously concluded that HPPL's Business Plan was "far superior to that of the two other bidders."

SBMA, through the unanimous vote of all the Board Members, excluding the Chairman of the Board who voluntarily inhibited himself from participating in the re-evaluation, selected the HPPL bid as the winning bid, being: the conforming bid with a realistic Business Plan offering the greatest financial return to the SBMA; the best possible offer in the market, and the most advantageous to the government in accordance with the Tender Document.

Notwithstanding the SBMA Board's recommendations and action awarding the project to HPPL, then Executive Secretary Ruben Torres submitted a memorandum to the Office of the President recommending that another rebidding be conducted. Consequently, the Office of the President issued a Memorandum directing the SBMA Board of Directors to refrain from signing the Concession Contract with HPPL and to conduct a rebidding of the project.

HPPL, feeling aggrieved by the SBMA's failure and refusal to commence negotiations and to execute the Concession Agreement despite its earlier pronouncements that HPPL was the winning bidder, filed a complaint against SBMA before the Regional Trial Court for specific performance, mandatory injunction and damages.

While the case before the trial court was pending litigation, on August 4, 1997, the SBMA sent notices to plaintiff HPPL, ICTSI and RPSI requesting them to declare their interest in participating in a rebidding of the proposed project.

In order to enjoin the rebidding while the case was still pending, plaintiff HPPL filed a motion for maintenance of the status quo . The said motion was denied by the court a quo. There being no clear and unmistakable right on the part of petitioner HPPL, the rebidding of the proposed project can no longer be enjoined as there is no material and substantial invasion to speak of. Thus, there is no longer any urgent or permanent necessity for the writ to prevent any perceived serious damage. In fine, since the requisites for the issuance of the writ of injunction are not present in the instant case, petitioner's application must be denied for lack of merit.

Admittedly, petitioner HPPL is a foreign corporation, organized and existing under the laws of the British Virgin Islands. While the actual bidder was a consortium composed of petitioner, and two other corporations, namely, Guoco Holdings (Phils.) Inc. and Unicol Management Servises, Inc., it is only petitioner HPPL that has brought the controversy before the Court, arguing that it is suing only on an isolated transaction to evade the legal requirement that foreign corporations must be licensed to do business in the Philippines to be able to file and prosecute an action before Philippines courts.

ISSUE

Whether participating in the bidding is a mere isolated transaction, or did it constitute "engaging in" or "transacting" business in the Philippines such that petitioner HPPL needed a license to do business in the Philippines before it could come to court.

RULING

There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, it has often been held that a single act or transaction may be considered as "doing business" when a corporation performs acts for which it was created or exercises some of the functions for which it was organized. The amount or volume of the business is of no moment, for even a singular act cannot be merely incidental or casual if it indicates the foreign corporation's intention to do business.

Participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation's reason for creation or existence. Thus, it has been held that "a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required."

In this regard, it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether a foreign corporation needs a license or not. The primary purpose of the license requirement is to compel a foreign corporation desiring to do business within the Philippines to submit itself to the jurisdiction of the courts of the state and to enable the government to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates a business in the Philippines without a license, and thus does not submit itself to Philippine laws, it is only just that said foreign corporation be not allowed to invoke them in our courts when the need arises.

"While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar."

The requirement of a license is not intended to put foreign corporations at a disadvantage, for the doctrine of lack of capacity to sue is based on considerations of sound public policy. Accordingly, petitioner HPPL must be held to be incapacitated to bring this petition for injunction before this Court for it is a foreign corporation doing business in the Philippines without the requisite license.

- Lorenzo Shipping Corp. vs. Chubb and Sons, 431 SCRA 266 (2004)

LORENZO SHIPPING CORP., petitioner, vs.CHUBB and SONS, Inc., GEARBULK, Ltd. and PHILIPPINE TRANSMARINE CARRIERS, INC., respondents.
G.R. No. 147724, SECOND DIVISION, June 8, 2004, PUNO, *J.*

Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party. Respondent Chubb and Sons who was plaintiff in the trial court does not possess any of these disabilities. On the contrary, respondent Chubb and Sons has satisfactorily proven its capacity to sue, after having shown that it is not doing business in the Philippines, but is suing only under an isolated transaction, i.e., under the one (1) marine insurance policy issued in favor of the consignee Sumitomo covering the damaged steel pipes.

FACTS

Petitioner Lorenzo Shipping Corporation (Lorenzo Shipping, for short), a domestic corporation engaged in coastwise shipping, was the carrier of 581 bundles of black steel pipes, the subject shipment, from Manila to Davao City. From Davao City, respondent Gearbulk, Ltd., a foreign corporation licensed as a common carrier under the laws of Norway and doing business in the Philippines through its agent, respondent Philippine Transmarine Carriers, Inc. (Transmarine Carriers, for short), a domestic corporation, carried the goods on board its vessel M/V San Mateo Victory to the United States, for the account of Sumitomo Corporation. The latter, the consignee, is a foreign corporation organized under the laws of the United States of America. It insured the shipment with respondent Chubb and Sons, Inc., a foreign corporation organized and licensed to engage in insurance business under the laws of the United States of America.

On November 21, 1987, Mayer Steel Pipe Corporation of Binondo, Manila, loaded 581 bundles of ERW black steel pipes on board the vessel M/V Lorcon IV, owned by petitioner Lorenzo Shipping, for shipment to Davao City. Petitioner Lorenzo Shipping issued a clean bill of lading for the account of the consignee, Sumitomo Corporation of San Francisco, California, USA, which in turn, insured the goods with respondent Chubb and Sons, Inc.

The M/V Lorcon IV arrived at the Sasa Wharf in Davao City on December 2, 1987. Respondent Transmarine Carriers received the subject shipment which was discharged on December 4, 1987. It discovered seawater in the hatch of M/V Lorcon IV, and found the steel pipes submerged in it. The consignee Sumitomo then hired the services of R.J. Del Pan Surveyors to inspect the shipment prior to and subsequent to discharge. Del Pan's Survey Report dated December 4, 1987 showed that the subject shipment was no longer in good condition, as in fact, the pipes were found with rust formation on top and/or at the sides. Moreover, the surveyor noted that the cargo hold of the M/V Lorcon IV was flooded with seawater, and the tank top was "rusty, thinning, and with several holes at different places." The rusty condition of the cargo was noted on the mate's receipts and the checker of M/V Lorcon IV signed his *conforme* thereon.

After the survey, respondent Gearbulk loaded the shipment on board its vessel M/V San Mateo Victory, for carriage to the United States. It issued Bills of Lading covering 364 bundles of steel pipes to be discharged at Oakland, U.S.A., and Bills of Lading covering 217 bundles of steel pipes to be discharged at Vancouver, Washington, U.S.A. All bills of lading were marked "ALL UNITS HEAVILY RUSTED."

While the cargo was in transit from Davao City to the U.S.A., consignee Sumitomo sent a letter of intent dated to petitioner Lorenzo Shipping, which the latter received on December 9, 1987. Sumitomo informed petitioner Lorenzo Shipping that it will be filing a claim based on the damaged cargo once such damage had been ascertained.

On January 17, 1988, M/V San Mateo Victory arrived at Oakland, California, U.S.A., where it unloaded 364 bundles of the subject steel pipes. It then sailed to Vancouver, Washington on January 23, 1988 where it unloaded the remaining 217 bundles. Toplis and Harding, Inc. of San Franciso, California, surveyed the steel pipes, and also discovered the latter heavily rusted. When the steel pipes were tested with a silver nitrate solution, Toplis and Harding found that they had come in contact with salt water.

Due to its heavily rusted condition, the consignee Sumitomo rejected the damaged steel pipes and declared them unfit for the purpose they were intended. It then filed a marine insurance claim with respondent Chubb and Sons, Inc. which the latter settled in the amount of US$104,151.00.

On December 2, 1988, respondent Chubb and Sons, Inc. filed a complaint for collection of a sum of money, against respondents Lorenzo Shipping, Gearbulk, and Transmarine. Respondent Chubb and Sons, Inc. alleged that it is not doing business in the Philippines, and that it is suing under an isolated transaction.

On February 21, 1989, respondents Gearbulk and Transmarine filed their answer with counterclaim and cross-claim against petitioner Lorenzo Shipping denying liability on the following grounds: (a) respondent Chubb and Sons, Inc. has no capacity to sue before Philippine courts; (b) the action should be dismissed on the ground of *forum non conveniens*; (c) damage to the steel pipes was due to the inherent nature of the goods or to the insufficiency of packing thereof; (d) damage to the steel pipes was not due to their fault or negligence; and, (e) the law of the country of destination, U.S.A., governs the contract of carriage.

Petitioner Lorenzo Shipping filed its answer with counterclaim. It denied liability, alleging, among others: (a) that rust easily forms on steel by mere exposure to air, moisture and other marine elements; (b) that it made a disclaimer in the bill of lading; (c) that the goods were improperly packed; and, (d) prescription, laches, and extinguishment of obligations and actions had set in.

ISSUE

Whether respondent Chubb and Sons has capacity to sue before the Philippine courts;

RULING

In the first place, petitioner failed to raise the defense that Sumitomo is a foreign corporation doing business in the Philippines without a license. It is therefore estopped from litigating the issue on appeal especially because it involves a question of fact which this Court cannot resolve. Secondly, assuming *arguendo* that Sumitomo cannot sue in the Philippines, it does not follow that respondent, as subrogee, has also no capacity to sue in our jurisdiction.

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers the situation under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means which the creditor could employ to enforce payment.

The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted – he cannot acquire any claim, security, or remedy the subrogor did not have. In other words, a subrogee cannot succeed to a right not possessed by the subrogor. A subrogee in effect steps into the shoes of the insured and can recover only if insured likewise could have recovered.

However, when the insurer succeeds to the rights of the insured, he does so only in relation to the debt. The person substituted (the insurer) will succeed to all the rights of the creditor (the insured), having reference to the debt due the latter. In the instant case, the rights inherited by the insurer, respondent Chubb and Sons, pertain only to the payment it made to the insured Sumitomo as stipulated in the insurance contract between them, and which amount it now seeks to recover from petitioner Lorenzo Shipping which caused the loss sustained by the insured Sumitomo. The capacity to sue of respondent Chubb and Sons could not perchance belong to the group of rights, remedies or securities pertaining to the payment respondent insurer made for the loss which was sustained by the insured Sumitomo and covered by the contract of insurance.

Capacity to sue is a right personal to its holder. It is conferred by law and not by the parties. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. It refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality, or any other disqualifications of a party. Respondent Chubb and Sons who was plaintiff in the trial court does not possess any of these disabilities. On the contrary, respondent Chubb and Sons has satisfactorily proven its capacity to sue, after having shown that it is not doing business in the Philippines, but is suing only under an isolated transaction, *i.e.*, under the one (1) marine insurance policy issued in favor of the consignee Sumitomo covering the damaged steel pipes.

The law on corporations is clear in depriving foreign corporations which are doing business in the Philippines without a license from bringing or maintaining actions before, or intervening in Philippine courts. Art. 133 of the Corporation Code states:

Doing business without a license. – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The law does not prohibit foreign corporations from performing single acts of business. A foreign corporation needs no license to sue before Philippine courts on an isolated transaction. As held by the Court in the case of Marshall-Wells Company vs. Elser & Company: The object of the statute (Secs. 68 and 69, Corporation Law) was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business for the Philippines, from seeking redress in the Philippine courts.

Likewise, the Court ruled in Universal Shipping Lines, Inc. vs. Intermediate Appellate Court that:. . . The private respondent may sue in the Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts.

The Court rejects the claim of petitioner Lorenzo Shipping that respondent Chubb and Sons is not suing under an isolated transaction because the steel pipes, subject of this case, are covered by two (2) bills of lading; hence, two transactions. The stubborn fact remains that these two (2) bills of lading spawned from the single marine insurance policy that respondent Chubb and Sons issued in favor of the consignee Sumitomo, covering the damaged steel pipes. The execution of the policy is a single act, an isolated transaction. The Court has not construed the term "isolated transaction" to literally mean "one" or a mere single act. In Eriks Pte. Ltd. vs. Court of Appeals, this Court held that: . . . What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase *"isolated transaction"* has a definite and fixed meaning, i.e. *a transaction or series of transactions* set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions.

Furthermore, respondent insurer Chubb and Sons, by virtue of the right of subrogation provided for in the policy of insurance, is the real party in interest in the action for damages before the court *a quo* against the carrier Lorenzo Shipping to recover for the loss sustained by its insured. Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest as one who is entitled to the avails of any judgment rendered in a suit, or who stands to be benefited or injured by it. Where an insurance company as subrogee pays the insured of the entire loss it suffered, the insurer-subrogee is the only real party in interest and must sue in its own name to enforce its right of subrogation against the third party which caused the loss. This is because the insurer in such case having fully compensated its insured, which payment covers the loss in full, is subrogated to the insured's claims arising from such loss. The subrogated insurer becomes the owner of the claim and, thus entitled to the entire fruits of the action. It then, thus possesses the right to enforce the claim and the significant interest in the litigation. In the case at bar, it is clear that respondent insurer was suing on its own behalf in order to enforce its right of subrogation.

- Expertravel & Tours, Inc. vs. CA, 459 SCRA 147 (2005)

EXPERTRAVEL & TOURS, INC., petitioner, vs. COURT OF APPEALS and KOREAN AIRLINES, respondent.
G.R. No. 152392, SECOND DIVISION, May 26, 2005, CALLEJO, SR., *J.*:

In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.

FACTS

Korean Airlines (KAL) is a corporation established and registered in the Republic of South Korea and licensed to do business in the Philippines. Its general manager in the Philippines is Suk Kyoo Kim, while its appointed counsel was Atty. Mario Aguinaldo and his law firm.

KAL filed a Complaint against ETI for the collection of the of money. The verification and certification against forum shopping was signed by Atty. Aguinaldo, who indicated therein that he was the resident agent and legal counsel of KAL and had caused the preparation of the complaint.
ETI filed a motion to dismiss the complaint on the ground that Atty. Aguinaldo was not authorized to execute the verification and certificate of non-forum shopping.

KAL opposed the motion, contending that Atty. Aguinaldo was its resident agent and was registered as such with the Securities and Exchange Commission (SEC) as required by the Corporation Code of the Philippines. It was further alleged that Atty. Aguinaldo was also the corporate secretary of KAL. Appended to the said opposition was the identification card of Atty. Aguinaldo, showing that he was the lawyer of KAL.

KAL submitted an Affidavit, executed by its general manager Suk Kyoo Kim, alleging that the board of directors conducted a special teleconference, which he and Atty. Aguinaldo attended. It was also averred that in that same teleconference, the board of directors approved a resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping and to file the complaint. Suk Kyoo Kim also alleged, however, that the corporation had no written copy of the aforesaid resolution.

ISSUE

Whether or not Atty. Aguinaldo, as the resident agent and corporate secretary, is authorized to sign and execute the certificate of non-forum.

RULING

No, in a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.

In this case, the petitioner, as the defendant in the RTC, assailed the authority of Atty. Aguinaldo to execute the requisite verification and certificate of non-forum shopping as the resident agent and counsel of the respondent. It was, thus, incumbent upon the respondent, as the plaintiff, to allege and establish that Atty. Aguinaldo had such authority to execute the requisite verification and certification for and in its behalf. The respondent, however, failed to do so.

As gleaned from the certification, there was no allegation that Atty. Aguinaldo had been authorized to execute the certificate of non-forum shopping by the respondent's Board of Directors; moreover, no such board resolution was appended thereto or incorporated therein.

While Atty. Aguinaldo is the resident agent of the respondent in the Philippines, this does not mean that he is authorized to execute the requisite certification against forum shopping. Under the law, Atty. Aguinaldo was not specifically authorized to execute a certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. This is because while a resident agent may be aware of actions filed against his principal (a foreign corporation doing business in the Philippines), such resident may not be aware of actions initiated by its principal, whether in the Philippines against a domestic corporation or private individual, or in the country where such corporation was organized and registered, against a Philippine registered corporation or a Filipino citizen.

The respondent knew that its counsel, Atty. Aguinaldo, as its resident agent, was not specifically authorized to execute the said certification. It attempted to show its compliance with the rule subsequent to the filing of its complaint by submitting a resolution purporting to have been approved by its Board of Directors during a teleconference held allegedly with Atty. Aguinaldo and Suk Kyoo Kim in attendance. However, such attempt of the respondent casts veritable doubt not only on its claim that such a teleconference was held, but also on the approval by the Board of Directors of the resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping.

If the resolution had indeed been approved long before the complaint was filed, the respondent should have incorporated it in its complaint, or at least appended a copy thereof. It even represented to the Court that a copy of its resolution was with its main office in Korea, only to allege later that no written copy existed. Worse still, it appears that as early as January 10, 1999,
Atty. Aguinaldo had signed a Secretary's/Resident Agent's Certificate alleging that the board of directors held a teleconference on June 25, 1999. No such certificate was appended to the complaint. The Court is, thus, more inclined to believe that the alleged teleconference on June 25, 1999 never took place.

- B. Van Zuiden Bros Ltd. vs. GTVL Manufacturing Industries, 523 SCRA 233 (2007)

B. VAN ZUIDEN BROS., LTD., Petitioner, vs. GTVL MANUFACTURING INDUSTRIES, INC., Respondent.

G.R. No. 147905, SECOND DIVISION, May 28, 2007, CARPIO, *J.:*

To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must actually transact business in the Philippines, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license.

FACTS

On 13 July 1999, petitioner filed a complaint for sum of money against respondent. Plaintiff, ZUIDEN, is a corporation, incorporated under the laws of Hong Kong. x x x ZUIDEN is not engaged in business in the Philippines, but is suing before the Philippine Courts. It is engaged in the importation and exportation of several products, including lace products.

On several occasions, GTVL purchased lace products from ZUIDEN. The procedure for these purchases, as per the instructions of GTVL, was that ZUIDEN delivers the products purchased by GTVL, to a certain Hong Kong corporation, known as Kenzar Ltd. (KENZAR), x x x and the products are then considered as sold, upon receipt by KENZAR of the goods purchased by GTVL.

KENZAR had the obligation to deliver the products to the Philippines and/or to follow whatever instructions GTVL had on the matter. Insofar as ZUIDEN is concerned, upon delivery of the goods to KENZAR in Hong Kong, the transaction is concluded; and GTVL became obligated to pay the agreed purchase price.

However, commencing October 31, 1994 up to the present, GTVL has failed and refused to pay the agreed purchase price for several deliveries ordered by it and delivered by ZUIDEN, as above-mentioned. In spite of said demands and in spite of promises to pay and/or admissions of liability, GTVL has failed and refused, and continues to fail and refuse, to pay the overdue amount of U.S.$32,088.02 [inclusive of interest].

Instead of filing an answer, respondent filed a Motion to Dismiss on the ground that petitioner has no legal capacity to sue. Respondent alleged that petitioner is doing business in the Philippines without securing the required license. Accordingly, petitioner cannot sue before Philippine courts.

ISSUE

Whether petitioner, an unlicensed foreign corporation, has legal capacity to sue before Philippine courts.

RULING

YES, although the petitioner is not doing business in the Philippines, it has locus standi to sue before Philippine courts.

To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must *actually transact business in the Philippines*, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license.

Under Section 3(d) of Republic Act No. 7042 (RA 7042) or "The Foreign Investments Act of 1991," the phrase "doing business" includes: x x x soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however*, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

The series of transactions between petitioner and respondent cannot be classified as "doing business" in the Philippines under Section 3(d) of RA 7042. An essential condition to be considered as "doing business" in the Philippines is the actual performance of specific commercial acts within the territory of the Philippines for the plain reason that the Philippines has no jurisdiction over commercial acts performed in foreign territories. Here, there is no showing that petitioner performed within the Philippine territory the specific acts of doing business mentioned in Section 3(d) of RA 7042. Petitioner did not also open an office here in the Philippines, appoint a representative or distributor, or manage, supervise or control a local business. While petitioner and respondent entered into a series of transactions implying a continuity of commercial dealings, the perfection and consummation of these transactions were done outside the Philippines.

In its complaint, petitioner alleged that it is engaged in the importation and exportation of several products, including lace products. Petitioner asserted that on several occasions, respondent purchased lace products from it. Petitioner also claimed that respondent instructed it to deliver the purchased goods to Kenzar, which is a Hong Kong company based in Hong Kong. Upon Kenzar's receipt of the goods, the products were considered sold. Kenzar, in turn, had the obligation to deliver the lace products to the Philippines. In other words, the sale of lace products was consummated in Hong Kong.

As earlier stated, the series of transactions between petitioner and respondent transpired and were consummated in Hong Kong. The Court finds no single activity which petitioner performed here in the Philippines pursuant to its purpose and object as a business organization. Moreover, petitioner's desire to do business within the Philippines is not discernible from the allegations of the complaint or from its attachments. Therefore, there is no basis for ruling that petitioner is doing business in the Philippines.

An exporter in one country may export its products to many foreign importing countries without performing in the importing countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not acquire jurisdiction over the foreign exporter who has not performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.

Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have a deleterious effect not only on Philippine exports, but also on global trade.

- Rimbunan Hijau Group of Companies vs. Oriental Wood Processing Corporation, 470 SCRA 650 (2005)

RIMBUNAN HIJAU GROUP OF COMPANIES AND NIUGINI LUMBER MERCHANTS PTY., LTD., *Petitioners*, *v.* **ORIENTAL WOOD PROCESSING CORPORATION,** *Respondent***.**
G.R. NO. 152228, SECOND DIVISION**,** September 23, 2005**,** TINGA, ***J***.:

After contracting with a foreign corporation, a domestic firm can no longer deny the former's capacity to sue. Estoppel is deeply rooted in the axiom of "*commodum ex injuria sua non habere debet*" *no person ought to derive any advantage from his own wrong.*

FACTS

This case stemmed from a complaint for sum of money filed by Rimbunan Hijau Group of Companies ("Rimbunan") and Niugini Lumber Merchants Pty., Ltd. ("Niugini") against Oriental Wood Processing Corporation (respondent) before the Regional Trial Court (RTC) of Malolos, Bulacan. Rimbunan and Niugini (petitioners) are foreign corporations duly organized and existing under the laws of Papua New Guinea ("PNG") while respondent is a private domestic corporation organized and existing under Philippine laws.

On 27 December 1999, petitioners filed an amended complaint with application for preliminary attachment against respondent, seeking to recover the amount of US$343,741.52 or its equivalent in Philippine currency. The amount represented the alleged remaining balance on the total purchase price of US$543,699.52 for the mixed species of PNG logs which petitioners sold and exported to respondent sometime in July 1998.

The pertinent allegations in petitioners' amended complaint "Plaintiffs RIMBUNAN HIJAU GROUP OF COMPANIES ("Rimbunan") and NIUGINI LUMBER MERCHANTS, PTY. LTD., ("Niugini") are nonresident foreign corporations, not doing business in the Philippines**,** duly organized and existing under and by virtue of the laws of Papua New Guinea ("PNG") with principal office at Port Moresby, Papua New Guinea. Niugini is a subsidiary of plaintiff Rimbunan and has the same set of directors and officers as the latter. In Papua New Guinea, they are engaged in the business of extraction and exportation of PNG round logs.

On 21 March 2000, respondent filed a *Motion to Dismiss* on the grounds that petitioners have no legal capacity to sue in this jurisdiction and that Niugini has no legal personality to sue. Respondent claimed in its motion that Rimbunan had been doing business in the Philippines without a license from 1996 to 1998. Within that two-year period, Rimbunan was alleged to have made no less than fourteen (14) transactions with respondent involving about 57,351.52 cubic meters of round logs with an estimated total value of US$4,000,000.00. Said transactions, according to respondent, clearly constituted a continuity of commercial dealings in the progressive prosecution of the purpose and object of Rimbunan's organization.

ISSUE

Whether or not the petitioners have the capacity to sue.

RULING

YES, the petitioners have the capacity to sue.

An unlicensed foreign corporation is nonetheless permitted to bring suit in the Philippines if it is suing on an isolated transaction. Thus, the ascertainment of whether a foreign corporation is merely suing on an isolated transaction or is actually doing business in the Philippines requires the elicitation of at least a preponderant set of facts. It simply cannot be answered through conjectures or acceptance of unsubstantiated allegations.

Even if the challenge to a foreign corporation-plaintiff's capacity to sue is raised in the preliminary stage that a motion to dismiss is, the demand for a clear factual finding to justify the dismissal cannot be dispensed with. Section 2, Rule 16 of the 1997 Rules of Civil Procedure allows not only a hearing on the motion to dismiss, but also for the parties to submit their evidence on the questions of fact involved. Evidently, the factual question of whether an unlicensed foreign corporation is indeed suing merely on an isolated transaction may be litigated extensively at the hearing or hearings on the motion to dismiss. The parties are allowed to submit their respective evidence, and even rebut the opposing parties' evidence.

The hearing should provide the parties the forum for full presentation of their sides. From the trial court's perspective, the extent of such hearing would depend on its satisfaction that the unlicensed foreign corporation's capacity to sue has been established or disestablished. What is essential is that if the trial court grants the motion to dismiss on this ground, the fact that the corporation is actually doing business in the Philippines or is not suing on an isolated transaction must be established by a preponderance of evidence, in accordance with Section 1, Rule 133. The standard of preponderance of evidence would apply in that instance since the order granting the motion to dismiss is a final order dispository of the case and also since the burden of proof to establish the ground for dismissal is on the defendant-movant.

What then constitutes "doing" or "transacting" business in the Philippines? . . . From the foregoing dissertations, we could readily infer that, indeed, [petitioners] are doing or transacting business in the Philippines without the appropriate license to do the same. The acts and transactions of [petitioners], which they, incidentally, never deny but even admitted, constitute not merely incidental or casual performance of business, but are of such character as distinctly to indicate a purpose on the part of (petitioners) to do business in the Philippines. There is no denying that the transactions they are engaged in constitute performance of acts for which [petitioners] were created or organized. Clearly therefore, [petitioners] cannot sue in our courts for lack of license.

Plainly, the Court of Appeals, in concluding that petitioners were doing business in the Philippines relied merely on respondent's say-so. This is evident as the following unsubstantiated averments comprise respondent's total basis for ascribing lack of capacity to sue to petitioners: (1) bare allegations that Rimbunan had engaged in fourteen (14) transactions with respondent and delivered logs with an estimated total value of US$4,000,000.00 to it from 1996 to 1998; (2) Rimbunan's failure to seriously dispute such allegations in the pleadings it subsequently filed; and (3) "information hereabouts that Rimbunan has had business transactions in the Philippines."

The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence. It cannot be used as basis for a court's decision. Absent evidence to prove respondent's allegations in the case at bar, this Court fails to see how the Court of Appeals could have concluded that petitioners were doing business in the Philippines.

After contracting with a foreign corporation, a domestic firm can no longer deny the former's capacity to sue. Estoppel is deeply rooted in the axiom of *commodum ex injuria sua non habere debet* no person ought to derive any advantage from his own wrong.

All things considered, respondent can no longer invoke petitioner's lack of capacity to sue in this jurisdiction. Considerations of fair play dictate that after having contracted and benefited from its business transaction with Rimbunan, respondent should be barred from questioning the latter's lack of license to transact business in the Philippines.

As a matter of principle, this Court will not step in to shield defaulting local companies from the repercussions of their business dealings. While the doctrine of lack of capacity to sue based on failure to first acquire a local license may be resorted to in meritorious cases, it is not a magic incantation. It cannot be called upon when no evidence exists to support its invocation or the facts do not warrant its application. In this case, that the respondent is estopped from challenging the petitioners' capacity to sue has been conclusively established, and the forthcoming trial before the lower court should weigh instead on the other defenses raised by the respondent.

- Aboitiz Shipping Corp. vs. Insurance Co. of North America, 561 SCRA 262 (2008)

ABOITIZ SHIPPING CORPORATION, petitioner, vs. INSURANCE COMPANY OF NORTH AMERICA, respondent.
G.R. No. 168402, THIRD DIVISION, August 6, 2008, REYES, R.T., *J.*:

A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits. It may, however, bring suits on isolated business transactions, which is not prohibited under Philippine law. Thus, the Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies *issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license per se, which bars a foreign corporation from access to our courts.*

FACTS

MSAS Cargo International Limited and/or Associated and/or Subsidiary Companies (MSAS) procured a marine insurance policy from respondent ICNA UK Limited of London. The insurance was for a transshipment of certain wooden work tools and workbenches purchased for the consignee Science Teaching Improvement Project (STIP), Ecotech Center, Sudlon Lahug, Cebu City, Philippines. ICNA issued an "all-risk" open marine policy, stating that "This Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure for MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies on behalf of the title holder: - Loss, if any, payable to the Assured or order.

The cargo, packed inside one container van, was shipped "freight prepaid" from Hamburg, Germany on board M/S Katsuragi. A clean bill of lading was issued by Hapag-Lloyd which stated the consignee to be STIP, Ecotech Center, Sudlon Lahug, Cebu City.

The container van was then off-loaded at Singapore and transshipped on board M/S Vigour Singapore. On July 18, 1993, the ship arrived and docked at the Manila International Container Port where the container van was again off-loaded. On July 26, 1993, the cargo was received by petitioner Aboitiz Shipping Corporation (Aboitiz) through its duly authorized booking representative, Aboitiz Transport System. The bill of lading issued by Aboitiz contained the notation "grounded outside warehouse."

The container van was stripped and transferred to another crate/container van without any notation on the condition of the cargo on the Stuffing/Stripping Report. On August 1, 1993, the container van was loaded on board petitioner's vessel, MV Super Concarrier I. The vessel left Manila *en route* to Cebu City on August 2, 1993.

On August 3, 1993, the shipment arrived in Cebu City and discharged onto a receiving apron of the Cebu International Port. It was then brought to the Cebu Bonded Warehousing Corporation pending clearance from the Customs authorities. In the Stripping Report, petitioner's checker noted that the crates were slightly broken or cracked at the bottom.

On August 11, 1993, the cargo was withdrawn by the representative of the consignee, Science Teaching Improvement Project (STIP) and delivered to Don Bosco Technical High School, Punta Princesa, Cebu City. It was received by Mr. Bernhard Willig. On August 13, 1993, Mayo B. Perez, then Claims Head of petitioner, received a telephone call from Willig informing him that the cargo sustained water damage. Perez, upon receiving the call, immediately went to the bonded warehouse and checked the condition of the container and other cargoes stuffed in the same container. He found that the container van and other cargoes stuffed there were completely dry and showed no sign of wetness.

Perez found that except for the bottom of the crate which was slightly broken, the crate itself appeared to be completely dry and had no water marks. But he confirmed that the tools which were stored inside the crate were already corroded. He further explained that the "grounded outside warehouse" notation in the bill of lading referred only to the container van bearing the cargo.

Thereafter, Willig informed Aboitiz of the damage noticed upon opening of the cargo. The letter stated that the crate was broken at its bottom part such that the contents were exposed. The work tools and workbenches were found to have been completely soaked in water with most of the packing cartons already disintegrating. The crate was properly sealed off from the inside with tarpaper sheets. On the outside, galvanized metal bands were nailed onto all the edges. The letter concluded that apparently, the damage was caused by water entering through the broken parts of the crate.

The consignee contacted the Philippine office of ICNA for insurance claims. The Claimsmen Adjustment Corporation (CAC) conducted an ocular inspection and survey of the damage. CAC reported to ICNA that the goods sustained water damage, molds, and corrosion which were discovered upon delivery to consignee.

On September 21, 1993, the consignee filed a formal claim with Aboitiz in the amount of ₱276,540.00 for the damaged condition of the the goods.

Aboitiz refused to settle the claim. On October 4, 1993, ICNA paid the amount of ₱280,176.92 to consignee. A subrogation receipt was duly signed by Willig. ICNA formally advised Aboitiz of the claim and subrogation receipt executed in its favor. Despite follow-ups, however, no reply was received from Aboitiz.

ISSUE

Is respondent ICNA the real party-in-interest that possesses the right of subrogation to claim reimbursement from petitioner Aboitiz?

RULING:

YES, ICNA the real party-in-interest that possesses the right of subrogation to claim reimbursement from petitioner Aboitiz.

A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits. It may, however, bring suits on isolated business transactions, which is not prohibited under Philippine law. Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license per se, which bars a foreign corporation from access to our courts.

In any case, the Court upholds the CA observation that while it was the ICNA UK Limited which issued the subject marine policy, the present suit was filed by the said company's authorized agent in Manila. It was the domestic corporation that brought the suit and not the foreign company. Its authority is expressly provided for in the open policy which includes the ICNA office in the Philippines as one of the foreign company's agents.

The terms of the Open Policy authorize the filing of any claim on the insured goods, to be brought against ICNA UK, the company who issued the insurance, or against any of its listed agents worldwide. MSAS accepted said provision when it signed and accepted the policy. The acceptance operated as an acceptance of the authority of the agents. Hence, a formal indorsement of the policy to the agent in the Philippines was unnecessary for the latter to exercise the rights of the insurer.

The policy benefits any subsequent assignee, or holder, including the consignee, who may file claims on behalf of the assured. This is in keeping with Section 57 of the Insurance Code which states: A policy may be so framed that it *will inure to the benefit of whosoever*, during the continuance of the risk, *may become the owner of the interest insured*.

Respondent's cause of action is founded on it being subrogated to the rights of the consignee of the damaged shipment. The right of subrogation springs from Article 2207 of the Civil Code, which states:

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

As held in the case of *Pan Malayan Insurance Corporation v. Court of Appeals*, payment by the insurer to the assured operates as an equitable assignment of all remedies the assured may have against the third party who caused the damage. Subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.

Upon payment to the consignee of indemnity for damage to the insured goods, ICNA's entitlement to subrogation equipped it with a cause of action against petitioner in case of a contractual breach or negligence. This right of subrogation, however, has its limitations. First, both the insurer and the consignee are bound by the contractual stipulations under the bill of lading. Second, the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. If by its own acts after receiving payment from the insurer, the insured releases the wrongdoer who caused the loss from liability, the insurer loses its claim against the latter.

- Cargill, Inc., vs. Intra Strata Assurance Corporation, G.R. No. 168266, March 15, 2010

CARGILL, INC., Petitioner, vs. INTRA STRATA ASSURANCE CORPORATION, Respondent.
G.R. No. 168266, SECOND DIVISION, March 15, 2010, CARPIO, *J.*

In the present case, petitioner is a foreign company merely importing molasses from a Philipine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

FACTS

Petitioner Cargill, Inc. (petitioner) is a corporation organized and existing under the laws of the State of Delaware, United States of America. Petitioner and Northern Mindanao Corporation (NMC) executed a contract whereby NMC agreed to sell to petitioner 20,000 to 24,000 metric tons of molasses, to be delivered from 1 January to 30 June 1990 at the price of $44 per metric ton. The contract provides that petitioner would open a Letter of Credit with the Bank of Philippine Islands. Under the "red clause" of the Letter of Credit, NMC was permitted to draw up to $500,000 representing the minimum price of the contract upon presentation of some documents.

The contract was amended three times: first, increasing the purchase price of the molasses to $47.50 per metric ton; second, reducing the quantity of the molasses to 10,500 metric tons and increasing the price to $55 per metric ton; and third, providing for the shipment of 5,250 metric tons of molasses on the last half of December 1990 through the first half of January 1991, and the balance of 5,250 metric tons on the last half of January 1991 through the first half of February 1991. The third amendment also required NMC to put up a performance bond equivalent to $451,500, which represents the value of 10,500 metric tons of molasses computed at $43 per metric ton. The performance bond was intended to guarantee NMC's performance to deliver the molasses during the prescribed shipment periods according to the terms of the amended contract.

In compliance with the terms of the third amendment of the contract, respondent Intra Strata Assurance Corporation (respondent) issued a performance bond in the sum of ₱11,287,500 to guarantee NMC's delivery of the 10,500 tons of molasses, and a surety bond in the sum of ₱9,978,125 to guarantee the repayment of downpayment as provided in the contract.

NMC was only able to deliver 219.551 metric tons of molasses out of the agreed 10,500 metric tons. Thus, petitioner sent demand letters to respondent claiming payment under the performance and surety bonds. When respondent refused to pay, petitioner filed a complaint for sum of money against NMC and respondent.

Petitioner, NMC, and respondent entered into a compromise agreement, which the trial court approved. The compromise agreement provides that NMC would pay petitioner ₱3,000,000 upon signing of the compromise agreement and would deliver to petitioner 6,991 metric tons of molasses from 16-31 December 1991. However, NMC still failed to comply with its obligation under the compromise agreement. Hence, trial proceeded against respondent.

ISSUE

Whether petitioner has legal capacity to sue despite not doing or transacting business in the Philippines.

RULING

YES, petitioner has legal capacity to sue despite not doing or transacting business in the Philippines.

Under Article 123 of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code.

Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, the Court finds that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case. In the case of *Antam Consolidated, Inc. v. CA*, in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized the importance of the element of continuity of commercial activities to constitute doing business in the Philippines. The Court held that. x x x In the case at bar, the transactions entered into by the respondent with the petitioners are not a series of commercial dealings which signify an intent on the part of the respondent to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The records show that the only reason why the respondent entered into the second and third transactions with the petitioners was because it wanted to recover the loss it sustained from the failure of the petitioners to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation. The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines. x x x

Similarly, in this case, petitioner and NMC amended their contract three times to give a chance to NMC to deliver to petitioner the molasses, considering that NMC already received the minimum price of the contract. There is no showing that the transactions between petitioner and NMC signify the intent of petitioner to establish a continuous business or extend its operations in the Philippines.

In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC, the domestic corporation, which derived income from the transaction and not petitioner. To constitute "doing business," the activity undertaken in the Philippines should involve profit-making. Besides, under Section 3(d) of RA 7042, "soliciting purchases" has been deleted from the enumeration of acts or activities which constitute "doing business."

Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner.

In the present case, petitioner is a foreign company merely importing molasses from a Philipine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

Nonetheless, the petitioner has locus standi grounded upon the case of B. Van Zuiden Bros., Ltd., vs. GTVL Manufacturing Industries, Inc., to wit: An exporter in one country may export its products to many foreign importing countries without performing in the importing countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not acquire jurisdiction over the foreign exporter who has not performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.

Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have a deleterious effect not only on Philippine exports, but also on global trade.

- Hutchison Ports Philippines Limited vs. Subic Bay Metropolitan Authority, International Container Terminal Services Inc., Royal Port Services, Inc., and the Executive Secretary, G.R. No. 131367, August 31, 2000

HUTCHISON PORTS PHILIPPINES LIMITED, petitioner, vs.
SUBIC BAY METROPOLITAN AUTHORITY, INTERNATIONAL CONTAINER TERMINAL SERVICES INC., ROYAL PORT SERVICES INC. and the EXECUTIVE SECRETARY, respondents.
G.R. No. 131367, FIRST DIVISION, August 31, 2000, YNARES-SANTIAGO, *J.:*

Participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation's reason for creation or existence. Thus, it has been held that "a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required."

FACTS

Subic Bay Metropolitan Authority (or SBMA) advertised in leading national daily newspapers and in one international publication, an invitation offering to the private sector the opportunity to develop and operate a modern marine container terminal within the Subic Bay Freeport Zone.

Out of seven bidders who responded to the published invitation, three were declared by the SBMA as qualified bidders after passing the pre-qualification evaluation conducted by the SBMA's Technical Evaluation Committee (or SBMA-TEC). These are: (1) International Container Terminal Services, Inc. (or ICTSI); (2) a consortium consisting of Royal Port Services, Inc. and HPC Hamburg Port Consulting GMBH (or RPSI); and (3) Hutchison Ports Philippines Limited (or HPPL), representing a consortium composed of HPPL, Guoco Holdings (Phils.), Inc. and Unicol Management Services, Inc. All three qualified bidders were required to submit their respective formal bid package on or before July 1, 1996 by the SBMA's Pre-qualification, Bids and Awards Committee (or SBMA-PBAC).

Thereafter, the services of three (3) international consultants recommended by the World Bank for their expertise were hired by SBMA to evaluate the business plans submitted by each of the bidders, and to ensure that there would be a transparent and comprehensive review of the submitted bids. All the consultants, after such review and evaluation unanimously concluded that HPPL's Business Plan was "far superior to that of the two other bidders."

SBMA, through the unanimous vote of all the Board Members, excluding the Chairman of the Board who voluntarily inhibited himself from participating in the re-evaluation, selected the HPPL bid as the winning bid, being: the conforming bid with a realistic Business Plan offering the greatest financial return to the SBMA; the best possible offer in the market, and the most advantageous to the government in accordance with the Tender Document.

Notwithstanding the SBMA Board's recommendations and action awarding the project to HPPL, then Executive Secretary Ruben Torres submitted a memorandum to the Office of the President recommending that another rebidding be conducted. Consequently, the Office of the President issued a Memorandum directing the SBMA Board of Directors to refrain from signing the Concession Contract with HPPL and to conduct a rebidding of the project.
HPPL, feeling aggrieved by the SBMA's failure and refusal to commence negotiations and to execute the Concession Agreement despite its earlier pronouncements that HPPL was the winning bidder, filed a complaint against SBMA before the Regional Trial Court for specific performance, mandatory injunction and damages.

While the case before the trial court was pending litigation, on August 4, 1997, the SBMA sent notices to plaintiff HPPL, ICTSI and RPSI requesting them to declare their interest in participating in a rebidding of the proposed project.

In order to enjoin the rebidding while the case was still pending, plaintiff HPPL filed a motion for maintenance of the status quo . The said motion was denied by the court a quo. There being no clear and unmistakable right on the part of petitioner HPPL, the rebidding of the proposed project can no longer be enjoined as there is no material and substantial invasion to speak of. Thus, there is no longer any urgent or permanent necessity for the writ to prevent any perceived serious damage. In fine, since the requisites for the issuance of the writ of injunction are not present in the instant case, petitioner's application must be denied for lack of merit.

Admittedly, petitioner HPPL is a foreign corporation, organized and existing under the laws of the British Virgin Islands. While the actual bidder was a consortium composed of petitioner, and two other corporations, namely, Guoco Holdings (Phils.) Inc. and Unicol Management Servises, Inc., it is only petitioner HPPL that has brought the controversy before the Court, arguing that it is suing only on an isolated transaction to evade the legal requirement that foreign corporations must be licensed to do business in the Philippines to be able to file and prosecute an action before Philippines courts.

ISSUE

Whether participating in the bidding is a mere isolated transaction, or did it constitute "engaging in" or "transacting" business in the Philippines such that petitioner HPPL needed a license to do business in the Philippines before it could come to court.

RULING

There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, it has often been held that a single act or transaction may be considered as "doing business" when a corporation performs acts for which it was created or exercises some of the functions for which it was organized. The amount or volume of the business is of no moment, for even a singular act cannot be merely incidental or casual if it indicates the foreign corporation's intention to do business.

Participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation's reason for creation or existence. Thus, it has been held that "a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required."

In this regard, it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether a foreign corporation needs a license or not. The primary purpose of the license requirement is to compel a foreign corporation desiring to do business within the Philippines to submit itself to the jurisdiction of the courts of the state and to enable the government to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates a business in the Philippines without a license, and thus does not submit itself to Philippine laws, it is only just that said foreign corporation be not allowed to invoke them in our courts when the need arises.

"While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar."

The requirement of a license is not intended to put foreign corporations at a disadvantage, for the doctrine of lack of capacity to sue is based on considerations of sound public policy. Accordingly, petitioner HPPL must be held to be incapacitated to bring this petition for injunction before this Court for it is a foreign corporation doing business in the Philippines without the requisite license.

- The Home Insurance Company vs. Eastern Shipping Lines, G.R. No. L-34382 July 20, 1983

THE HOME INSURANCE COMPANY, petitioner, vs. EASTERN SHIPPING LINES and/or ANGEL JOSE TRANSPORTATION, INC. and HON. A. MELENCIO-HERRERA, Presiding Judge of the Manila Court of First Instance, Branch XVII, respondents.
G.R. No. L-34383, G.R. No. L-34382, FIRST DIVISION, July 20, 1983, GUTIERREZ, JR., *J.:*

The old Section 69 has been reworded in terms of non-access to courts and administrative agencies in order to maintain or intervene in any action or proceeding. The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code. It is, therefore, not necessary to declare the contract null and void even as against the erring foreign corporation. The penal *sanction for the violation and the denial of access to our courts and administrative bodies are sufficient from the viewpoint of legislative policy.*

FACTS

On or about 13 January 1967, S. Kajita & Co., on behalf of Atlas Consolidated Mining & Development Corporation, shipped on board the SS Eastern Jupiter from Osaka, Japan, 2,361 coils of Black Hot Rolled Copper Wire Rods. The said VESSEL is owned and operated by Eastern Shipping Lines. The shipment was covered by Bill of Lading O-MA-9, with arrival notice to Phelps Dodge Copper Products Corporation of the Philippines at Manila. The shipment was insured with the Home Insurance Company against all risks in the amount of P1,580,105.06 under its Insurance Policy AS-73633. The coils discharged from the VESSEL numbered 2,361, of which 53 were in bad order.

What the Phelps Dodge ultimately received at its warehouse was the same number of 2,361 coils, with 73 coils loose and partly cut, and 28 coils entangled, partly cut, and which had to be considered as scrap. Upon weighing at Phelps Dodge's warehouse, the 2,361 coils were found to weight 263,940.85 kilos as against its invoiced weight of 264,534.00 kilos or a net loss/shortage of 593.15 kilos, or 1,209,56 lbs., according to the claims presented by the Phelps Dodge against Home Insurance, the Eastern Shipping, and Angel Jose Transportation Inc. For the loss/damage suffered by the cargo, Home Insurance paid the Phelps Dodge under its insurance policy the amount of P3,260.44, by virtue of which Home Insurance became subrogated to the rights and actions of the Phelps Dodge. Home Insurance made demands for payment against the Eastern Shipping and the Angel Jose Transportation for reimbursement of the aforesaid amount but each refused to pay the same."

On or about 22 December 1966, the Hansa Transport Kontor shipped from Bremen, Germany, 30 packages of Service Parts of Farm Equipment and Implements on board the VESSEL, SS 'NEDER RIJN' owned by N. V. Nedlloyd Lijnen, and represented in the Philippines by its local agent, the Columbian Philippines, Inc.. The shipment was covered by Bill of Lading No. 22 for transportation to, and delivery at, Manila, in favor of International Harvester Macleod, Inc. The shipment was insured with Home Insurance company under its Cargo Policy AS-73735 'with average terms' for P98,567.79. The packages discharged from the VESSEL numbered 29, of which seven packages were found to be in bad order. What International Harvester ultimately received at its warehouse was the same number of 29 packages with 9 packages in bad order. Out of these 9 packages, 1 package was accepted by International Harvester in good order due to the negligible damages sustained.

Upon inspection at International Harvester's warehouse, the contents of 3 out of the 8 cases were also found to be complete and intact, leaving 5 cases in bad order. The contents of these 5 packages showed several items missing in the total amount of $131.14; while the contents of the undelivered 1 package were valued at $394.66, or a total of $525.80 or P2,426.98. For the short- delivery of 1 package and the missing items in 5 other packages, Home Insurance paid International Harvester under its Insurance Cargo Policy the amount of P2,426.98, by virtue of which Home Insurance became subrogated to the rights and actions of International Harvester. Demands were made on N.V. Nedlloyd Lijnen and International Harvester for reimbursement thereof but they failed and refused to pay the same."

When the insurance contracts which formed the basis of these cases were executed, Home Insurance had not yet secured the necessary licenses and authority; but when the complaints in these two cases were filed, Home Insurance had already secured the necessary license to conduct its insurance business in the Philippines. In both cases, Home Insurance made the averment regarding its capacity to sue, as that it "is a foreign insurance company duly authorized to do business in the Philippines through its agent, Mr. Victor H. Bello, of legal age and with office address at Oledan Building, Ayala Avenue, Makati, Rizal." The Court of First Instance of Manila, Branch XVII, however, dismissed the complaints in both cases, on the ground that Home Insurance had failed to prove its capacity to sue. Home Insurance filed the petitions for review on certiorari, which were consolidated.

ISSUE

Whether or not the Honorable Trial Court erred in dismissing the complaint on the finding that petitioner has no capacity to sue.

RULING

YES. When the complaints in these two cases were filed, the petitioner had already secured the necessary license to conduct its insurance business in the Philippines. It could already file suits. Petitioner was, therefore, telling the truth when it averred in its complaints that it was a foreign insurance company duly authorized to do business in the Philippines through its agent Mr. Victor H. Bello. However, when the insurance contracts which formed the basis of these cases were executed, the petitioner had not yet secured the necessary licenses and authority. The lower court, therefore, declared that pursuant to the basic public policy reflected in the Corporation Law, the insurance contracts executed before a license was secured must be held null and void. The court ruled that the contracts could not be validated by the subsequent procurement of the license.

The Corporation Law is silent on whether or not the contract executed by a foreign corporation with no capacity to sue is null and void ab initio. Significantly, Batas Pambansa Blg. 68, the Corporation Code of the Philippines has corrected the ambiguity caused by the wording of Section 69 of the old Corporation Law.

The old Section 69 has been reworded in terms of non-access to courts and administrative agencies in order to maintain or intervene in any action or proceeding. The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code. It is, therefore, not necessary to declare the contract null and void even as against the erring foreign corporation. The penal sanction for the violation and the denial of access to our courts and administrative bodies are sufficient from the viewpoint of legislative policy.

- Steelcase, Inc. vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

Steelcase, Inc. v. Design International Selections, Inc.
G.R. No. 171995, April 18, 2012, Mendoza, J.

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation.

FACTS

Petitioner Steelcase, Inc. (Steelcase) is a foreign corporation existing under the laws of Michigan, United States of America (U.S.A.), and engaged in the manufacture of office furniture with dealers worldwide. Respondent Design International Selections, Inc. (DISI) is a corporation existing under Philippine Laws and engaged in the furniture business, including the distribution of furniture.

Sometime in 1986 or 1987, Steelcase and DISI orally entered into a dealership agreement whereby Steelcase granted DISI the right to market, sell, distribute, install, and service its products to end-user customers within the Philippines. The business relationship continued smoothly until it was terminated sometime in January 1999 after the agreement was breached with neither party admitting any fault.

Steelcase filed a complaint for sum of money against DISI alleging, among others, that DISI had an unpaid account of US$600,000.00. Steelcase prayed that DISI be ordered to pay actual or compensatory damages, exemplary damages, attorney's fees, and costs of suit. In its Answer with Compulsory Counterclaims, DISI alleged that Steelcase has no legal capacity to sue as it is doing business in the Philippines without the required license.

The RTC dismissed the complained filed by Steelcase and granted the TRO prayed for by DISI. Steelcase moved for reconsideration but the same was denied. The case was appealed to the CA. The latter ruled that Steelcase is doing business in the Philippines without the required license. The CA stated that the following acts of Steelcase showed its intention to pursue and continue the conduct of its business in the Philippines: (1) sending a letter to Phinma, informing the latter that the distribution rights for its products would be established in the near future and directing other questions about orders for Steelcase products to Steelcase International; (2) cancelling orders from DISI's customers, particularly Visteon, Phils., Inc. (Visteon); (3) continuing to send its products to the Philippines through Modernform Group Company Limited (Modernform), as evidenced by an Ocean Bill of Lading; and (4) going beyond the mere appointment of DISI as a dealer by making several impositions on management and operations of DISI. Thus, the CA ruled that Steelcase was barred from access to our courts for being a foreign corporation doing business here without the requisite license to do so.

ISSUE

Whether Steelcase is a foreign corporation doing business in the Philippines without a license.

RULING: No.

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.

In the case at bench, it is undisputed that DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug. In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings.

b. Necessity of a License to Do Business

- Antam Consolidated, Inc. vs. Court of Appeals, 143 SCRA 534 (1986)

ANTAM CONSOLIDATED, INC., TAMBUNTING TRADING CORPORATION and AURORA CONSOLIDATED SECURITIES and INVESTMENT CORPORATION, petitioners, vs. THE COURT OF APPEALS, THE HONORABLE MAXIMIANO C. ASUNCION (Court of First Instance of Laguna, Branch II [Sta. Cruz]) and STOKELY VAN CAMP, INC., respondents.
G.R. No. L-61523, SECOND DIVISION, July 31, 1986, GUTIERREZ, JR., *J.:*

Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes 'doing' or 'engaging in' or 'transacting' business in the Philippines.

FACTS

Respondent Stokely Van Camp. Inc. filed a complaint against petitioners for collection of sum of money. In its complaint, Stokely alleged that it is a corporation organized and existing under the laws of the state of Indiana, USA and one of its subdivisions "Capital City Product Company" (Capital City) has its office in Columbus, Ohio, U.S.A; that Stokely and Capital City is not engaged in business in the Philippines prior to the commencement of the suit so that Stokely is not licensed to do business in this country and is not required to secure such license.

Capital City and Coconut Oil Manufacturing Phil. Inc. (Comphil) with the latter acting through its broker Roths child Brokerage Company, entered into a contract wherein Comphil undertook to sell and deliver and Capital City agreed to buy 500 long tons of crude coconut oil. However, Comphil failed to deliver the coconut oil. They again entered into two other contracts to allow Comphil to make good on their obligation but Comphil failed to comply again.

ISSUE

Whether Stokely Van Camp, Inc. has the capacity to sue, in light of three transactions it entered into with Comphil, Antam, etc. without license.

RULING

YES. Stokely Van Camp, Inc. has the capacity to sue, in light of three transactions it entered into with Comphil, Antam, etc. without license.

The transactions entered into by Stokely with Comphil, Antam, et al. are not a series of commercial dealings which signify an intent on the part of Stokely to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The only reason why Stokely entered into the second and third transactions with Comphil, Antam, et al. was because it wanted to recover the loss it sustained from the failure of Comphil, Antam, et al. to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation.

Instead of making an outright demand on Comphil, Antam, et al., Stokely opted to try to push through with the transaction to recover the amount of US$103,600.00 it lost. This explains why in the second transaction, Comphil, Antam, et al. were supposed to buy back the crude coconut oil they should have delivered to the respondent in an amount which will earn the latter a profit of US$103,600.00. When this failed the third transaction was entered into by the parties whereby Comphil, Antam, et al. were supposed to sell crude coconut oil to the respondent at a discounted rate, the total amount of such discount being US$103,600.00.

Unfortunately, Comphil, Antam, et al. failed to deliver again, prompting Stokely to file the suit below. From these facts alone, it can be deduced that in reality, there was only one agreement between Comphil, Antam, et al. and Stokely and that was the delivery by the former of 500 long tons of crude coconut oil to the latter, who in turn, must pay the corresponding price for the same.

The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of Stokely to engage in a continuity of transactions with Comphil, Antam, et al. which will categorize it as a foreign corporation doing business in the Philippines. Stokely, being a foreign corporation not doing business in the Philippines, does not need to obtain a license to do business in order to have the capacity to sue.

c. Personality to Sue

- Bulakhidas vs. Navarro, 142 SCRA 1 (1986)

HATHIBHAI BULAKHIDAS, petitioner, vs. THE HONORABLE PEDRO L. NAVARRO, as Presiding Judge of the Court of First Instance of Rizal, Seventh Judicial District, Pasig, Metro Manila, Branch 11 and DIAMOND SHIPPING CORPORATION, respondent.
G.R. No. L-49695, FIRST DIVISION, April 7, 1986, PATAJO, *J.*

The object of Sections 68 and 69 of the Corporation law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts.

FACTS

Petitioner, a foreign partnership, filed a complaint against a domestic corporation, Diamond Shipping Corporation, before the Court of First Instance of Rizal for the recovery of damages allegedly caused by the failure of the said shipping corporation to deliver the goods shipped to it by petitioner to their proper destination. Paragraph 1 of said complaint alleged that plaintiff is "a foreign partnership firm not doing business in the Philippines" and that it is "suing under an isolated transaction." Defendant filed a motion to dismiss the complaint on the ground that plaintiff has no capacity to sue and that the complaint does not state a valid cause of action against defendant.

Acting on said motion to dismiss, the Court of First Instance dismissed the complaint on the ground that plaintiff being "a foreign corporation or partnership not doing business in the Philippines it cannot exercise the right to maintain suits before our Courts."

ISSUE

Whether or not a foreign corporation not engaged in business in the Philippines can institute an action before our courts.

RULING

YES, a foreign corporation, although not engaged in business in the Philippines, can institute an action before our courts.
Aetna Casualty and Surety Co. vs. Pacific Star Lines, 80 SCRA 635, is a case similar to the present one in that the action is also one for recovery of damages sustained by cargo shipped on defendants' vessels. Defendants set up the defense that plaintiff is a foreign corporation not duly licensed to do business in the Philippines and, therefore, without capacity to sue and be sued. In overruling said defense, this Court said: It is settled that if a foreign corporation is not engaged in business in the Philippines, it may not be denied the right to file an action in Philippine courts for isolated transactions.

The object of Sections 68 and 69 of the Corporation law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts.

In *Mentholatum Co. Inc. et al. vs. Mangaliman, et al.,* the Court ruled that: No general rule or governing principle can be laid down as to what constitutes 'doing' or 'engaging' in or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.

And in *Eastboard Navigation, Ltd. et al vs. Juan Ysmael & Co., Inc.,* the Court held that: (d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts.

- Converse Rubber Corporation vs. Universal Rubber Products Inc., 147 SCRA 154 (1987)

CONVERSE RUBBER CORPORATION, petitioner, vs. UNIVERSAL RUBBER PRODUCTS, INC. and TIBURCIO S. EVALLE, DIRECTOR OF PATENTS, respondents.

G.R. No. L-27906, SECOND DIVISION, January 8, 1987, FERNAN, J.:

A foreign corporation which has never done any business in the Philippines and which is unlicensed and unregistered to do business here, but is widely and favorably known in the Philippines through the use therein of its products bearing its corporate and tradename, has a legal right to maintain an action in the Philippines to restrain the residents and inhabitants thereof from organizing a corporation therein bearing the same name as the foreign corporation, when it appears that they have personal knowledge of the existence of such a foreign corporation, and it is apparent that the purpose of the proposed domestic corporation is to deal and trade in the same goods as those of the foreign corporation.

FACTS

Respondent Universal Rubber Products, Inc. filed an application with the Philippine Patent office for registration of the trademark "UNIVERSAL CONVERSE AND DEVICE" used on rubber shoes and rubber slippers.

Petitioner Converse Rubber Corporation filed its opposition to the application for registration on grounds that: a] The trademark sought to be registered is confusingly similar to the word "CONVERSE" which is part of petitioner's corporate name "CONVERSE RUBBER CORPORATION" as to likely deceive purchasers of products on which it is to be used to an extent that said products may be mistaken by the unwary public to be manufactured by the petitioner; and, b] The registration of respondent's trademark will cause great and irreparable injury to the business reputation and goodwill of petitioner in the Philippines and would cause damage to said petitioner within the, meaning of Section 8, R.A. No. 166, as amended.

Thereafter, respondent filed its answer and at the pre-trial, the parties submitted the following partial stipulation of facts: xxx 2] Petitioner is not licensed to do business in the Philippines and it is not doing business on its own in the Philippines; xxx

It is unfortunate that respondent Director of Patents has concluded that since the petitioner is not licensed to do business in the country and is actually not doing business on its own in the Philippines, it has no name to protect in the forum and thus, it is futile for it to establish that "CONVERSE" as part of its corporate name identifies its rubber shoes. That a foreign corporation has a right to maintain an action in the forum even if it is not licensed to do business and is not actually doing business on its own therein has been enunciated many times by this Court.

ISSUE

Whether or not the petitioner has the legal capacity to sue despite not licensed to do business in the Philippines.

RULING:

YES, petitioner has the legal capacity to sue despite not licensed to do business in the Philippines.

In *La Chemise Lacoste, S.A. vs. Fernandez,* 129 SCRA 373, reiterating *Western Equipment and Supply Co. vs. Reyes,* 51 Phil. 115, stated that: ... a foreign corporation which has never done any business in the Philippines and which is unlicensed and unregistered to do business here, but is widely and

favorably known in the Philippines through the use therein of its products bearing its corporate and tradename, has a legal right to maintain an action in the Philippines to restrain the residents and inhabitants thereof from organizing a corporation therein bearing the same name as the foreign corporation, when it appears that they have personal knowledge of the existence of such a foreign corporation, and it is apparent that the purpose of the proposed domestic corporation is to deal and trade in the same goods as those of the foreign corporation.
The Court further held that company is not here seeking to enforce any legal or control rights arising from or growing out of, any business which it has transacted in the Philippine Islands. The sole purpose of the action is to protect its reputation, its corporate name, its goodwill whenever that reputation, corporate name or goodwill have, through the natural development of its trade, established themselves.' And it contends that its rights to the use of its corporate and trade name; Is a property right, a right in recess which it may assert and protect against all the world, in any of the courts of the world even in jurisdictions where it does not transact business-just the same as it may protect its tangible property, real or personal against trespass, or conversion.

That point is sustained by the authorities, and is well stated in *Hanover Star Milling Co. vs. Allen and Wheeler Co*. [208 Fed., 5131, in which the syllabus says: Since it is the trade and not the mark that is to be protected, a trademark acknowledges no territorial boundaries of municipalities or states or nations, but extends to every market where the trader's goods have become known and identified by the use of the mark.

The ruling in the aforecited case is in consonance with the Convention of the Union of Paris for the Protection of Industrial Property to which the Philippines became a party on September 27, 1965. Article 8 thereof provides that "a trade name [corporate name] shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of the trademark."

The object of the Convention is to accord a national of a member nation extensive protection "against infringement and other types of unfair competition"

The mandate of the aforementioned Convention finds implementation in Sec. 37 of RA No. 166, otherwise known as the Trademark Law:

Sec. 37. Rights of Foreign Registrants-Persons who are nationals of, domiciled or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to an international convention or treaty relating to marks or tradenames on the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act . . .

Tradenames of persons described in the first paragraph of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

- Top-Weld Manufacturing, Inc. vs. Eced, S.A., 138 SCRA 118. See also Granger Associates vs. Microwave Systems, Inc., 189 SCRA 631 (1990)

TOP-WELD MANUFACTURING, INC., petitioner, vs. ECED, S.A., IRTI, S.A., EUTECTIC CORPORATION, VICTOR C. GAERLAN, and THE HON. COURT OF APPEALS, respondents. G.R. No. L-44944, FIRST DIVISION, August 9, 1985, GUTIERREZ, JR., *J.:*

As between the parties themselves, R.A. No. 5455 does not declare as void or invalid the contracts entered into without first securing a license or certificate to do business in the Philippines. Neither does it appear to intend to prevent the courts from enforcing contracts made in contravention of its licensing provisions. There is no denying, though, that an "illegal situation," as the appellate court has put it, was created when the parties voluntarily contracted without such license.

FACTS

Petitioner Top-weld Manufacturing, Inc. (Top-weld) is a Philippine corporation engaged in the business of manufacturing and selling welding supplies and equipment.

In pursuance of its business, the petitioner entered into separate contracts with two different foreign entities. One contract, entitled a "License And Technical Assistance Agreement" was entered into with IRTI, S.A., (IRTI), a corporation organized and existing under the laws of Switzerland with principal office at Fribourg, Switzerland. By virtue of this agreement, the petitioner was constituted a licensee of IRTI to manufacture welding products under certain specifications, with raw materials to be purchased by the former from suppliers designated by IRTI, for a period of three (3) years or up to January 1, 1975. This contract was later extended up to December 31, 1975 in a subsequent agreement.

The other contract was a "Distributor Agreement" entered into with ECED, S.A., (ECED), a company organized and existing under the laws of Panama with principal office at Apartado 1903, Panama I, City of Panama. Under this agreement, the petitioner was designated as ECED's distributor in the Philippines of certain welding products and equipment. By its terms, the contract was to remain effective until terminated by either party upon giving six (6) months or 180 days written notice to the other.

Upon learning that the two foreign entities were negotiating with another group to replace the petitioner as their licensee and distributor, the latter instituted a Civil Case against IRTI, ECED another corporation named EUTECTIC Corporation, organized under the laws of the State of New York, U.S.A., and an individual named Victor C. Gaerlan, a Filipino citizen alleged to be the representative and employee of these three corporations.

In its complaint, the petitioner sought the issuance of a writ of preliminary injunction to restrain the corporations from negotiating with third persons or from actually carrying out the transfer of its distributorship and franchising rights. It also asked the court to prohibit the defendants from terminating their contracts with the petitioner, and if said termination had already been accomplished, from putting into effect and carrying out the terms and the consequences of said termination until after good faith negotiations on existing contracts between them had been carried out and completed.

On June 17, 1975, the lower court issued a restraining order against the corporation pending the hearing on the issuance of a writ of preliminary injunction.

On September 3,1975, Top-weld filed an amended complaint together with a supplemental complaint which embodied a new application for a preliminary mandatory injunction to compel ECED to ship and deliver various items covered by the distributorship contract, and to prohibit the corporations

from importing into the Philippines directly or indirectly any EUTECTIC materials, supplies or equipment except to and/or through the petitioner.
Among others, the petitioner invoked the provisions of No. 9. Section 4 of Republic Act 5455 on alien firms doing business in the Philippines.

The respondent corporation further alleged that Section 4 (9) of R.A. No. 5455 cannot possibly apply to the instant case because:

a) With the violations of the contracts by the plaintiff and "other just causes" earlier mentioned, the defendants IRTI and ECED are fully justified in terminating them without being obliged to pay any compensation nor to reimburse plaintiff of investment or other expenses;
b) In fact, the defendants have sent written notices dated July 25, 1975 of the termination of their respective agreements with plaintiffs; and
c) Since no written certificate was applied for nor obtained by defendant entities from the Board of Investments, the latter cannot legally require of them compliance with No. 9, Section 4, R.A. No, 5455.

On October 9, 1975, the trial court issued an order granting the petitioner's application for preliminary injunction embodied in the amended complaint and its application for a writ of mandatory preliminary injunction embodied in the supplemental complaint,

ISSUE

Whether or not respondent corporations can be considered as "doing business" in the Philippines and, therefore, subject to the provisions of R.A. No. 5455.

RULING

YES, respondent corporations can be considered as "doing business" in the Philippines and, therefore, subject to the provisions of R.A. No. 5455.

There is no dispute that respondents are foreign corporations not licensed to do business in the Philippines. More important, however, there is no serious objection interposed by the respondents as to their amenability to the jurisdiction of our courts.

There is no general rule or governing principle laid down as to what constitutes "doing" or engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines and a foreign corporation which had been collecting premiums on outstanding policies were regarded as doing business here. The acts of these corporations should be distinguished from a single or isolated business transaction or occasional, incidental and casual transactions which do not come within the meaning of the law. Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.

In the *Mentholatum Co. v. Mangaliman* case earlier cited, this Court held: xxx ... The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.

Judged by the foregoing standards, the Court agrees with the CA in considering the respondents as "doing business" in the Philippines. When the respondents entered into the disputed contracts with the petitioner, they were carrying out the purposes for which they were created, i.e. to manufacture and market welding products and equipment. The terms and conditions of the contracts as well as the respondents' conduct indicate that they established within our country a continuous business, and not merely one of a temporary character. This fact is even more strengthened by the admission of the respondents that they are negotiating with another group for the transfer of the distributorship and franchising rights from the petitioner.

Respondents' acts enabled them to enter into the mainstream of our economic life in competition with our local business interests. This necessarily brings them under the provisions of R.A. No. 5455.

The respondents contend that they should be exempted from the requirements of R.A. 5455 because the petitioner maintained an independent status during the existence of the disputed contracts. This may be true if the petitioner is an independent entity which buys and distributes products not only of the petitioner but also of other manufacturers or transacts business in its name and for its account and not in the name or for the account of the foreign principal.

A perusal of the agreements between the petitioner and the respondents shows that they are highly restrictive in nature.

The Court can conclude that assuming the petitioner maintains an independent status, in essence it merely extends to the Philippines the business of the foreign corporations.

On the basis of the foregoing, the Court upholds the appellate court's finding that "IRTI AND ECED were doing business and engaging in economic activity in the Philippines ... as a prerequisite to which they should have first secured a written certificate from the Board of Investments."

The respondent court, however, erred in holding that "IRTI and ECED have not secured such written certificate in consequence of which there is no occasion for the Board of Investments to impose the requirements prescribed in the aforequoted provisions of Sec. 4, R.A. No. 5455 ... ." To accept this view would open the way for an interpretation that by doing business in the country without first securing the required written certificate from the Board of Investments, a foreign corporation may violate or disregard the safeguards which the law, by its provisions, seeks to establish.

The Court agrees, however, that there is a more compelling reason behind the finding that the "corporations are not bound by the requirement on termination, and TOP-WELD cannot invoke the same against the former."

As between the parties themselves, R.A. No. 5455 does not declare as void or invalid the contracts entered into without first securing a license or certificate to do business in the Philippines. Neither does it appear to intend to prevent the courts from enforcing contracts made in contravention of its licensing provisions. There is no denying, though, that an "illegal situation," as the appellate court has put it, was created when the parties voluntarily contracted without such license.

The parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative. Moreover, a person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary. In this case, the record shows that, at least, petitioner had actual knowledge of the applicability of R.A. No. 5455 at the time the contract was executed and at all times thereafter.

This conclusion is compelled by the fact that the same statute is now being propounded by the petitioner to bolster its claim. The Court, therefore, sustains the appellate court's view that "it was incumbent upon TOP-WELD to know whether or not IRTI and ECED were properly authorized to engage in business in the Philippines when they entered into the licensing and distributorship agreements." The very purpose of the law was circumvented and evaded when the petitioner entered into said agreements despite the prohibition of R.A. No. 5455. The parties in this case being equally guilty of violating R.A, No. 5455, they are in pari delicto, in which case it follows as a consequence that petitioner is not entitled to the relief prayed for in this case.

No remedy could be afforded to the parties because of their presumptive knowledge that the transaction was tainted with illegality. Equity cannot lend its aid to the enforcement of an alleged right claimed by virtue of an agreement entered into in contravention of law.

- MR Holdings, Ltd. vs. Sheriff Carlos P. Bajar, Sheriff Ferdinand M. Jandusay, Solidbank Corporation, and Marcopper Mining Corporation, G.R. No. 138104, April 11, 2002

MR HOLDINGS, LTD., petitioner, vs. SHERIFF CARLOS P. BAJAR, SHERIFF FERDINAND M. JANDUSAY, SOLIDBANK CORPORATION, AND MARCOPPER MINING CORPORATION, respondents.
G.R. No. 138104, THIRD DIVISION, April 11, 2002, SANDOVAL-GUTIERREZ, *J.:*

The principles governing a foreign corporation's right to sue in local courts have long been settled by our Corporation Law. These principles may be condensed in three statements, to wit: a) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; b) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; and c) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction.

FACTS

Asian Development Bank (ADB), agreed to extend to Marcopper Mining Corporation (Marcopper) a loan in the aggregate amount of US$40,000,000.00 to finance the latter's mining project. ADB and Placer Dome, Inc., (Placer Dome), a foreign corporation which owns 40% of Marcopper, agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB. To secure the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage" covering substantially all of its (Marcopper's) properties and assets.

When Marcopper defaulted in the payment of its loan obligation, Placer Dome, in fulfillment of its undertaking agreed to have its subsidiary corporation, petitioner MR Holding, Ltd., assumed

Marcopper's obligation to ADB in the amount of US$ 18,453,450.02. Consequently, ADB assigned to petitioner all its rights, interests and obligations under the principal and complementary loan agreements. Marcopper likewise executed a "Deed of Assignment" in favor of petitioner. Under its provisions, Marcopper assigns, transfers, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its (Marcopper's) properties, mining equipment and facilities.

Meanwhile, Solidbank Corporation (Solidbank) obtained a Partial Judgment against Marcopper. The RTC of Manila issued a writ of execution pending appeal directing Carlos P. Bajar, respondent sheriff, to require Marcopper "to pay the sums of money to satisfy the Partial Judgment." Thereafter, respondent Bajar issued two notices of levy on Marcopper's personal and real properties, and over all its stocks of scrap iron and unserviceable mining equipment. Together with sheriff Ferdinand M. Jandusay (also a respondent) of the RTC, Branch 94, Boac, Marinduque, respondent Bajar issued two notices setting the public auction sale of the levied properties on August 27, 1998 at the Marcopper mine site.

Petitioner served an "Affidavit of Third-Party Claim" upon respondent sheriffs, asserting its ownership over all Marcopper's mining properties, equipment and facilities by virtue of the "Deed of Assignment."

Upon the denial by the RTC of Manila, petitioner commenced a complaint for reivindication of properties, etc., with prayer for preliminary injunction and temporary restraining order against respondents Solidbank, Marcopper, and sheriffs Bajar and Jandusay.

The Judge denied petitioner's application for a writ of preliminary injunction on the ground that a) petitioner has no legal capacity to sue, it being a foreign corporation doing business in the Philippines without license b) the validity of the "Assignment Agreement" and the "Deed of Assignment" has been "put into serious question by the timing of their execution and registration." The CA held that, "While petitioner may just be an assignee to the Deeds of Assignment, it may still fall within the meaning of "doing business".

In its petition, petitioner alleges that it is not "doing business" in the Philippines and characterizes its participation in the assignment contracts (whereby Marcopper's assets where transferred to it) as mere isolated acts that cannot foreclose its right to sue in local courts.

In its comment, Solidbank avers that: a) petitioner is "doing business" in the Philippines and this is evidenced by the "huge investment" it poured into the assignment contracts; b) granting that petitioner is not doing business in the Philippines, the nature of its transaction reveals an "intention to do business" or "to begin a series of transaction" in the country; c) petitioner, Marcopper and Placer Dome are one and the same entity, petitioner being then a wholly-owned subsidiary of Placer Dome, which, in turn, owns 40% of Marcopper;

ISSUES

1) Whether or not petitioner is doing business in the Philippines?
2) Whether or not the Deed of Assignment between Marcopper and petitioner executed is in fraud of creditors?
3) Whether petitioner MR Holdings, Ltd., Placer Dome, and Marcopper one and the same entity?

RULING

1. No, the principles governing a foreign corporation's right to sue in local courts have long been settled by our Corporation Law. These principles may be condensed in three statements, to wit: a) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; b) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; and c) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction.

Apparently, it is not the absence of the prescribed license but the "doing (of) business" in the Philippines without such license which debars the foreign corporation from access to our courts.

The Corporation Code of the Philippines," is silent as to what constitutes doing" or "transacting" business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object for which the corporation was organized."The Court laid down the test to determine whether a foreign company is "doing business," thus: "xxx The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.

In the case at bar, the Court of Appeals categorized as "doing business" petitioner's participation under the "Assignment Agreement" and the "Deed of Assignment." This is simply untenable. The expression "doing business" should not be given such a strict and literal construction as to make it apply to any corporate dealing whatever. At this early stage and with petitioner's acts or transactions limited to the assignment contracts, it cannot be said that it had performed acts intended to continue the business for which it was organized. It may not be amiss to point out that the purpose or business for which petitioner was organized is not discernible in the records. No effort was exerted by the Court of Appeals to establish the nexus between petitioner's business and the acts supposed to constitute "doing business." Thus, whether the assignment contracts were incidental to petitioner's business or were continuation thereof is beyond determination.

One important point. Long before petitioner assumed Marcopper's debt to ADB and became their assignee under the two assignment contracts, there already existed a "Support and Standby Credit Agreement" between ADB and Placer Dome whereby the latter bound itself to provide cash flow support for Marcopper's payment of its obligations to ADB. Plainly, petitioner's payment of US$ 18,453,450.12 to ADB was more of a fulfillment of an obligation under the "Support and Standby Credit Agreement" rather than an investment

In the final analysis, the petitioner was engaged only in isolated acts or transactions. Single or isolated acts, contracts, or transactions of foreign corporations are not regarded as a doing or carrying on of business. Typical examples of these are the making of a single contract, sale, sale with the taking of a note and mortgage in the state to secure payment therefor, purchase, or note, or the mere commission of a tort. In these instances, there is no purpose to do any other business within the country.

2. No, All that is necessary is to establish affirmatively that the conveyance is made in good faith and for a sufficient and valuable consideration.

The facts of the case so far show that the assignment contracts were executed in good faith. The execution of the "Assignment Agreement" and the "Deed of Assignment" is not the alpha of this case. While the execution of these assignment contracts almost coincided with the rendition on May 7, 1997 of the Partial Judgment in Civil Case, however, there was no intention on the part of petitioner to defeat Solidbank's claim. It is said that the test as to whether or not a conveyance is fraudulent is -- does it prejudice the rights of creditors?

The Court cannot see how Solidbank's right was prejudiced by the assignment contracts considering that substantially all of Marcopper's properties were already covered by the registered "Deed of Real Estate and Chattel Mortgage" executed by Marcopper in favor of ADB as early as November 11, 1992. As such, Solidbank cannot assert a better right than ADB, the latter being a preferred creditor. It is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor. Considering that petitioner assumed Marcopper's debt to ADB, it follows that Solidbank's right as judgment creditor over the subject properties must give way to that of the former.

3. No, the record is lacking in circumstances that would suggest that petitioner corporation, Placer Dome and Marcopper are one and the same entity. While admittedly, petitioner is a wholly-owned subsidiary of Placer Dome, which in turn, which, in turn, was then a minority stockholder of Marcopper, however, the mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.

- Global Business Holdings, Inc., vs. Surecomp Software, B.V., G.R. No. 173463, October 13, 2010

GLOBAL BUSINESS HOLDINGS, INC. (formerly Global Business Bank, Inc.), Petitioner, vs. SURECOMP SOFTWARE, B.V., Respondent.
G.R. No. 173463, SECOND DIVISION, October 13, 2010, NACHURA, *J.:*

A foreign corporation doing business in the Philippines without license may sue in Philippine courts a Filipino citizen or a Philippine entity that had contracted with and benefited from it.

FACTS

Respondent Surecomp Software, B.V. (Surecomp), a foreign corporation duly organized and existing under the laws of the Netherlands, entered into a software license agreement with Asian Bank Corporation (ABC), a domestic corporation, for the use of its IMEX Software System (System) in the bank's computer system for a period of twenty (20) years.

ABC merged with petitioner Global Business Holdings, Inc. (Global), with Global as the surviving corporation. When Global took over the operations of ABC, it found the System unworkable for its operations, and informed Surecomp of its decision to discontinue with the agreement and to stop further payments thereon.

Consequently, for failure of Global to pay its obligations under the agreement despite demands, Surecomp filed a complaint for breach of contract with damages before the Regional Trial Court (RTC) of Makati.

In its complaint, Surecomp alleged that it is a foreign corporation not doing business in the Philippines and is suing on an isolated transaction. Instead of filing an answer, Global filed a motion to dismiss based on two grounds that Surecomp had no capacity to sue because it was doing business in the Philippines without a license.

On the first ground, Global argued that the contract entered into was not an isolated transaction since the contract was for a period of 20 years. Furthermore, Global stressed that it could not be held accountable for any breach as the agreement was entered into between Surecomp and ABC.

ISSUE

Whether Global is estopped from questioning Surecomp's capacity to sue.

RULING

Yes. As a rule, unlicensed foreign non-resident corporations doing business in the Philippines cannot file suits in the Philippines.

The exception to this rule is the doctrine of estoppel. Global is estopped from challenging Surecomp's capacity to sue.

A foreign corporation doing business in the Philippines without license may sue in Philippine courts a Filipino citizen or a Philippine entity that had contracted with and benefited from it.

A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it.

The principle is applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract.

Due to Global's merger with ABC and because it is the surviving corporation, it is as if it was the one which entered into contract with Surecomp. In the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation.

This is particularly true in this case. Based on the findings of fact of the RTC, as affirmed by the CA, under the terms of the merger or consolidation, Global assumed all the liabilities and obligations of ABC as if it had incurred such liabilities or obligations itself. In the same way, Global also has the right to exercise all defenses, rights, privileges, and counter-claims of every kind and nature which ABC may have or invoke under the law. These findings of fact were never contested by Global in any of its pleadings filed before this Court.

d. Instances When Unlicensed Foreign Corporations May Be Allowed to Sue Isolated Transactions

- Steelcase, Inc., vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

Steelcase, Inc. v. Design International Selections, Inc.
G.R. No. 171995, April 18, 2012, Mendoza, J:

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation.

FACTS

Petitioner Steelcase, Inc. (Steelcase) is a foreign corporation existing under the laws of Michigan, United States of America (U.S.A.), and engaged in the manufacture of office furniture with dealers worldwide. Respondent Design International Selections, Inc. (DISI) is a corporation existing under Philippine Laws and engaged in the furniture business, including the distribution of furniture.

Sometime in 1986 or 1987, Steelcase and DISI orally entered into a dealership agreement whereby Steelcase granted DISI the right to market, sell, distribute, install, and service its products to end-user customers within the Philippines. The business relationship continued smoothly until it was terminated sometime in January 1999 after the agreement was breached with neither party admitting any fault.

Steelcase filed a complaint for sum of money against DISI alleging, among others, that DISI had an unpaid account of US$600,000.00. Steelcase prayed that DISI be ordered to pay actual or compensatory damages, exemplary damages, attorney's fees, and costs of suit. In its Answer with Compulsory Counterclaims, DISI alleged that Steelcase has no legal capacity to sue as it is doing business in the Philippines without the required license.

The RTC dismissed the complained filed by Steelcase and granted the TRO prayed for by DISI. Steelcase moved for a reconsideration but the same was denied. The case was appealed to the CA. The latter ruled that Steelcase is doing business in the Philippines without the required license. The CA stated that the following acts of Steelcase showed its intention to pursue and continue the conduct of its business in the Philippines: (1) sending a letter to Phinma, informing the latter that the distribution rights for its products would be established in the near future and directing other questions about orders for Steelcase products to Steelcase International; (2) cancelling orders from DISI's customers, particularly Visteon, Phils., Inc. (Visteon); (3) continuing to send its products to the Philippines through Modernform Group Company Limited (Modernform), as evidenced by an Ocean Bill of Lading; and (4) going beyond the mere appointment of DISI as a dealer by making several impositions on management and operations of DISI. Thus, the CA ruled that Steelcase was barred from access to our courts for being a foreign corporation doing business here without the requisite license to do so.

ISSUE

Whether Steelcase is a foreign corporation doing business in the Philippines without a license

RULING: No.

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.

In the case at bench, it is undisputed that DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug. In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings.

L. Mergers and Consolidations

1. Definition and Concept

- Edward J. Nell Company vs. Pacific Farms, Inc., 15 SCRA 415 (1965)

THE EDWARD J. NELL COMPANY, petitioner, vs. PACIFIC FARMS, INC., respondent.
G.R. No. L-20850, EN BANC, November 29, 1965, CONCEPCION, *J.:*

Generally where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except: (1) where the purchaser expressly or impliedly agrees to assume such debts; (2) where the transaction amounts to a consolidation or merger of the corporations; (3) where the purchasing corporation is merely a continuation of the selling corporation; and (4) where the transaction is entered into fraudulently in order to escape liability for such debts.

FACTS

On March 21, 1958, Pacific Farms, Inc. purchased 1,000 shares of stock of Insular Farms for P285,126.99; that, thereupon, Pacific Farms sold said shares of stock to certain individuals, who forthwith reorganized said corporation; and that the board of directors thereof, as reorganized, then caused its assets, including its leasehold rights over a public land in Bolinao, Pangasinan, to be sold to Pacific Farms for P10,000.00.

Meanwhile, On October 9, 1958, Edward J. Nell Company secured in Civil Case No. 58579 of the Municipal Court of Manila against Insular Farms, Inc. — hereinafter referred to as Insular Farms a judgment for the sum of P1,853.80 — representing the unpaid balance of the price of a pump sold by the company to Insular Farms — with interest on said sum, plus P125.00 as attorney's fees and P84.00 as costs. A writ of execution, issued after the judgment had become final. However on August 14, 1959, the writ was returned unsatisfied, stating that Insular Farms had no leviable property.

Soon thereafter, or on November 13, 1959, Edward J. Nell Company filed with said court the present action against Pacific Farms, Inc. — hereinafter referred to as appellee — for the collection of the judgment aforementioned, upon the theory that appellee is the alter ego of Insular Farms, which appellee has denied. In due course, the municipal court rendered judgment dismissing appellant's complaint. Hence the petition.

ISSUE

Whether or not the Pacific Farms is an alter ego of Insular Farms.

RULING

NO. Generally where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except: (1) where the purchaser expressly or impliedly agrees to assume such debts; (2) where the transaction amounts to a consolidation or merger of the corporations; (3) where the purchasing corporation is merely a continuation of the selling corporation; and (4) where the transaction is entered into fraudulently in order to escape liability for such debts.

In this case, there is neither proof nor allegation that Pacific Farms had expressly or impliedly agreed to assume the debt of Insular Farms in favor of Edward J. Nell Company or that the appellee is a continuation of Insular Farms, or that the sale of either the shares of stock or the assets of Insular Farms to the appellee has been entered into fraudulently, in order to escape liability for the debt of the Insular Farms in favor of appellant herein.

Moreover, appellee purchased the shares of stock of Insular Farms as the highest bidder at an auction sale held at the instance of a bank to which said shares had been pledged as security for an obligation of Insular Farms in favor of said bank. It has, also, been established that the appellee had paid P285,126.99 for said shares of stock, apart from the sum of P10,000.00 it, likewise, paid for the other assets of Insular Farms.

Neither is it claimed that these transactions have resulted in the consolidation or merger of the Insular Farms and appellee herein. On the contrary, appellant's theory to the effect that appellee is an alter ego of the Insular Farms negates such consolidation or merger, for a corporation cannot be its own alter ego.

- Associated Bank vs. Court of Appeals and Lorenzo Sarmiento, Jr., G.R. No. 123793, June 29, 1998

ASSOCIATED BANK, petitioner, vs. COURT OF APPEALS and LORENZO SARMIENTO JR., respondents.
G.R. No. 123793, FIRST DIVISION, June 29, 1998, PANGANIBAN, *J.:*

The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. 12 Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for *determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.*

FACTS

Associated Banking Corporation and Citizens Bank and Trust Company (CBTC) merged to form just one banking corporation known as Associated Citizens Bank (later renamed Associated Bank), the surviving bank. After the merger agreement had been signed, but before a certificate of merger was issued, respondent Lorenzo Sarmiento, Jr. executed in favor of Associated Bank a promissory note, promising to pay the bank P2.5 million on or before due date at 14% interest per annum, among other accessory dues. For failure to pay the amount due, Sarmiento was sued by Associated Bank.

Respondent argued that the plaintiff is not the proper party in interest because the promissory note was executed in favor of CBTC. Also, while respondent executed the promissory note in favor of CBTC, said note was a contract pour autrui, one in favor of a third person who may demand its fulfillment. Also, respondent claimed that he received no consideration for the promissory note and, in support thereof, cites petitioner's failure to submit any proof of his loan application and of his actual receipt of the amount loaned.

A civil case was filed againt Sarmiento. On May 22, 1986, the defendant was declared as if in default for failure to appear at the Pre-Trial Conference despite due notice. A Motion to Lift Order of Default and/or Reconsideration of Order dated May 22, 1986 was filed by defendant's counsel which was denied by the Court.

Based on the evidence presented by petitioner, the trial court ordered Respondent Sarmiento to pay the bank his remaining balance plus interests and attorney's fees.

Upon appeal to the Court of Appeals, respondent Court held that the Associated Bank had no cause of action against Lorenzo Sarmiento Jr., since said bank was not privy to the promissory note executed by Sarmiento in favor of Citizens Bank and Trust Company (CBTC). The court ruled that the earlier merger between the two banks could not have vested Associated Bank with any interest arising from the promissory note executed in favor of CBTC after such merger.

ISSUE

Whether or not Associated Bank, the surviving corporation, may enforce the promissory note made by private respondent in favor of CBTC, the absorbed company, after the merger agreement had been signed

RULING

YES. Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.

The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. 12 Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.

Consistent with the aforementioned Section 79, the September 16, 1975 Agreement of Merger, which Associated Banking Corporation (ABC) and Citizens Bank and Trust Company (CBTC) entered into, provided that its effectivity "shall, for all intents and purposes, be the date when the necessary papers to carry out this [m]erger shall have been approved by the Securities and Exchange Commission." As to the transfer of the properties of CBTC to ABC, the agreement provides:

10. Upon effective date of the Merger, all rights, privileges, powers, immunities, franchises, assets and property of [CBTC], whether real, personal or mixed, and including [CBTC's] goodwill and tradename, and all debts due to [CBTC] on whatever act, and all other things in action belonging to [CBTC] as of the effective date of the [m]erger shall be vested in [ABC], the SURVIVING BANK.

The records do not show when the SEC approved the merger. Private respondent's theory is that it took effect on the date of the execution of the agreement itself, which was September 16, 1975. Thus, the fact that the promissory note was executed after the effectivity date of the merger does not militate against petitioner. The agreement itself clearly provides that all contracts — irrespective of the date of execution — entered into in the name of CBTC shall be understood as pertaining to the surviving bank, herein petitioner. Since, in contrast to the earlier aforequoted provision, the latter clause no longer specifically refers only to contracts existing at the time of the merger, no distinction should be made. The clause must have been deliberately included in the agreement in order to protect the interests of the combining banks; specifically, to avoid giving the merger agreement a farcical interpretation aimed at evading fulfillment of a due obligation.

Thus, although the subject promissory note names CBTC as the payee, the reference to CBTC in the note shall be construed, under the very provisions of the merger agreement, as a reference to petitioner bank, "as if such reference [was a] direct reference to" the latter "for all intents and purposes."

- SME Bank Inc. vs. Gaspar, G.R. No. 186641, October 8, 2013

SME BANK INC., ABELARDO P. SAMSON, OLGA SAMSON and AURELIO VILLAFLOR, JR., Petitioners, vs. PEREGRIN T. DE GUZMAN,EDUARDO M. AGUSTIN, JR., ELICERIO GASPAR, , RICARDO GASPAR JR., EUFEMIA ROSETE, FIDEL ESPIRITU, SIMEONESPIRITU, JR., and LIBERATO MANGOBA, Respondents.
G.R. No. 186641, G.R. No. 184517, EN BANC, October 8, 2013, SERENO, *CJ.:*

A mere change in the equity composition of a corporation is neither a just nor an authorized cause that would legally permit the dismissal of the corporation's employees en masse.

FACTS

Respondent employees Elicerio Gaspar (Elicerio), Ricardo Gaspar, Jr. (Ricardo), Eufemia Rosete (Eufemia), Fidel Espiritu (Fidel), Simeon Espiritu, Jr. (Simeon, Jr.), and Liberato Mangoba (Liberato) were employees of Small and Medium Enterprise Bank, Incorporated (SME Bank).Originally, the principal shareholders and corporate directors of the bank were Eduardo M. Agustin, Jr. (Agustin) and Peregrin de Guzman, Jr. (De Guzman).

SME Bank experienced financial difficulties. To remedy the situation, the bank officials proposed its sale to Samson.

Accordingly, negotiations ensued, Letter Agreements were sent to Agustin and De Guzman, conditioning that it shall guarantee the peaceful turn over of all assets as well as the peaceful transition of management of the bank and shall terminate/retire the employees we mutually agree upon, upon transfer of shares in favor of groups nominees; and all retirement benefits, if any of the above officers/stockholders/board of directors are hereby waived upon consummation of the above sale. The retirement benefits of the rank and file employees including the managers shall be honored by the new management. Thereafter, the Letter Agreement was accepted.

Simeon Espiritu (Espiritu), then the general manager of SME Bank, held a meeting with all the employees and persuaded them to tender their resignations, with the promise that they would be rehired upon reapplication. His directive was allegedly done at the behest of petitioner Olga Samson.

Relying on this representation, Elicerio,Ricardo,Fidel,Simeon, Jr., and Liberato tendered their resignations. As for Eufemia, she first tendered a resignation letter and then a retirement letter.

Agustin and De Guzman signified their conformity to the Letter Agreements and sold 86.365% of the shares of stock of SME Bank to spouses Abelardo and Olga Samson. Spouses Samson then became the principal shareholders of SME Bank, while Aurelio Villaflor, Jr. was appointed bank president. As it turned out, respondent employees, except for Simeon, Jr., were not rehired. After a month in service, Simeon, Jr. again resigned on October 2001.
Respondent-employees demanded the payment of their respective separation pays, but their requests were denied. Aggrieved by the loss of their jobs, respondent employees filed a Complaint before NLRC and sued SME Bank, spouses Abelardo and Olga Samson and Aurelio Villaflor (the Samson Group). Subsequently, they amended their Complaint to include Agustin and De Guzman as respondents to the case.

The labor arbiter ruled that the buyer of an enterprise is not bound to absorb its employees, unless there is an express stipulation to the contrary. However, he also found that respondent employees were illegally dismissed, because they had involuntarily executed their resignation letters after relying on representations that they would be given their separation benefits and rehired by the new management. Accordingly, the labor arbiter decided the case against Agustin and De Guzman, but dismissed the Complaint against the Samson Group.

Respondent employees questioned the labor arbiters failure to award backwages, while Agustin and De Guzman contended that they should not be held liable for the payment of the employees claims.

The NLRC found that there was only a mere transfer of shares and therefore, a mere change of management. As the change of management was not a valid ground to terminate respondent bank employees, the NLRC ruled that they had indeed been illegally dismissed. It further ruled that Agustin, De Guzman and the Samson Group should be held jointly and severally liable for the employees separation pay and backwages. On appeal, the CA affirmed the decision of the NLRC.

ISSUE

Whether or not the respondent employees were illegally dismissed and, if so, which of the parties are liable for the claims of the employees and the extent of the reliefs that may be awarded to these employees.

RULING

Petitioner bank also argues that, there being a transfer of the business establishment, the innocent transferees no longer have any obligation to continue employing respondent employees and that the most that they can do is to give preference to the qualified separated employees; hence, the employees were validly dismissed.

The argument is misleading and unmeritorious. Contrary to petitioner bank's argument, there was no transfer of the business establishment to speak of, but merely a change in the new majority shareholders of the corporation.

There are two types of corporate acquisitions: asset sales and stock sales. In asset sales, the corporate entity sells all or substantially all of its assets to another entity. In stock sales, the individual or corporate shareholders sell a controlling block of stock to new or existing shareholders.

In asset sales, the rule is that the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation pay under the law. The buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims. The most that it may do, for reasons of public policy and social justice, is to give preference to the qualified separated personnel of the selling firm.

In contrast with asset sales, in which the assets of the selling corporation are transferred to another entity, the transaction in stock sales takes place at the shareholder level. Because the corporation possesses a personality separate and distinct from that of its shareholders, a shift in the composition of its shareholders will not affect its existence and continuity. Thus, notwithstanding the stock sale, the corporation continues to be the employer of its people and continues to be liable for the payment of their just claims. Furthermore, the corporation or its new majority share holders are not entitled to lawfully dismiss corporate employees absent a just or authorized cause.

In the case at bar, the Letter Agreements show that their main object is the acquisition by the Samson Group of 86.365% of the shares of stock of SME Bank. Hence, this case involves a stock sale, whereby the transferee acquires the controlling shares of stock of the corporation. Thus, following the rule in stock sales, respondent employees may not be dismissed except for just or authorized causes under the Labor Code.

Petitioner bank argues that, following our ruling in Manlimos v. NLRC, even in cases of stock sales, the new owners are under no legal duty to absorb the seller's employees, and that the most that the new owners may do is to give preference to the qualified separated employees. Thus, petitioner bank argues that the dismissal was lawful.

Manlimos dealt with a stock sale in which a new owner or management group acquired complete ownership of the corporation at the shareholder level. The employees of the corporation were later "considered terminated, with their conformity" by the new majority shareholders. The employees then re-applied for their jobs and were rehired on a probationary basis. After about six months, the new management dismissed two of the employees for having abandoned their work, and it dismissed the rest for committing "acts prejudicial to the interest of the new management." Thereafter, the employees sought reinstatement, arguing that their dismissal was illegal, since they "remained regular employees of the corporation regardless of the change of management."

In disposing of the merits of the case, the Court upheld the validity of the second termination, ruling that "the parties are free to renew the contract or not [upon the expiration of the period provided for in their probationary contract of employment]."

In a number of cases on this point, the rule has been laid down that the sale or disposition must be motivated by good faith as an element of exemption from liability. Indeed, an innocent transferee of a business establishment has no liability to the employees of the transfer or to continue employer them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability therefor is assumed by the new employer under the contract of sale, or when liability arises because of the new owner's participation in thwarting or defeating the rights of the employees.

Where such transfer of ownership is in good faith, the transferee is under no legal duty to absorb the transferor's employees as there is no law compelling such absorption. The most that the transferee may do, for reasons of public policy and social justice, is to give preference to the qualified separated employees in the filling of vacancies in the facilities of the purchaser.
Since the petitioners were effectively separated from work due to a bona fide change of ownership and they were accordingly paid their separation pay, which they freely and voluntarily accepted, the private respondent corporation was under no obligation to employ them; it may, however, give them preference in the hiring. x x x.

We take this opportunity to revisit our ruling in Manlimos insofar as it applied a doctrine on asset sales to a stock sale case. Central Azucarera del Danao, San Felipe Neri School of Mandaluyong and MDII Supervisors &Confidential Employees Association all dealt with asset sales, as they involved a sale of all or substantially all of the assets of the corporation. The transactions in those cases were not made at the shareholder level, but at the corporate level. Thus, applicable to those cases were the rules in asset sales: the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims.

The rule should be different in Manlimos, as this case involves a stock sale. It is error to even discuss transfer of ownership of the business, as the business did not actually change hands. The transfer only involved a change in the equity composition of the corporation. To reiterate, the employees are not transferred to a new employer, but remain with the original corporate employer, notwithstanding an equity shift in its majority shareholders. This being so, the employment status of the employees should not have been affected by the stock sale. A change in the equity composition of the corporate shareholders should not result in the automatic termination of the employment of the corporation's employees. Neither should it give the new majority shareholders the right to legally dismiss the corporation's employees, absent a just or authorized cause.

The right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. This guarantee proscribes a situation in which the corporation procures the severance of the employment of its employees – who patently still desire to work for the corporation – only because new majority stockholders and a new management have come into the picture. This situation is a clear circumvention of the employees' constitutionally guaranteed right to security of tenure, an act that cannot be countenanced by this Court.

It is thus erroneous on the part of the corporation to consider the employees as terminated from their employment when the sole reason for so doing is a change of management by reason of the stock sale. The conformity of the employees to the corporation's act of considering them as terminated and their subsequent acceptance of separation pay does not remove the taint of illegal dismissal. Acceptance of separation pay does not bar the employees from subsequently contesting the legality of their dismissal, nor does it estop them from challenging the legality of their separation from the service.

The Court therefore sees it fit to expressly reverse our ruling in Manlimos insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation; and that the dismissal of the affected employees is lawful, even absent a just or authorized cause.

- Commission of Internal Revenue vs. Bank of Commerce, G.R. No. 180529, November 25, 2013

Commission of Internal Revenue vs. Bank of Commerce
G.R. No. 180529; November 25, 2013 J. Leonardo- De Castro

Where the purchase and sale of identified assets between two companies under a Purchase and Sale Agreement does not constitute a merger as defined under Section 40 (C)(6)(b) of the Tax Code, the seller and the purchaser are considered entities different from one another. Thus, the purchaser company cannot be held liable for the payment of the deficiency Documentary Stamp Tax assessed against the seller company.

FACTS

Bank of Commerce (BOC) and Traders Royal Bank (TRB) executed a Purchase and Sale Agreement whereby it stipulated TRB's desire to sell and BOC's desire to purchase identified recorded assets of TRB in consideration of BOC assuming identified record liabilities. Under the Agreement, it was stated that BOC and TRB shall continue to exist as separate corporations with distinct corporate personalities.

During sometime, BOC received copies of a Formal Letter of Demand and Assessment Notice addressed to TRB demanding payment of the amount of P41,467,887.51 as deficiency documentary stamp taxes (DST) on Special Savings Deposit (SSD) account of the latter for taxable year 1999.

TRB protested the assessment, which was denied. With the denial constituting as the final decision, BOC filed a Petition for review before the CTA 2nd division praying that it be held not liable for the DST. To support its claim, BOC argued that as stated in the Purchase and Sale Agreement, the parties therein continued to exist as separate corporations with distinct corporate personalities. BOC emphasized that there was no merger between it and TRB as it only acquired certain assets of TRB in return for its assumption of some of TRB's liabilities. Later on, the CTA 2nd Division rendered a decision dismissing BOC's petition for lack of merit.

After the denial of the subsequent motion for reconsideration filed by BOC, it filed a petition for review before the CTA En Banc. Said court then affirmed the CTA 2nd Division's Decision, ruling that BOC was liable for the DST of TRB's SSD accounts. On BOC's motion for reconsideration, CTA En Banc reversed itself and ruled that BOC could not be held liable for the deficiency DST of TRB on its SSD accounts.In resolving the case, CTA En Banc relied on the Resolution in the Traders Royal Bank case, wherein the CTA 1st Division made a categorical pronouncement on the issue of merger based on the evidence at its disposal, which included the Purchase and Sale Agreement and the CIR's own administrative ruling on the issue of merger in BIR Ruling No. 10-2006 dated October 6, 2006.

With the reversal, CIR filed a motion for reconsideration, but was denied. Hence, the petition.

ISSUE

Whether or not BOC is liable for TRB's deficiency in the Document Stamp Tax.

RULING

After carefully evaluating the records, the CTA 1st Division agrees with BOC for the following reasons: First, a close reading of the Purchase and Sale Agreement shows the following self- explanatory provisions: a) Items in litigation, both actual and prospective, against [TRB] are excluded from the liabilities to be assumed by the Bank of Commerce (Article II, paragraph 2); and b) The Bank of Commerce and Traders Royal Bank shall continue to exist as separate corporations with distinct corporate personalities (Article III, paragraph 1).

Second, aside from the foregoing, the Purchase and Sale Agreement does not contain any provision that the [BOC] acquired the identified assets of [TRB] solely in exchange for the latter's stocks. Merger is defined under Section 40 (C)(6)(b) of the Tax Code as follows: "b) The term "merger" or "consolidation", when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, [t]hat for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: x x x." Since the purchase and sale of identified assets between the two companies does not constitute a merger under the foregoing definition, the Bank of Commerce is considered an entity separate from petitioner. Thus, it cannot be held liable for the payment of the deficiency DST assessed against petitioner.

Thus, when the CTA En Banc took into consideration the above ruling in its Amended Decision, it necessarily affirmed the findings of the CTA 1st Division and found them to be correct. This Court likewise finds the foregoing ruling to be correct. The CTA 1st Division was spot on when it interpreted the Purchase and Sale Agreement to be just that and not a merger.

In this petition however, the CIR insists that BIR Ruling No. 10-2006 cannot be used as a basis for the CTA En Banc's Amended Decision, due to BOC's failure, at the time it requested for such ruling, to inform the CIR of TRB's deficiency DST assessments for taxable years 1996, 1997, and 1999. The CIR's contention is untenable. A perusal of BIR Ruling No. 10-2006 will show that the CIR ruled on the issue of merger without any reference to TRB's subject tax liabilities.

Clearly, the CIR, in BIR Ruling No. 10-2006, ruled on the issue of merger without taking into consideration TRB's pending tax deficiencies. The ruling was based on the Purchase and Sale Agreement, factual evidence on the status of both companies, and the Tax Code provision on merger. The CIR's knowledge then of TRB's tax deficiencies would not be material as to affect the CIR's ruling. The resolution of the issue on merger depended on the agreement between TRB and BOC, as detailed in the Purchase and Sale Agreement, and not contingent on TRB's tax liabilities.

- Bank of Commerce vs. Radio Philippines Network Inc., et al., G.R. No. 195615, April 21, 2014

BANK OF COMMERCE vs. RADIO PHILIPPINES NETWORK, INC., ET. AL.
G.R. No. 195615, THIRD DIVISION, April 21, 2014, J. Abad

Indubitably, it is clear that no merger took place between Bancommerce and TRB as the requirements and procedures for a merger were absent. A merger does not become effective upon the mere agreement of the constituent corporations. All the requirements specified in the law must be complied with in order for merger to take effect. Here, Bancommerce and TRB remained separate corporations with distinct corporate personalities. What happened is that TRB sold and Bancommerce purchased identified recorded assets of TRB in consideration of Bancommerce's assumption of identified recorded liabilities of TRB including booked contingent accounts. There is no law that prohibits this kind of transaction especially when it is done openly and with appropriate government approval.

FACTS

Traders Royal Bank (TRB) sold to petitioner Bank of Commerce (Bancommerce) its banking business consisting of specified assets and liabilities through a Purchase and Assumption (P & A) Agreement. Bangko Sentral ng Pilipinas' (BSP's) approval of their P & A Agreement was however necessary. On November 8, 2001 the BSP approved that agreement subject to the condition that Bancommerce and TRB would set up an escrow fund of PSO million with another bank to cover TRB liabilities for contingent claims that may subsequently be adjudged against it, which liabilities were excluded from the purchase. Subsequently, P & A Agreement was approved by BSP. To comply with a BSP mandate, TRB placed P50 million in escrow with Metropolitan Bank and Trust Co. (Metrobank) to answer for those claims and liabilities that were excluded from the P & A Agreement and remained with TRB.

Shortly after acting in G.R. 138510, Traders Royal Bank v. Radio Philippines Network (RPN), Inc., this Court ordered TRB to pay respondents RPN, Intercontinental Broadcasting Corporation, and Banahaw Broadcasting Corporation (collectively, RPN, et al.) actual damages plus 12% legal interest and some amounts. Based on this decision, RPN, et al.filed a motion for execution against TRB before the Regional Trial Court (RTC). But rather than pursue a levy in execution of the corresponding amounts on escrow with Metrobank, RPN, et al. filed a Supplemental Motion for Execution where they described TRB as "now Bank of Commerce" based on the assumption that TRB had been merged into Bancommerce.

Subsequently, the RTC issued the assailed Order directing the release to the Sheriff of Bancommerce's "garnished monies and shares of stock or their monetary equivalent" and for the sheriff to pay 25% of the amount "to the respondents' counsel representing his attorney's fees and appearance fees and litigation expenses" and the balance to be paid to the respondents after deducting court dues.

ISSUE

Whether or not there was a merger or de facto merger between TRB and Bancommerce thereby considering the latter as judgment debtor.

RULING: None.

Indubitably, it is clear that no merger took place between Bancommerce and TRB as the requirements and procedures for a merger were absent. A merger does not become effective upon the mere agreement of the constituent corporations. All the requirements specified in the law must be complied with in order for merger to take effect. Section 79 of the Corporation Code further provides that the merger shall be effective only upon the issuance by the Securities and Exchange Commission (SEC) of a certificate of merger. Here, Bancommerce and TRB remained separate corporations with distinct corporate personalities. What happened is that TRB sold and Bancommerce purchased identified recorded assets of TRB in consideration of Bancommerce's assumption of identified recorded liabilities of TRB including booked contingent accounts. There is no law that prohibits this kind of transaction especially when it is done openly and with appropriate government approval.

In his book, Philippine Corporate Law, Dean Cesar Villanueva explained that under the Corporation Code, "a de facto merger can be pursued by one corporation acquiring all or substantially all of the properties of another corporation in exchange of shares of stock of the acquiring corporation. The acquiring corporation would end up with the business enterprise of the target corporation; whereas, the target corporation would end up with basically its only remaining assets being the shares of stock of the acquiring corporation."

No de facto merger took place in the present case simply because the TRB owners did not get in exchange for the bank's assets and liabilities an equivalent value in Bancommerce shares of stock. Moreover, Bancommerce and TRB agreed with BSP approval to exclude from the sale the TRB's contingent judicial liabilities, including those owing to RPN, et al. The Bureau of Internal Revenue (BIR) treated the transaction between the two banks purely as a sale of specified assets and liabilities when it rendered its opinion on the tax consequences of the transaction given that there is a difference in tax treatment between a sale and a merger or consolidation. Furthermore, what was "consolidated" was the banking activities and transactions of Bancommerce and TRB, not their corporate existence. The BSP did not remotely suggest a merger of the two corporations.

To end, since there had been no merger, Bancommerce cannot be considered as TRB's successor-in-interest and against which the Court's Decision of October 10, 2002 in G.R. 138510 may be enforced. Bancommerce did not hold the former TRBs assets in trust for it as to subject them to garnishment for the satisfaction of the latter's liabilities to RPN, et al. Bancommerce bought and acquired those assets and thus, became their absolute owner.

- Bank of Commerce v. Heirs of Dela Cruz, G.R. No. 211519, August 14, 2017, Justice Bersamin

BANK of COMMERCE *v.*HEIRS of RODOLFO DELA CRUZ
G.R. No. 211519, August 14, 2017, Third Division, BERSAMIN, J.:

The terms of merger between two corporations, when determinative of their joint or respective liabilities towards third parties, cannot be assumed. The party alleging the corporations' joint liabilities should establish the allegation. Otherwise, the liabilities of each of them shall be separate.

FACTS

Plaintiff Dela Cruz is the sole owner and proprietor of the Mamertha General Merchandising (Mamertha), an entity engaged in sugar trading. He maintained a bank account with defendant Panasia in the name of Mamertha General Merchandising.

Dela Cruz discovered that Panasia allowed his son, Allan Dela Cruz to withdraw money from the said bank account without his consent. Upon discovery, he immediately instructed Panasia not to allow his son to make any withdrawals from his bank account and even sent a letter stating therein that his son, Allan Dela Cruz is neither authorized to make any withdrawal from his bank account nor sign any check drawn against the bank account unless with his written/expressed consent or authority. However, Panasia still allowed Allan to withdraw from complainant's bank account in the total amount of₱56,223,066.07.

Dela Cruz demanded from Panasia the restoration of the said amount to his bank account, but Panasia failed to do so. He then filed a compaint for collection of sum of money and damages with prayer for a writ of preliminary injunction and/or temporary restraining order against Panasia. Meanwhile, the Bank of Commerce demanded payment from Dela Cruz in the amount of ₱27, 150,000.00, which is the amount of the loan Dela Cruz obtained from Panasia. Panasia has been acquired by Bank of Commerce pursuant to a Purchase and Sale Agreement entered into between the two banks.

Dela Cruz now offers to compensate or set off his secured loan obligation with the amount of unauthorized withdrawals Panasia permitted his son.

ISSUE

Whether or not petitioner bank is solidarily liable with Panasia for the latter's negligence.

RULING

NO, petitioner bank is not solidarily liable with Panasia for the latter's negligence. The case is against petitioner is dismissed for lack of cause of action.

Section 34, Rule 132 of the Rules of Court commands that "the court shall consider no evidence which has not been formally offered," and that "the purpose for which the evidence is offered must be specified."

The exclusion of the Sale and Purchase Agreement from the body of evidence for consideration in the resolution of the case caused a void in the link between the petitioner and Panasia necessary to support the pronouncement of the personal liability of the petitioner for the negligence on the part of Panasia. Verily, without the Sale and Purchase Agreement being admitted in evidence, implicating the petitioner in the negligence of Panasia had no factual basis for the simple reason that there was no showing at all of the petitioner having specifically merged with Panasia and thereby assumed the latter's liabilities.

Dela Cruz did not establish that the petitioner had assumed Panasia's liabilities. The allegations of his amended complaint, being averments of ultimate facts, did not constitute proof of his cause of action against the petitioner. The merger of petitioner and Panasia cannot be taken judicial notice of by the courts. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. It was overly presumptuous for the RTC to thereby assume the merger because the element of notoriety as basis for taking judicial notice of the merger was loudly lacking.

2. Constituent vs. Consolidated Corporation

- John F. McLeod vs. National Labor Relations Commission (First Division), et al., G.R. No. 146667, January 23, 2007

JOHN F. McLEOD, Petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION (First Division), FILIPINAS SYNTHETIC FIBER CORPORATION (FILSYN), FAR EASTERN TEXTILE MILLS, INC., STA. ROSA TEXTILES, INC., (PEGGY MILLS, INC.), PATRICIO L. LIM, and ERIC HU, Respondents. G.R. No. 146667, SECOND DIVISION, January 23, 2007, CARPIO, *J.:*

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the selling corporation fraudulently enters into the transaction to escape liability for those debts. None of the foregoing exceptions is present in this case.

FACTS

On February 2, 1995, John F. McLeod filed a complaint for retirement benefits, vacation and sick leave benefits, non-payment of unused airline tickets, holiday pay, underpayment of salary and 13th month pay, moral and exemplary damages, attorney's fees plus interest against Filipinas Synthetic Corporation (Filsyn), Far Eastern Textile Mills, Inc., Sta. Rosa Textiles, Inc., Patricio Lim and Eric Hu.

In their Reply, respondents alleged that except for Peggy Mills, the other respondents are not proper persons in interest due to the lack of employer-employee relationship between them and complainant; that undersigned counsel does not represent Peggy Mills, Inc.

The Court of Appeals rejected McLeod's theory that all respondent corporations are the same corporate entity which should be held solidarily liable for the payment of his monetary claims.

The Court of Appeals ruled that the fact that (1) all respondent corporations have the same address; (2) all were represented by the same counsel, Atty. Isidro S. Escano; (3) Atty. Escano holds office at respondent corporations' address; and (4) all respondent corporations have common officers and key personnel, would not justify the application of the doctrine of piercing the veil of corporate fiction.

The Court of Appeals held that there should be clear and convincing evidence that SRTI, FETMI, and Filsyn were being used as alter ego, adjunct or business conduit for the sole benefit of Peggy Mills, Inc. (PMI), otherwise, said corporations should be treated as distinct and separate from each other.

The Court of Appeals held that McLeod failed to substantiate his claim that all respondent corporations should be treated as one corporate entity. The Court of Appeals thus upheld the NLRC's finding that no employer-employee relationship existed between McLeod and respondent corporations except PMI.

ISSUE

Whether the private respondents may be held liable for financial obligations to the petitioner.

RULING

NO, private respondents may not be held liable for financial obligations to the petitioner.

When PMI's rank-and-file employees staged a strike on 19 August 1989 to July 1992, PMI incurred serious business losses. This prompted PMI to stop permanently plant operations and to send a notice of closure to the Department of Labor and Employment on 21 July 1992.

PMI informed its employees, including McLeod, of the closure. PMI paid its employees, including managerial employees, except McLeod, their unpaid wages, sick leave, vacation leave, prorated 13th month pay, and separation pay. Under the compromise agreement between PMI and its employees, the employer-employee relationship between them ended on 25 November 1992.

Records also disclose that PMI extended McLeod's service up to 31 December 1992 "to wind up some affairs" of the company. McLeod testified on cross-examination that he received his last salary from PMI in December 1992.

It is thus clear that McLeod was a managerial employee of PMI from 20 June 1980 to 31 December 1992. However, McLeod claims that after FETMI purchased PMI in January 1993, he "continued to work at the same plant with the same responsibilities" until 30 November 1993. McLeod claims that FETMI merely renamed PMI as SRTI. McLeod asserts that it was for this reason that when he reached the retirement age in 1993, he asked all the respondents for the payment of his benefits. These assertions deserve scant consideration.

What took place between PMI and SRTI was dation in payment with lease.

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the selling corporation fraudulently enters into the transaction to escape liability for those debts. None of the foregoing exceptions is present in this case.

Here, PMI transferred its assets to SRTI to settle its obligation to SRTI in the sum of ₱210,000,000. The Court is not convinced that PMI fraudulently transferred these assets to escape its liability for any of its debts. PMI had already paid its employees, except McLeod, their money claims. There was also no merger or consolidation of PMI and SRTI.

Consolidation is the union of two or more existing corporations to form a new corporation called the consolidated corporation. It is a combination by agreement between two or more corporations by which their rights, franchises, and property are united and become those of a single, new corporation, composed generally, although not necessarily, of the stockholders of the original corporations.

Merger, on the other hand, is a union whereby one corporation absorbs one or more existing corporations, and the absorbing corporation survives and continues the combined business.

The parties to a merger or consolidation are called constituent corporations. In consolidation, all the constituents are dissolved and absorbed by the new consolidated enterprise. In merger, all constituents, except the surviving corporation, are dissolved. In both cases, however, there is no liquidation of the assets of the dissolved corporations, and the surviving or consolidated corporation acquires all their properties, rights and franchises and their stockholders usually become its stockholders.

The surviving or consolidated corporation assumes automatically the liabilities of the dissolved corporations, regardless of whether the creditors have consented or not to such merger or consolidation.

In the present case, there is no showing that the subject dation in payment involved any corporate merger or consolidation. Neither is there any showing of those indicative factors that SRTI is a mere instrumentality of PMI. Moreover, SRTI did not expressly or impliedly agree to assume any of PMI's debts.

Also, McLeod did not present any evidence to show the alleged renaming of "Peggy Mills, Inc." to "Sta. Rosa Textiles, Inc." Hence, it is not correct for McLeod to treat PMI and SRTI as the same entity.

However, McLeod claims that "for purposes of determining employer liability, all private respondents are one and the same employer" because: (1) they have the same address; (2) they are all engaged in the same business; and (3) they have interlocking directors and officers. This assertion is untenable.

A corporation is an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the 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.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

Here, the Court does not find any of the evils sought to be prevented by the doctrine of piercing the corporate veil. Respondent corporations may be engaged in the same business as that of PMI, but this fact alone is not enough reason to pierce the veil of corporate fiction. That respondent corporations have interlocking incorporators, directors, and officers is of no moment.
The only interlocking incorporators of PMI and Filsyn were Patricio and Carlos Palanca, Jr. While Patricio was Director and Board Chairman of Filsyn, SRTI, and PMI, he was never an officer of FETMI. Eric Hu, on the other hand, was Director of Filsyn and SRTI. He was never an officer of PMI.

At any rate, the existence of interlocking incorporators, directors, and officers is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations.

To reiterate, a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities.

Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.

Considering that McLeod failed to prove any of the foregoing exceptions in the present case, McLeod cannot hold Patricio solidarily liable with PMI.

The records are bereft of any evidence that Patricio acted with malice or bad faith. Bad faith is a question of fact and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud.

In the present case, there is nothing substantial on record to show that Patricio acted in bad faith in terminating McLeod's services to warrant Patricio's personal liability. PMI had no other choice but to stop plant operations. The work stoppage therefore was by necessity. The company could no longer continue with its plant operations because of the serious business losses that it had suffered. The mere fact that Patricio was president and director of PMI is not a ground to conclude that he should be held solidarily liable with PMI for McLeod's money claims.

The Court comes now to the personal liability of petitioner, Sunio, who was made jointly and severally responsible with petitioner company and CIPI for the payment of the backwages of private respondents. This is reversible error. The Assistant Regional Director's Decision failed to disclose the reason why he was made personally liable. Respondents, however, alleged as grounds thereof, his being the owner of one-half (½) interest of said corporation, and his alleged arbitrary dismissal of private respondents.

Petitioner Sunio was impleaded in the Complaint in his capacity as General Manager of petitioner corporation. There appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents. His act, therefore, was within the scope of his authority and was a corporate act.

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212(c) nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation.

The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons.

The records are bereft of any evidence that Typoco acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. The unilateral termination of the Contract during the existence of the TRO was indeed contemptible – for which MPC should have merely been cited for contempt of court at the most – and a preliminary injunction would have then stopped work by the second contractor. Besides, there is no showing that the unilateral termination of the Contract was null and void.

3. Effectivity

- Philippine National Bank & National Sugar Development Corporation vs. Andrada Electric & Engineering Company, G.R. No. 142936, April 17, 2002

PHILIPPINE NATIONAL BANK & NATIONAL SUGAR DEVELOPMENT CORPORATION, petitioners, vs. ANDRADA ELECTRIC & ENGINEERING COMPANY, respondent. G.R. No. 142936, THIRD DIVISION, April 17, 2002, PANGANIBAN, *J.*

The merger, however, does not become effective upon the mere agreement of the constituent corporations. Since a merger or consolidation involves fundamental changes in the corporation, as well as in the rights of stockholders and creditors, there must be an express provision of law authorizing them. For a valid merger or consolidation, the approval by the Securities and Exchange Commission (SEC) of the articles of merger or consolidation is required. These articles must likewise be duly approved by a majority of the respective stockholders of the constituent corporations.

FACTS:

In its complaint, the plaintiff [herein respondent] alleged that it is a partnership duly organized, existing, and operating under the laws of the Philippines, with office and principal place of business in Quezon City, while the defendant [herein petitioner] Philippine National Bank (herein referred to as PNB), is a semi-government corporation duly organized, existing and operating under the laws of the Philippines, with office and principal place of business at Escolta Street, Sta. Cruz, Manila; whereas, the other defendant, the National Sugar Development Corporation (NASUDECO in brief), is also a semi-government corporation and the sugar arm of the PNB, with office and principal place of business at the 2nd Floor, Sampaguita Building, Cubao, Quezon City; and the defendant Pampanga Sugar Mills (PASUMIL in short), is a corporation organized, existing and operating under the 1975 laws of the Philippines, and had its business office before 1975 at Del Carmen, Floridablanca, Pampanga;

The plaintiff is engaged in the business of general construction for the repairs and/or construction of different kinds of machineries and buildings; that on August 26, 1975, the defendant PNB acquired the assets of the defendant PASUMIL that were earlier foreclosed by the Development Bank of the Philippines (DBP)

The defendant PNB organized the defendant NASUDECO in September, 1975, to take ownership and possession of the assets and ultimately to nationalize and consolidate its interest in other PNB controlled sugar mills; that prior to October 29, 1971, the defendant PASUMIL engaged the services of plaintiff for electrical rewinding and repair, most of which were partially paid by the defendant PASUMIL, leaving several unpaid accounts with the plaintiff; that finally, on October 29, 1971, the plaintiff and the defendant PASUMIL entered into a contract for the plaintiff to perform several works.

Aside from the work contract mentioned-above, the defendant PASUMIL required the plaintiff to perform extra work, and provide electrical equipment and spare parts.

Out of the total obligation of P777,263.80, the defendant PASUMIL had paid only P250,000.00, leaving an unpaid balance, amounting to P527,263.80, as shown in the Certification of the chief accountant of the PNB, that out of said unpaid balance of P527,263.80, the defendant PASUMIL made a partial payment to the plaintiff of P14,000.00, in broken amounts, covering the period from January 5, 1974 up to May 23, 1974, leaving an unpaid balance of P513,263.80; that the defendant PASUMIL and the defendant PNB, and now the defendant NASUDECO, failed and refused to pay the plaintiff their just, valid and demandable obligation; that the President of the NASUDECO is also the Vice-President of the PNB, and this official holds office at the 10th Floor of the PNB, Escolta, Manila, and plaintiff besought this official to pay the outstanding obligation of the defendant PASUMIL, inasmuch as the defendant PNB and NASUDECO now owned and possessed the assets of the defendant PASUMIL, and these defendants all benefited from the works, and the electrical, as well as the engineering and repairs, performed by the plaintiff;

Because of the failure and refusal of the defendants to pay their just, valid, and demandable obligations, plaintiff suffered actual damages in the total amount of P513,263.80; and that in order to recover these sums, the plaintiff was compelled to engage the professional services of counsel, to whom the plaintiff agreed to pay a sum equivalent to 25% of the amount of the obligation due by way of attorney's fees. Accordingly, the plaintiff prayed that judgment be rendered against the defendants PNB, NASUDECO, and PASUMIL, jointly and severally.

"The defendants PNB and NASUDECO filed a joint motion to dismiss the complaint chiefly on the ground that the complaint failed to state sufficient allegations to establish a cause of action against both defendants, inasmuch as there is lack or want of privity of contract between the plaintiff and the two defendants, the PNB and NASUDECO.

ISSUE

Whether or not the petitioners liable for the unpaid corporate debts of PASUMIL, a corporation whose corporate existence has not been legally extinguished or terminated, simply because of petitioners['] take-over of the management and operation of PASUMIL pursuant to the mandates of LOI No. 189-A, as amended by LOI No. 311.

RULING

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the transaction is fraudulently entered into in order to escape liability for those debts.

A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence.[12] It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

The question of whether a corporation is a mere alter ego is one of fact. 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 plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.

The Court believes that the absence of the foregoing elements in the present case precludes the piercing of the corporate veil. *First*, other than the fact that petitioners acquired the assets of PASUMIL, there is no showing that their control over it warrants the disregard of corporate personalities.[31] *Second*, there is no evidence that their juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person. *Third*, respondent was not defrauded or injured when petitioners acquired the assets of PASUMIL.

Being the party that asked for the piercing of the corporate veil, respondent had the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule. However, it utterly failed to discharge this burden; it failed to establish by competent evidence that petitioner's separate corporate veil had been used to conceal fraud, illegality or inequity.

While the Court agrees with respondent's claim that the assets of the National Sugar Development Corporation (NASUDECO) can be easily traced to PASUMIL, the Court is not convinced that the transfer of the latter's assets to petitioners was fraudulently entered into in order to escape liability for its debt to respondent.

A careful review of the records reveals that DBP foreclosed the mortgage executed by PASUMIL and acquired the assets as the highest bidder at the public auction conducted. The bank was justified in foreclosing the mortgage, because the PASUMIL account had incurred arrearages of more than 20 percent of the total outstanding obligation. Thus, DBP had not only a right, but also a duty under the law to foreclose the subject properties.

Respondent further claims that petitioners should be held liable for the unpaid obligations of PASUMIL by virtue of LOI Nos. 189-A and 311, which expressly authorized PASUMIL and PNB to merge or consolidate. On the other hand, petitioners contend that their takeover of the operations of PASUMIL did not involve any corporate merger or consolidation, because the latter had never lost its separate identity as a corporation.

A consolidation is the union of two or more existing entities to form a new entity called the consolidated corporation. A merger, on the other hand, is a union whereby one or more existing corporations are absorbed by another corporation that survives and continues the combined business.

The merger, however, does not become effective upon the mere agreement of the constituent corporations. Since a merger or consolidation involves fundamental changes in the corporation, as well as in the rights of stockholders and creditors, there must be an express provision of law authorizing them. For a valid merger or consolidation, the approval by the Securities and Exchange Commission (SEC) of the articles of merger or consolidation is required. These articles must likewise be duly approved by a majority of the respective stockholders of the constituent corporations.

In the case at bar, the Court holds that there is no merger or consolidation with respect to PASUMIL and PNB. The procedure prescribed under Title IX of the Corporation Code was not followed.

- Mindanao Savings and Loan Association, Inc., represented by its Liquidator, the Philippine Deposit Insurance Corporation vs. Edward Willkom; Gilda Go; Remedios

Uy; Malayo Bantuas, in his capacity as the Deputy Sheriff of Regional Trial Court, Branch 3, Iligan City; and the Register of Deeds of Cagayan de Oro City, G.R. No. 178618, October 11, 2010

MINDANAO SAVINGS AND LOAN ASSOCIATION, INC., represented by its Liquidator, THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, Petitioner, vs. EDWARD WILLKOM; GILDA GO; REMEDIOS UY; MALAYO BANTUAS, in his capacity as the Deputy Sheriff of Regional Trial Court, Branch 3, Iligan City; and the REGISTER OF DEEDS of Cagayan de Oro City, Respondent. G.R. No. 178618, SECOND DIVISION, October 11, 2010, NACHURA, *J.*

Pursuant to the issuance of the certificate, the absorbed corporation ceases to exist, and its rights, properties, and liabilities are transferred to the surviving corporation.

FACTS

In 1985, First Iligan Savings and Loan Association, Inc. (FISLAI), and the Davao Savings and Loan Association, Inc. (DSLAI), entered into a merger, DSLAI being the surviving corporation. However, the articles of merger were not registered with the SEC due to incomplete documentation. DSLAI eventually changed its corporate name to Mindanao Savings and Loan Association, Inc. (MSLAI).

Due to insolvency, MSLAI was ordered for closure and placed under receivership by the Monetary Board of the Central Bank on August 31, 1990, then eventually placed under liquidation on May 24, 1991, with the PDIC as liquidator.

In 1989, respondent Remedios Uy prevailed in a collection suit she had previously filed against FISLAI with the RTC of Iligan. This decision was modified by the Court of Appeals directing the third-party defendant to reimburse the payments that would be made by the defendants in the collection suit. A writ of execution was issued after the decision became final and executory. Thereafter, on April 28, 1993, the sheriff levied on 6 parcels of land of FISLAI in Cagayan de Oro City, and Willkom prevailed as the highest bidder in the auction sale. The sheriff issued a definite deed of sale to Willkom after the expiration of the redemption period. Willkom eventually sold one of the parcels of land to respondent Gilda Go on September 20, 1994.

On June 14, 1995, MSLAI filed a complaint for Annulment of Sheriff's Sale, Cancellation of Title and Reconveyance of Properties against respondents alleging that it did not receive notice of the sale on execution of the properties in question, and that since the assets of the institution were under receivership and liquidation, they were deemed to be in custodia legis, thus exempt from garnishment, levy, attachment, or execution.

The RTC dismissed the case of lack of jurisdiction on the ground that it could not annul the decision of a court of coordinate jurisdiction. The Court of Appeals affirmed the RTC resolution. The CA ratiocinated that FISLAI and DSLAI failed to abide by the procedure under the Corporation Code for a valid merger or consolidation, thus there was no merger, and the two corporations remained separate juridical entities. Pursuant to this, the claim against FISLAI by respondent Uy was valid along with the subsequent sale of the levied properties.

ISSUE

Whether or not the merger between FISLAI and DSLAI was valid.

RULING

No. For a merger or consolidation to be valid, it must comply with the requirements provided under Sections 76 to 79 of the Corporation Code, namely:

1. A plan of merger or consolidation drawn up by the board of each corporation, which includes any necessary amendment to the articles of incorporation of the surviving corporation, or in case of a consolidation, all the statements required in the articles of incorporation of a corporation.

2. The plant must be submitted to stockholders or members for approval in a meeting duly called for the purpose. It must be approved by a vote of two-thirds of the stockholders or members.

3. Execution of the formal agreement – articles of merger or consolidation, by the corporate officers of each constituent corporation.

4. Submission of the Articles of Merger or Consolidation to the SEC for approval.

5. The SEC shall set a hearing, if necessary.

6. Issuance of Certificate of merger or consolidation by the SEC. The merger is only effective upon the issuance of the certificate after determination that the merger is not inconsistent with the Corporation Code and other laws.

Pursuant to the issuance of the certificate, the absorbed corporation ceases to exist, and its rights, properties, and liabilities are transferred to the surviving corporation.

In the present case, the articles of merger between FISLAI and DSLAI was not registered with the SEC due to incomplete documentation. The SEC did not issue a certificate of merger; thus, such merger is not valid. The two corporations thus remain separate entities, and as such, the property of FISLAI cannot be considered the property of DSLAI or MSLAI, despite the Deed of Assignment made by FISLAI in favor of DSLAI. Article 1625 of the Civil Code provides that an assignment of credit, right or action shall produce no effect against third persons, unless made in a public instrument, or recorded in the Registry of Deeds in the case of real property.

4. Effects

- Associated Bank vs. Court of Appeals and Lorenzo Sarmiento, Jr., G.R. No. 123793, June 29, 1998

ASSOCIATED BANK, petitioner, vs. COURT OF APPEALS and LORENZO SARMIENTO JR., respondents.
G.R. No. 123793, FIRST DIVISION, June 29, 1998, PANGANIBAN, *J.:*

The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. 12 Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of *merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.*

FACTS

Associated Banking Corporation and Citizens Bank and Trust Company (CBTC) merged to form just one banking corporation known as Associated Citizens Bank (later renamed Associated Bank), the surviving bank. After the merger agreement had been signed, but before a certificate of merger was issued, respondent Lorenzo Sarmiento, Jr. executed in favor of Associated Bank a promissory note, promising to pay the bank P2.5 million on or before due date at 14% interest per annum, among other accessory dues. For failure to pay the amount due, Sarmiento was sued by Associated Bank.

Respondent argued that the plaintiff is not the proper party in interest because the promissory note was executed in favor of CBTC. Also, while respondent executed the promissory note in favor of CBTC, said note was a contract pour autrui, one in favor of a third person who may demand its fulfillment. Also, respondent claimed that he received no consideration for the promissory note and, in support thereof, cites petitioner's failure to submit any proof of his loan application and of his actual receipt of the amount loaned.

A civil case was filed againt Sarmiento. On May 22, 1986, the defendant was declared as if in default for failure to appear at the Pre-Trial Conference despite due notice. A Motion to Lift Order of Default and/or Reconsideration of Order dated May 22, 1986 was filed by defendant's counsel which was denied by the Court.

Based on the evidence presented by petitioner, the trial court ordered Respondent Sarmiento to pay the bank his remaining balance plus interests and attorney's fees.

Upon appeal to the Court of Appeals, respondent Court held that the Associated Bank had no cause of action against Lorenzo Sarmiento Jr., since said bank was not privy to the promissory note executed by Sarmiento in favor of Citizens Bank and Trust Company (CBTC). The court ruled that the earlier merger between the two banks could not have vested Associated Bank with any interest arising from the promissory note executed in favor of CBTC after such merger.

ISSUE

Whether or not Associated Bank, the surviving corporation, may enforce the promissory note made by private respondent in favor of CBTC, the absorbed company, after the merger agreement had been signed

RULING

YES. Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.

The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. 12 Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.

Consistent with the aforementioned Section 79, the September 16, 1975 Agreement of Merger, which Associated Banking Corporation (ABC) and Citizens Bank and Trust Company (CBTC) entered into, provided that its effectivity "shall, for all intents and purposes, be the date when the necessary papers to carry out this [m]erger shall have been approved by the Securities and Exchange Commission." As to the transfer of the properties of CBTC to ABC, the agreement provides:

10. Upon effective date of the Merger, all rights, privileges, powers, immunities, franchises, assets and property of [CBTC], whether real, personal or mixed, and including [CBTC's] goodwill and tradename, and all debts due to [CBTC] on whatever act, and all other things in action belonging to [CBTC] as of the effective date of the [m]erger shall be vested in [ABC], the SURVIVING BANK.

The records do not show when the SEC approved the merger. Private respondent's theory is that it took effect on the date of the execution of the agreement itself, which was September 16, 1975. Thus, the fact that the promissory note was executed after the effectivity date of the merger does not militate against petitioner. The agreement itself clearly provides that all contracts — irrespective of the date of execution — entered into in the name of CBTC shall be understood as pertaining to the surviving bank, herein petitioner. Since, in contrast to the earlier aforequoted provision, the latter clause no longer specifically refers only to contracts existing at the time of the merger, no distinction should be made. The clause must have been deliberately included in the agreement in order to protect the interests of the combining banks; specifically, to avoid giving the merger agreement a farcical interpretation aimed at evading fulfillment of a due obligation.

Thus, although the subject promissory note names CBTC as the payee, the reference to CBTC in the note shall be construed, under the very provisions of the merger agreement, as a reference to petitioner bank, "as if such reference [was a] direct reference to" the latter "for all intents and purposes."

- Babst vs. Court of Appeals, 350 SCRA 341 (2001)

CHESTER BABST, petitioner, vs. COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS, ELIZALDE STEEL CONSOLIDATED, INC., and PACIFIC MULTI-COMMERCIAL CORPORATION, respondents.

ELIZALDE STEEL CONSOLIDATED, INC., petitioner, vs. COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS, PACIFIC MULTI-COMMERCIAL CORPORATION and CHESTER BABST, respondents.

G.R. No. 99398 & 104625, FIRST DIVISION, January 26, 2001, YNARES-SANTIAGO, *J*.:

It is settled that in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation. Hence, BPI has a right to institute the case a quo. However, despite the merger BPI consented to the substitution of DBP. It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor.

FACTS

ELISCON obtained from CBTC a loan with interest at the rate of 14% per annum, evidenced by a promissory note. ELISCON defaulted in its payments. The letters of credit, on the other hand, were opened for ELISCON by CBTC using the credit facilities of Pacific Multi-Commercial Corporation (MULTI) with the said bank, pursuant to the Resolution of the Board of Directors of MULTI. That the President & General Manager, Antonio Roxas Chua, allow and authorize ELISCON to avail and make use of the Credit Line of MULTI with CBTC.

Subsequently, Chua and Babst executed a Continuing Suretyship, whereby they bound themselves jointly and severally liable to pay any existing indebtedness of MULTI to CBTC. CBTC opened for ELISCON in favor of National Steel Corporation three domestic letters of credit which ELISCON defaulted in its obligation. BPI and CBTC entered into a merger, wherein BPI, as the surviving corporation, acquired all the assets and assumed all the liabilities of CBTC. Meanwhile, ELISCON encountered financial difficulties and became heavily indebted to the Development Bank of the Philippines (DBP).

In order to settle its obligations, ELISCON proposed to convey to DBP by way of dacion en pago all its fixed assets mortgaged with DBP, as payment for its total indebtedness. ELISCON and DBP executed a Deed of Cession of Property in Payment of Debt. ELISCON called its creditors to a meeting to announce the take-over by DBP of its assets. DBP formally took over the assets of ELISCON, including its indebtedness to BPI. Thereafter, DBP proposed formulas for the settlement of all of ELISCON's obligations to its creditors, but BPI expressly rejected the formula submitted to it for not being acceptable.

BPI, as successor-in-interest of CBTC, instituted with RTC a complaint for sum of money against ELISCON, MULTI and Babst, ELISCON, in its Answer argued that the complaint was premature since DBP had made serious efforts to settle its obligations with BPI. Babst also filed his Answer alleging that he signed the Continuing Suretyship on the understanding that it covers only obligations which MULTI incurred solely for its benefit and not for any third-party liability. MULTI, for its part, denied knowledge of the merger between BPI and CBTC, and averred that the guaranty under its board resolution did not cover purchases made by ELISCON in the form of trust receipts. The RTC ruled in favor of BPI, making Babst, ELISCON and MULTI jointly and severally liable. BPI's contention: that by virtue of its merger with CBTC, it acquired all the latter's rights and interest including all receivables; that in order to effect a valid novation by substitution of debtors, the consent of the creditor must be express; that in addition, the consent of BPI must appear in its books, it being a private corporation; that BPI intentionally did not consent to the assumption by DBP of the obligations of ELISCON because it wanted to preserve intact its causes of action and legal recourse against MULTI and Babst as sureties of ELISCON and not of DBP.

ISSUE

Whether or not BPI is entitled to recover from ELISCON the latter's obligation with CBTC.

RULING

No, it cannot since there was a valid novation. There is no question that there was a valid merger between BPI and CBTC. It is settled that in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation. Hence, BPI has a right to institute the case a quo. However, despite the merger BPI consented to the substitution of DBP. It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor. Article 1205 of the Civil Code does not mean or require that the creditor's consent to the change of debtors must be given simultaneously with the debtor's consent to the substitution, its evident purpose being to preserve the creditor's full right, it is sufficient that the latter's consent be given at any time and in any form whatever, while the agreement of the debtors subsists. Such consent may be express or implied or inferred from the act of the creditor.

In the case at bar, due to the failure of BPI to register its objection to the take-over by DBP of ELISCON's assets, at the creditors' meeting it is deemed to have consented to the substitution of DBP for ELISCON as debtor. The authority granted by BPI to its account officer to attend the creditors' meeting was an authority to represent the bank, such that when he failed to object to the substitution of debtors, he did so on behalf of and for the bank. As repeatedly pointed out by ELISCON and MULTI, BPI's objection was to the proposed payment formula, not to the substitution itself. BPI gives no cogent reason in withholding its consent to the substitution, other than its desire to preserve its causes of action and legal recourse against the sureties of ELISCON. It must be remembered, however, that while a surety is solidarily liable with the principal debtor, his obligation to pay only arises upon the principal debtor's failure or refusal to pay. In the case at bar, there was no indication that the principal debtor will default in payment. In fact, DBP, which had stepped into the shoes of ELISCON, was capable of payment. The original obligation having been extinguished, the contracts of suretyship executed separately by Babst and MULTI, being accessory obligations, are likewise extinguished. Hence, BPI should enforce its cause of action against DBP.

- Omictin vs. Court of Appeals 512 SCRA 70 (2007)

VINCENT E. OMICTIN, Petitioner, vs. HON. COURT OF APPEALS (Special Twelfth Division) and GEORGE I. LAGOS, Respondents.
G.R. No.148004, FIRST DIVISION, January 22, 2007, AZCUNA, *J.*:

Strictly speaking, the objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the *exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.*

FACTS

Petitioner Vincent E. Omictin, Operations Manager Ad Interim of Saag Phils., Inc., filed a complaint for two counts of estafa with the Office of the City Prosecutor of Makati against private respondent George I. Lagos. He alleged that private respondent, despite repeated demands, refused to return the two company vehicles entrusted to him when he was still the president of Saag Phils., Inc..

On February 26, 1999, public prosecutor Alex G. Bagaoisan recommended the indictment of private respondent, and on the same day, respondent was charged with the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code before the Regional Trial Court (RTC).

On June 24, 1999, private respondent filed a motion to suspend proceedings on the basis of a prejudicial question because of a pending petition with the Securities and Exchange Commission (SEC) involving the same parties.

It appears that on January 7, 1999, private respondent filed SEC Case for the declaration of nullity of the respective appointments of Alex Y. Tan and petitioner as President Ad Interim and Operations Manager Ad Interim of Saag Phils., Inc., declaration of dividends, recovery of share in the profits, involuntary dissolution and the appointment of a receiver, recovery of damages and an application for a temporary restraining order (TRO) and injunction against Saag (S) Pte. Ltd., Nicholas Ng, Janifer Yeo, Tan and petitioner.

In the action before the SEC, private respondent averred that Saag (S) Pte. Ltd. is a foreign corporation organized and existing under the laws of Singapore, and is fully owned by Saag Corporation (Bhd). On July 1, 1994, he was appointed as Area Sales Manager in the Philippines by Thiang Shiang Hiang, Manager of Saag (S) Pte. Ltd. Pursuant to his appointment, respondent was authorized to organize a local joint venture corporation to be known as Saag Philippines, Inc. for the wholesale trade and service of industrial products for oil, gas and power industries in the Philippines.

On September 9, 1994, Saag Philippines, Inc. was incorporated with Saag (S) Pte. Ltd. as the majority stockholder. Private respondent was appointed to the board of directors, along with Rommel I. Lagos, Jose E. Geronimo, Gan Ching Lai and Thiang Shiang Hiang, and was elected president of the domestic corporation.

Later, due to intra-corporate disputes, Gan and Thiang resigned and divested their shares in Saag Corporation (Bhd), thereby resulting in a change in the controlling interest in Saag (S) Pte. Ltd.

Barely three months after, or on June 23, 1998, private respondent resigned his post as president of Saag Phils., Inc. while still retaining his position as a director of the company.[4] According to private respondent, the joint venture agreement (JVA) between him or Saag Phils., Inc. and Saag (S) Pte. Ltd. provided that should the controlling interest in the latter company, or its parent company Saag Corp. (Bhd), be acquired by any other person or entity without his prior consent, he has the option either to require the other stockholders to purchase his shares or to terminate the JVA and dissolve Saag Phils., Inc. altogether. Thus, pursuant to this provision, since private respondent did not give his consent as regards the transfer of shares made by Gan and Thiang, he made several requests to

Nicholas Ng, who replaced Gan as director, and Janifer Yeo, Executive Director of Saag (S) Pte. Ltd., to call for a board meeting in order to discuss the following: a) implementation of the board resolution declaring dividends; b) acquisition of private respondent's shares by Saag (S) Pte. Ltd.; c) dissolution of Saag Phils., Inc.; and d) the termination of the JVA.

Ng and Yeo failed to appear, however, in the scheduled board meetings. Instead, on September 30, 1998 they issued a letter appointing Alex Y. Tan as President Ad Interim of Saag Phils., Inc. Tan, in turn, appointed petitioner Omictin as the company's Operations Manager Ad Interim.

Citing as a reason the absence of a board resolution authorizing the continued operations of Saag Phils., Inc., private respondent retained his possession of the office equipment of the company in a fiduciary capacity as director of the corporation pending its dissolution and/or the resolution of the intra-corporate dispute. He likewise changed the locks of the offices of the company allegedly to prevent Tan and petitioner from seizing company property.

Private respondent stressed that Tan's appointment was invalid because it was in derogation of the company by-laws requiring that the president must be chosen from among the directors, and elected by the affirmative vote of a majority of all the members of the board of directors. As Tan's appointment did not have the acquiescence of the board of directors, petitioner's appointment by the former is likewise allegedly invalid. Thus, neither has the power or the authority to represent or act for Saag Phils., Inc. in any transaction or action before the SEC or any court of justice.

ISSUE

Whether or not a prejudicial question exists to warrant the suspension of the criminal proceedings pending the resolution of the intra-corporate controversy that was originally filed with the SEC.

RULING

A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal. Here, the case which was lodged originally before the SEC and which is now pending before the RTC of Mandaluyong City by virtue of Republic Act No. 8799 involves facts that are intimately related to those upon which the criminal prosecution is based.

Ultimately, the resolution of the issues raised in the intra-corporate dispute will determine the guilt or innocence of private respondent in the crime of estafa filed against him by petitioner before the RTC of Makati. As correctly stated by the CA, one of the elements of the crime of estafa with abuse of confidence under Article 315, par. 1(b) of the Revised Penal Code is a demand made by the offended party to the offender.

Logically, under the circumstances, since the alleged offended party is Saag Phils., Inc., the validity of the demand for the delivery of the subject vehicles rests upon the authority of the person making such a demand on the company's behalf. Private respondent is challenging petitioner's authority to act for Saag Phils., Inc. in the corporate case pending before the RTC of Mandaluyong, Branch 214. Taken in this light, if the supposed authority of petitioner is found to be defective, it is as if no demand was ever made, hence, the prosecution for estafa cannot prosper. Moreover, the mere failure to return the thing received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of estafa. This is because the crime is committed by misappropriating or converting money or goods received by the offender under a lawful transaction. As stated in the case of *United States v. Bleibel*: The crime of estafa is not committed by the failure to return the things received for sale on commission, or to deliver their value, but, as this class of crime is defined by law, by misappropriating or converting the money or goods received on commission. Delay in the fulfillment of a commission or in the delivery of the sum on such account received only involves civil liability. So long as the money that a person is under obligation to deliver is not demanded of him, and he fails to deliver it for having wrongfully disposed of it, there is no *estafa*, whatever be the cause of the debt.

Likewise, by analogy, the doctrine of primary jurisdiction may be applied in this case. The issues raised by petitioner particularly the status of Saag Phils., Inc. vis-à-vis Saag (S) Pte. Ltd., as well as the question regarding the supposed authority of the latter to make a demand on behalf of the company, are proper subjects for the determination of the tribunal hearing the intra-corporate case which in this case is the RTC of Mandaluyong. These issues would have been referred to the expertise of the SEC in accordance with the doctrine of primary jurisdiction had the case not been transferred to the RTC of Mandaluyong.

Strictly speaking, the objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.

While the above doctrine refers specifically to an administrative tribunal, the Court believes that the circumstances in the instant case do not proscribe the application of the doctrine, as the role of an administrative tribunal such as the SEC in determining technical and intricate matters of special competence has been taken on by specially designated RTCs by virtue of Republic Act No. 8799.

Hence, the RTC of Mandaluyong where the intra-corporate case is pending has the primary jurisdiction to determine the issues under contention relating to the status of the domestic corporation, Saag Phils., Inc., vis-à-vis Saag Pte. Ltd.; and the authority of petitioner to act on behalf of the domestic corporation, the determination of which will have a direct bearing on the criminal case. The law recognizes that, in place of the SEC, the regular courts now have the legal competence to decide intra-corporate disputes.

- Spouses Ramon Nisce vs. Equitable PCI Bank 516 SCRA 231 (2007)

SPOUSES RAMON M. NISCE and A. NATIVIDAD PARAS-NISCE, Petitioners, vs. EQUITABLE PCI BANK, INC., Respondent.
G.R. No. 167434, THIRD DIVISION, February 19, 2007, CALLEJO, SR., *J.:*

Admittedly, PCI Capital is a subsidiary of respondent Bank. Even then, PCI Capital [PCI Express Padala (HK) Ltd.] has an independent and separate juridical personality from that of the respondent Bank, its parent company; hence, any claim against the subsidiary is not a claim against the parent company and *vice versa. The evidence on record shows that PCIB, which had been merged with Equitable Bank, owns almost all of the stocks of PCI Capital. However, the fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation, as well as the subsidiary shall be confined to those arising in their respective business.*

FACTS

Spouses Ramon and Natividad Nisce contracted loans evidenced by promissory notes amounting to P34, 087,725.76 with Equitable PCI Bank, secured by a real estate mortgage of the Petitioners land. Having defaulted, respondents as creditor-mortgagee filed a petition for extrajudicial foreclosure. Petitioner alleged, among others, that the bank should have set off their debt with their dollar account which they maintain with PCI Capital Asia Ltd. (Hong Kong), a subsidiary of Equitable. The Bank, for its part, contends that although the spouses' debt was restructured, they nevertheless failed to pay. Moreover, it alleged that there cannot be legal compensation because PCI Capital had a separate and distinct personality from the PCIB, and a claim against the former cannot be made against the latter.

On November 26, 2002, Equitable PCI Bank (Bank) as creditor-mortgagee filed a petition for extrajudicial foreclosure before the Office of the Clerk of Court as Ex-Officio Sheriff of the Regional Trial Court (RTC) of Makati City. The Nisce spouses filed before the RTC of Makati City a complaint for "nullity of the Suretyship Agreement, damages and legal compensation" with prayer for injunctive relief against the Bank and the Ex-Officio Sheriff. They had requested the bank (through their lawyer-son Atty. Rosanno P. Nisce) to set off the peso equivalent of their obligation against their US dollar account with PCI Capital Asia Limited (Hong Kong), a subsidiary of the Bank, the Bank accepted their offer and requested for an estimate of the balance of their account; they complied with the Bank's request and in a letter dated February 11, 2002, informed it that the estimated balance of their account as of December 1991 (including the 11.875% per annum interest) was US$51,000.42, and that as of December 2002, Natividad's US dollar deposit with it amounted to at least ₱9,000,000.00; they were surprised when they received a letter from the Bank demanding payment of their loan account, and later a petition for extrajudicial foreclosure.

In its Answer to the complaint, the Bank alleged that the spouses had no cause of action for legal compensation since PCI Capital was a different corporation with a separate and distinct personality; if at all, offsetting may occur only with respect to the spouses' US$500.00 deposit account in its Paseo de Roxas branch.

On March 24, 2003, the RTC issued an Order granting the spouses Nisce's plea for a writ of preliminary injunction on a bond of ₱10,000,000.00. The Bank opted not to file a motion for reconsideration of the order, and instead assailed the trial court's order before the CA via petition for certiorari under Rule 65 of the Rules of Court. The CA rendered judgment granting the petition

ISSUE

Whether or not the Spouses Nisce may set off their obligation with Equitable PCI bank with their foreign deposit from PCI Capital Asia Limited being a subsidiary of Equitable?

RULING

NO. Article 1980 of the New Civil Code provides that fixed, savings and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans. Under Article 1953, of the same Code, a person who secures a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay the creditor an equal amount of the same kind and quality. The relationship of the depositors and the Bank or similar institution is that of creditor-debtor. Such deposit may be setoff against the obligation of the depositor with the bank or similar institution.

When petitioner Natividad Nisce deposited her US$20,500.00 with the PCIB on July 19, 1984, PCIB became the debtor of petitioner. However, when upon petitioner's request, the amount of US$20,000.00 was transferred to PCI Capital, PCI Capital, in turn, became the debtor of Natividad Nisce. Indeed, a certificate of deposit is a written acknowledgment by a bank or borrower of the receipt of a sum of money or deposit which the Bank or borrower promises to pay to the depositor, to the order of the depositor; or to some other person; or to his order whereby the relation of debtor and creditor between the bank and the depositor is created. The issuance of a certificate of deposit in exchange for currency creates a debtor-creditor relationship.

Admittedly, PCI Capital is a subsidiary of respondent Bank. Even then, PCI Capital [PCI Express Padala (HK) Ltd.] has an independent and separate juridical personality from that of the respondent Bank, its parent company; hence, any claim against the subsidiary is not a claim against the parent company and vice versa. The evidence on record shows that PCIB, which had been merged with Equitable Bank, owns almost all of the stocks of PCI Capital. However, the fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation, as well as the subsidiary shall be confined to those arising in their respective business. A corporation has a separate personality distinct from its stockholders and from other corporations to which it may be conducted. This separate and distinct personality of a corporation is a fiction created by law for convenience and to prevent injustice.

On hindsight, petitioners could have spared themselves the expenses and tribulation of a litigation had they just withdrawn their deposit from the PCI Capital and remitted the same to respondent. However, petitioner insisted on their contention of setoff.

- Bank of the Philippine Islands vs. BPI Employees Union-Davao Chapter-Federation of Unions In Bpi Unibank, G.R. No. 164301, October 19, 2011

BANK OF THE PHILIPPINE ISLANDS, Petitioner, vs. **BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK,** Respondent.
G.R. No. 164301, EN BANC, **October 19, 2011**, **LEONARDO-DE CASTRO,** ***J.***

In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. In fact, the Corporation Code does not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger.

FACTS

On March 23, 2000, the Bangko Sentral ng Pilipinas approved the Articles of Merger executed on January 20, 2000 by and between BPI and FEBTC. Pursuant to the Article and Plan of Merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI as the surviving corporation. FEBTC employees, including those in its different branches across the country, were hired by petitioner as its own employees, with their status and tenure recognized and salaries and benefits maintained.

Respondent BPI Employees Union-Davao Chapter – Federation of Unions in BPI Unibank (is the exclusive bargaining agent of BPI's rank and file employees in Davao City. The former FEBTC rank-and-file employees in Davao City did not belong to any labor union at the time of the merger. Prior to the effectivity of the merger, or on March 31, 2000, respondent Union invited said FEBTC employees to a meeting regarding the Union Shop of the existing CBA between petitioner BPI and respondent Union. When former FEBTC refused to attend, the Union requested BPI to implement the Union Shop Clause of the CBA and to terminate their employment.

After two months of management inaction on the request, respondent Union informed petitioner BPI of its decision to refer the issue of the implementation of the Union Shop Clause of the CBA to the Grievance Committee. However, the issue remained unresolved at this level and so it was subsequently submitted for voluntary arbitration by the parties. The voluntary arbitrator ruled in favor of petitioner BPI's interpretation that the former FEBTC employees were not covered by the Union Security Clause of the CBA between the Union and the Bank on the ground that the said employees were not new employees who were hired and subsequently regularized, but were absorbed employees "by operation of law" because the "former employees of FEBTC can be considered assets and liabilities of the absorbed corporation."

Respondent Union filed a Motion for Reconsideration, but the Voluntary Arbitrator denied the same in an Order dated March 25, 2002. Dissatisfied, respondent then appealed the Voluntary Arbitrator's decision to the Court of Appeals. The Court of Appeals reversed and set aside the Decision of the Voluntary Arbitrator. Likewise, the Court of Appeals denied herein petitioner's Motion for Reconsideration.

ISSUE

Whether or not the former FEBTC employees were absorbed by BPI "by operation of law" because the former employees of FEBTC can be considered assets and liabilities of the absorbed corporation.

RULING

NO. In legal parlance, human beings are never embraced in the term "assets and liabilities." Moreover, BPI's absorption of former FEBTC employees was neither by operation of law nor by legal consequence of contract. There was no government regulation or law that compelled the merger of the two banks or the absorption of the employees of the dissolved corporation by the surviving corporation. Had there been such law or regulation, the absorption of employees of the non-surviving entities of the merger would have been mandatory on the surviving corporation.

In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. In fact, the Corporation Code does not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger.

Significantly, too, the Articles of Merger and Plan of Merger dated April 7, 2000 did not contain any specific stipulation with respect to the employment contracts of existing personnel of the non-surviving entity which is FEBTC. "The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being in personam, thus binding only between the parties. A labor contract merely creates an action in personam and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our Constitution, and the same can only be restricted by law through the exercise of the police power."

Furthermore, it is contrary to public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. Assets and liabilities, in this instance, should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel.

A corporation cannot unilaterally transfer its employees to another employer like chattel. Certainly, if BPI as an employer had the right to choose who to retain among FEBTC's employees, FEBTC employees had the concomitant right to choose not to be absorbed by BPI. Even though FEBTC employees had no choice or control over the merger of their employer with BPI, they had a choice whether or not they would allow themselves to be absorbed by BPI. Certainly nothing prevented the FEBTC's employees from resigning or retiring and seeking employment elsewhere instead of going along with the proposed absorption.

Employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual's freedom to contract. It would have been a different matter if there was an express provision in the articles of merger that as a condition for the merger, BPI was being required to assume all the employment contracts of all existing FEBTC employees with the conformity of the employees. In the absence of such a provision in the articles of merger, then BPI clearly had the business management decision as to whether or not employ FEBTC's employees. FEBTC employees likewise retained the prerogative to allow themselves to be absorbed or not; otherwise, that would be tantamount to involuntary servitude.

- Bank of Philippine Islands vs. Lee, G.R. No. 190144, August 1, 2012

BPI V. CARLITO LEE,
G.R. No. 190144, THIRD DIVISION, August 1, 2012, PERLAS – BERNABE, J.

Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case.

FACTS

On April 26, 1988, respondent Carlito Lee (Lee) filed a complaint for sum of money with damages with application for the issuance of a writ of attachment against Trendline and Buelva (collectively called "defendants") seeking to recover his total investment in the amount of P5.8 million. Lee alleged that he was enticed to invest his money with Trendline upon Buelva's misrepresentation that she was its duly licensed investment consultant or commodity saleswoman. His investments, however, were lost without any explanation from the defendants.

On May 4, 1988, the RTC issued a writ of preliminary attachment whereby the Check-O-Matic Savings Accounts of Trendline with Citytrust Banking Corporation in the total amount of P700,962.10 were garnished. Subsequently, the RTC rendered a decision on August 8, 1989 finding defendants jointly and severally liable to Lee for the full amount of his investment. This decision was affirmed on appeal and became final and executory.

On October 4, 1996, Citytrust and BPI merged, with the latter as the surviving corporation. The Articles of Merger provide, among others, that "all liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations."

On December 16, 2002, Lee filed a Motion for Execution and/or Enforcement of Garnishment before the RTC seeking to enforce against BPI the garnishment of Trendline's deposit in the amount of P700,962.10 and other deposits it may have had with Citytrust.

ISSUE

Can BPI be held liable?

RULING

Yes. Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case.

It is a settled rule that upon service of the writ of garnishment, the garnishee becomes a "virtual party" or "forced intervenor" to the case and the trial court thereby acquires jurisdiction to bind the garnishee to comply with its orders and processes. Citytrust, therefore, upon service of the notice of garnishment and its acknowledgment that it was in possession of defendants' deposit accounts, became a "virtual party" to or a "forced intervenor" in the civil case.

As such, it became bound by the orders and processes issued by the trial court despite not having been properly impleaded therein. Consequently, by virtue of its merger with BPI on October 4, 1996, BPI, as the surviving corporation, effectively became the garnishee, thus the "virtual party" to the civil case.

Under Article 80 of the Corporation Code, as the surviving corporation, BPI simply continued the combined businesses of the two banks and absorbed all the rights, privileges, assets, liabilities and obligations of Citytrust, including the latter's obligation over the garnished deposits of the defendants.

Moreover, BPI cannot avoid the obligation attached to the writ of garnishment by claiming that the fund was not transferred to it, in light of the Articles of Merger which provides that "all liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations, and in order that the rights and interest of creditors of Citytrust or liens upon the property of Citytrust shall not be impaired by merger."

- THE PHILIPPINE GEOTHERMAL, GEOTHERMAL, INC. EMPLOYEES UNION, Petitioner, -versus- UNOCAL PHILIPPINES, INC. (now known as CHEVRON GEOTHERMAL PHILIPPINES HOLDINGS, INC.), Respondent. (GR. No. 190187, September 28, 2016, SECOND DIVISION, LEONEN,J.)

THE PHILIPPINE GEOTHERMAL, GEOTHERMAL, INC. EMPLOYEES UNION, Petitioner, - versus- UNOCAL PHILIPPINES, INC. (now known as CHEVRON GEOTHERMAL PHILIPPINES HOLDINGS, INC.), Respondent. GR. No. 190187, September 28, 2016, SECOND DIVISION, LEONEN,J.

The merger of a corporation with another does not operate to dismiss the employees of the corporation absorbed by the surviving corporation. This is in keeping with the nature and effects of a merger as provided under law and the constitutional policy protecting the rights of labor. The employment of the absorbed employees subsists. Necessarily, these absorbed employees are not entitled to separation pay on account of such merger in the absence of any other ground for its award.

Branch and Subsidiary

If a party before the DOLE voluntary mediation proceedings claimed that it is a "branch" of another corporation, can it later claim before the Court of Appeals that it is a "subsidiary" of said corporation? No. A branch and a subsidiary differ in its corporate existence: a branch is not a legally independent unit, while a subsidiary has a separate and distinct personality from its parent corporation. In Philippine Deposit Insurance Corp. v. Citibank, we observed: "The Court begins by examining the manner by which a foreign corporation can establish its presence in the Philippines. It may choose to incorporate its own subsidiary as a domestic corporation, in which case such subsidiary would have its own separate and independent legal personality to conduct business in the country. In the alternative, it may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines."

FACTS

Philippine Geothermal, Inc. Employees Union is the bargaining agent of the rank-and-file employees of Unocal Philippines.

On April 4, 2005, Unocal Corporation executed an Agreement and Plan of Merger (Merger Agreement) with Chevron Texaco Corporation (Chevron) and Blue Merger Sub, Inc. (Blue Merger). Blue Merger is a wholly owned subsidiary of Chevron. Under the Merger Agreement, Unocal Corporation merged with Blue Merger, and Blue Merger became the surviving corporation. Chevron then became the parent corporation of the merged corporations: After the merger, Blue Merger, as the surviving corporation, changed its name to Unocal Corporation.

The Union wrote Unocal Philippines asking for the separation benefits provided for under the Collective Bargaining Agreement. According to the Union, the Merger Agreement of Unocal Corporation, Blue Merger, and Chevron resulted in the closure and cessation of operations of Unocal Philippines and the implied dismissal of its employees.

The parties agreed to submit their dispute for voluntary arbitration before the Department of Labor and Employment, with the Secretary of Labor and Employment as Voluntary Arbitrator who ruled that the Union's members were impliedly terminated from employment as a result of the Merger Agreement. The Court of Appeals granted the appeal of Unocal Philippines and reversed the Decision of the Secretary of Labor. It held that Unocal Philippines has a separate and distinct juridical personality from its parent company, Unocal Corporation, which was the party that entered into the Merger Agreement. The Court of Appeals ruled that Unocal Philippines remained undissolved and its employees were unaffected by the merger. Moreover, the Court of Appeals found that although Unocal Corporation became a part of Chevron, Unocal Philippines still remained as a wholly owned subsidiary of Unocal California after the merger.

ISSUE

Whether the Merger Agreement executed by Unocal Corporation, Blue Merger, and Chevron resulted in the termination of the employment of petitioner's members and thereby entitling them to separation pay.

RULING

Whether or not respondent is a party to the Merger Agreement, there is no implied dismissal of its employees as a consequence of the merger.

A merger is a consolidation of two or more corporations, which results in one or rriore corporations being absorbed into one surviving corporation. The separate existence of the absorbed corporation ceases, and the surviving corporation "retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s)."

If respondent is a subsidiary of Unocal California, which, in tum, is a subsidiary of Unocal Corporation, then the merger of Unocal Corporation with Blue Merger and Chevron does not affect respondent or any of its employees. Respondent has a separate and distinct personality from its parent corporation.

Nonetheless, if respondent is indeed a party to the merger, the merger still does not result in the dismissal of its employees. Section 80 of the Corporation Code provides that the surviving corporation shall possess all the rights, privileges, properties, and receivables due of the absorbed corporation. Moreover, all interests of, belonging to, or due to the absorbed corporation "shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed. The surviving corporation likewise acquires all the liabilities and obligations of the absorbed corporation as if it had itself incurred these liabilities or obligations. This acquisition of all assets, interests, and liabilities of the absorbed corporation necessarily includes the rights and obligations of the absorbed corporation under its employment contracts. Consequently, the surviving corporation becomes bound by the employment contracts entered into by the absorbed corporation. These employment contracts are not terminated. They subsist unless their termination is allowed by law. Given these considerations, the petitioner is not entitled to the separation benefits it claims from respondent.

- SUMIFRU (PHILIPPINES) CORPORATION (SURVIVING ENTITY IN A MERGER WITH DAVAO FRUITS CORPORATION AND OTHER COMPANIES) v. BERNABE BAYA, G.R. No. 188269, April 17, 2017, First Division, PERLAS-BERNABE, J.

SUMIFRU (PHILIPPINES) CORPORATION (SURVIVING ENTITY IN A MERGER WITH DAVAO FRUITS CORPORATION AND OTHER COMPANIES) *v.* BERNABE BAYA
G.R. No. 188269, April 17, 2017, First Division, PERLAS-BERNABE, J.:

One of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with.

FACTS

Baya has been employed by AMSFC since 1985. As a supervisor, Baya joined the union of supervisors, and eventually, formed AMS Kapalong Agrarian Reform Beneficiaries Multipurpose Cooperative (AMSKARBEMCO), the basic agrarian reform organization of the regular employees of AMSFC. In 1999, Baya was reassigned to a series of supervisory positions in AMSFC's sister company, DFC, where he also became a member of the latter's supervisory union while at the same time, remaining active at AMSKARBEMCO.

In October 2001, the Agrarian Reform beneficiaries held a referendum in order to choose as to which group between AMSKARBEMCO or SAFFPAI, an association of pro-company beneficiaries, they wanted to belong; 280 went to AMSKARBEMCO while 85 joined SAFFPAI.Baya was repeatedly summoned, and was told that he would be putting himself in a "difficult situation" if he will not shift his loyalty to SAFFPAI; this notwithstanding, Baya politely refused to betray his cooperative. A few days later, Baya received a letter stating that his secondment with DFC has ended, thus, ordering his return to AMSFC. However, upon Baya's return to AMSFC, he was informed that there were no supervisory positions available; thus, he was assigned to different rank-and-file positions instead. Baya's written request to be restored to a supervisory position was denied, prompting him to file the instant complaint in 2002. In 2008, during the pendency of the case, Sumifru Corporation (Sumifru) acquired DFC *via* merger. It was held that AMSFC and DFC constructively dismissed Baya.

ISSUE

Whether or not Sumifru should be held solidarily liable with AMSFC's for Baya's monetary awards

RULING

YES. Sumifru, as the surviving entity in its merger with DFC, must be held answerable for the latter's liabilities, including its solidary liability with AMSFC arising herein.

Section 80 of the Corporation Code of the Philippines clearly states that one of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with, to wit:

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 merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables 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.

Verily, jurisprudence states that "in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation," as in this case.

- Spouses Ong v. BPI Family Savings Bank, Inc., G.R. No. 208638, [January 24, 2018]

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.

M. Miscellaneous Topics

1. Corporate Officers

- Board of Liquidators vs. Kalaw, 20 SCRA 987 (1967)

THE BOARD OF LIQUIDATORS representing THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,plaintiff-appellant, vs. HEIRS OF MAXIMO M. KALAW,[2] JUAN BOCAR, ESTATE OF THE DECEASED CASIMIRO GARCIA,[3] and LEONOR MOLL, defendants-appellees.
G.R. No. L-18805, EN BANC, August 14, 1967, SANCHEZ, *J.*

Accepted in this jurisdiction are three methods by which a corporation may wind up its affairs: (1) under Section 3, Rule 104, of the Rules of Court [which superseded Section 66 of the Corporation Law] whereby, upon voluntary dissolution of a corporation, the court may direct "such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation;" (2) under Section 77 of the Corporation Law, whereby a corporation whose corporate existence is terminated, "shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established;" and (3) under Section 78 of the Corporation Law, by virtue of which the corporation, within the three year period *just mentioned, "is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested."*

FACTS

The National Coconut Corporation (NACOCO) was chartered as a non-profit governmental organization on May 7, 1940 by Commonwealth Act 518 avowedly for the protection, preservation and development of the coconut industry in the Philippines. On August 1, 1946, NACOCO's charter was amended [Republic Act 5] to grant that corporation the express power "to buy, sell, barter, export, and in any other manner deal in, coconut, copra, and dessicated coconut, as well as their by-products, and to act as agent, broker or commission merchant of the producers, dealers or merchants" thereof.

General manager and board chairman Defendants Juan Bocar and Casimiro Garcia - members of the Board Defendant Leonor Moll - became director only on December 22, 1947 NACOCO, after the passage of Republic Act 5, embarked on copra trading activities. Amongst the scores of contracts executed by general manager Kalaw are the disputed contracts, for the delivery of copra. An unhappy chain of events conspired to deter NACOCO from fulfilling these contracts.

Nature supervened. Four devastating typhoons visited the Philippines: the first in October, the second and third in November, and the fourth in December, 1947. Coconut trees throughout the country suffered extensive damage. Copra production decreased. Prices spiralled. Warehouses were destroyed. Cash requirements doubled. Deprivation of export facilities increased the time necessary to accumulate shiploads of copra. Quick turnovers became impossible, financing a problem. When it became clear that the contracts would be unprofitable, Kalaw submitted them to the board for approval. It was not until December 22, 1947 when the membership was completed. Defendant Moll took her oath on that date. A meeting was then held. Kalaw made a full disclosure of the situation, apprised the board of the impending heavy losses. No action was taken on the contracts. Neither did the board vote thereon at the meeting of January 7, 1948 following.

Then, on January 11, 1948, President Roxas made a statement that the NACOCO head did his best to avert the losses, emphasized that government concerns faced the same risks that confronted private companies, that NACOCO was recouping its losses, and that Kalaw was to remain in his post. Not long thereafter, that is, on January 30, 1948, the board met again with Kalaw, Bocar, Garcia and Moll in attendance. They unanimously approved the contracts hereinbefore enumerated. As expected, NACOCO partially performed the contracts. The buyers threatened damage suits. Some of the claims were settled, viz: Pacific Vegetable Oil Co., in copra delivered by NACOCO, P539,000.00; Franklin Baker Corporation, P78,210.00; Spencer Kellog & Sons, P159,040.00. But one buyer, Louis Dreyfus & Go.(Overseas) Ltd., did in fact sue before the Court of First Instance of Manila.

These cases culminated in an out-of-court amicable settlement when the Kalaw management was already out. The corporation thereunder paid Dreyfus P567,024.52 representing 70% of the total claims. With particular reference to the Dreyfus claims, NACOCO put up the defenses that: (1) the contracts were void because Louis Dreyfus & Co.(Overseas) Ltd. did not have license to do business here; and (2)failure to deliver was due to force majeure, the typhoons. In this suit started in February, 1949, NACOCO seeks to recover the sum of P1,343,274.52 from general manager and board chairman Maximo M. Kalaw, and directors Juan Bocar, Casimiro Garcia and Leonor Moll. It charges Kalaw with negligence under Article 1902 of the old Civil Code (now Article 2176, new Civil Code); and defendant board members, including Kalaw, with bad faith and/or breach of trust for having approved the contracts. CFI: dismissed the complaint; NACOCO was ordered to pay the heirs of Maximo Kalaw the sum of P2,601.94 for unpaid salaries and cash deposit due the deceased Kalaw from NACOCO.

ISSUE

Whether or not the plaintiff Board of Liquidators has lost its legal personality to continue with this suit. – YES

RULING

Accepted in this jurisdiction are three methods by which a corporation may wind up its affairs: (1) under Section 3, Rule 104, of the Rules of Court [which superseded Section 66 of the Corporation Law] whereby, upon voluntary dissolution of a corporation, the court may direct "such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation;" (2) under Section 77 of the Corporation Law, whereby a corporation whose corporate existence is terminated, "shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established;" and (3) under Section 78 of the Corporation Law, by virtue of which the corporation, within the three year period just mentioned, "is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested."

It is defendants' pose that their case comes within the coverage of the second method. They reason out that suit was commenced in February, 1949; that by Executive Order 372, dated November 24, 1950, NACOCO, together with other government-owned corporations, was abolished, and the Board of Liquidators was entrusted with the function of settling and closing its affairs; and that, since the three year period has elapsed, the Board of Liquidators may not now continue with, and prosecute, the present case to its conclusion, because Executive Order 372 provides in Section 1 thereof that —

Sec.1. The National Abaca and Other Fibers Corporation, the National Coconut Corporation, the National Tobacco Corporation, the National Food Producer Corporation and the former enemy-owned or controlled corporations or associations, . . . are hereby abolished.

The said corporations shall be liquidated in accordance with law, the provisions of this Order, and/or in such manner as the President of the Philippines may direct;

Provided, however, That each of the said corporations shall nevertheless be continued as a body corporate for a period of three (3) years from the effective date of this Executive Order for the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators gradually to settle and close its affairs, to dispose of and, convey its property in the manner hereinafter provided.

The executive order abolishing NACOCO and creating the Board of Liquidators should be examined in context. The proviso in Section 1 of EO 372, whereby the corporate existence of NACOCO was continued for a period of three years from the effectivity of the order for "the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators gradually to settle and close its affairs, to dispose of and convey its property in the manner hereinafter provided", is to be read not as an isolated provision but in conjunction with the whole. So reading, it will be readily observed that no time limit has been tacked to the existence of the Board of Liquidators and its function of closing the affairs of the various government owned corporations, including NACOCO.

By Section 2 of the executive order, while the boards of directors of the various corporations were abolished, their powers and functions and duties under existing laws were to be assumed and exercised by the Board of Liquidators. The President thought it best to do away with the boards of directors of the defunct corporations; at the same time, however, the President had chosen to see to it that the Board of Liquidators step into the vacuum. And nowhere in the executive order was there any mention of the lifespan of the Board of Liquidators.

Thus, liquidation by the Board of Liquidators may, under section 1, proceed in accordance with law, the provisions of the executive order, "and/or in such manner as the President of the Philippines may direct." By Section 4, when any property, fund, or project is transferred to any governmental instrumentality "for administration or continuance of any project," the necessary funds therefor shall be taken from the corresponding special fund created in Section 5. Section 5, in turn, talks of special funds established from the "net proceeds of the liquidation" of the various corporations abolished. And by Section, 7, fifty per centum of the fees collected from the copra standardization and inspection service shall accrue "to the special fund created in section 5 hereof for the rehabilitation and development of the coconut industry."

Implicit in all these, is that the term of life of the Board of Liquidators is without time limit. Contemporary history gives us the fact that the Board of Liquidators still exists as an office with officials and numerous employees continuing the job of liquidation and prosecution of several court actions. By EO 372, the government, the sole stockholder, abolished NACOCO, and placed its assets in the hands of the Board of Liquidators. The Board of Liquidators thus became the trustee on behalf of the government. It was an express trust. The legal interest became vested in the trustee — the Board of Liquidators. The beneficial interest remained with the sole stockholder — the government. The provisions of Section 78 of the Corporation Law — the third method of winding up corporate affairs — find application. We, accordingly, rule that the Board of Liquidators has personality to proceed as party-plaintiff in this case.

- AC Ransom Labor Union vs. NLRC 142 SCRA 269 (1986); Villanueva vs. Adre 172 SCRA 876 (1989).

A.C. RANSOM LABOR UNION-CCLU, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION, First Division A.C. RANSOM (PHIIS.) CORPORATION RUBEN HERNANDEZ, MAXIMO C. HERNANDEZ, SR., PORFIRIO R. VALENCIA, LAURA H. CORNEJO, FRANCISCO HERNANDEZ, CELESTINO C. HERNANDEZ and MA. ROSARIO HERNANDEZ, respondents. G.R. No. L-69494, FIRST DIVISION, May 29, 1987, MELENCIO-HERRERA, *J.:*

In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy *or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.*

FACTS

Successive Motion for Execution were filed by the UNION for the backwages due to 22 employees amounting to P 199,276.00 - all of which were opposed by RANSOM stressing its precarious financial position if immediate execution of the backwages would be ordered.

Upon the UNION's motion asking the CIR that RANSOM be ordered to deposit with the Court the backwages due, RANSOM manifested that it did not have the funds to deposit the amount. After several hearings, a recomputation was made reducing the award to P 164,984.00.

The records show that, upon application filed by RANSOM on April 2, 1973, it was granted clearance by the Secretary of Labor on June 7, 1973 to cease operation and terminate employment effective May 1, 1973, without prejudice to the right of subject employees to seek redress of grievances under existing laws and decrees. The reasons given by RANSOM for the clearance application were financial difficulties on account of obligations incurred prior to 1966.

On January 21, 1974, the UNION filed another Motion for Execution alleging that although RANSOM had assumed a posture of suffering from business reverse, its officers and principal stockholders had organized a new corporation, the Rosario Industrial Corporation using the same equipment, personnel, business stocks and the same place of business.

RANSOM declared that ROSARIO is a distinct and separate corporation, which was organized long before these instant cases were decided adversely against RANSOM.

Sometime in 1969, ROSARIO, a closed corporation, was, in fact, established. It was engaged in the same line of business as RANSOM with the same Hernandez family as the owners, the same officers, the same President, the same counsel and the same address at 555 Quirino Avenue, Paranaque, Rizal. The compound, building, plant, equipment, machinery, laboratory and bodega were the same as those occupied and used by RANSOM. The UNION claims that ROSARIO thrives to this day.

Writs of execution were issued successively against RANSOM but to no avail.

On December 18, 1978, the UNION again filed an ex-parte Motion for Writ of Execution and Garnishment praying that the Writ issue against the Officers/Agents of RANSOM personally and or their estates, as the case may be, considering their success in hiding or shielding the assets of said company. RANSOM countered that the CIR Decision, dated August 19, 1972, could no longer be enforced by mere Motion because more than five (5) years had already lapsed.

Acting on the Motiong, Labor Arbiter Genilo issued an order holding the corporation's officers and agents liable. It appears however that among the persons named in the order as officer, Ma. Rosario Hernandez, died in 1971, Francisco Hernandez died in 1977: and Celestino C. Hernandez passed away in 1979. And Maximo Hernandez who was named in the CIR Decision, died in 1966.

On appeal, the NLRC modified the Decision by relieving the officers and agents of liability. By the special civil action of certiorari the Court reinstated the Labor Arbiter's decision.

Incontrovertible is the fact that RANSOM was found guilty by the CIR, in its Decision of August 19, 1972, of unfair labor practice; that its *officers and agents* were ordered to cease and desist from further committing acts constitutive of the same, and to *reinstate immediately* the 22 union members to their respective positions *with backwages* from July 25, 1969 until actually reinstated.

ISSUE

Whether the judgment against the Corporation to reinstate employees with backwages enforceable against its agents and officers in their individual, private and personal capacities

Ruling

Yes.

The Court upheld that portion of the judgment ordering the *officers and agents* of RANSOM to reinstate the laborers concerned, with backwages. The inclusion of the officers and agents was but proper since a corporation, as an artificial being, can act only through them. the officers and agents listed in the Genilo Order except for those who have since passed away, should, as affirmed by this Court, be held jointly and severally liable for the payment of backwages to the 22 strikers.

This finding does not ignore the legal fiction that a corporation has a personality separate and distinct from its stockholders and members, for, as the Court had held "where the incorporators and directors belong to a single family, the corporation and its members can be considered as one in order to avoid its being used as an instrument to commit injustice.

The alleged bankruptcy of RANSOM furnishes no justification for non-payment of backwages to the employees concerned taking into consideration Article 110 of the Labor Code: ART. 110. Worker preference in case of bankruptcy. - In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

The term "wages" refers to all remunerations, earnings and other benefits in terms of money accruing to the employees or workers for services rendered. They are to be paid in full before other creditors may establish any claim to a share in the assets of the employer.

The worker preference applies even if the employer's properties are encumbered by means of a mortgage contract, as in this case. So that, when machinery and equipment of RANSOM were sold to Revelations Manufacturing Corporation for P 2M in 1975, the right of the 22 laborers to be paid from the proceeds should have been recognized, even though it is claimed that those proceeds were turned over to the Commercial Bank and Trust Company (Comtrust) in payment of RANSOM obligations, since the workers' preference is over and above the claim of other creditors.

The contention, therefore, of the heirs of the late Maximo C. Hernandez, Sr. that since they paid from their own personal funds the balance of the amount owing by RANSOM to Comtrust they are the "preferential creditors" of RANSOM, is clearly without merit. Workers are to be paid in full before other creditors may establish any claim to a share in the assets of the employer.

ANTONIO M. VILLANUEVA and FULGENCIO B. LAVAREZ, petitioners, vs. HONORABLE ABEDNEGO O. ADRE, Presiding Judge, Regional Trial Court, Branch 22, 11th Judicial Region, and LUCIO VELAYO, respondents.
G.R. No. 80863, SECOND DIVISION, April 27, 1989, SARMIENTO, *J.:*

The theory of corporate entity, in the first place, was not meant to promote unfair objectives or otherwise, to shield them. The Court has not hesitated in penetrating the veil of corporate fiction when it would defeat the ends envisaged by law, not to mention the clear decree of the Labor Code.

FACTS

A complaint for the recovery of unpaid 13th month pay was filed by the Sarangani Marine and General Workers Union-ALU with the DOLE against South Cotabato Integrated Port Services Inc. (SCIPSI). It was then consolidated with the complaints filed by 37 non-union members.

The Labor Arbiter dismissed the complaint and on appeal the decision was reversed by the NLRC ordering SCIPSI and its president and general manager, Lucio Velayo, to pay the demand. The decision attained finality.

The parties were made to appear before a corporate examiner to determine the exact liability of the private respondents. the corporate auditing examiner submitted an accounting and found the private respondents liable in the total sum of P 1,134,000.00.

On January 16,1987, the union moved for execution and pursuant thereto, the labor arbiter issued a writ of execution. As a result, the sheriff levied on two parcels of land, both registered in Lucio Velayo's name, with an area of 400 and 979 square meters.

On February 16,1987, Velayo alone filed a petition with the respondent court on a cause of action based on an alleged irregular execution, on the ground that he "was never a party to the labor case" and that "a corporation (that is, SCIPSI has a separate and distinct personality from this incorporators, stockholders and officers."

Meanwhile, on April 27,1988, the parties (in G.R. Nos. 7730001) submitted a Compromise Agreement whereby the private respondents agreed to pay, in installments, the reduced sum of P637,400.00 to the workers. On May 11, 1988, the Court issued a Resolution approving the Compromise Agreement, and considering the cases (G.R. Nos. 77300-01) closed and terminated.

At the same time, the court, in this petition, a Resolution requiring the private respondents and/or counsel, Atty. Oscar Dinipol, to show cause why they should not be held in contempt for forum-shopping. On December 9,1988, Atty. Dinopol filed a manifestation praying for dismissal "not because it has become moot and academic in view of the compromise agreement executed by the parties in G.R. Nos. 77300-01 but because the subject or cause of action is totally different from the cause of action in the above-entitled case."

ISSUE

Whether or not this case has become moot and academic in view of the compromise reached in G.R. Nos. 77300-01

RULING

Yes. It should be noted that the instant petition has been brought as a result of the execution of the judgment rendered below, and since the parties, by virtue of the compromise, have spelled out the manner by which payment shall be made, execution by means of levy, the question confronting the court herein, may no longer be carried out. Nevertheless, because of the ethical implications of the acts of the private respondents, the Court is constrained to render its judgment if only to forestall future similar acts and for the guidance of the bench and the bar.

The respondent Lucio Velayo's reliance upon *National Mines and Allied Workers Union v. Vera* is not well-taken. In that case, the properties involved belonged to third persons, a development that provided a civil dimension to the labor case, and a development that gave the courts the jurisdiction. In the case at bar, however, Velayo cannot be said to be a stranger to the proceedings for a number of reasons. First, and as pointed out by the Solicitor General, and as the records will amply show, he, Velayo, was a party to the proceedings below where he took part actively in defense of his case.

The fact that he was never mentioned in the pleadings before the petitioner-labor arbiter is of no moment.The fact is that he himself had questioned the findings of the corporate auditor (in G.R. Nos. 77300-01) and this is enough evidence that he admits personal liability, although he does not agree with the amount supposedly due from him. His remonstrance came too late in the day.

In A.C. Ransom Labor Union-CCLU v. NLRC the Court held that in case of corporations. It is the president who responds personally for violation of the labor pay laws. Accordingly, Velayo cannot be excused from payment of SCIPSI's liability by mere reason of SCIPSI's separate corporate existence. The theory of corporate entity, in the first place, was not meant to promote unfair objectives or otherwise, to shield them. The Court has not hesitated in penetrating the veil of corporate fiction when it would defeat the ends envisaged by law, not to mention the clear decree of the Labor Code.

- Prime White Cement Corporation vs. Intermediate Appellate Court, 220 SCRA 103 (1993)

PRIME WHITE CEMENT CORPORATION, Petitioner, vs. HONORABLE INTERMEDIATE APPELLATE COURT and ALEJANDRO TE, Respondents.
G.R. No. L-68555, SECOND DIVISION, March 19, 1993, CAMPOS, JR., ***J.***

All corporate powers shall be exercised by the Board of Directors, except as otherwise provided by law. Although it cannot completely abdicate its power and responsibility to act for the juridical entity, the Board may expressly delegate specific powers to its President or any of its officers. In the absence of such express delegation, a contract entered into by its President, on behalf of the corporation, may still bind the corporation if the board should ratify the same expressly or impliedly.

FACTS

July 1969, plaintiff and Defendant Corporation thru its President, entered into a dealership agreement whereby plaintiff was obligated to act as the exclusive distributor of the cement products in Mindanao for 5 years.

As a result, some business associates propose to be a sub-dealer in Mindanao. Relying on the dealership agreement, plaintiff entered into a written agreement with several hardware stores dealing in buying and selling white cement in Davao and Cagayan de Oro.

Later on, the defendant corporation decide to impose conditions which were answered by several demands from the plaintiff to comply with the dealership agreement. However, defendant refused to comply. After the trial court adjudged the corporation liable to Alejandro Te, the CA affirmed the said decision based on: There is no dispute that when Zosimo R. Falcon and Justo B. Trazo signed the dealership agreement Exhibit "A", they was the President and Chairman of the Board, respectively, of defendant-appellant Corporation. Neither is the genuineness of the said agreement contested. As a matter of fact, it appears on the face of the contract itself that both officers were duly authorized to enter into the said agreement and signed the same for and in behalf of the corporation. When they, therefore, entered into the said transaction they created the impression that they were duly clothed with the authority to do so. It cannot now be said that the disputed agreement which possesses all the essential requisites of a valid contract was never intended to bind the corporation as this avoidance is barred by the principle of estoppel.

ISSUE

Whether or not the dealership agreement referred by the President and Chairman of the Board of petitioner corporation is valid and enforceable contract.

RULING: No, it is not valid.

Under the Corporation Law, which was then in force at the time this case arose, as well as under the present Corporation Code, all corporate powers shall be exercised by the Board of Directors, except as otherwise provided by law. Although it cannot completely abdicate its power and responsibility to act for the juridical entity, the Board may expressly delegate specific powers to its President or any of its officers. In the absence of such express delegation, a contract entered into by its President, on behalf of the corporation, may still bind the corporation if the board should ratify the same expressly or impliedly.

Furthermore, even in the absence of express or implied authority by ratification, the President as such may, as a general rule, bind the corporation by a contract in the ordinary course of business, provided the same is reasonable under the circumstances. These rules are basic, but are all general and thus quite flexible. They apply where the President or other officer, purportedly acting for the corporation, is dealing with a third person, i. e., a person outside the corporation.

The situation is quite different where a director or officer is dealing with his own corporation. In the instant case respondent Te was not an ordinary stockholder; he was a member of the Board of Directors and Auditor of the corporation as well. He was what is often referred to as a "self-dealing" director. A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation. In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit.

- Tabang vs. National Labor Relations Commission, 266 SCRA 462 (1997)

PURIFICACION G. TABANG, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION and PAMANA GOLDEN CARE MEDICAL CENTER FOUNDATION, INC., respondents.
G.R. No. 121143, SECOND DIVISION, January 21, 1997, REGALADO, *J.*

A corporate officer's dismissal is always a corporate act, or an intra-corporate 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 intra-corporate 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.

FACTS

Purificacion Tabang was a founding member, a member of the Board of Trustees, and the corporate secretary of private respondent Pamana Golden Care Medical Center Foundation, Inc., a non-stock corporation engaged in extending medical and surgical services.

On October 30, 1990, the Board of Trustees issued a memorandum appointing petitioner as Medical Director and Hospital Administrator of private respondent's Pamana Golden Care Medical Center in Calamba, Laguna. As medical director and hospital administrator, petitioner was tasked to run the affairs of the aforesaid medical center and perform all acts of administration relative to its daily operations.

On May 1, 1993, petitioner was allegedly informed personally by Dr. Ernesto Naval that in a special meeting held on April 30, 1993, the Board of Trustees passed a resolution relieving her of her position as Medical Director and Hospital Administrator, and appointing the latter and Dr. Benjamin Donasco as acting Medical Director and acting Hospital Administrator, respectively. Petitioner averred that she thereafter received a copy of said board resolution.

On June 6, 1993, petitioner filled a complaint for illegal dismissal and non-payment of wages, allowances and 13th month pay before the labor arbiter. Respondent corporation moved for the dismissal of the complaint on the ground of lack of jurisdiction over the subject matter. It argued that petitioner's position as Medical Director and Hospital Administrator was interlinked with her position as member of the Board of Trustees, hence, her dismissal is an intra-corporate controversy which falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC).

Petitioner opposed the motion to dismiss, contending that her position as Medical Director and Hospital Administrator was separate and distinct from her position as member of the Board of Trustees. She claimed that there is no intra-corporate controversy involved since she filed the complaint in her capacity as Medical Director and Hospital Administrator, or as an employee of private respondent.

ISSUE

Whether or not the position as Medical Director and Hospital Administrator was separate and distinct from a amember of the Board of Trustees, thus no intra-corporate controversy is. involved

RULING

NO. The charges against herein private respondent partake of the nature of an intra-corporate controversy. Similarly, the determination of the rights of petitioner and the concomitant liability of private respondent arising from her ouster as a medical director and/or hospital administrator, which are corporate offices, is an intra-corporate controversy subject to the jurisdiction of the SEC.

Contrary to the contention of petitioner, a medical director and a hospital administrator are considered as corporate officers under the by-laws of respondent corporation. Section 2(i), Article I thereof states that one of the powers of the Board of Trustees is "(t)o appoint a Medical Director, Comptroller/Administrator, Chiefs of Services and such other officers as it may deem necessary and prescribe their powers and duties."

The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary. It has been held that 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.

In the case at bar, considering that herein petitioner, unlike an ordinary employee, was appointed by respondent corporation's Board of Trustees, she is deemed an officer of the corporation. Perforce, Section 5(c) of Presidential Decree No. 902-A, which provides that the SEC exercises exclusive jurisdiction over controversies in the election appointment of directors, trustees, officers or managers of corporations, partnerships or associations, applies in the present dispute. Accordingly, jurisdiction over the same is vested in the SEC, and not in the Labor Arbiter or the NLRC.

A corporate officer's dismissal is always a corporate act, or an intra-corporate 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 intra-corporate 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.

Moreover, even assuming that the monthly payment of P5,000.00 was a valid claim against respondent corporation, this would not operate to effectively remove this case from the jurisdiction of the SEC. In the case of *Cagayan de Oro Coliseum*, *Inc*. *vs*. *Office of the Minister of Labor and Employment, etc*., *et al*., the Court ruled that "(a)lthough the reliefs sought by Chavez appear to fall under the jurisdiction of the labor arbiter as they are claims for unpaid salaries and other remunerations for services rendered, a close scrutiny thereof shows that said claims are actually part of the perquisites of his position in, and therefore interlinked with, his relations with the corporation. In *Dy, et al*.,*vs*. *NLRC, et al*., the Court said: "(t)he question of remuneration involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is in fact a corporate controversy in contemplation of the Corporation Code."

- Naguiat vs. National Labor Relations Commission, 269 SCRA 564 (1997)

SERGIO F. NAGUIAT, DOING BUSINESS UNDER THE NAME AND STYLE, SERGIO F. NAGUIAT ENT., INC., & CLARK FIELD TAXI, INC. vs. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), NATIONAL ORGANIZATION OF WORKINGMEN AND ITS MEMBERS, LEONARDO T. GALANG, ET AL
G.R. NO. 116123, THIRD DIVISION, MARCH 13, 1997, PANGANIBAN, J.

Both CFTI and Naguiat Enterprises were "close family corporations" owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states:

(5) To the extent that the stockholders are actively engage(d) in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance.

FACTS

Petitioner Clark Field Taxi, Inc (CFTI) held a concessionaire's contract with the Army Air Force Exchange Services ("AAFES") for the operation of taxi services within Clark Air Base. Sergio F. Naguiat was CFTI's president, while Antolin T. Naguiat was its vice-president. Like Sergio F. Naguiat Enterprises, Incorporated ("Naguiat Enterprises"), a trading firm, it was a family-owned corporation.

Individual respondents were previously employed by CFTI as taxicab drivers. During their employment, they were required to pay a daily "boundary fee" in the amount of US$26.50 for those working from 1:00 a.m. to 12:00 noon, and US$27.00 for those working from 12:00 noon to 12:00 midnight. All incidental expenses for the maintenance of the vehicles they were driving were accounted against them, including gasoline expenses.
The drivers worked at least three to four times a week, depending on the availability of taxicabs. They earned not less than US$15.00 daily.

In excess of that amount, however, they were required to make cash deposits to the company, which they could later withdraw every fifteen days.

Due to the phase-out of the US military bases in the Philippines, from which Clark Air Base was not spared, the AAFES was dissolved, and the services of individual respondents were officially terminated on November 26, 1991.

The AAFES Taxi Drivers Association ("drivers' union"), through its local president, Eduardo Castillo, and CFTI held negotiations as regards separation benefits that should be awarded in favor of the drivers. They arrived at an agreement that the separated drivers will be given P500.00 for every year of service as severance pay. Most of the drivers accepted said amount in December 1991 and January 1992. However, individual respondents herein refused to accept theirs.

A complaint was filed against "Sergio F. Naguiat doing business under the name and style Sergio F. Naguiat Enterprises, Inc., Army-Air Force Exchange Services (AAFES) with Mark Hooper as Area Service Manager, Pacific Region, and AAFES Taxi Drivers Association with Eduardo Castillo as President," for payment of separation pay due to termination/phase-out. Said complaint was later amendedto include additional taxi drivers who were similarly situated as complainants, and CFTI with Antolin T. Naguiat as vice president and general manager, as party respondent. In their complaint, herein private respondents alleged that they were regular employees of Naguiat Enterprises, although their individual applications for employment were approved by CFTI. They claimed to have been assigned to Naguiat Enterprises after having been hired by CFTI, and that the former thence managed, controlled and supervised their employment. They averred further that they were entitled to separation pay based on their latest daily earnings of US$15.00 for working sixteen (16) days a month.

In their position paper submitted to the labor arbiter, herein petitioners claimed that the cessation of business of CFTI on November 26, 1991, was due to "great financial losses and lost business opportunity" resulting from the phase-out of Clark Air Base brought about by the Mt. Pinatubo eruption and the expiration of the RP-US military bases agreement. They admitted that CFTI had agreed with the drivers' union, through its President Eduardo Castillo who claimed to have had blanket authority to negotiate with CFTI in behalf of union members, to grant its taxi driver-employees separation pay equivalent to P500.00 for every year of service.

The labor arbiter, finding the individual complainants to be regular workers of CFTI, ordered the latter to pay them P1,200.00 for every year of service "for humanitarian consideration," setting aside the earlier agreement between CFTI and the drivers' union of P500.00 for every year of service. The labor arbiter rejected the allegation of CFTI that it was forced to close business due to "great financial losses and lost business opportunity" since, at the time it ceased operations, CFTI was profitably earning and the cessation of its business was due to the untimely closure of Clark Air Base.

Herein individual private respondents appealed to the NLRC. In its Resolution, the NLRC modified the decision of the labor arbiter by granting separation pay to the private respondents. As mentioned earlier, the motion for reconsideration of herein petitioners was denied by the NLRC. Hence, this petition with prayer for issuance of a temporary restraining order. Upon posting by the petitioners of a surety bond, a temporary restraining order was issued by this Court enjoining execution of the assailed Resolutions.

ISSUE

Whether or not Naguiat enterprise is liable.

RULING

Based on factual submissions of the parties, the labor arbiter, however, found that individual respondents were regular employees of CFTI who received wages on a boundary or commission basis.

The Court finds no reason to make a contrary finding. Labor-only contracting exists where: (1) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, and work premises, among others; and (2) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. Independent contractors, meanwhile, are those who exercise independent employment, contracting to do a piece of work according to their own methods without being subject to control of their employer except as to the result of their Work. From the evidence proffered by both parties, there is no substantial basis to hold that Naguiat Enterprises is an indirect employer of individual respondents much less a labor only contractor. On the contrary, petitioners submitted documents such as the drivers' applications for employment with CFTI, and social security remittances and payroll of Naguiat Enterprises showing that none of the individual respondents were its employees. Moreover, in the contract between CFTI and AAFES, the former, as concessionaire, agreed to purchase from AAFES for a certain amount within a specified period a fleet of vehicles to be "ke(pt) on the road" by CFTI, pursuant to their concessionaire's contract. This indicates that CFTI became the owner of the taxicabs which became the principal investment and asset of the company.

Private respondents failed to substantiate their claim that Naguiat Enterprises managed, supervised and controlled their employment. It appears that they were confused on the personalities of Sergio F. Naguiat as an individual who was the president of CFTI, and Sergio F. Naguiat Enterprises, Inc., as a separate corporate entity with a separate business. They presumed that Sergio F. Naguiat, who was at the same time a stockholder and director of Sergio F. Naguiat Enterprises, Inc., was managing and controlling the taxi business on behalf of the latter. A closer scrutiny and analysis of the records, however, evince the truth of the matter: that Sergio F. Naguiat, in supervising the taxi drivers and determining their employment terms, was rather carrying out his responsibilities as president of CFTI. Hence, Naguiat Enterprises as a separate corporation does not appear to be involved at all in the taxi business.

Sergio F. Naguiat, admittedly, was the president of CFTI who actively managed the business. Thus, applying the ruling in A.C. Ransom , he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees.

Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations" owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states:
(5) To the extent that the stockholders are actively engage(d) in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance.

Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort.

Our jurisprudence is wanting as to the definite scope of "corporate tort." Essentially, "tort" consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty. Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable. As pointed out earlier, the fifth paragraph of Section 100 of the Corporation Code specifically imposes personal liability upon the stockholder actively managing or operating the business and affairs of the close corporation.

In fact, in posting the surety bond required by this Court for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, only Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation thereunder, i . e ., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto.

- Llamdo vs. Court of Appeals, 270 SCRA 423 (1997)

RICARDO A. LLAMADO, petitioner, vs. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents.
G.R. No. 99032, SECOND DIVISION, March 26, 1997, TORRES, JR., *J.:*

As treasurer of the corporation who signed the check in his capacity as corporate officer, lack of involvement in the negotiation for the transaction is not a defense. Llamado is personally liable even if the check was in the name of the corporation.

FACTS

Ricardo Llamado and Jacinto Pascual were Treasurer and President of Pan Asia Finance Corporation. Leon Gaw delivered P180,000 to Llamado with assurance that the amount would be repaid on 4 November 1983 with 12% interest and a share of the profits of the corporation. On said date, Gaw deposited the check but it was dishonored. Informing Llamado of the dishonor, Llamado offered in writing to pay Gaw a portion of the amount equivalent to 10% thereof on 14 or 15 November and the balance rolled over for a period of 90 days. Llamado failed to do so.

Gaw filed a complaint against Llamado and Pascual for violation of BP 22. Pascual remains at large. Llamado contends he signed the check in blank.

ISSUE

Whether Llamado is personally liable for the bounced check.

RULING

Llamado's claim that he signed the check in blank is hardly a defense. By signing the check, he made himself prone to being charged with violation of BP 22. It became incumbent upon him to prove his defenses.

As treasurer of the corporation who signed the check in his capacity as corporate officer, lack of involvement in the negotiation for the transaction is not a defense. Llamado is personally liable even if the check was in the name of the corporation. Third paragraph of Section 1, BP 22, states that "where the check is drawn by a corporation, company or entity, the person(s) who actually signed the check in behalf of such drawer shall be liable under this Act." It must be noted that the check was issued for a valuable consideration (P180,000). Had the money been intended to be returned when the investment was successful, the check need not be issued. A receipt and their written agreement would have sufficed.

- Reahs Corporation vs. National Labor Relations Commission, 271 SCRA 247 (1997)

REAHS CORPORATION, SEVERO CASTULO, ROMEO PASCUA, and DANIEL VALENZUELA, petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION, BONIFACIO RED VICTORIA PADILLA, MA. SUSAN R. CALWIT, SONIA DE LA CRUZ, SUSAN DE LA CRUZ, EDNA WAHINGON, NANCY B. CENITA and BENEDICTO A. TULABING, respondents.
G.R. No. 117473, FIRST DIVISION, April 15, 1997, PADILLA, *J.*

As a general rule established by legal fiction, the corporation has a personality separate and distinct from its officers, stockholders and members. Hence, officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority.

FACTS

Complainant Bonifacio Red alleges that he started working as a supervisor at the health and sauna parlor of respondents from September 5, 1977 to November 6, 1990, with a salary of P50.00, that the said establishment was closed by respondents on November 6, 1990, without any notice and without paying his wages, separation pay and other benefits under the law; and that he works a minimum of twelve (12) hours a day without being paid overtime.

Complainant Benedicto Tulabing alleges that he started on December 16, 1986 up to November 6, 1990 in the same establishment with a salary of P26.00 a day; that he works thirteen (13) hours a day without payment of overtime pay.

Complainant Nancy Cenita and Susan Calwit alleges [*sic*] that they were hired as waitresses on May 20, 1990 up to November 6, 1990 and paid on commission basis at P0.25 per bottle of beer sold to or consumed by the customers and that they work ten (10) hours a day without being paid overtime.

Complainants Edna Wahingon, Susan dela Cruz, Sonia dela Cruz and Victoria Padilla claims [*sic*] working as attendants and were hired on different dates until November 6, 1990 All were paid on commission basis at the rate of twenty (20%) percent of the service fee paid by the customers, P90.00 and P110.00 respectively, for ordinary and VIP service; that they render(ed) eleven (11) hours of work a day without being paid overtime; and that the closure of the health parlor was illegal as they were not notified.

On the other hand, respondents allege that sometime in 1986, a certain Ms Soledad Domingo, the sole proprietress and operator of Rainbow Sauna located at 316 Araneta Avenue, Quezon City, offered to sell her business to respondent Reah's Corporation After the sale, all the assets of Ms Domingo were turned over to respondent Reah's, which put a sing-along coffee shop and massage clinic; that complainant Red started his employment on the first week of December 1988 as a roomboy at P50.00/day and was given living quarters inside the premises as he requested; that sometime in March 1989, complainant Red asked permission to go to Bicol for a period of ten (10) days, which was granted, and was given an advance money of P1,200.00 to bring some girls from the province to work as attendants at the respondent's massage clinic, that it was only on January 1, 1990 that complainant Red returned and was re-hired under the same terms and conditions of his previous employment with the understanding that he will have to refund the P1,200.00 cash advance given to him; that due to poor business, increase in the rental cost and the failure of Meralco to reconnect the electrical services in the establishment, it suffered losses leading to its closure.

On 6 May 1993, the labor arbiter rendered judgment dismissing private respondents' complaints for unfair labor practice and illegal dismissal but upholding the claims for separation pay, underpayment of wages, holiday pay and 13th month pay. All eight (8) private respondents were awarded separation pay. However, only Bonifacio Red and Benedicto Tulabing were declared entitled to the claimed labor standard benefits as the rest were found to have been employed on commission basis. The labor arbiter further awarded attorney's fees to private respondents Bonifacio Red and Benedicto Tulabing amounting to ten (10%) percent of their adjudged money claims.

Petitioners appealed the labor arbiter's decision to the NLRC, contending mainly that Article 283 of the Labor Code, "exempts establishment(s) from payment of termination pay when the closure of business is due to serious business losses or financial reverses"; that petitioners Castulo, Pascua and Valenzuela, while admittedly the acting chairman of the board, board member and accountant — acting manager respectively of Reah's Corporation, cannot be held jointly and severally liable with Reah's "unless there is evidence to show that the cause of the closure of the business was due to the criminal negligence of the [respondent] officers.

ISSUE

Whether or not petitioners-officers can be held jointly and severally liable with the corporation in the payment of separation pay to private respondents under Article 283 of the Labor Code.

RULING

As a general rule established by legal fiction, the corporation has a personality separate and distinct from its officers, stockholders and members. Hence, officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. This fictional veil, however, can be pierced by the very same law which created it when "the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues". Under the Labor Code, for instance, when a corporation violates a provision declared to be penal in nature, the penalty shall be imposed upon the guilty officer or officers of the corporation.

The Solicitor General, in behalf of private respondents, argues that the doctrine laid down in the case of *A.C. Ransom Labor Union-CCLU v. NLRC* should be applied to the case at bar. In that case, a judgment against a corporation (A.C. Ransom) to reinstate its dismissed employees with back wages was declared to be a continuing solidary liability of the company president and all who may have thereafter succeeded to said office after the records failed to identify the officer or agents directly responsible for failure to pay the back wages of its employees. The Court noted Ransom's subterfuge in organizing another family corporation while the case was on litigation with the intent to phase out the existing corporation in case of an adverse decision, as what actually happened when it ceased operations a few months after the labor arbiter ruled in favor of Ransom's employees.

The basis, said the Court, is found in Article 212(c) of the Labor Code which provides that "an employer includes any person acting in the interest of an employer, directly or indirectly." "Since Ransom is an artificial person, it must have an officer who can be presumed to be the employer, ... The corporation only in the technical sense is the employer."

This ruling was eventually applied by the Court in the following cases: *Maglutac v. NLRC* an illegal dismissal case, where the most ranking officer of Commart, petitioner therein, was held solidarily liable with the corporation which thereafter became insolvent and suspended operations; *Chua v. NLRC*, [10] also an illegal dismissal case, where the vice-president of a corporation was held solidarily liable with the corporation for the payment of the unpaid salaries of its president; and in *Gudez v. NLRC*, [11] where the president and treasurer were held solidarily liable with the corporation which had ceased operations but failed to pay the wage and money claims of its employees.

These cases, however, should be construed still as exceptions to the doctrine of separate personality of a corporation which should remain as the guiding rule in determining corporate liability to its employees. At the very least, as what we held in *Pabalan v. NLRC*, to justify solidary liability, "there must be an allegation or showing that the officers of the corporation deliberately or maliciously designed to evade the financial obligation of the corporation to its employees", or a showing that the officers indiscriminately stopped its business to perpetrate an illegal act, *as a vehicle for the evasion of existing obligations*, in circumvention of statutes, and to confuse legitimate issues.

As the NLRC aptly stated. Neither did respondents (petitioners) present any evidence to prove that Reah's closure was really due to SERIOUS business losses or financial reverses. We only have respondents mere say-so on the matter.

This uncaring attitude on the part of the officers of Reah's gives credence to the supposition that they simply ignored the side of the workers who, more or less, were only demanding what is due them in accordance with law. In fine, these officers were conscious that the corporation was violating labor standard provisions but they did not act to correct these violations, instead, they abruptly closed business. Neither did they offer separation pay to the employees as they conveniently resorted to a lame excuse that they suffered serious business losses, knowing fully well that they had no substantial proof in their hands to prove such losses.

The findings of the NLRC did not indicate whether or not Reah's Corporation has continued its personality after it had stopped operations when it closed its sing-along, coffee shop, and massage clinic in November 1990. But in its petition, petitioners aver, among others, that the "*company totally folded* for lack of patrons, (disconnection of) light and discontinuance of the leased premises [*sic*] for failure to pay the increased monthly rentals from P8,000 to P20,000."

Under the Rules of Evidence, petitioners are bound by the allegations contained in their pleading. Since petitioners themselves have admitted that they have dissolved the corporation *de facto*, the Court presumes that Reah's Corporation had become insolvent and therefore would be unable to satisfy the judgment in favor of its employees. Under these circumstances, we cannot allow labor to go home with an empty victory. Neither would it be oppressive to capital to hold petitioners Castulo, Pascua and Valenzuela solidarily liable with Reah's Corporation because the law presumes that they have acted in the latter's interest when they obstinately refused to grant the labor standard benefits and separation pay due private respondent-employees.

- Uichico vs. National Labor Relations Commission, 273 SCRA 35 (1997)

ELENA F. UICHICO, SAMUEL FLORO, VICTORIA F. BASILIO, petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION, LUZVIMINDA SANTOS, SHIRLEY PORRAS, CARMEN ELIZARDE, ET. AL., respondents.
G.R. No. 121434, FIRST DIVISION, June 2, 1997, HERMOSISIMA, JR., *J.*

In labor cases, particularly, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith.

FACTS

In November 1991, Luzviminda Santos, Shirley Porras, Carmen Elizarde, et al. (private respondents), who were employed by Crispa, Inc. in its garments factory, filed three separate complaints for illegal dismissal and diminution of compensation against the Crispa, Inc., Valeriano Floro (a major stockholder, incorporator and Director of Crispa, Inc.), Elena F. Uichico, Samuel Floro and Victoria F. Basilio (the petitioners), who were high ranking officers and directors of the company. Allegedly, the employment of the private respondents was terminated sometime in September 1991 on the ground of retrenchment due to alleged serious business losses suffered by Crispa, Inc. in the years immediately preceding 1990.

The three Complaints were consolidated and referred to the Labor Arbiter (LA). The LA dismissed the complaints but nevertheless ordered Crispa, Inc., Floro and the petitioners to pay respondents their separation pay equivalent 17 days for every year of service.

On appeal to the National Labor Relations Commission (NLRC), herein the public respondent, the decision was reversed in favor of the private respondents. In a Resolution, dated September 30, 1993, the Second Division of the NLRC found Crispa, Inc., Floro, and the petitioners liable for illegal dismissal, and modified the award of separation pay in the amount of one (1) month for every year of service. The petitioners filed a motion for reconsideration but the same was denied.

Subsequently, the petitioners filed a Motion to Clarify Judgment on the Resolution insofar as the computation of separation pay by the Examination and Computation Division was concerned as well as the failure of the Resolution to award them full backwages despite the finding of illegal dismissal. The NLRC accordingly treated the said motion as an appeal. To this, the NLRC granted the said motion. The petitioners filed a motion for reconsideration but was denied. Hence, this petition was filed.

Here, the petitioners are actually assailing the decision of the NLRC holding them solidarily liable with Crispa, Inc. for the payment of separation pay and backwages to the private respondents. It is the contention of the petitioners that the award of backwages and separation pay is a corporate obligation and must therefore be assumed by Crispa, Inc. alone.

ISSUE

Whether or not the petitioners are solidarily liable with Crispa, Inc. for the payment of separation pay and backwages to the private respondents.

RULING

Yes. A corporation is a juridical entity with legal personality separate and distinct from those acting for and, in its behalf, and, in general, from the people comprising it. The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. There are times, however, when solidary liabilities may be incurred but only when exceptional circumstances warrant such as in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof did not forthwith file with the corporate secretary his written objection thereto;
3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

In labor cases, particularly, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. *In this case*, it is undisputed that petitioners have a direct hand in the illegal dismissal of respondent employees. They were the ones, who as high-ranking officers and directors of Crispa, Inc., signed the Board Resolution retrenching private respondents on the feigned ground of serious business losses that had no basis apart from an unsigned and unaudited Profit and Loss Statement which, to repeat, had no evidentiary value whatsoever. This is indicative of bad faith on the part of petitioners for which they can be held jointly and severally liable with Crispa, Inc. for all the money claims of the illegally terminated respondent employees in this case.

- Torres, Jr. vs. Court of Appeals, 278 SCRA 793 (1997)

MANUEL A. TORRES, JR., (Deceased), GRACIANO J. TOBIAS, RODOLFO L. JOCSON, JR., MELVIN S. JURISPRUDENCIA, AUGUSTUS CESAR AZURA and EDGARDO D. PABALAN, petitioners, vs. COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, TORMIL REALTY & DEVELOPMENT CORPORATION, ANTONIO P. TORRES, JR., MA. CRISTINA T. CARLOS, MA. LUISA T. MORALES and DANTE D. MORALES, respondents.
G.R. No. 120138, FIRST DIVISION, September 5, 1997, KAPUNAN, *J.:*

It is the corporate secretary's duty and obligation to register valid transfers of stocks. Stock and Transfer books must be kept at the principal office of the corporation. All corporations, big or small, must abide by the provisions of the code including the requirements in Section 74.

FACTS

Judge Manuel Torres was the majority stockholder of Tormil Realty & Development Corporation (TRDC) while private respondents who are the children of Judge Torres' deceased brother Antonio A. Torres, constituted the minority stockholders.

TRDC is a small family owned corporation and other stockholders thereof include Judge Torres' nieces and nephews. Before the regular election of TRDC officers, Judge Torres assigned one share each to his assignees for the purpose of qualifying them to be elected as directors in the board and thereby strengthen Judge Torres' power over other family members.

However, the said assignment of shares were not recorded by the corporate secretary, in the stock and transfer book of TRDC. When the validity of said assignments were questioned, Judge Torres ratiocinated that it is impractical for him to order Carlos to make the entries because Carlos is one of his opposition. So what Judge Torres did was to make the entries himself because he was keeping the stock and transfer book. He further ratiocinated that he can do what a mere secretary can do because in the first place, he is the president. Judge Torres and his assignees then decided to conduct the election among themselves considering that the 6 of them constitute a quorum.

ISSUE

Whether or not the recording made in the books by Judge Torres, and his custody of the books complied with procedural requirements in Section 74 of the Corporation Code.

RULING

No. The assignment of the shares of stocks did not comply with procedural requirements. It did not comply with the by laws of TRDC nor did it comply with Section 74 of the Corporation Code.

Section 74 provides that the stock and transfer book should be kept at the principal office of the corporation. In the case at bar, the stock and transfer book was not kept at the principal office of the corporation either but at the place of Torres. These being the obtaining circumstances, any entries made in the stock and transfer book by respondent cannot therefore be given any valid effect. Here, it was Judge Torres who was keeping it and was bringing it with him. Petitioners cannot use the flimsy excuse that it would have been a vain attempt to force the incumbent corporate secretary to register the aforestated assignments in the stock and transfer book because the latter belonged to the opposite faction.

It is the corporate secretary's duty and obligation to register valid transfers of stocks and if said corporate officer refuses to comply, the transferor-stockholder may rightfully bring suit to compel performance.

In other words, there are remedies within the law that petitioners could have availed of, instead of taking the law in their own hands. The Supreme Court also emphasized: all corporations, big or small, must abide by the provisions of the Corporation Code. Being a simple family corporation is not an exemption. Such corporations cannot have rules and practices other than those established by law.

- San Juan Structure and Steel Fabricators, Inc. vs. Court of Appeals, 296 SCRA 631 (1998)

SAN JUAN STRUCTURAL AND STEEL FABRICATORS, INC., *Petitioner*, *v*. **COURT OF APPEALS, MOTORICH SALES CORPORATION, NENITA LEE GRUENBERG, ACL DEVELOPMENT CORP. and JNM REALTY AND DEVELOPMENT CORP.**, *Respondents.*
G.R. No. 129459, FIRST DIVISION, September 29, 1998, PANGANIBAN, *J*.

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." Unless duly authorized, a treasurer, whose powers are limited, cannot bind the corporation in a sale of its assets.

FACTS

San Juan Structural and Steel Fabricators entered into an agreement with defendant-appellee Motorich Sales Corporation for the transfer to it of a parcel of land in Quezon City containing an area of Four Hundred Fourteen (414) square meters.

San Juan paid the downpayment in the sum P100,000. Motorich Sales Corporation were supposed to meet in the office of plaintiff-appellant but defendant-appellee's treasurer, Nenita Lee Gruenberg, did not appear; that defendant-appellee Motorich Sales Corporation despite repeated demands and in utter disregard of its commitments had refused to execute the Transfer of Rights/Deed of Assignment which is necessary to transfer the certificate of title.

In its answer, Motorich Sales Corporation and Nenita Lee Gruenberg interposed as affirmative defense that the President and Chairman of Motorich did not sign the agreement; that Mrs. Gruenberg's signature on the agreement (ref: par. 3 of Amended Complaint) is inadequate to bind Motorich. The other signature, that of Mr. Reynaldo Gruenberg, President and Chairman of Motorich, is required: that plaintiff knew this from the very beginning as it was presented a copy of the Transfer of Rights (Annex B of amended complaint) at the time the Agreement (Annex B of amended complaint) was signed.

ISSUE

Whether or not there was a valid contract of sale between the petitioner and Motorich considering that it was only Mrs. Gruenberg who signed the agreement

RULING

The contract of sale is not valid. Such contract, cannot bind Motorich, because it never authorized or ratified such sale.

A corporation is a juridical person separate and distinct from its stockholders or members. Accordingly, the property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without express authorization from the corporation's board of directors. Section 23 of BP 68, otherwise known as the Corporation Code of the Philippines, provides;

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 to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

The Court has held that "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." Unless duly authorized, a treasurer, whose powers are limited, cannot bind the corporation in a sale of its assets.

In the case at bar, Respondent Motorich categorically denies that it ever authorized Nenita Gruenberg, its treasurer, to sell the subject parcel of land. Consequently, petitioner had the burden of proving that Nenita Gruenberg was in fact authorized to represent and bind Motorich in the transaction.

Because Motorich had never given a written authorization to Respondent Gruenberg to sell its parcel of land, the Court holds that the February 14, 1989 Agreement entered into by the latter with petitioner is void under Article 1874 of the Civil Code. Being inexistent and void from the beginning, said contract cannot be ratified.

- People's Aircagro and Warehousing Company, Inc. vs. Court of Appeals, 297 SCRA 170 (1998)

PEOPLES AIRCARGO AND WAREHOUSING CO. INC., *Petitioner*, *v*. **COURT OF APPEALS and STEFANI SAO**, *Respondents*.
G.R. No. 117847, FIRST DIVISION, **October 7, 1998**, **PANGANIBAN,** *J.:*

Apparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.

FACTS:

Petitioner is a domestic corporation, which was organized in the middle of 1986 to operate a customs bonded warehouse at the old Manila International Airport in Pasay City. To obtain a license for the corporation from the Bureau of Customs, Antonio Punsalan Jr., the corporation president, solicited a proposal from private respondent for the preparation of a feasibility study. Private respondent submitted a letter-proposal dated October 17, 1986 (First Contract hereafter) to Punsalan.

Initially, Cheng Yong, the majority stockholder of petitioner, objected to private respondents offer, as another company priced a similar proposal at only ₱15,000. However, Punsalan preferred private respondents services because of the latters membership in the task force, which was supervising the transition of the Bureau of Customs from the Marcos government to the Aquino administration.

On October 17, 1986, Petitioner, through Punsalan, sent private respondent a letter, confirming their agreement.

Accordingly, private respondent prepared a feasibility study for petitioner which eventually paid him the balance of the contract price, although not according to the schedule agreed upon. On December 4, 1986, upon Punsalans request, private respondent sent petitioner another letter-proposal (Second Contract hereafter).

On January 10, 1987, Andy Villaceren, vice president of petitioner, received the operations manual prepared by private respondent. Petitioner submitted said operations manual to the Bureau of Customs in connection with the formers application to operate a bonded warehouse; thereafter, in May 1987, the Bureau issued to it a license to operate, enabling it to become one of the three public customs bonded warehouses at the international airport. Private respondent also conducted, in the third week of January 1987 in the warehouse of petitioner, a three-day training seminar for the latters employees.

On March 25, 1987, private respondent joined the Bureau of Customs as special assistant to then Commissioner Alex Padilla, a position he held until he became technical assistant to then Commissioner Miriam Defensor-Santiago on March 7, 1988. Meanwhile, Punsalan sold his shares in petitioner-corporation and resigned as its president in 1987.

On February 9, 1988, private respondent filed a collection suit against petitioner. He alleged that he had prepared an operations manual for petitioner, conducted a seminar-workshop for its employees and delivered to it a computer program; but that, despite demand, petitioner refused to pay him for his services.

Petitioner, in its answer, denied that private respondent had prepared an operations manual and a computer program or conducted a seminar-workshop for its employees. It further alleged that the letter-agreement was signed by Punsalan without authority, in collusion with [private respondent] in order to unlawfully get some money from [petitioner], and despite his knowledge that a group of employees of the company had been commissioned by the board of directors to prepare an operations manual.

ISSUE

Whether or not the president of the petitioner-corporation had apparent authority to bind petitioner to the Second Contract*;*

RULING

The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. A corporation is a juridical person, separate and distinct from its stockholders and members, having xxx powers, attributes and properties expressly authorized by law or incident to its existence.

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, bylaws, 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. The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, viz.: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.

Apparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.

In the case at bar, Petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus clothing its president with the power to bind the corporation. The grant of apparent authority to Punsalan is evident in the testimony of Yong -- senior vice president, treasurer and major stockholder of petitioner.

Hence, private respondent should not be faulted for believing that Punsalans conformity to the contract in dispute was also binding on petitioner. It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agents authority.

Furthermore, private respondent prepared an operations manual and conducted a seminar for the employees of petitioner in accordance with their contract. Petitioner accepted the operations manual, submitted it to the Bureau of Customs and allowed the seminar for its employees. As a result of its aforementioned actions, petitioner was given by the Bureau of Customs a license to operate a bonded warehouse. Granting *arguendo* then that the Second Contract was outside the usual powers of the president, petitioners ratification of said contract and acceptance of benefits have made it binding, nonetheless. The enforceability of contracts under Article 1403(2) is ratified by the acceptance of benefits under them under Article 1405.

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.[31] In the absence of a charter or bylaw 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. Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy.

- Restaurante Las Conchas vs. Llego, 314 SCRA 24 (1999) (Please see, however, decisions to the contrary in Carag vs. NLRC and Macleod vs. NLRC, *infra*)

RESTAURANTE LAS CONCHAS and/or DAVID GONZALES, *Petitioners*, v. LYDIA LLEGO, SERGIO DANO, EDWARD ARDIANTE, FEDERICO DE LA CRUZ, SHERILITA ANIEL, LORNA AZUELA, ZENAIDA HERMOCILLA, FELICIDAD ROLDAN, HELEN MANALAYSAY, LUZ BALDELAMAR, FELICIDAD MENDOZA, DOLORES BAQUIZO, RODOLFO BAS, CIRIACO BATITES, and THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, *Respondents*.
G.R. No. 119085, FIRST DIVISION, September 9, 1999, KAPUNAN, *J.*:

Although, as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation.

FACTS

While private respondents (employees of Restaurante Las Conchas) were being employed by petitioners (David and Elizabeth Gonzales – officers and members of BOD), the Restaurante Services

Corporation got involved in a legal battle with the Ayala Land, Inc. over the land allegedly being occupied by the petitioners for their restaurant.

Ayala Land, Inc. obtained a favorable judgment in the case filed against Restaurant Services Corporation for unlawful detainer and the latter were ordered to vacate the premises. Petitioners attempted to look for a suitable place for their restaurant business at the Ortigas Center but to no avail, thus sometime in February 1994 they shut down their business. This resulted in the termination of employment of private respondents. The NLRC, on appeal, ordered the petitioners to pay the separation benefits to the complainant.

ISSUE

Can the petitioners be held personally liable as officers and members of the BOD of the corporation, notwithstanding the fact that it is the latter which is the owner of Restaurante Las Conchas?

RULING

Yes. Assuming that indeed, the Restaurant Services Corporation was the owner of the Restaurante Las Conchas and the employer of private respondents, this will not absolve petitioners David Gonzales and Elizabeth Gonzales from their liability as corporate officers.

Although, as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. Here, the corporation does not appear to exist anymore.

The employees can no longer claim their separation benefits and 13th month pay from the corporation because it has already ceased operation. To require them to do so would render illusory the separation and 13th month pay awarded to them by the NLRC. Their only recourse is to satisfy their claim from the officers of the corporation who were, in effect, acting in behalf of the corporation.

It would appear that, originally, Restaurante Las Conchas was a single proprietorship put up by the parents of Elizabeth Gonzales, who together with her husband, David, later took over its management. Private respondents claim, and rightly so, that the former were the real owners of the restaurant. The conclusion is bolstered by the fact that petitioners never revealed who were the other officers of the Restaurant Services Corporation, if only to pinpoint responsibility in the closure of the restaurant that resulted in the dismissal of private respondents from employment. Petitioners David and Elizabeth Gonzales are, therefore, personally liable for the payment of the separation and 13th month pay due to their former employees.

- Consolidated Food Corporation vs. National Labor Relations, 315 SCRA 129 (1999)

CONSOLIDATED FOOD CORPORATION/PRESIDENT JOHN GOKONGWEI, GEN. MGR. VICTORIO FADRILAN, JR., and UNIT MGR. JAIME S. ABALOS, petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION AND WILFREDO M. BARON, respondents.
G.R. No. 118647, SECOND DIVISION, September 23, 1999, BELLOSILLO, *J.*

A valid exercise of management prerogative as one which covers hiring, work assignment, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Except as provided for or limited by special laws, employers are free to regulate, according to their own discretion and judgment, all aspects of employment. Re-assignments made by management pending investigation of irregularities allegedly committed by an employee fall within the ambit of management prerogative. The purpose of reassignments is no different from that of preventive suspension which management could validly impose as a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.

FACTS

Petitioner Consolidated Food Corporation (CFC) is a domestic corporation engaged in the sale of food products, *e.g*., Presto Ice Cream, with petitioner John Gokongwei as its President, Victorio V. Fadrilan Jr. as General Manager, and Jaime S. Abalos as Unit Manager for Northern Luzon. Private respondent Wilfredo M. Baron was a Bonded Merchandiser at CFC since November 1985 and received commendations for being a consistent member of the "millionaires group," a title given to provincial salesmen who filled sales quotas in their assigned areas. In March and December 1989, and February and April 1990, he was given commendations by Gen. Mgr. Victorio V. Fadrilan Jr. and Unit Mgr. Jaime S. Abalos for his good performance in sales. Thereafter, he was assigned as Acting Section Manager for Northern Luzon (NL) — 2 Area covering Baguio City, La Trinidad and Benguet. He was tasked, among others, to deliver for sale CFC Presto Ice Cream Products to stores and outlets in Baguio City, make inventories thereof, replace or retrieve bad orders or damaged ice cream stocks, and to handle funds in relation to his functions. He received a basic salary of P3,300.00 per month plus commissions averaging monthly at P30,000.00 or one percent (1%) of his sales.

On 16 July 1990 a killer earthquake hit Baguio City causing severe damage in the area. Power lines were cut off and the roads to and from the city became impassable. Hence, the Presto ice cream products in the possession of customers and sales outlets in Baguio were damaged and became bad orders.

On 1 August 1990 Unit Mgr. Abalos issued an Action Plan for NL-2 Area approved by Gen. Mgr. Fadrilan Jr. which provided among others the cut-off audit of Sec. Mgr. Wilfredo M. Baron to determine accountabilities that should be liquidated on account of non-sales operations due to fortuitous event, and a plan for the reorganization of the Northern Luzon Sections (NL-1, 3 and 4) to create only one (1) section from the existing outlets. It was proposed that Baron start with at least fifty (50) freezers to immediately service and develop potential outlets in the assigned area.

On 15 October 1990 Unit Mgr. Abalos issued a Memorandum directing Baron to temporarily stop routing in his assigned areas until such time that the complete audit of the customers' bad orders stocks within the area had been finished. Thereafter, Unit Mgr. Abalos issued another memorandum ordering the turnover of accountabilities of Baron to Branch Mgr. Josedario Calura, who should take over the route operation of Baguio City effective 15 October 1990 as private respondent's presence would be required in the audit being conducted on bad orders stocks caused by the earthquake.

On 1 December 1990 the Field Audit Group submitted its report declaring that the quantity of bad orders stocks per Bad Orders Summary Sheets (BOSS) prepared by Baron was higher than the total quantity of bad orders stocks per confirmed customers' listings. Some customers claimed through written statements that Baron did not totally dispose of their bad orders stocks but instead loaded some in his truck. They could not, however, recall the quantity of bad orders stocks taken private respondent. These findings tended to indicate that Baron's funds presented for audit as of 15 August 1990 could have been manipulated to replace good stocks and/or cash with customers' bad orders stocks.

Thus, on 15 January 1991 a memorandum signed by Unit Mgr. Abalos and approved by Gen. Mgr. Fadrilan Jr. was sent to Baron informing him of the discrepancies appearing in the audit of accountabilities and giving him opportunity to explain his side in writing. Meanwhile, his normal sales route was temporarily suspended until further notice but he was instructed to report daily to the head office in Pasig City.

On 28 January 1991 Unit Mgr. Abalos and Gen. Mgr. Fadrilan Jr. issued a memorandum requesting the Corporate Auditing Department to conduct a cut-off audit on Baron to determine the extent of his accountabilities which should be turned over to them pending result of the investigation of his case. On the same date, private respondent submitted his answer addressed to Gen. Mgr. Fadrilan Jr. explaining that the inventory of the bad orders stocks at the Trinidad Bakery was done in haste as he and his companions would all rush out of the building every time aftershocks were felt, and hesitantly return to resume the inventory-taking. He reasoned that the circumstances then obtaining should be taken into consideration before concluding that funds were manipulated to replace good stocks/cash with customers' bad orders stocks, and that this was the first time that such a glaring error was ever committed by him.

On the alleged cash shortage of P33,908.30, Baron explained that on 14 July 1990 his total cash accountability per audit was P24,033.35 after remitting the amount of P81,087.05. The amount was intentionally not remitted because it was paid to Mr. Supermart to cover bad orders stocks thereby partially accounting for the difference between the BOSS and the customers' listings. The shortage of P1,985.12 could be attributed to the unusual circumstances then prevailing and not due to manipulation of his accountability.

On 13 April 1991 private respondent received a memorandum from petitioners stating among others that they had carefully evaluated his written explanation and noted that he failed to categorically explain how he came to have excess Truck Bad Orders Stocks (TBOS) amounting to P87,202.27 when the should-be good stocks as of 15 August 1990 were worth P22,461.71 only. Such TBOS were returned to the Dairy Products Division (DPD) Bad Orders Warehouse and for which Baron withdrew replacement good stocks worth P87,201.10 under DR No. 24632 dated 18 August 1990. Petitioners further noted that in Baron's effort to explain the whereabouts of cash totalling P33,908.30 which he failed to show during the audit, he mentioned about the P24,033.35 allegedly paid to Mr. Supermart, and another amount of P5,000.00 again to Mr. Supermart as Anniversary Promotion. These payments were absolutely not authorized by the Company and constituted personal use of company funds for purposes other than those for which the same were intended. Baron also failed to explain why even the balance of P4,874.95 was not accounted for during the audit. Petitioners declared however that before any decision could be formalized, private respondent should submit his written explanation on the points indicated within a period of seven (7) days from receipt of the memorandum. He was also requested to explain why no additional action should be taken against him for his continued absence from 18 March to 13 April 1991.

On 18 April 1991 petitioners sent notice to private respondent requiring him to explain within ten (10) days why he should not be dismissed from the service for having been absent without leave (AWOL). On 29 April 1991 Baron sent a letter to petitioners stating that he was advised by his doctor not to report for work because he was sick and would have to take his medication until 15 May 1991. On 14 May 1991 private respondent Baron filed a complaint with the Labor Arbiter for constructive dismissal, non-payment of salaries, commissions, service incentive leave pay and allowances.

ISSUE

Whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that private respondent Baron was constructively dismissed simply because he was subjected to various audits concerning his sales activities.

RULING

The Court has defined a valid exercise of management prerogative as one which covers hiring, work assignment, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Except as provided for or limited by special laws, employers are free to regulate, according to their own discretion and judgment, all aspects of employment. Re-assignments made by management pending investigation of irregularities allegedly committed by an employee fall within the ambit of management prerogative. The purpose of reassignments is no different from that of preventive suspension which management could validly impose as a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.

In the instant case, the result of the initial audit on the accountabilities of private respondent Baron conducted on 15 August 1990 showed a net shortage of P1,985.12 in the Cash Purchase Fund (CPF) and Expense Allowance Fund (EAF) in his possession. A follow-up audit was conducted by the Company during which petitioners: (a) obtained confirmation from customers on the correctness of the quantity of damaged ice cream stocks which were disposed of as reflected in the Bad Orders Summary Sheets (BOSS) submitted by respondent Baron; (b) analyzed Baron's daily sales reports and entries prior to and after the 16 July 1990 earthquake with regard to truck stocks and cash balances as of these dates; and, (c) compared results with the result of the audit conducted on 15 August 1990. The result of the follow-up audit showed that the quantity of damaged stocks per summary of the report prepared by Baron was higher than the total quantity of damaged stocks per confirmed customers' listings. Further, the quantity of damaged stocks he initially presented for audit on 15 August 1990, for which he had already acquired replacement stocks from the Company on 1 August 1990, was declared at P87,202.27. It appears from company records however that the quantity of damaged stocks as of 15 August 1990 was valued only at P22,461.71 showing an excess of bad orders stocks declared by Baron to the Company in the amount of P64,740.56.

The audit result also showed that Baron failed to account for his expense allowance fund in the amount of P33,908.30. Although Baron had given his written explanation, petitioners found it unsatisfactory and his defense inexcusable. While there may be no direct evidence to prove that Baron actually an deliberately committed fraud or misappropriation of Company funds, there was substantial proof of the existence of irregularities committed by him in the use of the funds. We have ruled that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.

The Court finds that petitioners' acts of conducting audits and investigation on the alleged irregularities committed by private respondent and in reassigning him to another place of work pending the results of the investigation were based on valid and legitimate grounds. As such, these acts of management cannot amount to constructive dismissal. It is worthy to note that petitioners gave Baron every opportunity to raise his defense and fully explain the discrepancies in the funds in his possession. In fact private respondent informed petitioners that he would be returning for work on 5 March 1991 after his sick leave. But instead of doing so, he filed a complaint for constructive dismissal before the Labor Arbiter.

By leaving his job without submitting the required final explanation on the alleged irregularities, private respondent deprived himself of the opportunity to face his accusers and prove his innocence of the charges hurled against him. In fact, the results of the final investigation conducted by the Company and presented during the proceedings before the Labor Arbiter affirmed the initial results of the audit concerning the existence of anomalies in the transactions of Baron.

The records show that during the audit and investigation Baron was reassigned to the head office of the Company in Pasig City without pay beginning 1 January 1991 to 15 March 1991 when he did not return to work anymore. He was required to report for work for the Company although his regular sales route in Baguio City was suspended. There is nothing in the records however that would show that petitioners placed private respondent under preventive suspension. Hence for services rendered arising from his new assignment from January 1991 to 15 March 1991 he should have been paid his salaries for the period as well as proportionate 13th month pay.

The circumstances of this case clearly show that the petitioners had knowledge and allowed the withholding of salaries of private respondent starting 1 January 1991 up to the time he resigned from his employment. Therefore, they are held jointly and severally liable to pay private respondent the amounts indicated above in the total amount of P8,937.55. Further, private respondent was forced to litigate for the recovery of his wages, hence, he is entitled to an award of attorney's fees of P1,000.00 which amount is reasonable in this case.

- Rural Bank of Milaor (Camarines Sur) vs. Ocfemia, 325 SCRA 99 (2000); Soler vs. Court of Appeals, 358 SCRA 57 (2001)

RURAL BANK OF MILAOR (CAMARINES SUR), petitioner, vs. FRANCISCA OCFEMIA, ROWENA BARROGO, MARIFE O. NIÑO, FELICISIMO OCFEMIA, RENATO OCFEMIA JR, and WINSTON OCFEMIA, respondents.
G.R. No. 137686, THIRD DIVISION, February 8, 2000, PANGANIBAN, *J.:*

When a bank, by its acts and failure to act, has clearly clothed its manager with apparent authority to sell an acquired asset in the normal course of business, it is legally obliged to confirm the transaction by issuing a board resolution to enable the buyers to register the property in their names. It has a duty to perform necessary and lawful acts to enable the other parties to enjoy all benefits of the contract which it had authorized.

FACTS

Marife O. Niño, one of the [respondents] in this case, show[s] that she is the daughter of Francisca Ocfemia, a co-[respondent] in this case, and the late Renato Ocfemia who died on July 23, 1994. The parents of her father, Renato Ocfemia, were Juanita Arellano Ocfemia and Felicisimo Ocfemia. Her other co-[respondents] Rowena O. Barrogo, Felicisimo Ocfemia, Renato Ocfemia, Jr. and Winston Ocfemia are her brothers and sisters.

Marife O. Niño knows the five (5) parcels of land subject of this case which are located in Bombon, Camarines Sur and that they are the ones possessing them which were originally owned by her grandparents, Juanita Arellano Ocfemia and Felicisimo Ocfemia. During the lifetime of her grandparents, [respondents] mortgaged the said five (5) parcels of land and two (2) others to the [petitioner] Rural Bank of Milaor.

The spouses Felicisimo Ocfemia and Juanita Arellano Ocfemia were not able to redeem the mortgaged properties consisting of seven (7) parcels of land and so the mortgage was foreclosed and thereafter ownership thereof was transferred to the [petitioner] bank. Out of the seven (7) parcels that were foreclosed, five (5) of them are in the possession of the [respondents] because these five (5) parcels of land described in paragraph 6 of the petition were sold by the [petitioner] bank to the parents of Marife O. Niño.

The aforementioned five (5) parcels of land subject of the deed of sale, have not been, however transferred in the name of the parents of Merife O. Niño after they were sold to her parents by the [petitioner] bank because according to the Assessor's Office the five (5) parcels of land, subject of the sale, cannot be transferred in the name of the buyers as there is a need to have the document of sale registered with the Register of Deeds of Camarines Sur.

In view of the foregoing, Marife O. Niño went to the Register of Deeds of Camarines Sur with the Deed of Sale in order to have the same registered. The Register of Deeds, however, informed her that the document of sale cannot be registered without a board resolution of the [petitioner] Bank. Marife Niño then went to the bank, showed to if the Deed of Sale, the tax declaration and receipt of tax payments and requested the [petitioner] for a board resolution so that the property can be transferred to the name of Renato Ocfemia the husband of petitioner Francisca Ocfemia and the father of the other [respondents] having died already.

The [petitioner] bank refused her request for a board resolution and made many alibi[s]. She was told that the [petitioner] bank ha[d] a new manager and it had no record of the sale. She was asked and she complied with the request of the [petitioner] for a copy of the deed of sale and receipt of payment. The president of the [petitioner] bank told her to get an authority from her parents and other [respondents] and receipts evidencing payment of the consideration appearing in the deed of sale. She complied with said requirements and after she gave all these documents, Marife O. Niño was again told to wait for two (2) weeks because the [petitioner] bank would still study the matter.

After two (2) weeks, Marife O. Niño returned to the [petitioner] bank and she was told that the resolution of the board would not be released because the [petitioner] bank ha[d] no records from the old manager. Because of this, Marife O. Niño brought the matter to her lawyer and the latter wrote a letter on December 22, 1995 to the [petitioner] bank inquiring why no action was taken by the board of the request for the issuance of the resolution considering that the bank was already fully paid [for] the consideration of the sale since January 1988 as shown by the deed of sale itself.

On January 15, 1996 the [petitioner] bank answered [respondents'] lawyer's letter informing the latter that the request for board resolution ha[d] already been referred to the board of directors of the [petitioner] bank with another request that the latter should be furnished with a certified machine copy of the receipt of payment covering the sale between the [respondents] and the [petitioner]. This request of the [petitioner] bank was already complied [with] by Marife O. Niño even before she brought the matter to her lawyer.

After several days from receipt of the letter when Marife O. Niño went to the [petitioner] again and reiterated her request, the manager of the [petitioner] bank told her that they could not issue the required board resolution as the [petitioner] bank ha[d] no records of the sale. Because of this Merife O. Niño already went to their lawyer and ha[d] this petition filed.

ISSUE

Whether or not the board of directors of a rural banking corporation may be compelled to confirm a deed of absolute sale of real property owned by the corporation which deed of sale was executed by the bank manager without prior authority of the board of directors of the rural banking corporation

RULING

Respondents based their action before the trial court on the Deed of Sale, the substance of which was alleged in and a copy thereof was attached to the Petition for Mandamus . The Deed named Fe S. Tena as the representative of the bank. Petitioner, however, failed to specifically deny under oath the allegations in that contract. In fact, it filed no answer at all, for which reason it was declared in default.

In failing to file its answer specifically denying under oath the Deed of Sale, the bank admitted the due execution of the said contract. Such admission means that it acknowledged that Tena was authorized to sign the Deed of Sale on its behalf. 13 Thus, defenses that are inconsistent with the due execution and the genuineness of the written instrument are cut off by an admission implied from a failure to make a verified specific denial.

In any event, the bank acknowledged, by its own acts or failure to act, the authority of Fe S. Tena to enter into binding contracts. After the execution of the Deed of Sale, respondents occupied the properties in dispute and paid the real estate taxes due thereon. If the bank management believed that it had title to the property, it should have taken some measures to prevent the infringement or invasion of its title thereto and possession thereof.

Likewise, Tena had previously transacted business on behalf of the bank, and the latter had acknowledged her authority. A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like Manager Tena, even though such agent is abusing her authority. 14 Clearly, persons dealing with her could not be blamed for believing that she was authorized to transact business for and on behalf of the bank.

It is settled that when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business.

Notwithstanding the putative authority of the manager to bind the bank in the Deed of Sale, petitioner has failed to file an answer to the Petition below within the reglementary period, let alone present evidence controverting such authority. Indeed, when one of herein respondents, Marife S. Nino, went to the bank to ask for the board resolution, she was merely told to bring the receipts. The bank failed to categorically declare that Tena had no authority.

In this light, the bank is estopped from questioning the authority of the bank manager to enter into the contract of sale. If a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds the agent out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

Unquestionably, petitioner has authorized Tena to enter into the Deed of Sale. Accordingly, it has a clear legal duty to issue the board resolution sought by respondent's. Having authorized her to sell the property, it behooves the bank to confirm the Deed of Sale so that the buyers may enjoy its full use.

The board resolution is, in fact, mere paper work. Nonetheless, it is paper work necessary in the orderly operations of the register of deeds and the full enjoyment of respondents' rights. Petitioner-bank persistently and unjustifiably refused to perform its legal duty. Worse, it was less than candid in dealing with respondents regarding this matter. In this light, the Court finds it proper to assess the bank treble costs, in addition to the award of damages.

JASMIN SOLER, petitioner, vs. COURT OF APPEALS, COMMERCIAL BANK OF MANILA, and NIDA LOPEZ, respondents.
G.R. No. 123892, FIRST DIVISION, May 21, 2001, PARDO, *J*.

It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

FACTS

Petitioner Jazmin Soler is a Fine Arts graduate of the University of Sto. Tomas, Manila. She is a well known licensed professional interior designer. In November 1986, her friend Rosario Pardo asked her to talk to Nida Lopez, who was manager of the COMBANK Ermita Branch for they were planning to renovate the branch offices.

Even prior to November 1986, petitioner and Nida Lopez knew each other because of Rosario Pardo, the latter's sister. During their meeting, petitioner was hesitant to accept the job because of her many out of town commitments, and also considering that Ms. Lopez was asking that the designs be submitted by December 1986, which was such a short notice. Ms. Lopez insisted, however, because she really wanted petitioner to do the design for renovation. Petitioner acceded to the request. Ms. Lopez assured her that she would be compensated for her services. Petitioner even told Ms. Lopez that her professional fee was ten thousand pesos (P10,000.00), to which Ms. Lopez acceded.

After a few days, petitioner requested for the blueprint of the building so that the proper design, plans and specifications could be given to Ms. Lopez in time for the board meeting in December 1986. Petitioner then asked her draftsman Jackie Barcelon to go to the jobsite to make the proper measurements using the blue print. Petitioner also did her research on the designs and individual drawings of what the bank wanted. Petitioner hired Engineer Ortanez to make the electrical layout, architects Frison Cruz and De Mesa to do the drafting. For the services rendered by these individuals, petitioner paid the engineer P4,000.00, architects Cruz and de Mesa P5,000.00 and architect Barcelon P6,000.00. Petitioner also contacted the suppliers of the wallpaper and the sash makers for their quotation. So come December 1986, the lay out and the design were submitted to Ms. Lopez. She even told petitioner that she liked the designs.

Subsequently, petitioner repeatedly demanded payment for her services but Ms. Lopez just ignored the demands. In February 1987, by chance petitioner and Ms. Lopez saw each other in a concert at the Cultural Center of the Philippines. Petitioner inquired about the payment for her services, Ms. Lopez curtly replied that she was not entitled to it because her designs did not conform to the bank's policy of having a standard design, and that there was no agreement between her and the bank.

To settle the controversy, petitioner referred the matter to her lawyers, who wrote Ms. Lopez on May 20, 1987, demanding payment for her professional fees in the amount of P10,000.00 which Ms. Lopez ignored. Hence, on June 18, 1987, the lawyers wrote Ms. Lopez once again demanding the return of the blueprint copies petitioner submitted which Ms. Lopez refused to return.

On October 13, 1987, petitioner filed at the Regional Trial Court of Pasig, a complaint against COMBANK and Ms. Lopez for collection of professional fees and damages.

In its answer, COMBANK stated that there was no contract between COMBANK and petitioner; that Ms. Lopez merely invited petitioner to participate in a bid for the renovation of the COMBANK Ermita Branch; that any proposal was still subject to the approval of the COMBANK's head office.

ISSUE

Whether or not there was a perfected contract between petitioner Jazmin Soler and respondents COMBANK and Nida Lopez, and whether or not Nida Lopez, the manager of the bank branch, had authority to bind the bank in the transaction.

RULING

The discussions between petitioner and Ms. Lopez was to the effect that she had authority to engage the services of petitioner. During their meeting, she even gave petitioner specifications as to what was to be renovated in the branch premises and when petitioners requested for the blueprints of the building, Ms. Lopez supplied the same.

Ms. Lopez was aware that petitioner hired the services of people to help her come up with the designs for the December, 1986 board meeting of the bank. Ms. Lopez even insisted that the designs be rushed in time for presentation to the bank. With all these discussion and transactions, it was apparent to petitioner that Ms. Lopez indeed had authority to engage the services of petitioner.

Petitioner believed that once she submitted the designs she would be paid her professional fees. Ms. Lopez assured petitioner that she would be paid.

It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

Also, petitioner may be paid on the basis of *quantum meruit*. "It is essential for the proper operation of the principle that there is an acceptance of the benefits by one sought to be charged for the services rendered under circumstances as reasonably to notify him that the lawyer performing the task was expecting to be paid compensation therefor. The doctrine of *quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it."

- Lao vs. CA, 325 SCRA 694 (2000)

ANDRES LAO, petitioner, vs. COURT OF APPEALS, THE ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION and ESTEBAN CO,respondents.
G.R. Nos. 47013, 60647, 60958-59, THIRD DIVISION, February 17, 2000, PURISIMA, J.:

As a corporate officer, his power to bind the Corporation as its agent must be sought from statute, charter, by-laws, a delegation of authority to a corporate officer, or from the acts of the board of directors formally expressed or implied from a habit or custom of doing business. In this case, no such sources of petitioner's authority from which to deduce whether or not he was acting beyond the scope of his responsibilities as corporate vice-president are mentioned, much less proven. It is thus logical to conclude that the board of directors or by-laws of the corporation vested petitioner Co with certain executive duties one of which is a case for the Corporation.

FACTS

The Associated Anglo-American Tobacco Corporation entered into a "Contract of Sales Agent "with Andres Lao. Under the contract, Lao agrees to sell cigarettes manufactured and shipped by the corporation to his business address in Tacloban City. Lao would in turn remit the sales. Esteban Co, the Vice president and general manager of the Corporation summoned Lao for accounting. It was then established that there was Lao's liability.

Lao encountered difficulties in complying with these obligations. The corporation sent Ngo Kheng to supervise Lao's sales operation. Ngo Kheng discovered that contrary to Lao's allegation that he still had huge collectibles from his customers, nothing was due the Corporation from Lao's clients. From then on, Lao no longer received shipments.

Lao brought a complaint for accounting and damages against the corporation. During the pendency of the said civil case, Esteban co, representing the corporation as its new vice-president filed an estafe case against Lao. Without awaiting the termination of the criminal case, Lao lodged a complaint for malicious prosecution. The court ruled in favor of Lao declaring that the estafa case was filed without probable cause and with malice and orders the corporation and Esteban Co to jointly and severally pay the Laos.

ISSUE

Can petitioner Co be held solidarily liable with the Corporation for whatever damages would be imposed upon them?

RULING

NO. A perusal of Lao's affidavit-complaint reveals that at the time he filed the same petitioner Co was the vice-president of the Corporation. As a corporate officer, his power to bind the Corporation as its agent must be sought from statute, charter, by-laws, a delegation of authority to a corporate officer, or from the acts of the board of directors formally expressed or implied from a habit or custom of doing business. In this case, no such sources of petitioner's authority from which to deduce whether or not he was acting beyond the scope of his responsibilities as corporate vice-president are mentioned, much less proven. It is thus logical to conclude that the board of directors or by-laws of the corporation vested petitioner Co with certain executive duties one of which is a case for the Corporation.

That petitioner Co was authorized to institute the estafa case is buttressed by the fact that the Corporation failed to make an issue out of his authority to file the case. Upon well-established principles of pleading, lack of authority of an officer of a corporation to bind it by contract executed by him in its name, is a defense which should have been specially pleaded by the corporation. The Corporation's failure to interpose such a defense could only mean that the filing of the affidavit-complaint by petitioner Co was with the consent and authority of the Corporation. In the same vein, petitioner Co may not be held personally liable for acts performed in pursuance of an authority and therefore, holding him solidarily liable with the Corporation for the damages awarded to respondent Lao does accord with law and jurisprudence.

- BA Savings Bank vs. Court of Appeals, 336 SCRA 484 (2000)

BA SAVINGS BANK, petitioner, vs. ROGER T. SIA, TACIANA U. SIA and JOHN DOE, respondents. G.R. No. 131214, THIRD DIVISION, July 27, 2000, PANGANIBAN, *J.:*

The certificate of non-forum shopping required by Supreme Court Circular 28-91 may be signed, for and on behalf of a corporation, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.

FACTS

On August 6, 1997, the Court of Appeals issued a Resolution denying due course to a Petition for Certiorari filed by BA Savings Bank, on the ground that "the Certification on anti-forum shopping incorporated in the petition was signed not by the duly authorized representative of the petitioner, as required under Supreme Court Circular No. 28-91, but by its counsel, in contravention of said circular x x x."

A Motion for Reconsideration was subsequently filed by the petitioner, attached to which was a BA Savings Bank Corporate Secretary's Certificate, dated August 14, 1997. The Certificate showed that the petitioner's Board of Directors approved a Resolution on May 21, 1996, authorizing the petitioner's lawyers to represent it in any action or proceeding before any court, tribunal or agency; and to sign, execute and deliver the Certificate of Non-forum Shopping, among others.

On October 24, 1997, the Motion for Reconsideration was denied by the Court of Appeals on the ground that Supreme Court Revised Circular No. 28-91 "requires that it is the petitioner, not the counsel, who must certify under oath to all of the facts and undertakings required therein."

ISSUE

Whether Supreme Court Revised Circular No. 28-91 allows a corporation to authorize its counsel to execute a certificate of non-forum shopping for and on its behalf.

RULING

A corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and, except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

In the present case, the corporation's board of directors issued a Resolution specifically authorizing its lawyers "to act as their agents in any action or proceeding before the Supreme Court, the Court of Appeals, or any other tribunal or agency[;] and to sign, execute and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, certificate of non-forum shopping and other instruments necessary for such action and proceeding." The Resolution was sufficient to vest such persons with the authority to bind the corporation and was specific enough as to the acts they were empowered to do.

In the case of natural persons, Circular 28-91 requires the parties themselves to sign the certificate of non-forum shopping. However, such requirement cannot be imposed on artificial persons, like corporations, for the simple reason that they cannot personally do the task themselves. As already stated, corporations act only through their officers and duly authorized agents. In fact, physical actions, like the signing and the delivery of documents, may be performed, on behalf of the corporate entity, only by specifically authorized individuals.

It is noteworthy that the Circular does not require corporate officers to sign the certificate. More important, there is no prohibition against authorizing agents to do so.

In fact, not only was BA Savings Bank authorized to name an agent to sign the certificate; it also exercised its appointing authority reasonably well. For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.

Circular 28-91 was prescribed by the Supreme Court to prohibit and penalize the evils of forum shopping. We see no circumvention of this rationale if the certificate was signed by the corporation's specifically authorized counsel, who had personal knowledge of the matters required in the Circular.

Finally, we stress that technical rules of procedure should be used to promote, not frustrate, justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal.

- Security Bank and Trust Co. vs. Cuenca, 341 SCRA 781 (2000)

SECURITY BANK AND TRUST COMPANY, Inc., *petitioner*, vs. RODOLFO M. CUENCA, *respondent.*
G.R. No. 138544, THIRD DIVISION, October 3, 2000, PANGANIBAN, *J.:*

Being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor. The fundamental rules of fair play require the creditor to obtain the consent of the surety to any material alteration in the principal loan agreement, or at least to notify it thereof. Hence, petitioner bank cannot hold herein respondent liable for loans obtained in excess of the amount or beyond the period stipulated in the original agreement, absent any clear stipulation showing that the latter waived his right to be notified thereof, or to give consent thereto. This is especially true where, as in this case, respondent was no longer the principal officer or major stockholder of the corporate debtor at the time the later obligations were incurred. He was thus no longer in a position to compel the debtor to pay the creditor and had no more reason to bind himself anew to the subsequent obligations.

FACTS

Security Bank granted a credit line in the amount of 8 million pesos in favour of Sta. Ines, a corporation engaged in logging operations and in which Rodolfo Cuenca is the President. In order to secure payment, Sta. Ines executed a chattel mortgage over some of its machineries and equipments and as an additional security Cuenca executed an Indemnity Agreement where he bound himself jointly and severally with Sta. Ines and without the benefit of excussion of whatever amount the client may be indebted to the bank by virtue of aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s).

After Cuenca resigned, Sta. Ines was able to obtained a loan of 6 million pesos, but was unable to pay the amortization payments and requested Security Bank a complete restructure of its indebtedness which was approved and without prior notice to or consent of Cuenca. Despite that Sta. Ines was still unable to pay. As a result Security Bank made failed attempts to demand from Sta. Ines and Cuenca the fulfillmentof their obligation, thus a complaint was filed and a decision in favour of Security Bank was rendered which held Cuenca liable. On appeal, Cuenca contends that the original agreement of 8 million loan was extinguished by novation when the obligation under the 6 million loan and subsequent restructuring was granted.

ISSUE

Whether Cuenca is liable as a surety to the 6 million loan under the Indemnity Agreement?

RULING

NO. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The 1989 Loan Agreement expressly stipulated that its purpose was to "liquidate," not to renew or extend, the outstanding indebtedness. Moreover, respondent did not sign or consent to the 1989 Loan Agreeement, which had alledgedly extended the original P8 million credit facility. Hence, his obligation as a surety should be deemed extinguished, pursuant to Article 2079 of the Civil Code, which specifically states that "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty.

An essential alteration in the terms of a Loan Agreement without the consent of the surety extinguishes the latter's obligation. The submission that only the borrower, not the surety, is entitled to be notified of any modification in the original loan accommodation is untenable - such theory is contrary to the to the principle that a surety cannot assume an obligation more onerous than that of the principal. That the Indemnity Agreement is a continuing surety does not authorize the lender to extend the scope of the principal obligation inordinately; A continuing guaranty is one which covers all transaction, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof.

The Indemnity Agreement is a continuing surety and as such does not authorize the bank to extend the scope of the principal obligation inordinately. A surety being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor.

The fundamental rules of fair play require the creditor to obtain the consent of the surety to any material alteration in the principal loan agreement, or at least to notify it thereof. Hence, petitioner bank cannot hold herein respondent liable for loans obtained in excess of the amount or beyond the period stipulated in the original agreement, absent any clear stipulation showing that the latter waived his right to be notified thereof, or to give consent thereto. This is especially true where, as in this case, respondent was no longer the principal officer or major stockholder of the corporate debtor at the time the later obligations were incurred. He was thus no longer in a position to compel the debtor to pay the creditor and had no more reason to bind himself anew to the subsequent obligations.

- Atrium Management Corp. vs. Court of Appeals, 353 SCRA 23 (2001)

ATRIUM MANAGEMENT CORPORATION, petitioner, vs. COURT OF APPEALS, E.T. HENRY AND CO., LOURDES VICTORIA M. DE LEON, RAFAEL DE LEON, JR., AND HI-CEMENT CORPORATION, respondents.
G.R. Nos. 109491, 121794, FIRST DIVISION, February 28, 2001, PARDO, *J*.

An ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law. The term "ultra vires" is distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated.

FACT

Hi-Cement Corporation through its corporate signatories, petitioner Lourdes M. de Leon, treasurer, and the late Antonio de las Alas, Chairman, issued checks in favor of E.T. Henry and Co. Inc., as payee. E.T. Henry and Co., Inc., in turn, endorsed the four checks to Atrium for valuable consideration.

Enrique Tan of E.T. Henry approached Atrium for financial assistance, offering to discount four RCBC checks in the total amount of P2 million, issued by Hi-Cement in favor of E.T. Henry. Atrium agreed to discount the checks, provided it be allowed to confirm with Hi-Cement the fact that the checks represented payment for petroleum products which E.T. Henry delivered to Hi-Cement.

Upon presentment for payment, the drawee bank dishonored all four checks for the common reason "payment stopped". As a result thereof, Atrium filed an action for collection of the proceeds of 4 PDC in the total amount of 2M with RTC Manila. Judgment was rendered in favor of Atrium ordering Lourdes and Rafael de Leon, E.T. Henry and Co., and Hi-Cement to pay Atrium the said amount plus interest and attorneys fees.

CA absolved Hi-cement Corporation from liability. It also ruled that since Lourdes was not authorized to issue the subjects checks in favor of E.T. Henry Inc., the said act was ultra vires.

ISSUE

Whether the issuance of the questioned checks was an ultra vires act;

RULING

Yes. An ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law. The term "ultra vires" is distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated.

Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when:

1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;
2. He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;
3. He agrees to hold himself personally and solidarily liable with the corporation; or
4. He is made, by a specific provision of law, to personally answer for his corporate action.

In the case at bar, Lourdes M. de Leon and Antonio de las Alas as treasurer and Chairman of Hi-Cement were authorized to issue the checks. However, Ms. de Leon was negligent when she signed the confirmation letter requested by Mr. Yap of Atrium and Mr. Henry of E.T. Henry for the rediscounting of the crossed checks issued in favor of E.T. Henry. She was aware that the checks were strictly endorsed for deposit only to the payee's account and not to be further negotiated. What is more, the confirmation letter contained a clause that was not true, that is, "that the checks issued to E.T. Henry were in payment of Hydro oil bought by Hi-Cement from E.T. Henry". Her negligence resulted in damage to the corporation. Hence, Ms. de Leon may be held personally liable therefor.

- Safic Alcan & Cie vs. Imperial Vegetable Co., Inc., 355 SCRA 559 (2001)

SAFIC ALCAN & CIE, *Petitioner*, v. IMPERIAL VEGETABLE OIL CO., INC., *Respondent*.
G.R. No. 126751, FIRST DIVISION, March 28, 2001, YNARES-SANTIAGO, *J.*:

It can be clearly seen from the foregoing provision of IVO's By-laws that Monteverde had no blanket authority to bind IVO to any contract. He must act according to the instructions of the Board of Directors. Even in instances when he was authorized to act according to his discretion, that discretion must not conflict with prior Board orders, resolutions and instructions. The evidence shows that the IVO Board knew nothing of the 1986 contracts and that it did not authorize Monteverde to enter into speculative contracts.

FACTS

Petitioner Safic Alcan & Cie (hereinafter, "Safic") is a French corporation engaged in the international purchase, sale and trading of coconut oil.

Petitioner Safic alleged that on July 1, 1986 and September 25, 1986, it placed purchase orders with Imperial Vegetable Oil Inc., (IVO) for 2,000 long tons of crude coconut oil, valued at US$222.50 per ton to be delivered within the month of January 1987. Private respondent, however, failed to deliver the said coconut oil and, instead, offered a "wash out" settlement, whereby the coconut oil subject of the purchase contracts were to be "sold back" to IVO at the prevailing price in the international market at the time of wash out. Thus, IVO bound itself to pay to Safic the difference between the said prevailing price and the contract price of the 2,000 long tons of crude coconut oil, which amounted to US$293,500.00. IVO failed to pay this amount despite repeated oral and written demands.

Safic alleged that on eight occasions between April 24, 1986 and October 31, 1986, it placed purchase orders with IVO for a total of 4,750 tons of crude coconut oil. When IVO failed to honor its obligation under the wash out settlement narrated above, Safic demanded that IVO make marginal deposits within 48 hours on the eight purchase contracts in amounts equivalent to the difference between the contract price and the market price of the coconut oil, to compensate it for the damages it suffered when it was forced to acquire coconut oil at a higher price. IVO failed to make the prescribed marginal deposits on the eight contacts, in the aggregate amount of US$391,593.62, despite written demands.

Hence, Safic prayed that IVO be ordered to pay the sums of US$293,500.00 and US$391,593.62, plus attorney's fees and litigation expenses.

IVO raised the following special affirmative defenses: Safic had no legal capacity to sue because it was doing business in the Philippines without the requisite license or authority; the subject contracts were speculative contracts entered into by IVO's then President, Dominador Monteverde, in contravention of the prohibition by the Board of Directors against engaging in speculative paper trading, and despite IVO's lack of the necessary license from Central Bank to engage in such kind of trading activity.

ISSUE

Whether the act of Dominador Monteverde binds IVO.

RULING

No, the act of Dominador Monteverde without the authorization of the Board of Directors did not bind IVO.

It can be clearly seen from the foregoing provision of IVO's By-laws that Monteverde had no blanket authority to bind IVO to any contract. He must act according to the instructions of the Board of Directors. Even in instances when he was authorized to act according to his discretion, that discretion must not conflict with prior Board orders, resolutions and instructions. The evidence shows that the IVO Board knew nothing of the 1986 contracts and that it did not authorize Monteverde to enter into speculative contracts.

In fact, Monteverde had earlier proposed that the company engage in such transactions but the IVO Board rejected his proposal. Since the 1986 contracts marked a sharp departure from past IVO transactions, Safic should have obtained from Monteverde the prior authorization of the IVO Board. Safic can not rely on the doctrine of implied agency because before the controversial 1986 contracts, IVO did not enter into identical contracts with Safic. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent.

In the case of Bacaltos Coal Mines v. Court of Appeals, we elucidated the rule on dealing with an agent thus: Every person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such inquiry, he is chargeable with knowledge of the agent's authority, and his ignorance of that authority will not be any excuse. Persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal, to ascertain not only the fact of the agency but also the nature and extent of the authority, and in case either is controverted, the burden of proof is upon them to establish it.
The most prudent thing petitioner should have done was to ascertain the extent of the authority of Dominador Monteverde. Being remiss in this regard, petitioner can not seek relief on the basis of a supposed agency.

Under Article 1898 of the Civil Code, the acts of an agent beyond the scope of his authority do not bind the principal unless the latter ratifies the same expressly or impliedly. It also bears emphasizing that when the third person knows that the agent was acting beyond his power or authority, the principal can not be held liable for the acts of the agent. If the said third person is aware of such limits of authority, he is to blame, and is not entitled to recover damages from the agent, unless the latter undertook to secure the principal's ratification.

- Nakpil vs. Intercontinental Broadcasting Corporation, 379 SCRA 653 (2002)

DILY DANY NACPIL, petitioner, vs. INTERNATIONAL BROADCASTING CORPORATION, respondent.
G.R. No. 144767, FIRST DIVISION, March 21, 2002, KAPUNAN, *J.*

As petitioner's appointment as comptroller required the approval and formal action of the IBC's Board of Directors to become valid, it is clear therefore holds that petitioner is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC under Section 5(c) of P.D. 902-A which includes controversies involving both election and appointment of corporate directors, trustees, officers, and managers. Had petitioner been an ordinary employee, such board action would not have been required.

FACTS

Petitioner states that he was Assistant General Manager for Finance/Administration and Comptroller of private respondent Intercontinental Broadcasting Corporation (IBC) from 1996 until April 1997. According to petitioner, when Emiliano Templo was appointed to replace IBC President Tomas Gomez III sometime in March 1997, the former told the Board of Directors that as soon as he assumes the IBC presidency, he would terminate the services of petitioner. Apparently, Templo blamed petitioner, along with a certain Mr. Basilio and Mr. Gomez, for the prior mismanagement of IBC. Upon his assumption of the IBC presidency, Templo allegedly harassed, insulted, humiliated and pressured petitioner into resigning until the latter was forced to retire. However, Templo refused to pay him his retirement benefits, allegedly because he had not yet secured the clearances from the Presidential Commission on Good Government and the Commission on Audit. Furthermore, Templo allegedly refused to recognize petitioner's employment, claiming that petitioner was not the Assistant General Manager/Comptroller of IBC but merely usurped the powers of the Comptroller. Hence, in 1997, petitioner filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of benefits.

Instead of filing its position paper, IBC filed a motion to dismiss alleging that the Labor Arbiter had no jurisdiction over the case. IBC contended that petitioner was a corporate officer who was duly elected by the Board of Directors of IBC; hence, the case qualifies as an intra-corporate dispute falling within the jurisdiction of the Securities and Exchange Commission (SEC). However, the motion was denied by the Labor Arbiter in an Order.

On August 21, 1998, the Labor Arbiter rendered a Decision stating that petitioner had been illegally dismissed.

ISSUE

Whether the Labor Arbiter had jurisdiction over the case for illegal dismissal and non-payment of benefits filed by petitioner.

RULING:

The Court finds that the Labor Arbiter had no jurisdiction over the same.

Under Presidential Decree No. 902-A (the Revised Securities Act), the law in force when the complaint for illegal dismissal was instituted by petitioner in 1997, the following cases fall under the exclusive of the SEC: xxx

c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships or associations; xxx

The Court has consistently held that there are two elements to be considered in determining whether the SEC has jurisdiction over the controversy, to wit: (1) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.

Petitioner's argument is untenable. Even assuming that he was in fact appointed by the General Manager, such appointment was subsequently approved by the Board of Directors of the IBC. That the position of Comptroller is not expressly mentioned among the officers of the IBC in the By-Laws is of no moment, because the IBC's Board of Directors is empowered under Section 25 of the Corporation Code and under the corporation's By-Laws to appoint such other officers as it may deem necessary.

The Court has held that in most cases the "by-laws may and usually do provide for such other officers," and that where a corporate office is not specifically indicated in the roster of corporate offices in the by-laws of a corporation, the board of directors may also be empowered under the by-laws to create additional officers as may be necessary.

An "office" has been defined as a creation of the charter of a corporation, while an "officer" as a person elected by the directors or stockholders. On the other hand, an "employee" occupies no office and is generally employed not by action of the directors and stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

As petitioner's appointment as comptroller required the approval and formal action of the IBC's Board of Directors to become valid, it is clear therefore holds that petitioner is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC under Section 5(c) of P.D. 902-A which includes controversies involving both election and appointment of corporate directors, trustees, officers, and managers. Had petitioner been an ordinary employee, such board action would not have been required.

As to petitioner's argument that the nature of his functions is recommendatory thereby making him a mere managerial officer, the Court has previously held that the relationship of a person to a corporation, whether as officer or agent or employee is not determined by the nature of the services performed, but instead by the incidents of the relationship as they actually exist.

It is likewise of no consequence that petitioner's complaint for illegal dismissal includes money claims, for such claims are actually part of the perquisites of his position in, and therefore linked with his relations with, the corporation. The inclusion of such money claims does not convert the issue into a simple labor problem. Clearly, the issues raised by petitioner against the IBC are matters that come within the area of corporate affairs and management, and constitute a corporate controversy in contemplation of the Corporation Code.

- Great Asian Sales Center Corporation vs. Court of Appeals, 381 SCRA 557 (2002)

GREAT ASIAN SALES CENTER CORPORATION and TAN CHONG LIN, petitioners, vs. THE COURT OF APPEALS and BANCASIA FINANCE AND INVESTMENT CORPORATION, respondents. G.R. No. 105774, THIRD DIVISION, April 25, 2002, CARPIO, *J.*:

In the ordinary course of business, a corporation can borrow funds or dispose of assets of the corporation only on authority of the board of directors. The board of directors normally designates one or more corporate officers to sign loan documents or deeds of assignment for the corporation.

Clearly, the discounting arrangements entered into by Arsenio under the Deeds of Assignment were the very transactions envisioned in the two board resolutions of Great Asian to raise funds for its business. Arsenio acted completely within the limits of his authority under the two board resolutions. Arsenio did exactly what the board of directors of Great Asian directed and authorized him to do.

FACTS

Great Asian is engaged in the business of buying and selling general merchandise, in particular household appliances. On March 17, 1981, the board of directors of Great Asian approved a resolution authorizing its Treasurer and General Manager, Arsenio Lim Piat, Jr. ("Arsenio" for brevity) to secure a loan from Bancasia in an amount not to exceed P1.0 million. The board resolution also authorized Arsenio to sign all papers, documents or promissory notes necessary to secure the loan. On February 10, 1982, the board of directors of Great Asian approved a second resolution authorizing Great Asian to secure a discounting line with Bancasia in an amount not exceeding P2.0 million. The second board resolution also designated Arsenio as the authorized signatory to sign all instruments, documents and checks necessary to secure the discounting line.

On March 4, 1981, Tan Chong Lin signed a Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. On January 29, 1982, Tan Chong Lin signed a Comprehensive and Continuing Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. Thus, Tan Chong Lin signed two surety agreements ("Surety Agreements" for brevity) in favor of Bancasia.

Great Asian, through its Treasurer and General Manager Arsenio, signed four (4) Deeds of Assignment of Receivables ("Deeds of Assignment" for brevity), assigning to Bancasia fifteen (15) postdated checks. Nine of the checks were payable to Great Asian, three were payable to "New Asian Emp.", and the last three were payable to cash. Various customers of Great Asian issued these postdated checks in payment for appliances and other merchandise.

Great Asian and Bancasia signed the first Deed of Assignment on January 12, 1982 covering four postdated checks with a total face value of P244,225.82, with maturity dates not later than March 17, 1982. Of these four postdated checks, two were dishonored. Great Asian and Bancasia signed the second Deed of Assignment also on January 12, 1982 covering four postdated checks with a total face value of P312,819.00, with maturity dates not later than April 1, 1982. All these four checks were dishonored. Great Asian and Bancasia signed the third Deed of Assignment on February 11, 1982 covering eight postdated checks with a total face value of P344,475.00, with maturity dates not later than April 30, 1982. All these eight checks were dishonored. Great Asian and Bancasia signed the fourth Deed of Assignment on March 5, 1982 covering one postdated check with a face value of P200,000.00, with maturity date on March 18, 1982. This last check was also dishonored. Great Asian assigned the postdated checks to Bancasia at a discount rate of less than 24% of the face value of the checks.

Arsenio endorsed all the fifteen dishonored checks by signing his name at the back of the checks. Eight of the dishonored checks bore the endorsement of Arsenio below the stamped name of "Great Asian Sales Center", while the rest of the dishonored checks just bore the signature of Arsenio. The drawee banks dishonored the fifteen checks on maturity when deposited for collection by Bancasia, with any of the following as reason for the dishonor: "account closed", "payment stopped", "account under garnishment", and "insufficiency of funds". The total amount of the fifteen dishonored checks is P1,042,005.00.

After the drawee bank dishonored Check No. 097480 dated March 16, 1982, Bancasia referred the matter to its lawyer, Atty. Eladia Reyes, who sent by registered mail to Tan Chong Lin a letter, notifying him of the dishonor and demanding payment from him. Subsequently, Bancasia sent by personal delivery a letter to Tan Chong Lin, notifying him of the dishonor of the fifteen checks and demanding payment from him. Neither Great Asian nor Tan Chong Lin paid Bancasia the dishonored checks.

On May 21, 1982, Great Asian filed with the then Court of First Instance of Manila a petition for insolvency, verified under oath by its Corporate Secretary, Mario Tan. Attached to the verified petition was a "Schedule and Inventory of Liabilities and Creditors of Great Asian Sales Center Corporation," listing Bancasia as one of the creditors of Great Asian in the amount of P1,243,632.00.

On June 23, 1982, Bancasia filed a complaint for collection of a sum of money against Great Asian and Tan Chong Lin. Bancasia impleaded Tan Chong Lin because of the Surety Agreements he signed in favor of Bancasia. In its answer, Great Asian denied the material allegations of the complaint claiming it was unfounded, malicious, baseless, and unlawfully instituted since there was already a pending insolvency proceedings, although Great Asian subsequently withdrew its petition for voluntary insolvency. Great Asian further raised the alleged lack of authority of Arsenio to sign the Deeds of Assignment as well as the absence of consideration and consent of all the parties to the Surety Agreements signed by Tan Chong Lin.

ISSUE

Whether or not Arsenio had authority to execute the Deeds of Assignment and thus bind Great Asian;

RULING

The Corporation Code of the Philippines vests in the board of directors the exercise of the corporate powers of the corporation, save in those instances where the Code requires stockholders' approval for certain specific acts. Section 23 of the Code provides:

"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."

In the ordinary course of business, a corporation can borrow funds or dispose of assets of the corporation only on authority of the board of directors. The board of directors normally designates one or more corporate officers to sign loan documents or deeds of assignment for the corporation.

To secure a credit accommodation from Bancasia, the board of directors of Great Asian adopted two board resolutions on different dates. The first board resolution expressly authorizes Arsenio, as Treasurer of Great Asian, to apply for a "*loan accommodation or credit line*" with Bancasia for not more than P1.0 million. Also, the first resolution explicitly authorizes Arsenio to sign any document, paper or promissory note, including mortgage deeds over properties of Great Asian, to secure the loan or credit line from Bancasia.

The second board resolution expressly authorizes Great Asian to secure a "*discounting line*" from Bancasia for not more than P2.0 million. The second board resolution also expressly empowers Arsenio, as the authorized signatory of Great Asian, "*to sign, execute and deliver any and all documents, checks x x x necessary or incidental to secure*" the discounting line. The second board resolution specifically authorizes Arsenio to secure the discounting line "*under such terms and conditions as (he) x x x may deem fit and proper*."

As plain as daylight, the two board resolutions clearly authorize Great Asian to secure a *loan or discounting line* from Bancasia. The two board resolutions also categorically designate Arsenio as the authorized signatory to sign and deliver all the implementing documents, including checks, for Great Asian. There is no iota of doubt whatsoever about the purpose of the two board resolutions, and about the authority of Arsenio to act and sign for Great Asian. The second board resolution even gave Arsenio *full authority* to agree with Bancasia on the terms and conditions of the discounting line. Great Asian adopted the correct and proper board resolutions to secure a loan or discounting line from Bancasia, and Bancasia had a right to rely on the two board resolutions of Great Asian. Significantly, the two board resolutions specifically refer to Bancasia as the financing institution from whom Great Asian will secure the loan accommodation or discounting line.

Armed with the two board resolutions, Arsenio signed the Deeds of Assignment selling, and endorsing, the fifteen checks of Great Asian to Bancasia. On the face of the Deeds of Assignment, the contracting parties are indisputably Great Asian and Bancasia as the names of these entities are expressly mentioned therein as the assignor and assignee, respectively. Great Asian claims that Arsenio signed the Deeds of Assignment in his personal capacity because Arsenio signed above his printed name, below which was the word "Assignor", thereby making Arsenio the assignor. Great Asian conveniently omits to state that the first paragraph of the Deeds expressly contains the following words: "*the ASSIGNOR, Great Asian Sales Center, a domestic corporation x x x herein represented by its Treasurer Arsenio Lim Piat, Jr*." The assignor is undoubtedly Great Asian, represented by its Treasurer, Arsenio. The only issue to determine is whether the Deeds of Assignment are indeed the transactions the board of directors of Great Asian authorized Arsenio to sign under the two board resolutions.

The Deeds of Assignment enabled Great Asian to generate instant cash from its fifteen checks, which were still not due and demandable then. In short, instead of waiting for the maturity dates of the fifteen postdated checks, Great Asian sold the checks to Bancasia at less than the total face value of the checks. In exchange for receiving an amount less than the face value of the checks, Great Asian obtained immediately much needed cash. Over three months, Great Asian entered into four transactions of this nature with Bancasia, showing that Great Asian availed of a discounting line with Bancasia.

Clearly, the discounting arrangements entered into by Arsenio under the Deeds of Assignment were the very transactions envisioned in the two board resolutions of Great Asian to raise funds for its business. Arsenio acted completely within the limits of his authority under the two board resolutions. Arsenio did exactly what the board of directors of Great Asian directed and authorized him to do.

Arsenio had all the proper and necessary authority from the board of directors of Great Asian to sign the Deeds of Assignment and to endorse the fifteen postdated checks. Arsenio signed the Deeds of Assignment as agent and authorized signatory of Great Asian under an authority expressly granted by its board of directors. The signature of Arsenio on the Deeds of Assignment is effectively also the signature of the board of directors of Great Asian, binding on the board of directors and on Great Asian itself. Evidently, Great Asian shows its bad faith in disowning the Deeds of Assignment signed by its own Treasurer, after receiving valuable consideration for the checks assigned under the Deeds.

- DBP vs. Sps. Francisco and Leticia Ong, 460 SCRA 170 (2005)

DEVELOPMENT BANK OF THE PHILIPPINES, petitioner, vs. SPOUSES FRANCISCO ONG and LETICIA ONG, respondents.
G.R. No. 144661 and 144797, THIRD DIVISION, June 15, 2005, GARCIA, *J.:*

By no stretch of imagination, however, can the mere "NOTING" of such an offer be taken to mean an approval of the supposed sale. Quite the contrary, the very circumstance that the offer to purchase was merely "NOTED" by the branch manager and not "approved", is a clear indication that there is no perfected contract of sale to speak of.

The representation of Roy Palasan, a mere clerk at petitioner's Cagayan de Oro City branch, that the manager had already approved the sale, even if true, cannot bind the petitioner bank to a contract of sale with respondents, it being obvious to us that such a clerk is not among the bank officers upon whom such putative authority may be reposed by a third party. There is, thus, no legal basis to bind petitioner into any valid contract of sale with the respondents, given the absolute absence of any approval or consent by any responsible officer of petitioner bank.

FACTS

Petitioner's foreclosed asset, formerly owned by one Enrique Abada located at Corrales Extension, Cagayan de Oro City is the subject of this controversy. On May 25, 1988, respondent Francisco Ong with the conformity of his wife Leticia Ong, addressed a written offer to petitioner thru its branch manager at Cagayan de Oro City to buy the subject property on a negotiated sale basis and submitted his "best and last offer" to purchase.

The foregoing offer was duly "NOTED" by petitioner's branch head at its Cagayan de Oro City Branch, Jose Z. Lagrito (Lagrito, for brevity), and Official Receipt was issued for the amount of ₱14,000.00 as respondents' deposit.

In a letter dated October 21, 1988, sent to respondents *via* registered mail, Lagrito informed the spouses that the bank recently received an offer from another interested third-party-buyer of the same property at the same price and term, "but better and more advantageous to the Bank considering that the buyer will assume the responsibility at her expense for the ejectment of present occupants in the said property". Nonetheless, respondents were given in the same letter three (3) days within which "to match the said offer", failing in which the Bank "will immediately award the said property to the other buyer", in which event respondents' deposit of ₱14,000.00 shall be refunded to them upon surrender of Official Receipt.

In yet another written offer, respondents matched the said offer of the second interested buyer by assuming the responsibility "at my/our own expense for the ejection of squatters/occupants, if any, on the property".

On April 7, 1989, there was a conference between respondents, together with their counsel, and the bank whereat respondents were informed why the sale could not be awarded to them. Thereafter, in a letter, respondents were notified that the property would instead be offered for public bidding on September 24, 1990 at ten 10:00 o'clock in the morning.

Feeling aggrieved by such turn of events, respondents filed with the Regional Trial Court at Cagayan de Oro City a complaint for breach of contract and/or specific performance against petitioner.

In a decision, the trial court dismissed the complaint finding that there was "no perfected contract of sale" between the parties, hence, "there is no breach to speak of since there was no contract from the very beginning". However, upon respondents' motion for reconsideration, the trial court vacated its judgment and set the case for the reception of evidence. This time, only the respondents adduced their evidence consisting of the lone testimony of respondent Francisco Ong and the documents identified by him in the course thereof.

ISSUE

Whether or not there actually was a perfected contract of sale between petitioner and respondents, for which the Court may compel petitioner to issue a board resolution approving the sale and to execute the final deed of sale in respondents' favor, and/or hold petitioner liable for a breach thereof. Needless to state, without a perfected contract of sale, there could be no cause of action for specific performance or breach thereof.

RULING

Judging from the findings of the two (2) courts below and the testimony of respondent Francisco Ong himself, it appears clear to the Court that the transaction between the respondents and the petitioner was limited to Palasan, one of the clerks of petitioner's branch in Cagayan de Oro City. Lagrito, the branch manager, had no personal or direct communication with respondents to express his alleged consent to the sale transaction. Thus, the undisputed evidence showed that it was Palasan, a mere bank clerk, and not the branch manager himself who assured respondents that theirs was a closed deal.

The Court is very much aware of their pronouncement in Rural Bank of Milaor vs. Ocfemia, involving a mandamus suit where the supposed buyer of a foreclosed property from a bank sought a court order to compel the bank to issue the required board resolution confirming the sale between the parties therein.

The Court has observed in Ramirez vs. Orientalist Co., , that — 'In passing upon the liability of a corporation in cases of this kind it is always well to keep in mind the situation as it presents itself to the third party with whom the contract is made. Naturally he can have little or no information as to what occurs in corporate meetings; and he must necessarily rely upon the external manifestation of corporate consent. The integrity of commercial transactions can only be maintained by holding the corporation strictly to the liability fixed upon it by its agents in accordance with law; and we would be sorry to announce a doctrine which would permit the property of man in the city of Paris to be whisked out of his hands and carried into a remote quarter of the earth without recourse against the corporation whose name and authority had been used in the manner disclosed in this case. As already observed, it is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to do acts within the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against anyone who has in good faith dealt with the corporation through such agent, be estopped from denying his authority; and where it is said 'if the corporation permits this means the same as 'if the thing is permitted by the directing power of the corporation.'"

In this light, the bank is estopped from questioning the authority of the bank manager to enter into the contract of sale. If a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds the agent out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

There is, however, a striking and very material difference between the aforecited case and the one at bar. For, unlike in *Milaor* where it was the **branch manager** who approved the sale for and in behalf of the bank, here, there is absolutely no approval whatsoever by any responsible bank officer of the petitioner. True it is that the signature of branch manager Lagrito appears below the typewritten word "NOTED" at the bottom of respondents' offer to purchase. By no stretch of imagination, however, can the mere "NOTING" of such an offer be taken to mean an approval of the supposed sale. Quite the contrary, the very circumstance that the offer to purchase was merely "NOTED" by the branch manager and not "approved", is a clear indication that there is no perfected contract of sale to speak of.

The representation of Roy Palasan, a mere clerk at petitioner's Cagayan de Oro City branch, that the manager had already approved the sale, even if true, cannot bind the petitioner bank to a contract of sale with respondents, it being obvious to us that such a clerk is not among the bank officers upon whom such putative authority may be reposed by a third party. There is, thus, no legal basis to bind petitioner into any valid contract of sale with the respondents, given the absolute absence of any approval or consent by any responsible officer of petitioner bank.

And because there is here no perfected contract of sale between the parties, respondents' action for breach of contract and/or specific performance is simply without any leg to stand on and must therefore fall.

With the hard reality that no approval or acceptance of respondents' offer to buy exists in this case, any independent transaction between petitioner and another third-party, like the one involving respondents' sister, would be irrelevant and immaterial insofar as respondents' own transaction with the petitioner is concerned. Besides, apart from saying that respondents' sister "made a similar offer to the [petitioner] under the same terms and conditions as to that of the [respondents], and was likewise assured by the same bank personnel that her offer xxx was already approved", which eventually resulted into a "consummated sale between (the sister) and DBP", the Court of Appeals made no finding that the sister's transaction with the petitioner was made exactly under the same circumstances obtaining in the present case. In any event, petitioner's favorable action on the offer of respondents' sister is hardly, if ever, relevant and determinative in the resolution of the legal issue presented in this case.

- Litonjua, Jr. vs. Eternity Corporation 490 SCRA 204 (2006)

EDUARDO V. LINTONJUA, JR. and ANTONIO K. LITONJUA, Petitioners, vs. ETERNIT CORPORATION (now ETERTON MULTI-RESOURCES CORPORATION), ETEROUTREMER, S.A. and FAR EAST BANK & TRUST COMPANY, Respondents.
G.R. No. 144805, FIRST DIVISION, June 8, 2006, CALLEJO, SR., *J.*

The property of a corporation, however, is not the property of the stockholders or members, and as such, may not be sold without express authority from the board of directors. Physical acts, like the offering of the properties of the corporation for sale, or the acceptance of a counter-offer of prospective buyers of such properties and the execution of the deed of sale covering such property, can be performed by the corporation only by officers or agents duly authorized for the purpose by corporate by-laws or by specific acts of the board of directors. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are not binding on the corporation.

FACTS

The Eternit Corporation (EC) is a corporation duly organized and registered under Philippine laws. Since 1950, it had been engaged in the manufacture of roofing materials and pipe products. Its manufacturing operations were conducted on eight parcels of land. The properties, located in Mandaluyong City, Metro Manila, were covered by Transfer Certificates of Title under the name of Far East Bank & Trust Company, as trustee. Ninety (90%) percent of the shares of stocks of EC were owned by Eteroutremer S.A. Corporation (ESAC), a corporation organized and registered under the laws of Belgium. Jack Glanville, an Australian citizen, was the General Manager and President of EC, while Claude Frederick Delsaux was the Regional Director for Asia of ESAC. Both had their offices in Belgium.

In 1986, the management of ESAC grew concerned about the political situation in the Philippines and wanted to stop its operations in the country. The Committee for Asia of ESAC instructed Michael Adams, a member of EC's Board of Directors, to dispose of the eight parcels of land. Adams engaged the services of realtor/broker Lauro G. Marquez so that the properties could be offered for sale to prospective buyers. Glanville later showed the properties to Marquez.

Marquez thereafter offered the parcels of land and the improvements thereon to Eduardo B. Litonjua, Jr. of the Litonjua & Company, Inc. In a Letter, Marquez declared that he was authorized to sell the properties for ₱27,000,000.00 and that the terms of the sale were subject to negotiation.

Eduardo Litonjua, Jr. responded to the offer. Marquez showed the property to Eduardo Litonjua, Jr., and his brother Antonio K. Litonjua. The Litonjua siblings offered to buy the property for ₱20,000,000.00 cash. Marquez apprised Glanville of the Litonjua siblings' offer and relayed the same to Delsaux in Belgium, but the latter did not respond. On October 28, 1986, Glanville telexed Delsaux in Belgium, inquiring on his position/ counterproposal to the offer of the Litonjua siblings. It was only on February 12, 1987 that Delsaux sent a telex to Glanville stating that, based on the "Belgian/Swiss decision," the final offer was "US$1,000,000.00 and ₱2,500,000.00 to cover all existing obligations prior to final liquidation."

Marquez furnished Eduardo Litonjua, Jr. with a copy of the telex sent by Delsaux. Litonjua, Jr. accepted the counterproposal of Delsaux. Marquez conferred with Glanville, and in a Letter, confirmed that the Litonjua siblings had accepted the counter-proposal of Delsaux. He also stated that the Litonjua siblings would confirm full payment within 90 days after execution and preparation of all documents of sale, together with the necessary governmental clearances.

The Litonjua brothers deposited the amount of US$1,000,000.00 with the Security Bank & Trust Company, Ermita Branch, and drafted an Escrow Agreement to expedite the sale.

Sometime later, Marquez and the Litonjua brothers inquired from Glanville when the sale would be implemented. In a telex, Glanville informed Delsaux that he had met with the buyer, which had given him the impression that "he is prepared to press for a satisfactory conclusion to the sale." He also emphasized to Delsaux that the buyers were concerned because they would incur expenses in bank commitment fees as a consequence of prolonged period of inaction.

Meanwhile, with the assumption of Corazon C. Aquino as President of the Republic of the Philippines, the political situation in the Philippines had improved. Marquez received a telephone call from Glanville, advising that the sale would no longer proceed. Glanville followed it up with a Letter, confirming that he had been instructed by his principal to inform Marquez that "the decision has been taken at a Board Meeting not to sell the properties on which Eternit Corporation is situated."
Delsaux himself later sent a letter dated May 22, 1987, confirming that the ESAC Regional Office had decided not to proceed with the sale of the subject land. When apprised of this development, the Litonjuas, through counsel, wrote EC, demanding payment for damages they had suffered on account of the aborted sale. EC, however, rejected their demand.

The Litonjuas then filed a complaint for specific performance and damages against EC (now the Eterton Multi-Resources Corporation) and the Far East Bank & Trust Company, and ESAC in the RTC of Pasig City. An amended complaint was filed, in which defendant EC was substituted by Eterton Multi-Resources Corporation; Benito C. Tan, Ruperto V. Tan, Stock Ha T. Tan and Deogracias G. Eufemio were impleaded as additional defendants on account of their purchase of ESAC shares of stocks and were the controlling stockholders of EC.

In their answer to the complaint, EC and ESAC alleged that since Eteroutremer was not doing business in the Philippines, it cannot be subject to the jurisdiction of Philippine courts; the Board and stockholders of EC never approved any resolution to sell subject properties nor authorized Marquez to sell the same; and the telex of Jack Glanville was his own personal making which did not bind EC.

The trial court declared that since the authority of the agents/realtors was not in writing, the sale is void and not merely unenforceable, and as such, could not have been ratified by the principal. In any event, such ratification cannot be given any retroactive effect. Plaintiffs could not assume that defendants had agreed to sell the property without a clear authorization from the corporation concerned, that is, through resolutions of the Board of Directors and stockholders. The trial court also pointed out that the supposed sale involves substantially all the assets of defendant EC which would result in the eventual total cessation of its operation.

On June 16, 2000, the CA rendered judgment affirming the decision of the RTC.

The CA ruled that Marquez, who was a real estate broker, was a special agent within the purview of Article 1874 of the New Civil Code. Under Section 23 of the Corporation Code, he needed a special authority from EC's board of directors to bind such corporation to the sale of its properties. Delsaux, who was merely the representative of ESAC (the majority stockholder of EC) had no authority to bind the latter. The CA pointed out that Delsaux was not even a member of the board of directors of EC. Moreover, the Litonjuas failed to prove that an agency by estoppel had been created between the parties.

ISSUE

Whether or not Marquez, Glanville, and Delsaux were authorized by respondent EC to act as its agents relative to the sale of the properties of respondent EC, and if so, the boundaries of their authority as agents.

RULING

In the absence of express written terms creating the relationship of an agency, the existence of an agency is a fact question. Whether an agency by estoppel was created or whether a person acted within the bounds of his apparent authority, and whether the principal is estopped to deny the apparent authority of its agent are, likewise, questions of fact to be resolved on the basis of the evidence on record. The findings of the trial court on such issues, as affirmed by the CA, are conclusive on the Court, absent evidence that the trial and appellate courts ignored, misconstrued, or misapplied facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.

It was the duty of the petitioners to prove that respondent EC had decided to sell its properties and that it had empowered Adams, Glanville and Delsaux or Marquez to offer the properties for sale to prospective buyers and to accept any counter-offer. Petitioners likewise failed to prove that their counter-offer had been accepted by respondent EC, through Glanville and Delsaux. It must be stressed that when specific performance is sought of a contract made with an agent, the agency must be established by clear, certain and specific proof.

Section 23 of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, provides:

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 to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Indeed, a corporation is a juridical person separate and distinct from its members or stockholders and is not affected by the personal rights, obligations and transactions of the latter. It may act only through its board of directors or, when authorized either by its by-laws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, by-laws, or relevant provisions of law.

Under Section 36 of the Corporation Code, a corporation may sell or convey its real properties, subject to the limitations prescribed by law and the Constitution, as follows:

SEC. 36. Corporate powers and capacity. – Every corporation incorporated under this Code has the power and capacity: x x x x

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution.

The property of a corporation, however, is not the property of the stockholders or members, and as such, may not be sold without express authority from the board of directors. Physical acts, like the offering of the properties of the corporation for sale, or the acceptance of a counter-offer of prospective buyers of such properties and the execution of the deed of sale covering such property, can be performed by the corporation only by officers or agents duly authorized for the purpose by corporate by-laws or by specific acts of the board of directors. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are not binding on the corporation.

While a corporation may appoint agents to negotiate for the sale of its real properties, the final say will have to be with the board of directors through its officers and agents as authorized by a board resolution or by its by-laws. An unauthorized act of an officer of the corporation is not binding on it unless the latter ratifies the same expressly or impliedly by its board of directors. Any sale of real property of a corporation by a person purporting to be an agent thereof but without written authority from the corporation is null and void. The declarations of the agent alone are generally insufficient to establish the fact or extent of his/her authority.

In this case, the petitioners as plaintiffs below, failed to adduce in evidence any resolution of the Board of Directors of respondent EC empowering Marquez, Glanville or Delsaux as its agents, to sell, let alone offer for sale, for and in its behalf, the eight parcels of land owned by respondent EC including the improvements thereon. The bare fact that Delsaux may have been authorized to sell to Ruperto Tan the shares of stock of respondent ESAC, on June 1, 1997, cannot be used as basis for petitioners' claim that he had likewise been authorized by respondent EC to sell the parcels of land. Moreover, the evidence of petitioners shows that Adams and Glanville acted on the authority of Delsaux, who, in turn, acted on the authority of respondent ESAC, through its Committee for Asia, the Board of Directors of respondent ESAC, and the Belgian/Swiss component of the management of respondent ESAC.

As such, Adams and Glanville engaged the services of Marquez to offer to sell the properties to prospective buyers. Thus, on September 12, 1986, Marquez wrote the petitioner that he was authorized to offer for sale the property for ₱27,000,000.00 and the other terms of the sale subject to negotiations. When petitioners offered to purchase the property for ₱20,000,000.00, through Marquez, the latter relayed petitioners' offer to Glanville; Glanville had to send a telex to Delsaux to inquire the position of respondent ESAC to petitioners' offer. However, as admitted by petitioners in their Memorandum, Delsaux was unable to reply immediately to the telex of Glanville because Delsaux had to wait for confirmation from respondent ESAC. When Delsaux finally responded to Glanville on February 12, 1987, he made it clear that, based on the "Belgian/Swiss decision" the final offer of respondent ESAC was US$1,000,000.00 plus ₱2,500,000.00 to cover all existing obligations prior to final liquidation. The offer of Delsaux emanated only from the "Belgian/Swiss decision," and not the entire management or Board of Directors of respondent ESAC. While it is true that petitioners accepted the counter-offer of respondent ESAC, respondent EC was not a party to the transaction between them; hence, EC was not bound by such acceptance.

While Glanville was the President and General Manager of respondent EC, and Adams and Delsaux were members of its Board of Directors, the three acted for and in behalf of respondent ESAC, and not as duly authorized agents of respondent EC; a board resolution evincing the grant of such authority is needed to bind EC to any agreement regarding the sale of the subject properties. Such board resolution is not a mere formality but is a condition sine qua non to bind respondent EC.

- Easycall Communications Phils. Inc. vs. Edward King 478 SCRA 102 (2005)

EASYCALL COMMUNICATIONS PHILS., INC., *Petitioner***,** *v.* **EDWARD KING,** *Respondent***.**
G.R. NO. 145901, THIRD DIVISION, December 15, 2005, CORONA, ***J*****.**

"Corporate officers" in the context of PD 902-A are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the "corporate officers" are the president, secretary, treasurer and such other officers as may be provided for in the by-laws.

FACTS

Petitioner Easycall Communications Phils., Inc. was a domestic corporation primarily engaged in the business of message handling. On May 20, 1992, petitioner, through its general manager, Roberto B. Malonzo, hired the services of respondent as assistant to the general manager. He was given the responsibility of ensuring that the expansion plans outside Metro Manila and Metro Cebu were achieved at the soonest possible time.

In an August 14, 1992 memorandum, Mr. R.T. Casas, respondent's immediate superior, recommended his promotion to assistant vice president for nationwide expansion. On December 22, 1992, respondent was appointed to the even higher position of vice president for nationwide expansion. Respondent's promotion was based on his performance during the six months preceding his appointment. As vice president for nationwide expansion, he became responsible for the sales and rentals of pager units in petitioner's expansion areas. He was also in charge of coordinating with the dealers in these areas.

Sometime in March 1993, Malonzo reviewed the sales performance of respondent. He also scrutinized the status of petitioner's Nationwide Expansion Program (NEP) which was under respondent's responsibility. He found that respondent's actual sales for the period October 1992 March 1993 was 78% of his sales commitment and 70% of his sales target.

Malonzo also checked the frequency and duration of the provincial sales development visits made by respondent for the same period to expansion areas under his jurisdiction. He discovered that the latter spent around 40% of the total number of working days for that period in the field.

The management then confronted respondent regarding his sales performance and provincial sales development visits. A series of dialogues between petitioner's management and respondent ensued.

On April 16, 1993, Rockwell Gohu, petitioner's deputy general manager, talked to respondent to discuss his sales performance. In the course of the conversation, Gohu informed respondent that Malonzo wanted his resignation. This prompted respondent to write a memorandum to Malonzo. In his memorandum, he inquired whether Malonzo really wanted him to resign. He emphasized that his work performance had yet to be evaluated. He also stated that, based on the approved budget for fiscal year ending in June 1993, he was within the budget and targets set forth by petitioner. He further declared that he had no intention of resigning from his position.

On April 19, 1993, respondent received a notice of termination signed by Malonzo. The notice informed him of the termination of his employment with petitioner effective April 30, 1993.

Aggrieved, the respondent filed a complaint for illegal dismissal with the NLRC. In his June 24, 1997 decision, the labor arbiter found that the termination of respondent's employment on the ground of loss of confidence was valid. Consequently, the labor arbiter dismissed the complaint for lack of merit.

ISSUE

Whether or not the NLRC had no jurisdiction.

RULING

Under Section 5 of PD 902-A, the law applicable at the time this controversy arose, the SEC, not the NLRC, had original and exclusive jurisdiction over cases involving the removal of corporate officers. Section 5(c) of PD 902-A applied to a corporate officer's dismissal for his dismissal was a corporate act and/or an intra-corporate controversy.

However, it had to be first established that the person removed or dismissed was a corporate officer before the removal or dismissal could properly fall within the jurisdiction of the SEC and not the NLRC. Here, aside from its bare allegation, petitioner failed to show that respondent was in fact a corporate officer.

"Corporate officers" in the context of PD 902-A are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the "corporate officers" are the president, secretary, treasurer and such other officers as may be provided for in the by-laws.

The burden of proof is on the party who makes the allegation. Here, petitioner merely alleged that respondent was a corporate officer. However, it failed to prove that its by-laws provided for the office of "vice president for nationwide expansion." Since petitioner failed to satisfy the burden of proof that was required of it, we cannot sanction its claim that respondent was a "corporate officer" whose removal was cognizable by the SEC under PD 902-A and not by the NLRC under the Labor Code.

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 occupies no office and generally is employed not by the 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.

In this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was *an employee, not a "corporate officer."* The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC.

- Elcee Farms, Inc. vs. NLRC 512 SCRA 602 (2007)

ELCEE FARMS INC. and CORAZON SAGUEMULLER, Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) and SUGAR AGRICULTURAL INDUSTRY LABOR ORGANIZATION (SAILO), et. al., Respondents.
G.R. No. 126428, THIRD DIVISION, January 25, 2007, CHICO-NAZARIO, *J.:*

It is basic that 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. 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.

FACTS

Pampelo Semillano and one hundred forty-three (143) other complainants, represented by the labor union, Sugar Agricultural Industrial Labor Organization (SAILO), filed this complaint for illegal dismissal with prayer for reinstatement with back wages, or in the alternative, separation pay, with damages against Elcee Farms, Corazon Saguemuller, Hilla Corporation (HILLA), Rey Hilado, and Roberto Montaño.

Private respondents alleged that they were all regular farm workers in Hacienda Trinidad, which was owned and operated by petitioner corporation Elcee Farms. Complainants alleged that petitioner Corazon Saguemuller was the president of Elcee Farms, but records disclosed that it was her son, Konrad Saguemuller, who was the president thereof.

Some of the complainants allegedly worked in Hacienda Trinidad as early as 1960. On 27 April 1987, Elcee Farms entered into a Lease Agreement with Garnele Aqua Culture Corporation (Garnele). Nevertheless, most of the private respondents continued to work in Hacienda Trinidad. On appeal, they presented payrolls and Social Security System (SSS) Forms E-4 issued during the period that Garnele leased the hacienda, naming Elcee Farms as their employer.

On 15 November 1990, Garnele sub-leased Hacienda Trinidad to Daniel Hilado, who operated HILLA. The contract of lease executed between Garnele and Daniel Hilado stipulated the continued employment of 120 of the former's employees by the latter, but the contract was silent as to the benefits which may accrue to the employees as a consequence of their employment with Elcee Farms. Thus, private respondents were allowed to continue working in Hacienda Trinidad, under the management of HILLA. Soon after HILLA took over, Daniel Hilado entered into a Collective Bargaining Agreement (CBA) with the United Sugar Farmers' Organization (USFO). The CBA contained a closed shop provision.

Due to their refusal to join the labor union, the private respondents were terminated by HILLA. On 26 December 1990, SAILO and 144 complainants, including the 131 private respondents herein, filed against Elcee Farms, Corazon Saguemuller, HILLA and its officers, Ray Hilado and Roberto Montaño, a complaint for illegal dismissal with reinstatement with back wages and separation pay with damages.

ISSUE

Whether the private respondents are entitled to the award of separation pay and moral damages.

RULING

Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.

Bad faith on the part of Elcee Farms is shown by the act of simulating a lease agreement with Garnele in order to evade paying private respondents the proper amount of separation benefits based on the number of years they worked in the hacienda, as provided by the Labor Code.

Records show that Elcee Farms did not pay any separation benefits to the private respondents when they allegedly leased the hacienda to Garnele, and again when the hacienda was leased to Daniel Hilado. When the employees filed their complaint with the Labor Arbiter, Elcee Farms, using the simulated lease agreement with Garnele, tried to deny liability by claiming that their claims had already prescribed. It claimed that the lease agreement with Garnele, which was allegedly executed in 1987, effectively terminated the employer-employee relationship before the complaint was filed in 1990, or more than three years after. These unlaudable acts undermine the workers' statutory rights for which moral damages may be awarded.

Liability for separation pay is provided under Article 283 of the Labor Code, as it existed in 1990, for the following circumstances, particularly the cessation of operations.

From this provision, three requirements are enumerated in cases of cessation of business operations of an employer company not due to business reverses: (1) service of a written notice to the employees and to the MOLE (now the Secretary of Labor and Employment) at least one month before the intended date thereof; (2) the cessation of or withdrawal from business operations must be bona fide in character; and (3) payment to the employees of termination pay amounting to at least one-half month pay for each year of service, or one month pay, whichever is higher.

In the present case, Elcee Farms effectively ceased to operate and manage Hacienda Trinidad when, through Garnele, it leased the hacienda to Daniel Hilado. The validity of the aforementioned lease was not questioned by any of the parties. There is no question that the lease to Daniel Hilado effectively terminated the employer-employee relationship between Elcee Farms and the farmworkers. Private respondents Pampelo Semillano and Roel Benignos testified that HILLA took possession of the hacienda in 1990 and managed the same. This was corroborated by the testimony of Anonio Sidayon, the administrator of HILLA. After the said lease was executed, the employer-employee relationship between the farm employees and Elcee Farms was severed. The lease agreement between Garnele and Daniel Hilado identified the employees who will continue working with the new management and stipulated that workers who were not in the list, whether new or employed in the past, will not be employed by the lessee. The lease contract even specified that Daniel Hilado will only be liable for all future labor cases, the cause of which arose during or by virtue of the sublease. Clearly, there was a cessation of operations of Elcee Farms, which renders it liable for separation pay to its employees, under Section 283 of the Labor Code.

The Court, nonetheless, finds merit in the petitioners' allegation that Corazon Saguemuller should not be subsidiarily liable with Elcee Farms for separation pay and damages. It is basic that 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. 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 the case of Santos v. National Labor Relations Commission, a corporate officer was not held liable for the obligations incurred by the corporation, where the corporate officer was not even shown to have had a direct hand in the dismissal of the employee enough to attribute to him an unlawful act.

In the present case, the NLRC took into account the testimony of the witness Roel Benignos who said that they believed that petitioner Corazon Saguemuller was the president of Elcee Farms because the employees would approach her if they needed help, as well as the fact that her sons were the officers of Elcee Farms and Garnele. Beyond these bare suppositions, no evidence, oral or documentary, was presented to prove that Corazon Saguemuller was truly the President of Elcee Farms. Nor was there even proof that she was in active management of the corporation and had dictated policies for implementation by the corporation. Extending help to private respondents certainly did not automatically vest upon her the position of President of the corporation. There, likewise, appears to be no evidence on record that she had acted maliciously or in bad faith in terminating the services of the private respondents; nor has it been shown that she has in any way consented to the simulated lease contract executed by her sons which effectively terminated the services of the private respondents.

- Aratea vs. Suico, 518 SCRA 501 (2007)

BENITO ARATEA and PONCIANA CANONIGO, Petitioners, vs. ESMERALDO P. SUICO and COURT OF APPEALS, Cebu City, Respondents.
G.R. No. 170284, FIRST DIVISION, March 16, 2007, GARCIA, *J.:*

Well-settled is the rule that a corporation has a personality separate and distinct from that of its officers and stockholders. Officers of a corporation are not personally liable for their acts as such officers unless it is shown that they have exceeded their authority. However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

FACTS

Petitioners Aratea and Canonigo are the controlling stockholders of Samar Mining Development Corporation (SAMDECO), a domestic corporation engaged in mining operations in San Isidro, Wright, Western Samar. On the other hand, private respondent Esmeraldo P. Suico (Suico) is a businessman engaged in export and general merchandise.

Sometime in 1989, Suico entered into a Memorandum of Agreement (MOA) with SAMDECO. Armed with the proper board resolution, Benito Aratea (Aratea) and Ponciana Canonigo (Canonigo) signed the MOA as the duly authorized representatives of the corporation. Under the MOA, Suico would extend loans and cash advances to SAMDECO in exchange for the grant of the exclusive right to market fifty percent (50%) of the total coal extracted by SAMDECO from its mining sites in San Isidro, Wright, Western Samar.

Suico was enticed into the aforementioned financing scheme because Aratea and Canonigo assured him that the money he would lend to SAMDECO would easily be paid with five percent (5%) monthly interest as the coals in said sites is easier to gather because it is excavated from open-pit mines. Aratea and Canonigo also promised to Suico that the loan the latter would extend to SAMDECO could easily be paid from the profits of his fifty percent (50%) share of the coal produced. Also reserved in favor of Suico was the right of first priority to operate the mining facilities in the event SAMDECO becomes incapable of coping with the work demands. By way of further incentive, Suico was actually appointed SAMDECO's Vice-President for Administration.

Pursuant to the same MOA, Suico started releasing loans and cash advances to SAMDECO, still through Aratea and Suico. SAMDECO started operations in its mining sites to gather the coal. As agreed in the MOA, fifty percent (50%) of the coals produced were offered by Suico to different buyers. However, SAMDECO, again through Aratea and Canonigo, prevented the full implementation of the marketing arrangement by not accepting the prices offered by Suico's coal buyers even though such prices were competitive and fair enough, giving no other explanation for such refusal other than saying that the price was too low. Aratea and Canonigo did not also set any criterion or standard with which any price offer would be measured against. Because he failed to close any sale of his 50% share of the coal-produce and gain profits therefrom, Suico could not realize payment of the loans and advances he extended to SAMDECO.

SAMDECO, on the other hand, successfully disposed of its 50% share of the coal-produce. Even with said coal sales, however, SAMDECO absolutely made no payment of its loan obligations to Suico, despite demands.

Aratea and Canonigo eventually sold the mining rights and passed on the operations of SAMDECO to Southeast Pacific Marketing, Inc. (SPMI). They also sold their shares in SAMDECO to SPMI's President, Arturo E. Dy without notice to, or consent of Suico, in violation of the MOA.

Hence, in the RTC of Cebu City, Suico filed a complaint for a Sum of Money and Damages against SAMDECO, Aratea, Canonigo, and Seiko Philippines, Inc. (SEIKO, which was later substituted by SPMI and Arturo E. Dy).

ISSUE

Whether or not the defendants-appellants Benito Aratea AND Ponciana Canonigo and condemning them to pay jointly and severally the loans, cash advances and capital infusion made by plaintiff to defendant-appellant SAMDECO.

RULING

The Court first stress that petitioners' personal and solidary liability depends on whether the Court finds SAMDECO's monetary obligations on account of the loans and cash advances made to it by Suico are due and demandable as borne by the evidence.

After carefully and thoroughly reviewing the records of the proceedings before the trial court, the Court finds no cogent reason to depart from the factual findings of both the trial and appellate courts holding all defendants liable for said loans and cash advances.

However, in determining whether SAMDECO's stockholders and/or representatives (petitioners Aratea and Canonigo) may be held solidarily liable with SAMDECO's obligations, the Court must determine whether, upon the same facts found by the two courts below, there is basis to pierce the veil of corporate fiction and hold SAMDECO's stockholders and/or officers personally and solidarily liable with the corporation.

Prudential Bank v. Alviar stated: Well-settled is the rule that a corporation has a personality separate and distinct from that of its officers and stockholders. Officers of a corporation are not personally liable for their acts as such officers unless it is shown that they have exceeded their authority. However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

SAMDECO must generally be treated as separate and distinct entity from petitioners Aratea and Canonigo unless there are facts and circumstances that would justify the Court to pierce the veil of corporate fiction and treat them as one and the same. From the facts, as found by the trial court and reechoed by the appellate court, the Court has no reason to doubt that Suico was very well aware that he was dealing with SAMDECO and that Aratea and Canonigo were mere authorized representatives acting for and in behalf of the corporation. In fact, Suico took note that Aratea and Canonigo were duly authorized by the corresponding board resolution. There were no indications whatsoever that Suico was misled to believe that the loans and cash advances were initially intended for the personal benefit of Aratea and/or Canonigo, and that the corporation was only used thereafter for the purpose of hiding behind the veil of corporate fiction to evade personal liability. The evidence sufficiently established that all loans and cash advances were used for the mining operations of SAMDECO, and there were neither allegations nor proofs to the contrary. Absent any proof of fraud or double dealing, therefore, the doctrine on piercing the veil of corporate entity would not apply.

Considering that the veil of corporate fiction cannot be pierced in this case but the evidence indisputably established that Suico released loans and cash advances in favor of SAMDECO, which loans and cash advances remain unpaid to the present, to Suico's damage and prejudice, Aratea and Canonigo, as SAMDECO's controlling stockholders and/or representatives, be nonetheless held personally and solidarily liable with SAMDECO and its successors-in-interest for obligations the corporation incurred under the facts herein obtaining.

Petitioners Aratea and Canonigo, despite having separate and distinct personalities from SAMDECO may be held personally liable for the loans and advances made by Suico to SAMDECO which they represent on account of their bad faith in carrying out the business of the corporation.

Petitioners Aratea and Canonigo acted in bad faith when they, as officers of SAMDECO, unreasonably prevented Suico from selling his part of the coal-produce of the mining site, in gross violation of their MOA. This resulted in Suico not being unable to realize profits from his 50% share of the coal-produce, from which Suico could obtain part of the payment for the loans and advances he made in favor of SAMDECO. Moreover, petitioners also acted in bad faith when they sold, transferred and assigned their proprietary rights over the mining area in favor of SPMI and Dy, thereby causing SAMDECO to grossly violate its MOA with Suico. Suico suffered grave injustice because he was prevented from acquiring the opportunity to obtain payment of his loans and cash advances, while petitioners Aratea and Canonigo profited from the sale of their shareholdings in SAMDECO in favor of SPMI and Dy. These facts duly established Aratea and Canonigo's personal liability as officers/stockholders of SAMDECO and their solidary liability with SAMDECO for its obligations in favor of Suico for the loans and cash advances received by the corporation.

- Carag vs. NLRC 520 SCRA 28 (2007)

ANTONIO C. CARAG, Petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION, ISABEL G. PANGANIBAN-ORTIGUERRA, as Executive Labor Arbiter, NAFLU, and MARIVELES APPAREL CORPORATION LABOR UNION, Respondents.
G.R. No. 147590, EN BANC, April 2, 2007, CARPIO, *J.*:

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence *of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212[e] nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation.*

FACTS

National Federation of Labor Unions (NAFLU) and Mariveles Apparel Corporation Labor Union (MACLU) (collectively, complainants), on behalf of all of MAC's rank and file employees, filed a complaint against MAC for illegal dismissal brought about by its illegal closure of business. Upon receipt of the records of the case, Arbiter Ortiguerra summoned the parties to explore options for possible settlement. The non-appearance of respondents prompted Arbiter Ortiguerra to declare the case submitted for resolution "based on the extant pleadings."

In their position paper dated 3 January 1994, complainants moved to implead Carag and David, as follows: In the present case, it is unfortunate for respondents that the records and evidence clearly demonstrate that the individual complainants are entitled to the reliefs prayed for in their complaint. However, any favorable judgment the Honorable Labor Arbiter may render in favor of herein complainants will go to naught should the Office fails [sic] to appreciate the glaring fact that the respondents [sic] corporation is no longer existing as it suddenly stopped business operation since [sic] 8 July 1993. Under this given circumstance, the complainants have no option left but to implead Atty. ANTONIO CARAG, in his official capacity as Chairman of the Board along with MR. ARMANDO DAVID as President. Both are also owners of the respondent corporation .This inclusion of individual respondents as party respondents in the present case is to guarantee the satisfaction of any judgment award on the basis of Article 212(c) of the Philippine Labor Code.

Where the employer-corporation, as in the present case, is no longer existing and unable to satisfy the judgment in favor of the employee, the officer should be held liable for acting on behalf of the corporation.

If no definite proof exists as to who is the responsible officer, the president of the corporation who can be deemed to be its chief operation officer shall be presumed to be the responsible officer. In Republic Act 602, for example, criminal responsibility is with the "manager" or in his default, the person acting as such.

ISSUE

Whether or not Carag and David are personally liable for over ₱50 million of the corporation's liability, merely as board chairman and President?

RULING

No, Carag cannot be held personally liable for the separation pay owed by MAC to complainants based alone on Article 212(e) of the Labor Code. Article 212(e) does not state that corporate officers are personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code.

Section 31 of the Corporation Code lays down the exceptions to the rule, as follows: Liability of directors, trustees or officers. - Directors or trustees who wilfully 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.
Section 31 makes a director personally liable for corporate debts if he wilfully and knowingly votes for or assents to patently unlawful acts of the corporation. Section 31 also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation.

Complainants did not allege in their complaint that Carag wilfully and knowingly voted for or assented to any patently unlawful act of MAC. Complainants did not present any evidence showing that Carag wilfully and knowingly voted for or assented to any patently unlawful act of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Complainants did not also allege that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Complainants did not present any evidence showing that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Arbiter Ortiguerra stated in her Decision that: In instances where corporate officers dismissed employees in bad faith or wantonly violate labor standard laws or when the company had already ceased operations and there is no way by which a judgment in favor of employees could be satisfied, corporate officers can be held jointly and severally liable with the company.

After stating what she believed is the law on the matter, Arbiter Ortiguerra stopped there and did not make any finding that Carag is guilty of bad faith or of wanton violation of labor standard laws. Arbiter Ortiguerra did not specify what act of bad faith Carag committed, or what particular labor standard laws he violated.

To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud.

In Business day Information Systems and Services, Inc. v. NLRC, we held: A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. Neither does bad faith arise automatically just because a corporation fails to comply with the notice requirement of labor laws on company closure or dismissal of employees. The failure to give notice is not an unlawful act because the law does not define such failure as unlawful. Such failure to give notice is a violation of procedural due process but does not amount to an unlawful or criminal act. Such procedural defect is called illegal dismissal because it fails to comply with mandatory procedural requirements, but it is not illegal in the sense that it constitutes an unlawful or criminal act.

For a wrongdoing to make a director personally liable for debts of the corporation, the wrongdoing approved or assented to by the director must be a patently unlawful act. Mere failure to comply with the notice requirement of labor laws on company closure or dismissal of employees does not amount to a patently unlawful act. Patently unlawful acts are those declared unlawful by law which imposes penalties for commission of such unlawful acts. There must be a law declaring the act unlawful and penalizing the act. In this case, Article 283 of the Labor Code, requiring a one-month prior notice to employees and the Department of Labor and Employment before any permanent closure of a company, does not state that non-compliance with the notice is an unlawful act punishable under the Code. There is no provision in any other Article of the Labor Code declaring failure to give such notice an unlawful act and providing for its penalty.

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212[e] nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation.

- Pamplona Plantation Company vs. Ramon Acosta et al., 510 SCRA 249 (2006)

PAMPLONA PLANTATION COMPANY, petitioner, vs. RAMON ACOSTA, et. al.,, respondents.
G.R. No. 153193, FIRST DIVISION, December 6, 2006, AUSTRIA-MARTINEZ, *J.*:

The rule is that officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

FACTS

There were originally 66 complainants in the case before the Labor Arbiter for underpayment, overtime pay, premium pay for rest day and holiday, service incentive leave pay, damages, attorney's fees, and 13th month pay. The complainants claimed that they were regular rank and file employees of the Pamplona Plantation Co., Inc. (petitioner) with different hiring periods, work designations, and salary rates. Petitioner, however, denied this, alleging that some of the complainants are seasonal employees, some are contractors, others were hired under the *pakyaw* system, while the rest were hired by the Pamplona Plantation Leisure Corporation, which has a separate and distinct entity from it.

In a Decision dated September 30, 1998, the Labor Arbiter (LA) held petitioner and its manager, Jose Luis Bondoc, liable for underpayment as complainants were regular employees of petitioner. They were also held guilty of illegal dismissal with regard to complainants Joselito Tinghil and Pedro Emperado.

On appeal to the National Labor Relations Commission (NLRC), the LA's Decision was reversed and another one was entered dismissing all the complaints per Decision dated June 30, 2000. It was the NLRC's finding that the complaint should have been directed against the Pamplona Plantation Leisure Corporation since complainants' individual affidavits contained the allegations that their tasks pertained to their work "in the golf course."

The Court of Appeals (CA), in turn, vacated and set aside the NLRC's dismissal in its Decision dated November 26, 2001, and reinstated the LA's Decision with the modification that the award of wage differentials was limited to the following twenty-two (22) persons, while the finding of illegal dismissal with regard to Pedro Emparado and the award of attorney's fees were deleted.

ISSUE

Whether or not the respondents are employees of the petitioner thus the corporate veil should be pierced.

RULING

The Court disagrees. Petitioner is estopped from denying that respondents worked for it. In the first place, it never raised this defense in the proceedings before the Labor Arbiter. Notably, the defense it raised pertained to the nature of respondents' employment, *i.e.*, whether they are seasonal employees, contractors, or worked under the *pakyaw* system. Thus, in its Position Paper, petitioner alleged that some of the respondents are coconut filers and copra hookers or *sakadors*; some are seasonal employees who worked as scoopers or *lugiteros*; some are contractors; and some worked under the *pakyaw* system. In support of these allegations, petitioner even presented the company's payroll, which will allegedly prove its allegations.

An examination of the facts reveals that, for both the coconut plantation and the golf course, there is only one management which the laborers deal with regarding their work. A portion of the plantation (also called Hacienda Pamplona) had actually been converted into a golf course and other recreational facilities. The weekly payrolls issued by petitioner-company bore the name "Pamplona Plantation Co., Inc." It is also a fact that respondents all received their pay from the same person, Petitioner Bondoc -- the managing director of the company. Since the workers were working for a firm known as Pamplona Plantation Co., Inc., the reason they sued their employer through that name was natural and understandable.

True, the Petitioner Pamplona Plantation Co., Inc., and the Pamplona Plantation Leisure Corporation appear to be separate corporate entities. But it is settled that this fiction of law cannot be invoked to further an end subversive of justice.

In the present case, the corporations have basically the same incorporators and directors and are headed by the same official. Both use only one office and one payroll and are under one management. In their individual Affidavits, respondents allege that they worked under the supervision and control of Petitioner Bondoc -- the common managing director of both the petitioner-company and the leisure corporation. Some of the laborers of the plantation also work in the golf course. Thus, the attempt to make the two corporations appear as two separate entities, insofar as the workers are concerned, should be viewed as a devious but obvious means to defeat the ends of the law. Such a ploy should not be permitted to cloud the truth and perpetrate an injustice.

The Court notes that this defense of separate corporate identity was not raised during the proceedings before the labor arbiter. The main argument therein raised by petitioners was their alleged lack of employer-employee relationship with, and power of control over, the means and methods of work of respondents because of the seasonal nature of the latter's work.

Indeed, it was only after this NLRC Decision was issued that the petitioners harped on the separate personality of the Pamplona Plantation Co., Inc., vis-à-vis the Pamplona Plantation Leisure Corporation.

As cited above, the NLRC dismissed the Complaints because of the alleged admission of respondents in their Affidavits that they had been working at the golf course. However, it failed to appreciate the rest of their averments. Just because they worked at the golf course did not necessarily mean that they were not employed to do other tasks, especially since the golf course was merely a portion of the coconut plantation. Even petitioners admitted that respondents had been hired as coconut filers, coconut scoopers or charcoal makers. Consequently, NLRC's conclusion derived from the Affidavits of respondents stating that they were employees of the Pamplona Plantation Leisure Corporation alone was the result of an improper selective appreciation of the entire evidence.

It is well-settled that the employer has the burden of proving that the dismissal was for a valid and just cause. Failure to discharge this burden of proof substantially means that the dismissal was not justified and therefore, illegal. Given petitioner's failure to discharge this burden, the Court sustains the finding of illegal dismissal vis-à-vis respondent Joselito Tinghil.

Lastly, petitioner believes that its manager, Jose Luis Bondoc, should not have been held solidarily liable with the company for the wage differentials awarded to respondents. Petitioner argues that Bondoc is merely an employee of the company and not a corporate director or officer who can be held personally liable therefor.

The rule is that officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

Moreover, a corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment.

Under Section 25 of the Corporation Code, three officers are specifically provided for which a corporation must have: president, secretary, and treasurer. The law, however, does not limit corporate officers to these three. Section 25 gives corporations the widest latitude to provide for such other offices, as they may deem necessary. The by-laws may and usually do provide for such other officers, *e.g.*, vice-president, cashier, auditor, and general manager.

In this case, there is no basis from which it may be deduced that Bondoc, as manager of petitioner, is also a corporate officer such that he may be held liable for the money claims awarded in favor of respondents. Even assuming that he is a corporate officer, still, there is no showing that he acted with evident malice and bad faith. Bondoc may have signed and approved the payrolls; nevertheless, it does not follow that he had a direct hand in determining the amount of respondents' corresponding salaries and other benefits. Bondoc, therefore, should not have been held liable together with petitioner.

- People of the Philippines vs. Hermenegildo Dumlao and Emilio La'o, 580 SCRA 409 (2009)

PEOPLE OF THE PHILIPPINES, *Petitioner*, *v.* HERMENEGILDO DUMLAO y CASTILIANO and EMILIO LA'O y GONZALES, *Respondents*.
G.R. NO. 168918, THIRD DIVISION, March 2, 2009, CHICO-NAZARIO, *J.*:

The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility.

FACTS

The accused Hermenegildo C. Dumlao, Aber Canlas, Jacobo C. Clave, Roman A. Cruz, Jr., and Fabian C. Ver, being then the members of the Board of Trustees of the Government Service Insurance System (GSIS) entered into a contract of lease-purchase with Emilio G. La'o (La'o), selling a GSIS-acquired property consisting of three parcels of land with a 5-storey building known as the Government Counsel Centre for the sum of ₱2,000,000.00 with a down payment of ₱200,000.00 with the balance payable in fifteen years at 12% interest per annum compounded yearly, with a yearly amortization of ₱264,278.37 including principal and interest. It also granted La'o the right to sub- lease the ground floor for his own account during the period of lease, from which he collected yearly rentals in excess of the yearly amortization. An Information was filed against the accused, alleging that the contract is manifestly and grossly disadvantageous to the government, which is in violation of Section 3(g) of RA 3019.

After pre-trial, Dumlao filed a motion to quash, claiming that the facts charged do not constitute an offense. He argued that the allegedly approved Board Resolution was not in fact approved by the GSIS Board of Trustees. Since the signatures of Ver, Cruz, Canlas and Clave did not appear in the minutes of the meeting held on April 23, 1982, he said it was safe to conclude that these people did not participate in the alleged approval of the Lease-Purchase Agreement. He maintained that there was no quorum of the board to approve the supposed resolution authorizing the sale of the GSIS property. There can be no resolution approving the Lease-Purchase Agreement. The unapproved resolution, he added, proved his innocence.

Sandiganbayan granted the motion. The minutes of the meeting held on April 23, 1982 of the Board of Trustees of GSIS shows that the Board failed to approve the Lease-Purchase Agreement in question. As stipulated upon by both parties out of the seven (7) members of GSIS Board of Trustees only three (3) members signed the minutes, the others did not. In order to validly pass a resolution at least a majority of four (4) members of the Board of Trustees must sign and approve the same. The Resolution was not validly passed by the Board of Trustees of GSIS since it was only signed by three (3) members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against Dumlao.

In a petition for certiorari under Rule 45, People of the Philippines, represented by the Office of the Ombudsman, thru the Office of the Special Prosecutor, argues it was denied its right to due process when the Sandiganbayan dismissed the case against Dumlao after pre-trial and before it could present its witnesses and formally offer its exhibits. The Sandiganbayan deprived it of the opportunity to prove its case – that the Resolution dated April 23, 1982 was passed by the GSIS Board of Trustees and that the Lease-Purchase Agreement was grossly and manifestly disadvantageous to the government.

ISSUE

Whether signatures not appearing in the minutes of the meeting mean that persons pertaining to such signatures did not participate in the alleged approval of the Lease-Purchase Agreement.

RULING

NO. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the 1980 Corporation Code requiring that the minutes of the meeting should be signed by all the members of the board.

A resolution is distinct and different from the minutes of the meeting. A board resolution is a formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion. On the other hand, minutes are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.

The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility.

In this case, Antonio Eduardo B. Nachura, Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of April 23, 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to La'o. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are prima facie evidence of what actually took place during the meeting.

The Sandiganbayan considered the ground invoked by Dumlao (that the facts charged do not constitute an offense) and, in effect, dismissed the case because of insufficiency of evidence, which is not one of the grounds of a Motion to Quash. In so doing, it violated the prosecution's right to due process. It should have given the prosecution the opportunity to fully present its case and to establish reasonable doubt on the alleged approval by the GSIS Board of Trustees of the lease- purchase of the GSIS properties.

- James U. Gosiaco vs. Leticia Ching and Edwin Casta 585 SCRA 471 (2009)

JAIME U. GOSIACO, *Petitioner, v.* **LETICIA CHING and EDWIN CASTA,** *Respondents.*
G.R. NO. 173807, SECOND DIVISION, **April 16, 2009, TINGA**, *J.*

When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.

FACTS

On 16 February 2000,Jaime Gosiaco (petitioner) invested ₱8,000,000.00 with ASB Holdings, Inc. (ASB) by way of loan. The money was loaned to ASB for a period of 48 days with interest at 10.5% which is equivalent to ₱112,000.00. In exchange, ASB through its Business Development Operation Group manager Ching, issued DBS checks for ₱8,000,000.00 and ₱112,000.00 respectively. The checks, both signed by Ching, were drawn against DBS Bank Makati Head Office branch. ASB, through a letter dated 31 March 2000, acknowledged that it owed petitioner the abovementioned amounts.

Upon maturity of the ASB checks, petitioner went to the DBS Bank San Juan Branch to deposit the two (2) checks. However, upon presentment, the checks were dishonored and payments were refused because of a stop payment order and for insufficiency of funds. Petitioner informed respondents, through letters, about the dishonor of the checks and demanded replacement checks or the return of the money placement but to no avail. Thus, petitioner filed a criminal complaint for violation of B.P. Blg. 22 before the Metropolitan Trial Court of San Juan against the private respondents.

Ching was arraigned and tried while Casta remained at large. Ching denied liability and claimed that she was a mere employee of ASB. She asserted that she did not have knowledge as to how much money ASB had in the banks. Such responsibility, she claimed belonged to another department.

ISSUES

Is a corporate officer who signed a bouncing check civilly liable under B.P. Blg. 22?;

RULING

YES. B.P. Blg. 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and commerce. The State criminalized such practice because it was deemed injurious to public interests and was found to be pernicious and inimical to public welfare. B.P. Blg. 22 punishes the act of making and issuing bouncing checks. It is the act itself of issuing the checks which is considered *malum prohibitum.* The law is an offense against public order and not an offense against property. It penalizes the issuance of a check without regard to its purpose. It covers all types of checks. Even checks that were issued as a form of deposit or guarantee were held to be within the ambit of B.P. Blg. 22.

When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.
The general rule is that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the recent case of Bautista v. Auto Plus Traders Inc., the Court ruled decisively that the civil liability of a corporate officer in a B.P. Blg. 22 case is extinguished with the criminal liability. The Court is not inclined through this case to revisit so recent a precedent, and the rule of stare decisis precludes us to discharge Ching of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge.

In the various stages of this case, petitioner has been proceeding from the premise that he is unable to pursue a separate civil action against ASB itself for the recovery of the amounts due from the subject checks. From this premise, petitioner sought to implead ASB as a defendant to the B.P. Blg. 22 case, even if such case is criminal in nature.

The Court is unable to agree with petitioner that he is entitled to implead ASB in the B.P. Blg. 22 case, or any other corporation for that matter, even if the Rules require the joint trial of both the criminal and civil liability. A basic maxim in statutory construction is that the interpretation of penal laws is strictly construed against the State and liberally construed against the accused. Nowhere in B.P. Blg. 22 is it provided that a juridical person may be impleaded as an accused or defendant in the prosecution for violations of that law, even in the litigation of the civil aspect thereof.

Nonetheless, the substantive right of a creditor to recover due and demandable obligations against a debtor-corporation cannot be denied or diminished by a rule of procedure. Technically, nothing in Section 1(b) of Rule 11 prohibits the reservation of a separate civil action against the juridical person on whose behalf the check was issued. What the rules prohibit is the reservation of a separate civil action against the natural person charged with violating B.P. Blg. 22, including such corporate officer who had signed the bounced check.

In theory the B.P. Blg. 22 criminal liability of the person who issued the bouncing check in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. B.P. Blg. 22 itself fused this criminal liability of the signer of the check in behalf of the corporation with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability not from the corporation, but from the person who signed the check in its behalf. Prior to the amendments to our rules on criminal procedure, it though clearly was permissible to pursue the criminal liability against the signatory, while going after the corporation itself for the civil liability.

If we conclude, as we should, that under the current Rules of Criminal Procedure, the civil action that is impliedly instituted in the B.P. Blg. 22 action is only the civil liability of the signatory, and not that of the corporation itself, the distinctness of the cause of action against the signatory and that against the corporation is rendered beyond dispute. It follows that the actions involving these liabilities should be adjudged according to their respective standards and merits. In the B.P. Blg. 22 case, what the trial court should determine whether or not the signatory had signed the check with knowledge of the insufficiency of funds or credit in the bank account, while in the civil case the trial court should ascertain whether or not the obligation itself is valid and demandable. The litigation of both questions could, in theory, proceed independently and simultaneously without being ultimately conclusive on one or the other.

Nonetheless, in petitioner's particular case, considering the previous legal confusion on whether he is authorized to file the civil case against ASB, he should, as a matter of equity, be exempted from paying the filing fees based on the amount of the checks should he pursue the civil action against ASB. In a similar vein and for a similar reason, the Court likewise find that petitioner should not be barred by prescription should he file the civil action as the period should not run from the date the checks were issued but from the date this decision attains finality. The courts should not be bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.

2. Doctrine of Corporate Negligence

- Professional Services, Inc. vs. CA 544 SCRA 170 (2008)

PROFESSIONAL SERVICES, INC., petitioner, vs. THE COURT OF APPEALS and NATIVIDAD and ENRIQUE AGANA, respondents,
G.R. No. 126297, G.R. No. 126467, G.R. No. 127590, FIRST DIVISION, February 11, 2008, SANDOVAL-GUTIERREZ, *J.*

As the hospital industry changes, so must the laws and jurisprudence governing hospital liability. The immunity from medical malpractice traditionally accorded to hospitals has to be eroded if we are to balance the interest of the patients and hospitals under the present setting.

FACTS

On April 4, 1984, Natividad Agana was admitted at the Medical City General Hospital (Medical City) because of difficulty of bowel movement and bloody anal discharge. Dr. Ampil diagnosed her to be suffering from "cancer of the sigmoid." Thus, on April 11, 1984, Dr. Ampil, assisted by the medical staff of Medical City, performed an anterior resection surgery upon her. During the surgery, he found that the malignancy in her sigmoid area had spread to her left ovary, necessitating the removal of certain portions of it. Thus, Dr. Ampil obtained the consent of Atty. Enrique Agana, Natividad's husband, to permit Dr. Juan Fuentes, , to perform hysterectomy upon Natividad.
Dr. Fuentes performed and completed the hysterectomy. Afterwards, Dr. Ampil took over, completed the operation and closed the incision. However, the operation appeared to be flawed - sponge count lacking 2, announced to surgeon searched done (sic) but to no avail continue for closure.

After a couple of days, Natividad complained of excruciating pain in her anal region. She consulted both Dr. Ampil and Dr. Fuentes about it. They told her that the pain was the natural consequence of the surgical operation performed upon her. Dr. Ampil recommended that Natividad consult an oncologist to treat the cancerous nodes which were not removed during the operation.

On May 9, 1984, Natividad, accompanied by her husband, went to the United States to seek further treatment. After four (4) months of consultations and laboratory examinations, Natividad was told that she was free of cancer. Hence, she was advised to return to the Philippines.

On August 31, 1984, Natividad flew back to the Philippines, still suffering from pains. Two (2) weeks thereafter, her daughter found a piece of gauze protruding from her vagina. Dr. Ampil was immediately informed. He proceeded to Natividad's house where he managed to extract by hand a piece of gauze measuring 1.5 inches in width. Dr. Ampil then assured Natividad that the pains would soon vanish.

Despite Dr. Ampil's assurance, the pains intensified, prompting Natividad to seek treatment at the Polymedic General Hospital. While confined thereat, Dr. Ramon Gutierrez detected the presence of a foreign object in her vagina -- a foul-smelling gauze measuring 1.5 inches in width. The gauze had badly infected her vaginal vault. A recto-vaginal fistula had formed in her reproductive organ which forced stool to excrete through the vagina. Another surgical operation was needed to remedy the situation. Thus, in October 1984, Natividad underwent another surgery.

On January 31, 2007, the Court, through its First Division, rendered a Decision holding that PSI is jointly and severally liable with Dr. Ampil for the following reasons: *first*, there is an employer-employee relationship between Medical City and Dr. Ampil. The Court relied on *Ramos v. Court of Appeals*, holding that for the purpose of apportioning responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians; *second*, PSI's act of publicly displaying in the lobby of the Medical City the names and specializations of its accredited physicians, including Dr. Ampil, estopped it from denying the existence of an employer-employee relationship between them under the doctrine of ostensible agency or agency by estoppel;and *third*, PSI's failure to supervise Dr. Ampil and its resident physicians and nurses and to take an active step in order to remedy their negligence rendered it directly liable under the doctrine of corporate negligence.

In its motion for reconsideration, PSI contends that the Court erred in finding it liable under Article 2180 of the Civil Code, there being no employer-employee relationship between it and its consultant, Dr. Ampil. PSI stressed that the Court's Decision in *Ramos* holding that "an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians for the purpose of apportioning responsibility" had been reversed in a subsequent Resolution.[3] Further, PSI argues that the doctrine of ostensible agency or agency by estoppels cannot apply because spouses Agana failed to establish one requisite of the doctrine, i.e., that Natividad relied on the representation of the hospital in engaging the services of Dr. Ampil. And lastly, PSI maintains that the doctrine of corporate negligence is misplaced because the proximate cause of Natividad's injury was Dr. Ampil's negligence.

ISSUE

Whether or not PSI can be held liable under doctrine of corporate negligence.

RULING

YES, PSI can be held liable under doctrine of corporate negligence.

As the hospital industry changes, so must the laws and jurisprudence governing hospital liability. The immunity from medical malpractice traditionally accorded to hospitals has to be eroded if we are to balance the interest of the patients and hospitals under the present setting.

In general, a hospital is not liable for the negligence of an independent contractor-physician. There is, however, an exception to this principle. The hospital may be liable if the physician is the "ostensible" agent of the hospital. The doctrine of apparent authority essentially involves two factors to determine the liability of an independent contractor-physician.

The first factor focuses on the hospital's manifestations and is sometimes described as an inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital. In this regard, the hospital need not make express representations to the patient that the treating physician is an employee of the hospital; rather a representation may be general and implied.

The doctrine of apparent authority is a specie of the doctrine of estoppel. Article 1431 of the Civil Code provides that "[t]hrough estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Estoppel rests on this rule: "Whether a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

The second factor focuses on the patient's reliance. It is sometimes characterized as an inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence.

PSI argues that the doctrine of apparent authority cannot apply to these cases because spouses Agana failed to establish proof of their reliance on the representation of Medical City that Dr. Ampil is its employee. The argument lacks merit. Atty. Agana categorically testified that one of the reasons why he chose Dr. Ampil was that he knew him to be a staff member of Medical City, a prominent and known hospital.

Clearly, PSI is estopped from passing the blame solely to Dr. Ampil. Its act of displaying his name and those of the other physicians in the public directory at the lobby of the hospital amounts to holding out to the public that it offers quality medical service through the listed physicians. This justifies Atty. Agana's belief that Dr. Ampil was a member of the hospital's staff. It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.6 In these cases, the circumstances yield a positive answer to the question.

The challenged Decision also anchors its ruling on the doctrine of corporate responsibility.The duty of providing quality medical service is no longer the sole prerogative and responsibility of the physician. This is because the modern hospital now tends to organize a highly-professional medical staff whose competence and performance need also to be monitored by the hospital commensurate with its inherent responsibility to provide quality medical care.8 Such responsibility includes the proper supervision of the members of its medical staff. Accordingly, the hospital has the duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.
Unfortunately, PSI had been remiss in its duty. It did not conduct an immediate investigation on the reported missing gauzes to the great prejudice and agony of its patient. Dr. Jocson, a member of PSI's medical staff, who testified on whether the hospital conducted an investigation, was evasive.

3. Doctrine of Apparent Authority

- Calubad v. Ricarcen Development Corp., G.R. No. 202364, August 30, 2017, Justice Leonen

ARTURO CALUBAD *v.* RICARCEN DEVELOPMENT CORPORATION
G.R. No. 202364, August 30, 2017, Third Division, LEONEN, J.:

Doctrine of apparent authority: When a corporation intentionally or negligently clothes its agent with apparent authority to act in its behalf, it is estopped from denying its agent's apparent authority as to innocent third parties who dealt with this agent in good faith.

FACTS

Respondent Ricarcen Development Corporation is seeking the Annulment of a Real Estate Mortgage and Extrajudicial Foreclosure of Mortgage and Sale with Damages against Marilyn Soliman and petitioner Arturo Calubad.

Respondent Ricarcen is a domestic family corporation engaged in real estate. Marilyn, then acting as the president of Ricarcen, took out a P5 million and P2 million loan from petitioner Calubad. The loan was secured with a real estate mortgage on 2 lots owned by respondent-corporation. To prove her authority, Marilyn presented a Board Resolution and Secretary Certificates authorizing her to borrow money and use the parcel of land as security.

After Ricarcen failed to pay the loan, Calubad extrajudicially foreclosed the property and won as the highest bidder in the auction sale. After confirming the sale of the property, Ricarcen fired Marilyn. Respondent then filed a Complaint for Annulment of a Real Estate Mortgage and Extrajudicial Foreclosure of Mortgage and Sale with Damages in the RTC. It claimed that it never authorized Marilyn to obtain loans or use the property as collateral.

The RTC ruled in favor of Ricarcen. The failure of Marilyn to present a SPA should have put petitioner Calubad on guard. Subsequently, the Court of Appeals dismissed Calubad's appeal and affirmed the RTC decision.

ISSUE

Whether or not respondent Ricarcen is estopped from denying the authority of its former president, Marilyn, from entering into a contract of loan and mortgage with petitioner Calubad.

RULING

YES, respondent is estopped from denying its agent's actions while contracting with third persons in good faith after such agent has been given the apparent authority to do so.
Based on law and jurisprudence, the two types of authorities conferred upon a corporate officer or agent in dealing with third persons are – actual authority and apparent authority. Actual authority may be express, which is the power given to the agent by the corporation, or implied, which is measured by the agent's acts ratified or whose benefits are accepted by the corporation.

In contrast, apparent authority, which is applicable in this case, is based on the principle of estoppel. Under Art. 1431 of the Civil Code, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as long as they are within his or her apparent scope of authority, bind the principal. However, the principal's liability is limited to third persons who are reasonably led to believe that the agent was authorized to act for the principal due to the principal's conduct. This is determined by the acts of the principal which led the third party to believe that the agent was acting in behalf of the said principal.

In this case, Ricarcen evidently gave Marilyn the scope of authority to act in its behalf. In particular, Ricarcen received checks in its name for the loans and likewise paid and issued checks as payments for the monthly interests of the mortgage loans. All the checks received by Calubad from Ricarcen cleared.

Calubad, as an innocent third party dealing in good faith with Marilyn, should not be made to suffer because of Ricarcen's negligence in conducting its own business affairs.

- Ayala Land, Inc. v. ASB Realty Corp., G.R. No. 210043, [September 26, 2018])

Ayala Land, Inc. v. ASB Realty Corp.
G.R. No. 210043, September 26, 2018, First Division, J. Del Castillo

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, the Court has recognized instances where third persons' actions bound a corporation under the doctrine of apparent authority or ostensible agency.

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, the 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.|||

- ENGINEERING GEOSCIENCE, INC. v. PHILIPPINE SAVINGS BANK, G.R. No. 187262, SECOND DIVISION, January 10, 2019, CARPIO J.

ENGINEERING GEOSCIENCE, INC., PETITIONER, -versus- PHILIPPINE SAVINGS BANK, RESPONDENT. G.R. No. 187262, SECOND DIVISION, January 10, 2019, CARPIO J.

A corporation, as a juridical entity, acts through its board of directors. The board exercises almost all corporate powers, lays down all corporate business policies, and is responsible for the efficiency of management. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. The records of the case show no evidence that EGI authorized Santos to file a Complaint and enter into a Compromise Agreement on its behalf. Neither was there any showing that EGI's By-Laws authorize its President to do such acts. EGI's grant of authority to Santos, however, falls under the doctrine of apparent authority. Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal.

Furthermore, having availed of benefits under the Compromise Agreement, EGI is estopped from repudiating it. Lastly, since EGI's Board of Directors questioned Santos' authority to enter into a Compromise Agreement only after 12 years, laches had already set in.

FACTS

EGI obtained a loan from PSBank in the principal amount of Twenty Four Million Sixty Four Thousand (Php24, 064,000.00) Pesos as evidenced by a Promissory Note dated February 14, 1990. To secure the loan, EGI, through its President, Jose Rolando Santos, executed a Real Estate Mortgage on February 13, 1990 in favor of PSBank over two parcels of land. EGI was only able to make partial payments on its loan as it fell due based on the agreed schedule of payment, and made no further payments to PSBank. Thus, PSBank invoked the acceleration clause under the promissory note and sent a demand letter dated February 11, 1991 demanding full payment of its loan obligation.

PSBank's demand letter went unheeded, prompting PSBank to file a petition for extra-judicial foreclosure of mortgage with the Office of the Ex-Officio Sheriff, Regional Trial Court of Quezon City. The foreclosure sale was set on June 26, 1991 but the same did not push through on account of the Complaint with Prayer for Writ of Preliminary Injunction and Restraining Order filed by EGI before the [trial court]. The [trial court] issued an Order dated August 26, 1991 granting EGI's prayer for issuance of writ of preliminary injunction and effectively enjoined PSBank from proceeding with the foreclosure sale.

Before the case materialized into a full-blown trial, [PSBank] and EGI submitted a Joint Motion for Approval of Compromise Agreement dated December 29, 1992, which was approved by the trial court in a Decision dated January 12, 1993.

Notwithstanding the above court-approved compromise agreement, EGI still failed to comply with the terms and conditions thereof. Thus, petitioner PS Bank was constrained to file a Motion for Execution of the trial court's 1993 Decision on their compromise agreement. Accordingly, a Writ of Execution was issued in favor of PSBank.

Accordingly, a Deed of Absolute Sale was executed by the Branch Clerk, as attorney-in-fact of EGI, in favor of PSBank over EGI's mortgaged properties in accordance with the terms set in the 1993 Decision. After the properties were registered under its name, PSBank filed an Ex-Parte Motion for the Issuance of a Writ of Possession, which was granted by the trial court.

EGI filed an Urgent Motion for Reconsideration which was denied by the trial court. EGI challenged the said Order before this Court by way of a Petition under Rule 45 of the Rules of Court. The Third Division of this Court dismissed EGI's petition for being the wrong remedy and further held that the issuance of the writ of possession is a ministerial duty of the trial court for purposes of implementing the parties' compromise agreement as contained in the Decision which has long become final and executory.

Consequently, PSBank filed a Motion for Issuance of Writ of Possession before the trial court, alleging that with the dismissal of EGI's petition before this Court and with the properties having been transferred under its name, PSBank is now entitled to the issuance of the writ as a matter of right. The same was granted Notice to Vacate was subsequently served on EGI.

EGI through its collaborating counsels filed an Urgent Motion For Reconsideration, alleging that it never received a copy of PSBank's motion for issuance of writ of possession and that it would have contested the motion had it known about the same, and invoked its right to due process. The trial court denied EGI's urgent motion for reconsideration, stating that the record of the case shows that EGI's counsel of record, Atty. Ambrosio Garcia, was duly served a copy of the Order directing counsel to file a comment/opposition to [PSBank's] motion. EGI then filed a Reply with Urgent Motion to Recall Order, alleging that it was denied the right to contest each and every point raised by PSBank in its opposition, and claiming that it had until May 13, 2005 within which to file its Reply thereto. It was only at that point that EGI raised for the first time the alleged lack of authority of its former president, Jose Rolando Santos, to enter into the compromise agreement reduced in the Decision dated January 12, 1993.

PSBank filed its Rejoinder with Opposition, arguing that EGI is now estopped from assailing the authority of Atty. Ambrosio Garcia and EGI's former president Jose Rolando Santos, which they could have interposed when they filed their motion for reconsideration of the order granting the issuance of the writ of possession. Thus, PS Bank prayed for the denial of EGI's motion for lack of merit.
While these issues are still pending before the trial court, EGI filed a Petition for Annulment before the Supreme Court, praying that the 1993 Decision be set aside and declared unenforceable or null and void. The SC dismissed the said petition.

EGI returned to the trial court and filed a Motion to Set Aside Judgment Based on a Compromise Agreement, alleging that the Compromise Agreement entered into by Mr. Santos with defendants PSBank and Metrobank be set aside because it was entered into by Mr. Santos without the knowledge of and the proper authority from plaintiff EGI and is not legally binding and not enforceable against plaintiff EGI. This was denied by the trial court for lack of merit. Respondent Pairing Judge Ma. Theresa Dela Torre-Yadao issued an Order dated February 15, 2007, denying EGI's motion for reconsideration for lack of merit.

Respondent Pairing Judge Ma. Theresa Dela Torre-Yadao issued the now challenged Order dated August 24, 2007 reversing the trial court's earlier Order dated February 25, 2007 and declaring the Compromise Agreement dated December 29, 1992 as null and void.

The CA annuled the August 24, 2007 order of the trial court declaring the compromise agreement as null and void ruling that the 24 August 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The CA was not inclined to believe that Jose Rolando Santos, EGI's former president, had no special power of attorney or secretary's certificate attesting to his authority to represent EGL and neither was the CA inclined to believe that Santos filed the complaint without any authority from EGI's Board of Directors. The CA further stated that laches had set in against EGI as 12 years had lapsed from the date of execution of the compromise agreement. Thus, EGI can no longer invoke the lack of knowledge of its Board of Directors.

ISSUE

Whether or not Jose Rolando Santos (the President of EGI) was authorized to enter the compromise agreement with PSBank? (YES)

RULING

The Court agrees with EGI that there is nothing in the records that shows that Santos had the express authority to represent EGI in filing a complaint before the trial court, or even enter into any compromise agreement on behalf of EGL Aside from its bare allegations, PSBank was not able to present any evidence which would show that Santos indeed had the authority to represent EGL PSBank was not able to show any evidence of a board authority, a special power of attorney, or even a secretary's certificate that EGI issued in favor of Santos. Neither was PSBank able to show that it was not necessary for Santos to present a Board Resolution that authorizes him to file the Complaint and enter into the Compromise Agreement because EGI's By-Laws expressly authorize him to do so.

However, in its eagerness to repudiate Santos' acts, EGI failed to substantiate how and when Santos lost his status as Company President, and how Santos was able to proceed with his misrepresentations before the Board of Directors regarding the payment of the loan obligation. The promissory notes from 1984 to 1990 were all signed by Santos as EGI's President. EGI did not bother to inform PSBank about the change in Santos' status despite previously holding him out as a person with authority to transact in its name. EGI also did not address how it will comply with the terms of the loan obligation. Moreover, in the same manner that EGI has been decrying the lack of explicit authority from its Board of Directors, we also expect nothing less than minutes of a Board Meeting, or even a Board Resolution, which removed Santos as Company President, or denounced his lack of authority to act in EGI's name.

A corporation, as a juridical entity, acts through its board of directors. The board exercises almost all corporate powers, lays down all corporate business policies, and is responsible for the efficiency of management. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

The records of the case show no evidence that EGI authorized Santos to file a Complaint and enter into a Compromise Agreement on its behalf. Neither was there any showing that EGI's By-Laws authorize its President to do such acts. EGI's grant of authority to Santos, however, falls under the doctrine of apparent authority. Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. Furthermore, the principal's liability is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was actually given.

Apparent authority is determined only by the acts of the principal and not by the acts of the agent. EGI does not repudiate the act of Santos in signing the Promissory Notes; in fact, EGI made partial payments, offering the authority of Santos to borrow and sign the Promissory Notes. EGI, however, repudiates the act of Santos in entering into the Compromise Agreement extending the repayment of the loan under the Promissory Notes, which extension is actually beneficial to EGI.

In fact, the Compromise Agreement bought time for EGI to pay the loan under the Promissory Notes but EGI still failed to pay. Having availed of benefits under the Compromise Agreement, EGI is estopped from repudiating it. Since EGI's Board of Directors questioned Santos' authority to enter into a Compromise Agreement only after 12 years, laches had already set in.

4. Authority to sign certification against forum shopping

- Digital Microwave Corp. vs. Court of Appeals, 328 SCRA 289 (2000)

DIGITAL MICROWAVE CORPORATION, *Petitioners* -versus- COURT OF APPEALS and ASIAN HIGH TECHNOLOGY CORPORATION, *Respondents*
G.R. No. 128550, SECOND DIVISION, March 16, 2000, QUISUMBING, *J.*

Substantial compliance will not suffice in a matter involving strict observance as provided for in Circular No. 28-91. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. To merit the Court's consideration, DMC must show reasonable cause for failure to personally sign the certification. DMC must convince the court that the outright dismissal of the petition would defeat the administration of justice.

FACTS

On December 14, 1994, Asian High Technology Corp. (AHTC) filed a complaint against Digital Microwave Corp. (DMC) for a sum of money and damages. DMC moved for the dismissal of the complaint. The trial court denied the motion, as well as DMC's subsequent motion for reconsideration.

DMC then initiated a special civil action for *certiorari* before the Court of Appeals, alleging grave abuse of discretion on the part of the trial court. However, the Court of Appeals dismissed the petition for failure to comply with Revised Circular No. 28-91, as amended by Administrative Circular No. 04-94. Said circular requires the petition filed before the Court of Appeals to be accompanied by a sworn certification against forum shopping, signed by petitioner himself. DMC's certification was signed by counsel; the petition was, thus, dismissed. DMC moved for a reconsideration of the dismissal and submitted a sworn certification against forum shopping duly signed by one of its senior officers. The motion was, however, denied, with the Court of Appeals stating that "In the present case, absent any compelling reason for petitioner's failure to comply, at first instance, with Revised Supreme Court Circular No. 28-91, the Court cannot therefore, accept its subsequent compliance."

Revised Circular No. 28-91 provided:

"To avoid [forum shopping], every petition or complaint filed with the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, shall comply with the following requirements, aside from pertinent provisions of the Rules of Court and existing circulars: x x x

2. *Certification*. - The party must certify under oath that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, and that to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If there is any other action pending, he must state the status of the same. If he should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, he should notify the court, tribunal or agency within five (5) days from such notice."

The requirement for a sworn certification against forum shopping was extended by administrative Circular No. 04-94 to complaints, petitions, applications or other initiatory pleadings filed in all courts or agencies other than the Supreme Court or the Court of Appeals.

ISSUE

Whether substantial compliance will suffice in Revised Circular No. 28-91, as amended by Administrative Circular No. 04-94.

RULING

NO, substantial compliance will not suffice.DMC contends that in the case of a corporation as petitioner, the certification against forum shopping may be signed by a natural person authorized to do so and with knowledge of the required facts. The authorized person may be anyone authorized by the corporation, not necessarily an officer thereof. In such a case, DMC argues, the counsel of record has the authority to execute the certification on behalf of the corporation, particularly considering that under the Rules of Court, counsel's authority to represent his client is presumed. No written power of attorney is required for counsel to appear for his client.

The reason the certification against forum shopping is required to be accomplished by party himself is because only the DMC himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies. Even his counsel may be unaware of such fact.

The Court disagrees with DMC that a corporation cannot possibly hope to comply with the requirement laid down by Revised Circular No. 28-91 because it is a juridical entity and not a natural person. If this were so, then it would have been impossible for a corporation to do *anything* at all. Needless to say, this is the reason why corporations have directors and officers, to represent it in its transactions with others. The same is true for the certification against forum shopping. It could easily have been made by a duly authorized director or officer of the corporation. DMC did not in the first instance comply with the requirement of revised Circular No. 28-91 by having the certification against forum shopping signed by one of its officers, as it did after its petition before the Court of Appeals had been dismissed, is beyond our comprehension.

In the case of *Spouses Valentin Ortiz and Camilla Milan Ortiz v. Court of Appeals, et al., 299 SCRA 708, 711-712 (1998)*, it was established that "Substantial compliance will not suffice in a matter involving strict observance as provided for in Circular No. 28-91. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. To merit the Court's consideration, DMC must show reasonable cause for failure to personally sign the certification. DMC must convince the court that the outright dismissal of the petition would defeat the administration of justice."

In this case, DMC has not adequately explained its failure to have the certification against forum shopping signed by one of its officers. Neither has it shown any compelling reason for us to disregard strict compliance with the rules. As we further stated in *Spouses Ortiz*, "Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction."

- BA Savings Bank vs. Court of Appeals, 336 SCRA 484 (2000)

BA SAVINGS BANK, petitioner, vs. ROGER T. SIA, TACIANA U. SIA and JOHN DOE, respondents. G.R. No. 131214, THIRD DIVISION, July 27, 2000, PANGANIBAN, *J.:*

The certificate of non-forum shopping required by Supreme Court Circular 28-91 may be signed, for and on behalf of a corporation, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.

FACTS

On August 6, 1997, the Court of Appeals issued a Resolution denying due course to a Petition for Certiorari filed by BA Savings Bank, on the ground that "the Certification on anti-forum shopping incorporated in the petition was signed not by the duly authorized representative of the petitioner, as required under Supreme Court Circular No. 28-91, but by its counsel, in contravention of said circular x x x."

A Motion for Reconsideration was subsequently filed by the petitioner, attached to which was a BA Savings Bank Corporate Secretary's Certificate, dated August 14, 1997. The Certificate showed that the petitioner's Board of Directors approved a Resolution on May 21, 1996, authorizing the petitioner's lawyers to represent it in any action or proceeding before any court, tribunal or agency; and to sign, execute and deliver the Certificate of Non-forum Shopping, among others.

On October 24, 1997, the Motion for Reconsideration was denied by the Court of Appeals on the ground that Supreme Court Revised Circular No. 28-91 "requires that it is the petitioner, not the counsel, who must certify under oath to all of the facts and undertakings required therein."

ISSUE

Whether Supreme Court Revised Circular No. 28-91 allows a corporation to authorize its counsel to execute a certificate of non-forum shopping for and on its behalf.

RULING

A corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and, except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

In the present case, the corporation's board of directors issued a Resolution specifically authorizing its lawyers "to act as their agents in any action or proceeding before the Supreme Court, the Court of Appeals, or any other tribunal or agency[;] and to sign, execute and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, certificate of non-forum shopping and other instruments necessary for such action and proceeding." The Resolution was sufficient to vest such persons with the authority to bind the corporation and was specific enough as to the acts they were empowered to do.

In the case of natural persons, Circular 28-91 requires the parties themselves to sign the certificate of non-forum shopping. However, such requirement cannot be imposed on artificial persons, like corporations, for the simple reason that they cannot personally do the task themselves. As already stated, corporations act only through their officers and duly authorized agents. In fact, physical actions, like the signing and the delivery of documents, may be performed, on behalf of the corporate entity, only by specifically authorized individuals.

It is noteworthy that the Circular does not require corporate officers to sign the certificate. More important, there is no prohibition against authorizing agents to do so.

In fact, not only was BA Savings Bank authorized to name an agent to sign the certificate; it also exercised its appointing authority reasonably well. For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.

Circular 28-91 was prescribed by the Supreme Court to prohibit and penalize the evils of forum shopping. We see no circumvention of this rationale if the certificate was signed by the corporation's specifically authorized counsel, who had personal knowledge of the matters required in the Circular.

Finally, we stress that technical rules of procedure should be used to promote, not frustrate, justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal.

- Shipside Incorporation vs. Court of Appeals, 352 SCRA 334 (2001)

SHIPSIDE INCORPORATED, petitioner, vs. THE HON. COURT OF APPEALS [Special Former Twelfth Division], HON. REGIONAL TRIAL COURT, BRANCH 26 (San Fernando City, La Union) & The REPUBLIC OF THE PHILIPPINES, respondents.
G.R. No. 143377, THIRD DIVISION, February 20, 2001, MELO, *J*.:

A corporation, such as petitioner, has no power except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.

FACTS

On October 29, 1958, Original Certificate of Title No. 0-381 was issued in favor of Rafael Galvez, over four parcels of land.

On April 11, 1960, Lots No. 1 and 4 were conveyed by Rafael Galvez in favor of Filipina Mamaril, Cleopatra Llana, Regina Bustos, and Erlinda Balatbat in a deed of sale on August 10, 1960. Consequently, Transfer Certificate was issued in favor of the buyers covering Lots No. 1 and 4.

On August 16, 1960, Mamaril, et al. sold Lots No. 1 and 4 to Lepanto Consolidated Mining Company. Subsequently, Transfer Certificate was issued in the name of Lepanto Consolidated Mining Company as owner of Lots No. 1 and 4.

On February 1, 1963, unknown to Lepanto Consolidated Mining Company, the Court of First Instance of La Union, Second Judicial District, issued an Order in Land Registration Case entitled "Rafael Galvez, Applicant, Eliza Bustos, et al., Parties-In-Interest; Republic of the Philippines, Movant" declaring OCT No. 0-381 of the Registry of Deeds for the Province of La Union issued in the name of Rafael Galvez, null and void, and ordered the cancellation thereof.

On October 28, 1963, Lepanto Consolidated Mining Company sold to herein petitioner Lots No. 1 and 4, with the deed. Transfer Certificate was thus issued in favor of the petitioner which starting since then exercised proprietary rights over Lots No. 1 and 4.

In the meantime, Rafael Galvez filed his motion for reconsideration against the order issued by the trial court declaring OCT No. 0-381 null and void. The motion was denied on January 25, 1965. On appeal, the Court of Appeals ruled in favor of the Republic of the Philippines in a Resolution promulgated on August 14, 1973.

Twenty four long years, thereafter, on January 14, 1999, the Office of the Solicitor General received a letter from Mr. Victor G. Floresca, Vice-President, John Hay Poro Point Development Corporation, stating that the aforementioned orders and decision of the trial court in L.R.C. No. N-361 have not been executed by the Register of Deeds, San Fernando, La Union despite receipt of the writ of execution.

In its complaint in Civil Case No.6346, the Solicitor General argued that since the trial court in LRC Case No. 361 had ruled and declared OCT No. 0-381 to be null and void, which ruling was subsequently affirmed by the Court of Appeals, the defendants-successors-in-interest of Rafael Galvez have no valid title over the property covered by OCT No. 0-381, and the subsequent Torrens titles issued in their names should be consequently cancelled.

On July 22, 1999, petitioner Shipside, Inc. filed its Motion to Dismiss, based on the following grounds: (1) the complaint stated no cause of action because only final and executory judgments may be subject of an action for revival of judgment; (2) .the plaintiff is not the real party-in-interest because the real property covered by the Torrens titles sought to be cancelled, allegedly part of Camp Wallace (Wallace Air Station), were under the ownership and administration of the Bases Conversion Development Authority (BCDA) under Republic Act No. 7227; (3) plaintiff's cause of action is barred by prescription; {4) twenty-five years having lapsed since the issuance of the writ of execution, no action for revival of judgment may be instituted because under Paragraph 3 of Article 1144 of the Civil Code, such action may be brought only within ten (10) years from the time the judgment had been rendered.

The trial court denied petitioner's motion to dismiss and, its motion for reconsideration was likewise turned down.

Petitioner instituted a petition for certiorari and prohibition with the Court of Appeals, on the ground that the orders of the trial court denying its motion to dismiss and its subsequent motion for reconsideration were issued in excess of jurisdiction.

The Court of Appeals dismissed the petition on the ground that the verification and certification in the petition, tinder the signature of Lorenzo Balbin, Jr., was made without authority, there being no proof therein that Balbin was authorized to institute the petition for and in behalf and of petitioner.

On May 23, 2000, the Court of Appeals denied petitioner's, motion for reconsideration on the grounds that: (1) a complaint filed on behalf of a corporation can be made only if authorized by its Board of Directors, and in the absence thereof, the petition cannot prosper and be granted due course; and (2) petitioner was unable to show that it had substantially complied with the rule requiring proof of authority to institute an action or proceeding.

ISSUE

Whether or not an authorization from petitioner's Board of Directors is still required in order for its resident manager to institute or commence a legal action for and in behalf of the corporation;

RULING

A corporation, such as petitioner, has no power except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.

It is undisputed that on October 21, 1999, the time petitioner's Resident Manager Balbin filed the petition, there was no proof attached thereto that Balbin was authorized to sign the verification and non-forum shopping certification therein, as a consequence of which the petition was dismissed by the Court of Appeals. However, subsequent to such dismissal, petitioner filed a motion for reconsideration, attaching to said motion a certificate issued by its "board secretary stating that on October 11, 1999, or ten days prior to the filing of the petition, Balbin had been authorized by petitioner's board of directors to file said petition.

The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

On the other hand, the lack of certification, against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.

In the instant case, the merits of petitioner' case should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. Moreover, in *Loyola, Roadway,* and *Uy,* the Court excused *non-compliance* with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein *did submit a certification on non-forum shopping,* failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise, mitigates this oversight.

It must also be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping. Lastly, technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal.

- San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue 492 SCRA 192 (2006)

SAN PABLO MANUFACTURING CORPORATION, *PETITIONER*, *VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT*.
***G.R. NO. 147749, JUNE 22, 2006,* SECOND DIVISION, CORONA**

SPMC did not indicate that the person who signed the verification/certification on non-forum shopping was authorized to do so. SPMC merely relied on the alleged inherent power of *its chief financial officer to represent SPMC in all matters regarding the finances* of *the* corporation *including, among others, the filing* of *suits to defend or protect it from assessments and to recover erroneously paid taxes. SPMC even admitted that no power* of *attorney, secretary's certificate or board resolution to prove the affiant's authority was attached to the petition. Thus, the petition was not properly verified. Since the petition lacked proper verification, it was to be treated as an unsigned pleading subject to dismissal.*

FACTS

San Pablo Manufacturing Corporation (SPMC) is a domestic corporation engaged in the business of milling, manufacturing and exporting of coconut oil and other allied products. It was assessed and ordered to pay by the Commissioner of Internal Revenue miller's tax and manufacturer's sales tax, among other deficiency taxes, for taxable year 1987 particularly on SPMC's sales of crude oil to United Coconut Chemicals, Inc. (UNICHEM) while the deficiency sales tax was applied on its sales of corn and edible oil as manufactured products. SPMC opposed the assessments. The Commissioner denied its protest. SPMC appealed the denial of its protest to the Court of Tax Appeals (CTA) by way of a petition for review docketed as CTA Case No. 5423. It insists on the liberal application of the rules because, on the merits of the petition, SPMC was not liable for the 3% miller's tax. It maintains that the crude oil which it sold to UNICHEM was actually exported by UNICHEM as an ingredient of fatty acid and glycerine, hence, not subject to miller's tax pursuant to Section 168 of the 1987 Tax Code. Since UNICHEM, the buyer of SPMC's milled products, subsequently exported said products, SPMC should be exempted from the miller's tax.

SPMC opposed the assessments but the Commissioner denied its protest. SPMC appealed the denial of its protest to the Court of Tax Appeals (CTA).

The CTA cancelled SPMC's liability for deficiency manufacturer's tax on the sales of corn and edible oils but upheld the Commissioner's assessment for the deficiency miller's tax. SPMC elevated the case to the Court of Appeals via a petition for review of the CTA decision insofar as it upheld the deficiency miller's tax assessment. In its July 19, 2000 resolution, the appellate court dismissed the petition on the principal ground that the verification attached to it was signed merely by SPMC's chief financial officer — without the corporate secretary's certificate, board resolution or power of attorney authorizing him to sign the verification and certification against forum shopping. SPMC sought a reconsideration of the resolution but the same was denied. Hence, this petition.

ISSUE

Whether the Court of Appeals erred in denying the petition of SPMC? (No)

RULING

Under Rule 43, Section 5 of the Rules of Court, appeals from the CTA and quasi-judicial agencies to the Court of Appeals should be verified. A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading.

Moreover, a petition for review under Rule 43 requires a sworn certification against forum shopping. Failure of the petitioner to comply with any of the requirements of a petition for review is sufficient ground for the dismissal of the petition.

A corporation may exercise the powers expressly conferred upon it by the Corporation Code and those that are implied by or are incidental to its existence through its board of directors and/or duly authorized officers and agents. Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by specific act of the board of directors. In the absence of authority from the board of directors, no person, not even the officers of the corporation, can bind the corporation.

SPMC's petition in the Court of Appeals did not indicate that the person who signed the verification/certification on non-forum shopping was authorized to do so. SPMC merely relied on the alleged inherent power of its chief financial officer to represent SPMC in all matters regarding the finances of the corporation including, among others, the filing of suits to defend or protect it from assessments and to recover erroneously paid taxes. SPMC even admitted that no power of attorney, secretary's certificate or board resolution to prove the affiant's authority was attached to the petition. Thus, the petition was not properly verified. Since the petition lacked proper verification, it was to be treated as an unsigned pleading subject to dismissal.

In *PET Plans, Inc.* v. *Court* of *Appeals*, the Court upheld the dismissal by the Court of Appeals of the petition on the ground that the verification and certification against forum shopping was signed by PET Plans, Inc.'s first vice-president for legal affairs/corporate secretary without any certification that he was authorized to sign in behalf of the corporation.

In *BPI Leasing* Corporation v. *Court* of *Appeals*, the Court ruled that the petition should be dismissed outright on the ground that the verification/certification against forum shopping was signed by BPI Leasing Corporation's counsel with no specific authority to do so. Since the counsel was purportedly acting for the corporation, he needed a resolution issued by the board of directors that specifically authorized him to institute the petition and execute the certification. Only then would his actions be legally binding on the corporation.

In this case, therefore, the appellate court did not commit an error when it dismissed the petition on the ground that it was signed by a person who had not been issued any authority by the board of directors to represent the corporation.

Neither can the Court subscribe to SPMC's claim of substantial compliance or to its plea for a liberal application of the rules. Save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice. Substantial compliance will not suffice in a matter involving strict observance such as the requirement on non-forum shopping, as well as verification. Utter disregard of the rules cannot justly be rationalized by harping on the policy of liberal construction.

But even if the fatal procedural infirmity were to be disregarded, the petition must still fail for lack of merit.

5. Teleconferencing

- Expertravel & Tours, Inc. vs. CA 459 SCRA 147 (2005)

EXPERTRAVEL & TOURS, INC., *Petitioner*, *v.* COURT OF APPEALS and KOREAN AIRLINES, *Respondent*.
G.R. NO. 152392, May 26, 2005, SECOND DIVISION, CALLEJO, SR., *J.*

If the resolution had indeed been approved long before the complaint was filed, the respondent should have incorporated it in its complaint, or at least appended a copy thereof. It even represented to the Court that a copy of its resolution was with its main office in Korea, only to allege later that no written copy existed. Worse still, it appears that as early as January 10, 1999.

Atty. Aguinaldo had signed a Secretary's/Resident Agent's Certificate alleging that the board of directors held a teleconference on June 25, 1999. No such certificate was appended to the complaint. The Court is, thus, more inclined to believe that the alleged teleconference on June 25, 1999 never took place.

FACTS

Korean Airlines (KAL) is a corporation established and registered in the Republic of South Korea and licensed to do business in the Philippines. Its general manager in the Philippines is Suk Kyoo Kim, while its appointed counsel was Atty. Mario Aguinaldo and his law firm.

KAL filed a Complaint against ETI for the collection of the of money. The verification and certification against forum shopping was signed by Atty. Aguinaldo, who indicated therein that he was the resident agent and legal counsel of KAL and had caused the preparation of the complaint.

ETI filed a motion to dismiss the complaint on the ground that Atty. Aguinaldo was not authorized to execute the verification and certificate of non-forum shopping. KAL opposed the motion, contending that Atty. Aguinaldo was its resident agent and was registered as such with the Securities and

Exchange Commission (SEC) as required by the Corporation Code of the Philippines. It was further alleged that Atty. Aguinaldo was also the corporate secretary of KAL. Appended to the said opposition was the identification card of Atty. Aguinaldo, showing that he was the lawyer of KAL.

KAL submitted an Affidavit, executed by its general manager Suk Kyoo Kim, alleging that the board of directors conducted a special teleconference, which he and Atty. Aguinaldo attended. It was also averred that in that same teleconference, the board of directors approved a resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping and to file the complaint. Suk Kyoo Kim also alleged, however, that the corporation had no written copy of the aforesaid resolution.

The trial court issued an Order denying the motion to dismiss, giving credence to the claims of Atty. Aguinaldo and Suk Kyoo Kim. ETI filed a motion for the reconsideration of the Order, contending that it was inappropriate for the court to take judicial notice of the said teleconference without any prior hearing but it was denied.

ETI then filed a petition for certiorari and mandamus, assailing the orders of the RTC.
The CA dismissed the petition and affirmed the RTC. ETI filed a motion for reconsideration of the said decision, which the CA denied.

The petitioner asserts that CA erred in considering the affidavit of the respondent's general manager, as well as the Secretary's/Resident Agent's Certification and the resolution of the board of directors contained therein, as proof of compliance with the requirements of Section 5, Rule 7 of the Rules of Court.

The respondent insists that Atty. Aguinaldo, as the resident agent and corporate secretary, is authorized to sign and execute the certificate of non-forum.

ISSUE

Whether or not Atty. Aguinaldo, as the resident agent and corporate secretary, is authorized to sign and execute the certificate of non-forum. (No)

RULING

In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.
In this case, the petitioner, as the defendant in the RTC, assailed the authority of Atty. Aguinaldo to execute the requisite verification and certificate of non-forum shopping as the resident agent and counsel of the respondent. It was, thus, incumbent upon the respondent, as the plaintiff, to allege and establish that Atty. Aguinaldo had such authority to execute the requisite verification and certification for and in its behalf. The respondent, however, failed to do so.

As gleaned from the certification, there was no allegation that Atty. Aguinaldo had been authorized to execute the certificate of non-forum shopping by the respondent's Board of Directors; moreover, no such board resolution was appended thereto or incorporated therein.

While Atty. Aguinaldo is the resident agent of the respondent in the Philippines, this does not mean that he is authorized to execute the requisite certification against forum shopping. Under the law, Atty. Aguinaldo was not specifically authorized to execute a certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. This is because while a resident agent may be aware of actions filed against his principal (a foreign corporation doing business in the Philippines), such resident may not be aware of actions initiated by its principal, whether in the Philippines against a domestic corporation or private individual, or in the country where such corporation was organized and registered, against a Philippine registered corporation or a Filipino citizen.

The respondent knew that its counsel, Atty. Aguinaldo, as its resident agent, was not specifically authorized to execute the said certification. It attempted to show its compliance with the rule subsequent to the filing of its complaint by submitting a resolution purporting to have been approved by its Board of Directors during a teleconference held allegedly with Atty. Aguinaldo and Suk Kyoo Kim in attendance. However, such attempt of the respondent casts veritable doubt not only on its claim that such a teleconference was held, but also on the approval by the Board of Directors of the resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping.

If the resolution had indeed been approved long before the complaint was filed, the respondent should have incorporated it in its complaint, or at least appended a copy thereof. It even represented to the Court that a copy of its resolution was with its main office in Korea, only to allege later that no written copy existed. Worse still, it appears that as early as January 10, 1999,

Atty. Aguinaldo had signed a Secretary's/Resident Agent's Certificate alleging that the board of directors held a teleconference on June 25, 1999. No such certificate was appended to the complaint. The Court is, thus, more inclined to believe that the alleged teleconference on June 25, 1999 never took place.

6. Condominium Corporation

- Yamane vs. BA Lepanto Condominium Corporation 474 SCRA 258 (2005)

LUZ R. YAMANE, in her capacity as the CITY TREASURER OF MAKATI, petitioner vs. BA LEPANTO CONDOMINIUM CORPORATION, respondent.
G.R. NO. 154993, OCTOBER 25, 2005, SECOND DIVISION, TINGA, *J.*

We can elicit from the Condominium Act that a condominium corporation is precluded by statute from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental or convenient to the accomplishment of such purposes.

FACTS

Respondent BA-Lepanto Condominium Corporation (the "Corporation") is a condominium corporation constituted in accordance with the Condominium Act, which owns and holds title to the common and limited common areas of the BA-Lepanto Condominium (the "Condominium"), situated in Makati City. Its membership comprises the various unit owners. The Corporation is authorized, under Article V of its Amended By-Laws, to collect regular assessments from its members for operating expenses, capital expenditures on the common areas, and other special assessments as provided for in the Master Deed with Declaration of Restrictions of the Condominium.

The Corporation received a Notice of Assessment signed by the City Treasurer. The Notice of Assessment stated that the Corporation is "liable to pay the correct city business taxes." The Notice of Assessment was silent as to the statutory basis of the business taxes assessed. The Corporation responded with a written tax protest addressed to the City Treasurer.

According to respondent, under both the Makati Code and the Local Government Code, "business" is defined as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." It was submitted that the Corporation, as a condominium corporation, was organized not for profit, but to hold title over the common areas of the Condominium, to manage the Condominium for the unit owners, and to hold title to the parcels of land on which the Condominium was located. Neither was the Corporation authorized, under its articles of incorporation or by-laws to engage in profit-making activities. The assessments it did collect from the unit owners were for capital expenditures and operating expenses.

The protest was rejected by the City Treasurer and insisted that the collection of dues from the unit owners was effected primarily "to sustain and maintain the expenses of the common areas, with the end in view of getting full appreciative living values for the individual condominium occupants and to command better marketable prices for those occupants" who would in the future sell their respective units. In short, the petitioner avers that it is engaged in business for profit making.

Because of the denial of the protest, respondent filed an Appeal with the RTC of Makati. However, the latter dismissed the case. As a recourse, respondent filed a Petition for Review under Rule 42 of the Rules of Civil Procedure with the CA. It was dismissed outright because only decisions of the RTC brought on appeal from a first level court could be elevated for review under Rule 42. However, it was reinstated by the CA because of Sec. 195 of the LGC stating that the remedy of the taxpayer on the denial of the protest filed with the local treasurer is to appeal the denial with the court of competent jurisdiction. Afterwards, the CA reversed the ruling of the RTC.

ISSUE

a. Whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises "original jurisdiction" or "appellate jurisdiction."
b. Whether or not the City of Makati may collect business taxes on condominium corporations.

RULING

a. The review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction. The review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official. Republic Act No. 9282 definitively proves that the CTA exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases original decided or resolved by them in the exercise of their originally or appellate jurisdiction. Moreover, the provision also states that the review is triggered "by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure." Republic Act No. 9282, however, would not apply to this case simply because it arose prior to the effectivity of that law.

b. No. Section 143 of the Code specifically enumerates several types of business on which municipalities and cities may impose taxes. However, the Corporation does not fall under such law. Moreover, nowhere in the Makati Revenue Code that would serve as the legal authority for the collection of business taxes from condominiums in Makati. We can elicit from the Condominium Act that a condominium corporation is precluded by statute from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental or convenient to the accomplishment of such purposes. Neither the maintenance of livelihood, nor the procurement of profit, fall within the scope of permissible corporate purposes of a condominium corporation under the Condominium Act. None of these stated corporate purposes are geared towards maintaining a livelihood or the obtention of profit. Even though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project.

7. Interest in Investment

- The President of PDIC as Liquidator of Pacific Banking Corporation vs. Reyes 460 SCRA 473 (2005)

THE PRESIDENT OF PHILIPPINE DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR OF PACIFIC BANKING CORPORATION, petitioner, vs. HON. WILFREDO D. REYES, Pairing Judge, RTC Manila, Branch 31; ANG ENG JOO; ANG KEONG LAN; and E.J. ANG INTERNATIONAL, LTD., represented by FORNIER & FORNIER LAW, respondents.
G.R. No. 154973, June 21, 2005, FIRST DIVISION, DAVIDE, JR., *C.J.*

A corporation, whose existence has been terminated, is entitled to an interest in the concept of actual and compensatory damages from the time such investment was made until the closure of the corporation.

FACTS

Pacific Banking Corporation (PaBC) was placed under receivership on the ground of insolvency. Subsequently, it was placed under liquidation and by filing with the Regional Trial Court (RTC) of Manila, a petition for assistance in the liquidation Naagas, President of the PDIC, was appointed.
Private respondents represented by their attorney-in-fact filed their claim before the liquidating court. They claimed to be preferred creditors and prayed for the return of their equity investment in the amount of US$2,531,632.18 with interest until the closure of the PaBC.

After due hearing the liquidation court, rendered its decision in favor of the private respondent. Consequently, the liquidation court, through the pairing judge Hon. Wilfredo D. Reyes, issued an

Order directing the President of the Land Bank of the Philippines (LBP) to release to the Sheriff the garnished amount of US$2,531,632.18.

The Bureau of Internal Revenue (BIR) and the Bangko Sentral ng Pilipinas promptly filed before the liquidation court separate motions to hold in abeyance the liquidation courts orders which was however denied by Judge Reyes and ordered the payment of accrued legal interest on the Singaporeans equity investment of US$2,531,632.18 at the rate of 12% per annum computed from the date the outward remittance and the investment were actually made, until its full payment, at the exchange rate prevailing at the time of payment.

ISSUE

Whether corporation, whose existence has been terminated, be entitled to an interest in the concept of actual and compensatory damages from the time such investment was made until the closure of the corporation.

RULING

Yes,. The interest that may be awarded as actual or compensatory damages in this case is that provided in No. II-3 of the afore-quoted guidelines. Upon the finality of the Order of 11 September 1992, the award of US$2,531,632.18 representing the Singaporeans equity investment became a judgment debt. As such, it shall bear an interest of 12% per annum from the finality of the Order until its full satisfaction.

However, the grant of the said interest does not bar the Singaporeans from claiming liquidating dividends which may have accrued from their equity investment after being determined by the Liquidator.

8. Penal Provisions

- IENT VS. TULLETT PREBON (G.R. No. 189158, January 11, 2017, J. Leonardo-De Castro)

JAMES IENT and MAHARLIKA SCHULZ *v.* TULLETT PREBON (PHILIPPINES), INC.
G.R. No. 189158 and G.R. No. 189530, January 11, 2017,
First Division, LEONARDO-DE CASTRO, J.

The Corporation Code was intended as a regulatory measure, not primarily as a penal statute.

FACTS

Petitioner Ient is a British national and the Chief Financial Officer of Tradition Asia Pacific Pte. Ltd. (Tradition Asia) in Singapore. Petitioner Schulze is a Filipino/German who does Application Support for Tradition Financial Services Ltd. in London (Tradition London).Tradition Asia and Tradition London are subsidiaries of *Compagnie Financiere* Tradition and are part of the "Tradition Group." The

Tradition Group is allegedly the third largest group of Inter-dealer Brokers (IDB) in the world while the corporate organization, of which respondent Tullett is a part, is supposedly the second largest.

Sometime in August 2008, in line with Tradition Group's motive of expansion and diversification in Asia, petitioners Ient and Schulze were tasked with the establishment of a Philippine subsidiary of Tradition Asia to be known as Tradition Financial Services Philippines, Inc. (Tradition Philippines).Tradition Philippines was registered with the Securities and Exchange Commission (SEC) on September 19, 2008 with petitioners Ient and Schulze, among others, named as incorporators and directors in its Articles of Incorporation.

On October 15, 2008, Tullett, through one of its directors, Gordon Buchan, filed a Complaint-Affidavitwith the City Prosecution Office of Makati City against the officers/employees of the Tradition Group for violation of the Corporation Code. Impleaded as respondents in the Complaint-Affidavit were petitioners Ient and Schulze, Jaime Villalon (Villalon), who was formerly President and Managing Director of Tullett, Mercedes Chuidian (Chuidian), who was formerly a member of Tullett's Board of Directors, and other John and Jane Does. Villalon and Chuidian were charged with using their former positions in Tullett to sabotage said company by orchestrating the mass resignation of its entire brokering staff in order for them to join Tradition Philippines. With respect to Villalon, Tullett claimed that the former held several meetings between August 22 to 25, 2008 with members of Tullett's Spot Desk and brokering staff in order to convince them to leave the company. Villalon likewise supposedly intentionally failed to renew the contracts of some of the brokers.

The proceedings can be summed up as follows: Petitioners posit that Section 144 (Violations of this Code) only applies to the provisions of the Corporation Code or its amendments "not otherwise specifically penalized" by said statute and should not cover Sections 31 (Liability of Directors, Trustees or Officers) and 34 (Disloyalty of a Director) which both prescribe the "penalties" for their violation; namely, damages, accounting and restitution of profits. On the other hand, respondent and the appellate court have taken the position that the term "penalized" under Section 144 should be interpreted as referring to criminal penalty, such as fine or imprisonment, and that it could not possibly contemplate "civil" penalties such as damages, accounting or restitution.

ISSUE

Whether the application of Section 144 of the Corporation Code to Sections 31 and 34 of the same statute will result to criminal liability in the event of violation of Sections 31 and 34.

RULING

NO. Respondent urges this Court to strictly construe Section 144 as contemplating only penal penalties. However, a perusal of Section 144 shows that it is not a purely penal provision. When it is a corporation that commits a violation of the Corporation Code, it may be dissolved in appropriate proceedings before the Securities and Exchange Commission. The involuntary dissolution of an erring corporation is not imposed as a criminal sanction, but rather it is an administrative penalty.

Giving a broad and flexible interpretation to the term "penalized" in Section 144 only has utility if there are provisions in the Corporation Code that specify consequences other than "penal" or "criminal" for violation of, or non-compliance with, the tenets of the Code. Petitioners point to the civil liability prescribed in Sections 31 and 34.

Also, quite apart that no legislative intent to criminalize Sections 31 and 34 was manifested in the deliberations on the Corporation Code, it is noteworthy from the same deliberations that legislators intended to codify the common law concepts of corporate opportunity and fiduciary obligations of corporate officers as found in American jurisprudence into said provisions. In common law, the remedies available in the event of a breach of director's fiduciary duties to the corporation are civil remedies. If a director or officer is found to have breached his duty of loyalty, an injunction may be issued or damages may be awarded. A corporate officer guilty of fraud or mismanagement may be held liable for lost profits. A disloyal agent may also suffer forfeiture of his compensation. There is nothing in the deliberations to indicate that drafters of the Corporation Code intended to deviate from common law practice and enforce the fiduciary obligations of directors and corporate officers through penal sanction aside from civil liability. On the contrary, there appears to be a concern among the drafters of the Corporation Code that even the imposition of the civil sanctions under Section 31 and 34 might discourage competent persons from serving as directors in corporations.

The Corporation Code was intended as a regulatory measure, not primarily as a penal statute. Sections 31 to 34 in particular were intended to impose exacting standards of fidelity on corporate officers and directors but without unduly impeding them in the discharge of their work with concerns of litigation. Considering the object and policy of the Corporation Code to encourage the use of the corporate entity as a vehicle for economic growth, we cannot espouse a strict construction of Sections 31 and 34 as penal offenses in relation to Section 144 in the absence of unambiguous statutory language and legislative intent to that effect. When Congress intends to criminalize certain acts it does so in plain, categorical language, otherwise such a statute would be susceptible to constitutional attack.

FOREIGN INVESTMENTS ACT (R.A. NO. 7042)

B. Definition of Terms

1. "Doing Business" in the Philippines

- Alfred Hahn vs. Court of Appeals, G.R. No. 113074, January 22, 1997

ALFRED HAHN VERSUS COURT OF APPEALS AND BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT (BMW)
G.R. NO. 113074, JANUARY 22, 1997, J. MENDOZA

What acts are considered "doing business in the Philippines" are enumerated in §3(d) of the Foreign Investments Act of 1991 (R.A. No. 7042) as follows:

d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches, appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity *of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization*

FACTS

Petitioner Alfred Hahn is a Filipino citizen doing business under the name and style "Hahn-Manila." On the other hand, private respondent Bayerische Motoren Werke Aktiengesellschaft (BMW) is a nonresident foreign corporation existing under the laws of the former Federal Republic of Germany, with principal office at Munich, Germany. Petitioner executed in favor of private respondent a "Deed of Assignment with Special Power of Attorney.

Per the agreement, the parties "continue[d] business relations as has been usual in the past without a formal contract." But on February 16, 1993, in a meeting with a BMW representative and the president of Columbia Motors Corporation (CMC), Jose Alvarez, petitioner was informed that BMW was arranging to grant the exclusive dealership of BMW cars and products to CMC, which had expressed interest in acquiring the same. On February 24, 1993, petitioner received confirmation of the information from BMW which, in a letter, expressed dissatisfaction with various aspects of petitioner's business, mentioning among other things, decline in sales, deteriorating services, and inadequate showroom and warehouse facilities, and petitioner's alleged failure to comply with the standards for an exclusive BMW dealer. Nonetheless, BMW expressed willingness to continue business relations with the petitioner on the basis of a "standard BMW importer" contract, otherwise, it said, if this was not acceptable to petitioner, BMW would have no alternative but to terminate petitioner's exclusive dealership effective June 30, 1993.

Petitioner protested, claiming that the termination of his exclusive dealership would be a breach of the Deed of Assignment. Hahn insisted that as long as the assignment of its trademark and device subsisted, he remained BMW's exclusive dealer in the Philippines because the assignment was made in consideration of the exclusive dealership.

Because of Hahn's insistence on the former business relation, BMW withdrew on March 26, 1993 its offer of a "standard importer contract" and terminated the exclusive dealer relationship effective June 30, 1993. At a conference of BMW Regional Importers held on April 26, 1993 in Singapore, Hahn was surprised to find Alvarez among those invited from the Asian region. On April 29, 1993, BMW proposed that Hahn and CMC jointly import and distribute BMW cars and parts.

Hahn found the proposal unacceptable. On May 14, 1993, he filed a complaint for specific performance and damages against BMW to compel it to continue the exclusive dealership. Later he filed an amended complaint to include an application for temporary restraining order and for writs of preliminary, mandatory and prohibitory injunction to enjoin BMW from terminating his exclusive dealership. Hahn, amended complaint alleged that Defendant [BMW] is a foreign corporation doing business in the Philippines with principal offices at Munich, Germany. It may be served with summons and other court processes through the Secretary of the Department of Trade and Industry of the Philippines.

The case was docketed as Civil Case No. Q-93-15933 and raffled to Branch 104 of the Quezon City Regional Trial Court, which on June 14, 1993 issued a temporary restraining order.

MW moved to dismiss the case, contending that the trial court did not acquire jurisdiction over it through the service of summons on the Department of Trade and Industry, because it (BMW) was a foreign corporation and it was not doing business in the Philippines. It contended that the execution of the Deed of Assignment was an isolated transaction; that Hahn was not its agent because the latter undertook to assemble and sell BMW cars and products without the participation of BMW and sold other products; and that Hahn was an indentor or middleman transacting business in his own name and for his own account.

Petitioner Alfred Hahn opposed the motion. He argued that BMW was doing business in the Philippines through him as its agent, as shown by the fact that BMW invoices and order forms were used to document his transactions; that he gave warranties as exclusive BMW dealer; that BMW officials periodically inspected standards of service rendered by him; and that he was described in service booklets and international publications of BMW as a "BMW Importer" or "BMW Trading Company" in the Philippines.

The trial court deferred resolution of the Motion to dismiss until after trial on the merits for the reason that the grounds advanced by BMW in its motion did not seem to be indubitable. Without seeking reconsideration of the aforementioned order, BMW filed a petition for certiorari with the Court of Appeals.

The Court of Appeals enjoined the trial court from hearing petitioner's complaint. On December 20, 1993, it rendered judgment finding the trial court guilty of grave abuse of discretion in deferring resolution of the motion to dismiss. Then, after stating that any ruling which the trial court might make on the motion to dismiss would anyway be elevated to it on appeal, the Court of Appeals itself resolved the motion. It ruled that BMW was not doing business in the country and, therefore, jurisdiction over it could not be acquired through service of summons on the DTI pursuant to Rule 14, Section 14. The court upheld private respondent's contention that Hahn acted in his own name and for his own account and independently of BMW, based on Alfred Hahn's allegations that he had invested his own money and resources in establishing BMW's goodwill in the Philippines and on BMW's claim that Hahn sold products other than those of BMW. It held that petitioner was a mere indentor or broker and not an agent through whom private respondent BMW transacted business in the Philippines. Consequently, the Court of Appeals dismissed petitioner's complaint against BMW. Hence, this appeal.

ISSUE

Whether or not the petitioner is "doing business" here in the Philippines.

RULING

Petitioner's appeal is well taken. Rule 14, § 14 provides:

§14. Service upon foreign corporations. If the defendant is a foreign corporation, or a nonresident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

What acts are considered "doing business in the Philippines" are enumerated in §3(d) of the Foreign Investments Act of 1991 (R.A. No. 7042) as follows:

d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches, appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having, a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

Thus, the phrase includes "appointing representatives or distributors in the Philippines" but not when the representative or distributor "transacts business in its name and for its own account." In addition, Section 1(f)(1) of the Rules and Regulations implementing (IRR) the Omnibus Investment Code of 1987 (E.O. No. 226) provided:

"(f) "Doing business" shall be any act or combination of acts, enumerated in Article 44 of the Code. In particular, "doing business" includes:

(1).... A foreign firm which does business through middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines"

The question is whether petitioner Alfred Hahn is the agent or distributor in the Philippines of private respondent BMW. If he is, BMW may be considered doing business in the Philippines and the trial court acquired jurisdiction over it (BMW) by virtue of the service of summons on the Department of Trade and Industry. Otherwise, if Hahn is not the agent of BMW but an independent dealer, albeit of BMW cars and products, BMW, a foreign corporation, is not considered doing business in the Philippines within the meaning of the Foreign Investments Act of 1991 and the IRR, and the trial court did not acquire jurisdiction over it (BMW).

There is nothing to support the appellate court's finding that Hahn solicited orders alone and for his own account and without "interference from, let alone direction of, BMW." (p. 13) To the contrary, Hahn claimed he took orders for BMW cars and transmitted them to BMW. Upon receipt of the orders, BMW fixed the down payment and pricing charges, notified Hahn of the scheduled production month for the orders, and reconfirmed the orders by signing and returning to Hahn the acceptance sheets. Payment was made by the buyer directly to BMW. Title to cars purchased passed directly to the buyer and Hahn never paid for the purchase price of BMW cars sold in the Philippines. Hahn was credited with a commission equal to 14% of the purchase price upon the invoicing of a vehicle order by BMW. Upon confirmation in writing that the vehicles had been registered in the Philippines and serviced by him, Hahn received an additional 3% of the full purchase price. Hahn performed after-sale services, including, warranty services, for which he received reimbursement from BMW. All orders were on invoices and forms of BMW.

Contrary to the appellate court's conclusion, this arrangement shows an agency. An agent receives a commission upon the successful conclusion of a sale. On the other hand, a broker earns his pay merely by bringing the buyer and the seller together, even if no sale is eventually made.

As to the service centers and showrooms which he said he had put up at his own expense, Hahn said that he had to follow BMW specifications as exclusive dealer of BMW in the Philippines. According to Hahn, BMW periodically inspected the service centers to see to it that BMW standards were maintained. Indeed, it would seem from BMW's letter to Hahn that it was for Hahn's alleged failure to maintain BMW standards that BMW was terminating Hahn's dealership.

The fact that Hahn invested his own money to put up these service centers and showrooms does not necessarily prove that he is not an agent of BMW. For as already noted, there are facts in the record which suggest that BMW exercised control over Hahn's activities as a dealer and made regular inspections of Hahn's premises to enforce compliance with BMW standards and specifications.

It is not true then that the question whether BMW is doing business could have been resolved simply by considering the parties' pleadings. There are genuine issues of facts which can only be determined on the basis of evidence duly presented. BMW cannot short circuit the process on the plea that to compel it to go to trial would be to deny its right not to submit to the jurisdiction of the trial court which precisely it denies.

Anyway, private respondent need not apprehend that by responding to the summons it would be waiving its objection to the trial court's jurisdiction. It is now settled that for purposes of having summons served on a foreign corporation in accordance with Rule 14, §14, it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction. A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to Rule 14, §14. Such determination does not foreclose a contrary finding should evidence later show that it is not transacting business in the country.

Far from committing an abuse of discretion, the trial court properly deferred resolution of the motion to dismiss and thus avoided prematurely deciding a question which requires a factual basis, with the same result if it had denied the motion and conditionally assumed jurisdiction. It is the Court of Appeals which, by ruling that BMW is not doing business on the basis merely of uncertain allegations in the pleadings, disposed of the whole case with finality and thereby deprived petitioner of his right to be heard on his cause of action. Nor was there justification for nullifying the writ of preliminary injunction issued by the trial court. Although the injunction was issued ex parte, the fact is that BMW was subsequently heard on its defense by filing a motion to dismiss.

- Eriks Pte. Ltd. vs. Court of Appeals, G.R. No. 118843, February 6, 1997

ERIKS PTE. LTD., VERSUS COURT OF APPEALS, AND DELFIN F. ENRIQUEZ, JR.
G.R. NO. 118843, FEBRUARY 6, 1997, J. PANGANIBAN

What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization.

FACTS

Petitioner Eriks Pte. Ltd. is a non-resident foreign corporation engaged in the manufacture and sale of elements used in sealing pumps, valves and pipes for industrial purposes. In its complaint, it alleged that:

(I)t is a corporation duly organized and existing under the laws of the Republic of Singapore. It is not licensed to do business in the Philippines and i(s) not so engaged and is suing on an isolated transaction for which it has capacity to sue.

On various dates, private respondent Delfin Enriquez, Jr., doing business under the name and style of Delrene EB Controls Center and/or EB Karmine Commercial, ordered and received from petitioner various elements used in sealing pumps, valves, pipes and control equipment, PVC pipes and fittings. The transfers of goods were perfected in Singapore, for private respondent's account, F.O.B. Singapore, with a 90-day credit term. Subsequently, demands were made by petitioner upon private respondent to settle his account, but the latter failed/refused to do so.

Petitioner corporation filed with the Regional Trial Court of Makati for the recovery of S$41,939.63 or its equivalent in Philippine currency, plus interest thereon and damages. Private respondent responded with a Motion to Dismiss, contending that petitioner corporation had no legal capacity to sue. In an Order the trial court dismissed the action on the ground that petitioner is a foreign corporation doing business in the Philippines without a license.

On appeal, respondent Court affirmed said order as it deemed the series of transactions between petitioner, corporation and private respondent not to be an "isolated or casual transaction." Thus, respondent Court likewise found petitioner to be without legal capacity to sue, and disposed of the appeal.

ISSUES

1. Whether or not petitioner's business with private respondent may be treated as isolated transactions.
2. Whether or not petitioner corporation may maintain an action in Philippine courts considering that it has no license to do business in the country.

RULING

(1) NO, more than the sheer number of transactions entered into, a clear and unmistakable intention on the part of petitioner to continue the body of its business in the Philippines is more than apparent. Thus, the sale by petitioner of the items covered by the receipts, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business,

pure and simple. Further, its grant and extension of 90-day credit terms to private respondent for every purchase made, unarguably shows an intention to continue transacting with private respondent.

What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization.

(2)NO, Sec. 133. No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. Petitioner must be held to be incapacitated to maintain the action a quo against private respondent.

The aforementioned provision prohibits, not merely absence of the prescribed license, but it also bars a foreign corporation "doing business" in the Philippines without such license access to our courts. A foreign corporation without such license is not ipso facto incapacitated from bringing an action. A license is necessary only if it is "transacting or doing business in the country.

It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it.

- Agilent Technologies Singapore (Pte.) Ltd. vs. Integrated Silicon Technology Philippines Corporation, G.R. No. 154618, April 14, 2004

AGILENT TECHNOLOGIES SINGAPORE (PTE) LTD VS. INTEGRATED SILICON TECHNOLOGY PHILIPPINES CORPORATION
G.R. NO. 154618, APRIL 14, 2004, FIRST DIVISION, YNARES-SANTIAGO, J

There is no definitive rule on what constitutes "doing", "engaging in", or "transacting" business in the Philippines. Jurisprudence has it, however, that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization." By and large, to constitute "doing business", the activity to be undertaken in the Philippines is one that is for profit---making.

FACTS

Petitioner Agilent Technologies Singapore (Pte.), Ltd. ("Agilent") is a foreign corporation, which, by its own admission, is not licensed to do business in the Philippines. Respondent Integrated Silicon Technology Philippines Corporation ("Integrated Silicon") is a private domestic corporation, 100% foreign owned, which is engaged in the business of manufacturing and assembling electronics components. The juridical relation among the various parties in this case can be traced to a 5---year Value Added Assembly Services Agreement ("VAASA"), entered between Integrated Silicon and the Hewlett---Packard Singapore. Under the terms of the VAASA, Integrated Silicon was to locally manufacture and assemble fiber optics for export to HP---Singapore. HP---Singapore, for its part, was to consign raw materials to Integrated Silicon; transport machinery to the plant of Integrated Silicon; and pay Integrated Silicon the purchase price of the finished products. The VAASA had a five---year term, with a provision for annual renewal by mutual written consent. With the consent of Integrated Silicon, HP---Singapore assigned all its rights and obligations in the VAASA to Agilent. On May 25, 2001, Integrated Silicon filed a complaint for "Specific Performance and Damages" against Agilent and its officers. It alleged that Agilent breached the parties' oral agreement to extend the VAASA. Integrated Silicon thus prayed that defendant be ordered to execute a written extension of the VAASA for a period of five years as earlier assured and promised; to comply with the extended VAASA.

Agilent filed a separate complaint against Integrated Silicon for "Specific Performance, Recovery of Possession, and Sum of Money with Replevin, Preliminary Mandatory Injunction, and Damages", before the Regional Trial Court. Agilent prayed that a writ of replevin or, in the alternative, a writ of preliminary mandatory injunction, be issued ordering Integrated Silicon to immediately return and deliver to Agilent its equipment, machineries and the materials to be used for fiber---optic components which were left in the plant of Integrated Silicon. Respondents filed a Motion to Dismiss, on the ground of lack of Agilent's legal capacity to sue, among others. The trial court denied the Motion to Dismiss and granted petitioner Agilent's application for a writ of replevin. Without filing a motion for reconsideration, respondents filed a petition for certiorari with the Court of Appeals. The Court of Appeals granted respondents' petition for certiorari, set aside the assailed Order of the trial court, and ordered the dismissal of the case. Hence, the instant petition where respondents argue that since Agilent is an unlicensed foreign corporation doing business in the Philippines, it lacks the legal capacity to file suit. The assailed acts of petitioner Agilent, purportedly in the nature of "doing business" in the Philippines, are the following: (1) mere entering into the VAASA, which is a "service contract"; (2) appointment of a full--- time representative in Integrated Silicon, to "oversee and supervise the production" of Agilent's products; (3) the appointment by Agilent of six full---time staff members, who were permanently stationed at Integrated Silicon's facilities in order to inspect the finished goods for Agilent; and (4) Agilent's participation in the management, supervision and control of Integrated Silicon, including instructing Integrated Silicon to hire more employees to meet Agilent's increasing production needs, regularly performing quality audit, evaluation and supervision of Integrated Silicon's employees, regularly performing inventory audit of raw materials to be used by Integrated Silicon, which was also required to provide weekly inventory updates to Agilent, and providing and dictating Integrated Silicon on the daily production schedule, volume and models of the products to manufacture and ship for Agilent.

ISSUE

Whether Agilent lacks the legal capacity to file suit, being an unlicensed foreign corporation doing business in the Philippines

RULING

NO. The principles regarding the right of a foreign corporation to bring suit in Philippine courts may thus be condensed in four statements: (1) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; (2) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction ; (3) if a foreign corporation does business in the Philippines without a license, a Philippine citizen or entity which has contracted with said corporation may be estopped from challenging the foreign corporation's corporate personality in a suit brought before Philippine courts; and (4) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction.

The challenge to Agilent's legal capacity to file suit hinges on whether or not it is doing business in the Philippines. However, there is no definitive rule on what constitutes "doing", "engaging in", or "transacting" business in the Philippines. Jurisprudence has it, however, that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization.". In the case at bar, the acts enumerated in the VAASA do not constitute "doing business" in the Philippines. By and large, to constitute "doing business", the activity to be undertaken in the Philippines is one that is for profit----making. By the clear terms of the VAASA, Agilent's activities in the Philippines were confined to (1) maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by Integrated Silicon; and (2) consignment of equipment with Integrated Silicon to be used in the processing of products for export. As such, we hold that, based on the evidence presented thus far, Agilent cannot be deemed to be "doing business" in the Philippines. Respondents' contention that Agilent lacks the legal capacity to file suit is therefore devoid of merit. As a foreign corporation not doing business in the Philippines, it needed no license before it can sue before our courts.

- Steelcase, Inc. vs. Design International Selections, Inc., G.R. No. 171995, April 18, 2012

STEELCASE, INC. V. DESIGN INTERNATIONAL SELECTIONS, INC.
G.R. NO. 171995, APRIL 18, 2012, THIRD DIVISION, MENDOZA, J

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation

FACTS

Petitioner Steelcase, Inc. *(Steelcase)* is a foreign corporation existing under the laws of Michigan, United States of America *(U.S.A.)*, and engaged in the manufacture of office furniture with dealers worldwide. Respondent Design International Selections, Inc. *(DISI)* is a corporation existing under Philippine Laws and engaged in the furniture business, including the distribution of furniture.
Sometime in 1986 or 1987, Steelcase and DISI orally entered into a dealership agreement whereby Steelcase granted DISI the right to market, sell, distribute, install, and service its products to end-user customers within the Philippines. The business relationship continued smoothly until it was terminated sometime in January 1999 after the agreement was breached with neither party admitting any fault.

Steelcase filed a complaint for sum of money against DISI alleging, among others, that DISI had an unpaid account of US$600,000.00. Steelcase prayed that DISI be ordered to pay actual or compensatory damages, exemplary damages, attorney's fees, and costs of suit. In its Answer with Compulsory Counterclaims, DISI alleged that Steelcase has no legal capacity to sue as it is doing business in the Philippines without the required license.

The RTC dismissed the complained filed by Steelcase and granted the TRO prayed for by DISI. Steelcase moved for a reconsideration but the same was denied. The case was appealed to the CA. The latter ruled that Steelcase is doing business in the Philippines without the required license. The CA stated that the following acts of Steelcase showed its intention to pursue and continue the conduct of its business in the Philippines: (1) sending a letter to Phinma, informing the latter that the distribution rights for its products would be established in the near future and directing other questions about orders for Steelcase products to Steelcase International; (2) cancelling orders from DISI's customers, particularly Visteon, Phils., Inc. *(Visteon);* (3) continuing to send its products to the Philippines through Modernform Group Company Limited *(Modernform)*, as evidenced by an Ocean Bill of Lading; and (4) going beyond the mere appointment of DISI as a dealer by making several impositions on management and operations of DISI. Thus, the CA ruled that Steelcase was barred from access to our courts for being a foreign corporation doing business here without the requisite license to do so.

Hence, this petition.

ISSUE

Whether Steelcase is a foreign corporation doing business in the Philippines without a license (**No)**

RULING

The appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.

In the case at bench, it is undisputed that DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug. In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings

C. Foreign Investment Negative List

- Heirs of Wilson Gamboa vs. Finance Secretary Margarito Teves, G.R. No. 176579, October 9, 2012

HEIRS OF WILSON P. GAMBOA VS. FINANCE SECRETARY MARGARITO B. TEVES, G.R. NO. 176579, JUNE 28, 2011 AND OCTOBER 9, 2012, CARPIO, J.

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

FACTS

In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26 percent of the outstanding common shares of PLDT to PTIC. In 1977, Prime Holdings, Inc. (PHI) was incorporated and subsequently became the owner of 111,415 shares of stock of PTIC. In 1986, the 111,415 shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG). The 111,415 PTIC shares, which represent about 46.125 percent of the outstanding capital stock of PTIC, were later declared by this Court to be owned by the Republic of the Philippines.

In 1999, First Pacific, a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54 percent of the outstanding capital stock of PTIC. In 2006, the Inter-Agency Privatization Council (IPC) of the Philippine Government announced that it would sell the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, through a public bidding. Only two bidders, Parallax Venture Fund XXVII (Parallax) and Pan-Asia Presidio Capital, submitted their bids and Parallax won with a bid of P25.6 billion or US$510 million.

Thereafter, First Pacific announced that it would exercise its right of first refusal as a PTIC stockholder and buy the 111,415 PTIC shares by matching the bid price of Parallax. However, First Pacific failed to do so on the deadline set by IPC and instead, yielded its right to PTIC itself which was then given by IPC until 2 March 2007 to buy the PTIC shares. In 2007, First Pacific, through its subsidiary, MPAH, entered into a Conditional Sale and Purchase Agreement of the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, with the Philippine Government for the price of P25,217,556,000 or US$510,580,189. Since PTIC is a stockholder of PLDT, the sale by the Philippine Government of 46.125 percent of PTIC shares is actually an indirect sale of 12 million shares or about 6.3 percent of the outstanding common shares of PLDT. With the sale, First Pacifics common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47 percent. This violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40 percent.

Petitioner filed the instant petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale of the 111,415 PTIC shares. Petitioner claims, among others, that the sale of the 111,415 PTIC shares would result in an increase in First Pacifics common shareholdings in PLDT from 30.7 percent to 37 percent, and this, combined with Japanese NTT DoCoMos common shareholdings in PLDT, would result to a total foreign common shareholdings in PLDT of 51.56 percent which is over the 40 percent constitutional limit.

In 2011, The Court partly granted the petition and held that the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors of a public utility, i.e., to the total common shares in PLDT.

The Office of the Solicitor General (OSG) initially filed a motion for reconsideration on behalf of the SEC, assailing the 28 June 2011 Decision. However, it subsequently filed a Consolidated Comment on behalf of the State, declaring expressly that it agrees with the Court's definition of the term "capital" in Section 11, Article XII of the Constitution. During the Oral Arguments on 26 June 2012, the OSG reiterated its position consistent with the Court's 28 June 2011 Decision.

ISSUE

Whether or not the term capital in Section 11, Article XII of the Constitution refers to the total common shares only of PLDT, a public utility.

RULING

NO. The 1987 Constitution mandates the Filipinization of public utilities by requiring that any form of authorization for the protection of the operation of public utilities should be granted only to citizens of the Philippines or to corporation or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens. The provision is an express recognition of the sensitive and vital position of public utilities both in the national economy and for national security. The evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.

The 2011 Decision declares that the 60 percent Filipino ownership required by the Constitution to engage in certain economic activities applies not only to voting control of the corporation, but also to the beneficial ownership of the corporation. Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares. This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution

SECURITIES REGULATION CODE (R.A. NO. 8799)

- THE SECURITIES AND EXCHANGE COMMISSION (SEC) CHAIRPERSON TERESITA J. HERBOSA, COMMISSIONER MA. JUANITA E. CUETO, COMMISIONER RAUL J. PALABRICA, COMMISSIONER MANUEL HUBERTO B. GAITE, COMMISIONER ELADIO M. JALA, and THE SEC ENFORCEMENT AND PROSECUTION DEPARTMENT, Petitioners, - versus - CJH DEVELOPMENT CORPORATION and CJH SUITES CORPORATION, herein represented by its EXECUTIVE VICEPRESIDENT AND CHIEF OPERATING OFFICER, ALFREDO R. YNIGUEZ III, Respondents. (G.R. No. 210316, THIRD DIVISION, November 28, 2016, PERALTA, J.)

THE SECURITIES AND EXCHANGE COMMISSION Petitioners, - versus - CJH DEVELOPMENT CORPORATION and CJH SUITES CORPORATION
G.R. No. 210316, THIRD DIVISION, November 28, 2016, PERALTA, J.

In here, the resolution of the case, as to whether or not the respondents' scheme of selling the subject condotel units is tantamount to an investment contract and/or sale of securities, as defined under the Securities Regulation Code, requires the expertise and technical knowledge of the SEC being the government agency which is tasked to enforce and implement the provisions of the said Code as well as its implementing rules and regulations.

FACTS

Respondent CJH Development Corporation (CJHDC) is a duly organized corporation engaged in the acquisition, development, sale, lease and management of real estate, while respondent CJH Suites Corporation (CJHSC) is a wholly-owned subsidiary of CJHDC which was formed primarily for the purpose of acquiring, maintaining, operating and managing hotels, inns, lodging houses, restaurants and other allied businesses.

On October 19, 1996, CJHDC entered into a Lease Agreement with the Bases Conversion and Development Authority (BCDA) for the development of a property in John Hay Special Economic Zone in Baguio City into public tourism complex, multiple-use forest watershed and human resource development center. The Agreement, among others, authorized CJHDC to sublease, develop and manage the said property, and upon expiration of the same, the leased property and the improvements thereon shall revert back to the BCDA.

Subsequently, CJHDC constructed two condotels in the property which it named as "The Manor" and "The Suites". The residential units in these condotels were offered for sale to the public by means of two schemes. The first was a straight purchase and sale contract where the buyer gets to enjoy the benefits of full ownership, subject to payment of maintenance dues and utility fees. The second scheme involved the sale of the unit with an added option of a "leaseback" or a "money-back" arrangement.

The buyers who opted for the "leaseback" arrangement will receive either a proportionate share in the annual income from the hotel operation or a guaranteed return on their investment. On the other hand, those who availed of the "money-back" arrangement will be entitled to a return of the purchase price at the termination of the Lease Agreement. When the BCDA and the CJHDC entered into an agreement in 2010 for the restructuring of the rental payments and other financial obligations of the latter to the former, ownership of 16 units from "The Manor" and 10 units from "The Suites" was transferred to the BCDA through dacion en pago. Said units were subject to a "leaseback" arrangement. Subsequently, the BCDA had known about the CJHDC and CJHSC's scheme of selling the units through "leaseback" or "money-back" terms.

On November 18, 2011, the BCDA requested the SEC to conduct an investigation into the operations of the respondents believing that the "leaseback" or "money-back" arrangements are investment contracts which are considered as securities under the Securities Regulation Code.

The Enforcement and Prosecution Department (EPD) of the SEC conducted its own investigation and submitted a Field Investigation Report. Subsequently, the SEC's Corporation Finance Department (CFD) issued a Memorandum opining that the said arrangements offered to the public are investment contracts.

On May 16, 2012, the EPD filed a Motion with the SEC En Banc praying that the respondents be directed to immediately cease and desist from further engaging in the business of selling securities until they have complied with the requirements of law and its implementing rules and regulations. The respondents filed a Petition for Review with prayer for the issuance of a TRO and/or writ of preliminary injunction before the CA. The CA issued a TRO and a writ of preliminary injunction before the CA. The CA issued a TRO and a writ of preliminary attachment, ruling in favor of CJHDC and CJHSC.

ISSUES

1. Whether or not the SEC has the primary jurisdiction over the case?
2. Whether or not the sale of "The Manor" or "The Suites" units to the general public under the "leaseback" or "money-back" scheme is a form of investment contract or sale of securities, and thus must comply with the requirements of law

RULING

1. Yes. Under the doctrine of primary administrative jurisdiction, courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, which under a regulatory scheme have been placed within the special competence of such tribunal or agency. Thus, if the determination of a case requires the expertise and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resorting to the court.

In here, the resolution of the case, as to whether or not the respondents' scheme of selling the subject condotel units is tantamount to an investment contract and/or sale of securities, as defined under the Securities Regulation Code, requires the expertise and technical knowledge of the SEC being the government agency which is tasked to enforce and implement the provisions of the said Code as well as its implementing rules and regulations.

2. Yes. In the instant case, the SEC through its EPD, conducted the necessary investigation by posing as representatives of interested buyers and talking to the respondent's Director of Sales, and interviewing several actual buyers to shed light on the questioned transactions.

The SEC arrived at a preliminary finding that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Based on this initial finding, respondents' act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. As correctly cited by the SEC, Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer. The Court agrees with the SEC that the purpose of this provision is to afford the public protection from investing in worthless securities.

C. **State Policy, Purpose**

- Abacus Securities Corporation vs. Ruben Ampil, G.R. No. 160016, February 27, 2006

ABACUS SECURITIES CORPORATION, PETITIONER, VERSUS RUBEN U. AMPIL, RESPONDENT, G.R. NO. 160016 FEBRUARY 27, 2006, FIRST DIVISION, PANGANIBAN, CJ.

It should be clear that Congress had imposed the margin requirements to protect the general economy, not to give the customer a free ride at the expense of the broker. Not to require respondent to pay for his April 10 and 11 trades would put a premium on his circumvention of the laws and would enable him to enrich himself unjustly at the expense of petitioner.

By failing to ensure his payment of his first purchase transactions within the period prescribed by law, thereby allowing him to make subsequent purchases, petitioner effectively converted his cash account into a credit account. The extension or maintenance of credits on nonmargin transactions, however, were specifically prohibited under Section 23(b).

FACTS

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation. In particular, the laws and regulations requiring payment of traded shares within specified periods are meant to protect the economy from excessive stock market speculations, and are thus mandatory.

In the present case, respondent cannot escape payment of stocks validly traded by petitioner on his behalf. These transactions took place before both parties violated the trading law and rules. Hence, they fall outside the purview of the pari delicto rule.

Petitioner corporation was engaged in business as a broker and dealer of securities of listed companies at the Philippine Stock Exchange Center. On April 8, 1997, respondent opened a cash account with petitioner for his transactions in securities and, on April 10, started trading on that account. As a result of his trading activities, he accumulated an outstanding obligation in favor of the corporation in the principal sum of P6,617,036.22 as of April 30, 1997.

Respondent failed to settle his account upon the lapse of the required period and the extension given by petitioner, prompting it to sell his securities on May 6, 1997, to offset his unsettled obligations. After the sale of his securities and the application of the proceeds against his account, his remaining accountabilities to petitioner totalled P3,364,313.56. This obligation he failed to settle despite its demands.

The trial court and the Court of Appeals (CA) both held that the parties were in pari delicto and, hence, without recourse against each other. The lower courts said that petitioner had violated Sections 23 and 25 of the Revised Securities Act (RSA) and Rule 25-1 of the Rules Implementing the Act (RSA Rules). The violation was committed when it failed 1) to require respondent to pay for his stock purchases within three (T+3) or four days (T+4) from trading; and 2) to request from the appropriate authority an extension of time for the payment of his cash purchases. The trial court noted that despite his nonpayment within the required period, petitioner did not cancel his purchases. Neither did it require him to deposit cash payments before it executed buy and/or sell orders subsequent to the first unsettled transaction.

ISSUE

Whether the pari delicto rule was applicable to the present case and whether the trial court had jurisdiction over the case.

RULING

With regard to the in pari delicto issue, sections 23 and 25 and Rule 25-1, otherwise known as the "mandatory close-out rule,"[1] clearly vested an obligation, not just a right, in petitioner. That obligation was to cancel or otherwise liquidate a customer's order, if payment was not received within three days from the date of purchase. Subsequent to an unpaid order, the broker should require its customer to deposit funds in the account sufficient to cover each purchase, prior to the execution of the transaction. These duties were imposed upon the broker to ensure faithful compliance with the margin requirements of the law, which forbade the broker from extending undue credit to a "cash" customer.

Nonetheless, these margin requirements were applicable only to transactions entered into by the parties subsequent to the initial trades of April 10 and 11, 1997. Thus, petitioner could still collect from respondent to the extent of the difference between his outstanding obligation as of April 11, 1997, less the proceeds from the mandatory sellout of the shares pursuant to the RSA Rules. Its right to collect was justified under the general law on obligations and contracts.

Petitioner could not be denied the right to collect, as the initial transactions had been entered into pursuant to the instructions of respondent. His obligation for stock transactions made and entered into on April 10 and 11, 1997, remained outstanding. Those transactions were valid, and the obligations he incurred in regard to his stock purchases on those dates subsisted. At the time, there was yet no violation of the RSA. Petitioner committed a fault only when it failed 1) to liquidate the transactions on April 14 and 15, 1997, or the fourth day following the stock purchases; and 2) to complete its liquidation no later than ten days after, by applying the proceeds as payment for his outstanding obligation.

Elucidating further, since the buyer was not able to pay for the transactions that had taken place on April 10 and 11 -- that is, at T+4 -- the broker was duty-bound to advance the payment to the settlement banks, without prejudice to its right to collect from the client later on. It should be clear that Congress had imposed the margin requirements to protect the general economy, not to give the customer a free ride at the expense of the broker. Not to require respondent to pay for his April 10 and 11 trades would put a premium on his circumvention of the laws and would enable him to enrich himself unjustly at the expense of petitioner.

By failing to ensure his payment of his first purchase transactions within the period prescribed by law, thereby allowing him to make subsequent purchases, petitioner effectively converted his cash account into a credit account. The extension or maintenance of credits on nonmargin transactions, however, were specifically prohibited under Section 23(b).

Thus, petitioner was remiss in its duty and could not be said to have come to court with "clean hands," insofar as it intended to collect on transactions subsequent to the initial trades of April 10 and 11, 1997.
On the other hand, respondent was found to be equally guilty of entering into transactions in violation of the RSA and RSA Rules. The Court was not prepared to accept his self-serving assertions of being an "innocent victim" in all the transactions. Obviously, he knowingly speculated on the market by taking advantage of the "nocash-out" arrangement extended to him by petitioner. It was respondent's privilege to gamble or speculate, as he apparently did by asking for extensions of time and refraining from giving orders to his broker to sell, in the hope that the prices would rise. Sustaining his argument would have amounted to relieving him of the risks of his own speculation and saddling petitioner with the consequences after the result turned out to be unfavorable. His conduct as an investor was precisely the sort deplored by the law. Thus, with respect to his counterclaim for damages for having been allegedly induced by petitioner to generate additional purchases despite his outstanding obligations, the Court held that he deserved no legal or equitable relief. In the final analysis, both parties had acted in violation of the law and did not come to court with clean hands as regards the transactions subsequent to the initial one made on April 10 and 11, 1997. In this case, the pari delicto rule applied only to transactions entered into after those initial trades. Pursuant to RSA Rule 25-1, petitioner should have liquidated the transactions (sold the stocks) on the fourth day after (at T+4) and completed its liquidation not later than ten days following the last day for the customer to pay (effectively at T+14). Respondent's outstanding obligation, therefore, was to be determined on the basis of the closing prices -- at T+14 -- of the stocks purchased.

With regard to jurisdiction, the instant controversy related to acts committed by the parties in the course of their business relationship. An ordinary civil case seeking to enforce rights arising from the Agreement (AOF) between the parties, the suit was intended to enable petitioner to collect on the alleged outstanding debt incurred by respondent for his stock purchases. To be sure, the RSA and its Rules were to be read into the Agreement that the parties had entered into. Thus, to determine whether they had fulfilled their obligations under this Agreement, the Court passed upon their compliance with the RSA and its Rules. In no way did it thereby deprive the Securities and Exchange Commission (SEC) of the authority to determine willful violations of the RSA and impose appropriate sanctions, as provided under Sections 45 and 46 of the Act.

D. **Securities Required to be Registered**

- Betty Gabionza and Isabelita Tan vs. Court of Appeals, G.R. No.161057, Sept. 12, 2008

BETTY GABIONZA AND ISABELITA TAN V. COURT OF APPEALS, LUKE ROXAS AND EVELYN NOLASCO,
G.R. NO. 161057, SEPTEMBER 12, 2008, SECOND DIVISION, J. TINGA

Section 4 of Batas Pambansa Blg. 176, or the Revised Securities Act, generally requires the registration of securities and prohibits the sale or distribution of unregistered securities. The DOJ extensively concluded that private respondents are liable for violating such prohibition against the sale of unregistered securities.

FACTS

Betty Go Gabionza (Gabionza) and Isabelita Tan (Tan) filed a complaint charging Respondents Luke Roxas (Roxas) and Evelyn Nolasco (Nolasco) with several criminal acts. Roxas was the president of ASB Holdings, Inc. (ASBHI) while Nolasco was the senior vice president and treasurer of the same corporation. Gabionza and Tan had previously placed monetary investment with the Bank of Southeast Asia (BSA). They alleged that they were convinced by the officers of ASBHI to lend or deposit money with the corporation. They were issued receipts reflecting the name "ASB Realty Development" which they were told was the same entity as BSA or was connected therewith but beginning in March 1998, the receipts were issued in the name of ASBHI.

DBS Bank started to refuse to pay for the checks purportedly by virtue of "stop payment" orders from ASBHI. ASBHI filed a petition for rehabilitation and receivership with the Securities and Exchange Commission (SEC), and it was able to obtain an order enjoining it from paying its outstanding liabilities. This lead to the filing of complaints by the petitioners and others against ASBHI. The complaints were for estafa under Article 315(2)(a) and (2)(d) of the Revised Penal Code, estafa under Presidential Decree No. 1689, violation of the Revised Securities Act and violation of the General Banking Act. Task Force on Financial Fraud (Task Force), was created by the Department of Justice (DOJ) which dismissed the said complaints. Such dismissal was concurred by the in by the assistant chief state prosecutor and approved by the chief state prosecutor. Petitioners filed a motion for reconsideration but it was denied.

With respect to the charges of estafa under Article 315(2) of the Revised Penal Code and of violation of the Revised Securities Act the Task Force concluded that the subject transactions were loans which gave rise only to civil liability; that petitioners were satisfied with the arrangement; that petitioners never directly dealt with Nolasco and Roxas; and that a check was not a security as contemplated by the Revised Securities Act. However, the DOJ made a Resolution alleging that it also made it clear that the false representations have been made to petitioners prior to or simultaneously with the commission of the fraud. The assurance given to them by ASBHI that it is a worthy credit partner occurred before they parted with their money. Relevantly, ASBHI is not the entity with whom petitioners initially transacted with, and they averred that they had to be convinced with such representations that Roxas and the same group behind BSA were also involved with ASBHI.

ISSUES

1. Whether or not it establish a prima facie finding that there has been a violation of the then-Revised Securities Act, specifically Section 4 in relation to Section 56 thereof.
2. Whether or not the charges against the corporation can also be pinned against Roxas and Nolasco likewise.

RULING

1. Yes. Section 4 of Batas Pambansa Blg. 176, or the Revised Securities Act, generally requires the registration of securities and prohibits the sale or distribution of unregistered securities.[29] The DOJ extensively concluded that private respondents are liable for violating such prohibition against the sale of unregistered securities:

Respondents Roxas and Nolasco do not dispute that in 1998, ASB borrowed funds about 700 individual investors amounting to close to P4 billion, on recurring, short-term basis, usually 30 or 45 days, promising high interest yields, issuing therefore mere postdate checks. Under the circumstances, the checks assumed the character of "evidences of indebtedness," which are among the "securities" mentioned under the Revised Securities Act. The term "securities" embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits.

Thus, it has been held that checks of a debtor received and held by the lender also are evidences of indebtedness and therefore "securities" under the Act, where the debtor agreed to pay interest on a monthly basis so long as the principal checks remained uncashed, it being said that such principal extent as would have promissory notes payable on demand.

In the instant case, the checks were issued by ASB in lieu of the securities enumerated under the Revised Securities Act in a clever attempt, or so they thought, to take the case out of the purview of the law, which requires prior license to sell or deal in securities and registration thereof. The scheme was to designed to circumvent the law. Checks constitute mere substitutes for cash if so issued in payment of obligations in the ordinary course of business transactions. But when they are issued in exchange for a big number of individual non-personalized loans solicited from the public, numbering about 700 in this case, the checks cease to be such. In such a circumstance, the checks assume the character of evidences of indebtedness. This is especially so where the individual loans were not evidenced by appropriate debt instruments, such as promissory notes, loan agreements, etc., as in this case. Purportedly, the postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme, whereby companies without prior license or authority from the SEC. This cannot be countenanced. The subsequent repeal of the Revised Securities Act does not spare respondents Roxas and Nolasco from prosecution thereunder, since the repealing law, Republic Act No. 8799 known as the "Securities Regulation Code," continues to punish the same offense (see Section 8 in relation to Section 73, R.A. No. 8799)

It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons. The Revised Securities Act was geared towards maintaining the stability of the national investment market against activities such as those apparently engaged in by ASBHI. As the DOJ Resolution noted, ASBHI adopted this scheme in an attempt to circumvent the Revised Securities Act, which requires a prior license to sell or deal in securities. After all, if ASBHI's activities were actually regulated by the SEC, it is hardly likely that the design it chose to employ would have been permitted at all. But was ASBHI able to successfully evade the requirements under the Revised Securities

Act? As found by the DOJ, there is ultimately a prima facie case that can at the very least sustain prosecution of private respondents under that law. The DOJ Resolution is persuasive in citing American authorities which countenance a flexible definition of securities. Moreover, it bears pointing out that the definition of "securities" set forth in Section 2 of the Revised Securities Act includes "commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another."[31] A check is a commercial paper evidencing indebtedness of any person, financial or non-financial entity. Since the checks in this case were generally rolled over to augment the creditor's existing investment with ASBHI, they most definitely take on the attributes of traditional stocks.We should be clear that the question of whether the subject checks fall within the classification of securities under the Revised Securities Act may still be the subject of debate, but at the very least, the DOJ Resolution has established a prima facie case for pxxx cuting private respondents for such offense. The thorough determination of such issue is best left to a full-blown trial of the merits, where private respondents are free to dispute the theories set forth in the DOJ Resolution. It is clear error on the part of the Court of Appeals to dismiss such finding so perfunctorily and on such flimsy grounds that do not consider the grave consequences. After all, as the DOJ Resolution correctly pointed out: "[T]he postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme,whereby companies without prior license or authority from the SEC. This cannot be countenanced."

This conclusion quells the stance of the Court of Appeals that the unfortunate events befalling petitioners were ultimately benign, not malevolent, a consequence of the economic crisis that beset the Philippines during that era. That conclusion would be agreeable only if it were undisputed that the activities of ASBHI are legal in the first place, but the DOJ puts forth a legitimate theory that the entire modus operandi of ASBHI is illegal under the Revised Securities Act and if that were so, the impact of the Asian economic crisis would not obviate the criminal liability of private respondents.
It is ineluctable that the DOJ Resolution established a prima facie case for violation of Article 315 (2)(a) of the Revised Penal Code and Sections 4 in relation to 56 of the Revised Securities Act.

2. Yes.The material misrepresentations have been made by the agents or employees of ASBHI to petitioners, to the effect that the corporation was structurally sound and financially able to undertake the series of loan transactions that it induced petitioners to enter into.

The false representations made by the ASB agents who dealt with the complainant petitioners and who inveigled them into investing their funds in ASB are properly imputable to respondents Roxas and Nolasco, because they, as ASB's president and senior vice president/treasurer, respectively, respectively, in charge of its operations, directed its agents to make the false representations to the public, including the complainant-petitioners, in order to convince them to invest their moneys in ASB. It is difficult to make a different conclusion, judging from the fact that respondents Roxas and Nolasco authorized and accepted for ASB the fraud induced loans.

- POWER HOMES UNLIMITED CORPORATION vs. SECURITIES AND EXCHANGE COMMISSION and NOEL MANERO, G.R. No. 164182, February 26, 2008, C.J. Puno

POWER HOMES UNLIMITED CORPORATION VERSUS SECURITIES AND EXCHANGE COMMISSION AND NOEL MANERO
G.R. NO. 164182, FEBRUARY 26, 2008, FIRST DIVISION, CJ. PUNO

We therefore rule that the business operation or the scheme of petitioner constitutes an investment contract that is a security under R.A. No. 8799. Thus, it must be registered with public respondent SEC before its sale or offer for sale or distribution to the public. As petitioner failed to register the same, its offering to the public was rightfully enjoined by public respondent SEC.

FACTS

Petitioner is a domestic corporation duly registered with public respondent SEC. Its primary purpose is to engage in the transaction of promoting, acquiring, managing, leasing, obtaining options on, development, and improvement of real estate properties for subdivision and allied purposes, and in the purchase, sale and/or exchange of said subdivision and properties through network marketing.

Noel Manero requested public respondent SEC to investigate petitioner‘s business. He claimed that he attended a seminar conducted by petitioner where the latter claimed to sell properties that were inexistent and without any broker‘s license. One Romulo E. Munsayac, Jr. inquired from public respondent SEC whether petitioner‘s business involves "legitimate network marketing." To address the issue, SEC conducted a conference with the incorporators.

Also, the petitioner submitted their marketing modules and their letters of accreditation authority from Crown Asia, FilEstate Network and Pioneer Realty Corporation. SEC visited the business premises of petitioner wherein it gathered documents such as certificates of accreditation to several real estate companies, list of members with web sites, sample of member mail box, webpages of two (2) members, and lists of Business Center Owners who are qualified to acquire real estate properties and materials on computer tutorials.

SEC found that the petitioner is engaged in the sale or offer for sale or distribution of investment contracts, which are considered securities under Sec. 3.1 (b) of Republic Act (R.A.) No. 8799 (The Securities Regulation Code), but failed to register them in violation of Sec. 8.1 of the same Act, and issued a Cease and Desist Order. The order was appealed but the Court of Appeals affirmed the SEC.

ISSUE

Whether the business of petitioner involves an investment contract that is considered security11 and thus, must be registered prior to sale or offer for sale or distribution to the public pursuant to Section 8.1 of R.A. No. 8799.

RULING

YES. The business of the petitioner involves an investment contract. It is a contract, transaction or scheme (collectively contract) whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others as defined in the Amended Implementing Rules and Regulations of R.A. No. 8799.

The HOWEY TEST is the test established to determine whether a transaction falls within the scope of an investment contract. It requires that a person:
1. Makes an investment of money;
2. In a common enterprise;
3. With the expectation of profits;
4. To be derived primarily from the efforts of others.

We therefore rule that the business operation or the scheme of petitioner constitutes an investment contract that is a security under R.A. No. 8799. Thus, it must be registered withpublic respondent SEC before its sale or offer for sale or distribution to the public.

As petitioner failed to register the same, its offering to the public was rightfully enjoined by public respondent SEC. The CDO was proper even without a finding of fraud. As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system.

- Timeshare Realty vs. Cesar Lao, G.R. No. 158941, Feb. 11, 2008

Timeshare Realty Corporation Versus Cesar Lao And Cynthia v. Cortez
G.R. No. 158941, February 11, 2008, J. Austria-Martinez

The provisions of B.P. Blg. 178 do not support the contention of petitioner that its mere registration as a corporation already authorizes it to deal with unregistered timeshares. Corporate registration is just one of several requirements before it may deal with timeshares

FACTS

Petitioner sold to Ceasar M. Lao and Cynthia V. Cortez (respondents), one timeshare of Laguna de Boracay for US$7,500.00 under Contract No. 135000998 payable in eight months and fully paid by the respondents. SEC issued a resolution to the effect that petitioner was without authority to sell securities, like timeshares, prior to February 11, 1998. It further stated in the resolution/order that the Registration Statement of petitioner became effective only on February 11, 1998. It also held that the 30 days within which a purchaser may exercise the option to unilaterally rescind the purchase agreement and receive the refund of money paid applies to all purchase agreements entered into by petitioner prior to the effectivity of the Registration Statement. Respondents wrote petitioner demanding their right and option to cancel their Contract, as it appears that Laguna de Boracay is selling said shares without license or authority from the SEC.

Respondents directly filed with SEC En Banc a Complaint against petitioner and the Members of its Board of Directors - Julius S. Strachan, Angel G. Vivar, Jr. and Cecilia R. Palma for violation of Section 4 of Batas Pambansa Bilang (B.P. Blg.) 178.

SEC En Banc rendered a Decision in favor of respondents, ordering petitioner, together with Julius S. Strachan, Angel G. Vivar, Jr., and Cecilia R. Palma, to pay respondents the amount of US$7,500.00. Petitioner received a copy of the June 24, 2002 SEC En Banc Order on July 4, 2002 and had 15 days or until July 19, 2002 within which to appeal. However, on July 10, 2002, petitioner sought from the

CA an extension of 30 days, counted from July 19, 2002, or until August 19, 2002, within which to appeal. The CA partly granted the motion.

CA then dismissed the Petition for Review thus, under Section 4, Rule 43 of the 1997 Revised Rules of Civil Procedure, petitioners shall not be given an extension longer than fifteen (15) days from the expiration of the reglementary period, except for the most compelling reason.

ISSUE

Whether or not the eventual approval or issuance of license has retroactive effect and therefore ratifies all earlier transactions;

RULING

1. NO. The provisions of B.P. Blg. 178 do not support the contention of petitioner that its mere registration as a corporation already authorizes it to deal with unregistered timeshares. Corporate registration is just one of several requirements before it may deal with timeshares:

Section 8. Procedure for registration. - (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

xxxx
(36) Unless previously filed and registered with the Commission and brought up to date:
Prior to fulfillment of all the other requirements of Section 8, petitioner is absolutely proscribed under Section 4 from dealing with unregistered timeshares, thus:

Section 4. Requirement of registration of securities. - (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.

(a) A copy of its articles of incorporation with all amendments thereof and its existing by- laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation.

- Securities and Exchange Commission vs. Prosperity.Com, Inc., G.R. No. 164197, Jan. 25, 2012

SECURITIES AND EXCHANGE COMMISSION *v*. PROSPERITY.COM, INCORPORATED
G.R. No. 164197, 25 January 2012, THIRD DIVISION (Abad, *J.*)

For an investment contract to exist, the Howey test comprising of the following elements must concur: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others.

FACTS

Prosperity.Com, Inc. (PCI) sold computer software and hosted websites without providing internet service. To make a profit, PCI devised a scheme in which, for the price of US$234.00 (subsequently increased to US$294), a buyer could acquire from it an internet website of a 15- Mega Byte (MB) capacity. At the same time, by referring to PCI his own down-line buyers, a first-time buyer could earn commissions, interest in real estate in the Philippines and in the United States, and insurance coverage worth ₱50,000.00.

To benefit from this scheme, a PCI buyer must enlist and sponsor at least two other buyers as his own down-lines. These second tier of buyers could in turn build up their own down-lines. For each pair of down-lines, the buyer-sponsor received a US$92.00 commission. But referrals in a day by the buyer-sponsor should not exceed 16 since the commissions due from excess referrals inure to PCI, not to the buyer-sponsor.

Apparently, PCI patterned its scheme from that of Golconda Ventures, Inc. (GVI), which company stopped operations after the Securities and Exchange Commission (SEC) issued a cease and desist order (CDO) against it. As it later on turned out, the same persons who ran the affairs of GVI directed PCI's actual operations.

In 2001, disgruntled elements of GVI filed a complaint with the SEC against PCI, alleging that the latter had taken over GVI's operations. After hearing, the SEC issued a CDO against PCI ruling that PCI's scheme constitutes an Investment contract and, following the Securities Regulations Code, it should have first registered such contract or securities with the SEC.

PCI filed with the Court of Appeals (CA) a petition for certiorari against the SEC with an application for a temporary restraining order (TRO) and preliminary injunction Because the CA did not act promptly on this application for TRO, PCI returned to the SEC and filed with it a request to lift the CDO. PCI moved to withdraw its petition before the CA to avoid possible forum shopping violation. During the pendency of PCI's action before the SEC, however, the CA issued a TRO, enjoining the enforcement of the CDO. In response, the SEC filed with the CA a motion to dismiss the petition on ground of forum shopping. In a Resolution, the CA initially dismissed the petition, finding PCI guilty of forum shopping. But on PCI's motion, the CA reversed itself and reinstated the petition.

On July 31, 2003 the CA rendered a decision, granting PCI's petition and setting aside the SEC- issued CDO. The CA ruled that, following the Howey test, PCI's scheme did not constitute an investment contract that needs registration pursuant to R.A. 8799, hence, this petition.

ISSUE

Whether or not PCI's scheme constitutes an investment contract that requires registration under R.A. 8799?

RULING

The Securities Regulation Code treats investment contracts as "securities" that have to be registered with the SEC before they can be distributed and sold. An investment contract is a contract, transaction, or scheme where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

The United States Supreme Court held in Securities and Exchange Commission v. W.J. Howey Co. that, for an investment contract to exist, the following elements, referred to as the Howey test must concur: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Thus, to sustain the SEC position in this case, PCI's scheme or contract with its buyers must have all these elements.

An example that comes to mind would be the long-term commercial papers that large companies, like San Miguel Corporation (SMC), offer to the public for raising funds that it needs for expansion. When an investor buys these papers or securities, he invests his money, together with others, in SMC with an expectation of profits arising from the efforts of those who manage and operate that company. SMC has to register these commercial papers with the SEC before offering them to investors.

Here, PCI's clients do not make such investments. They buy a product of some value to them: an Internet website of a 15-MB capacity. The client can use this website to enable people to have internet access to what he has to offer to them, say, some skin cream. The buyers of the website do not invest money in PCI that it could use for running some business that would generate profits for the investors. The price of US$234.00 is what the buyer pays for the use of the website, a tangible asset that PCI creates, using its computer facilities and technical skills.

Actually, PCI appears to be engaged in network marketing. Under this scheme, adopted by most health product distributors, the buyer can become a down-line seller. The latter earns commissions from purchases made by new buyers whom he refers to the person who sold the product to him. The network goes down the line where the orders to buy come. The commissions, interest in real estate, and insurance coverage worth ₱50,000.00 are incentives to down-line sellers to bring in other customers. These can hardly be regarded as profits from investment of money under the Howey test. The CA is right in ruling that the last requisite in the Howey test is lacking in the marketing scheme that PCI has adopted. Evidently, it is PCI that expects profit from the network marketing of its products. PCI is correct in saying that the US$234 it gets from its clients is merely a consideration for the sale of the websites that it provides.

- Securities and Exchange Commission vs. Oudine Santos, G.R. No. 195542, Mar. 19, 2014

SECURITIES AND EXCHANGE COMMISSION VERSUS OUDINE SANTOS
G.R. NO. 195542, MARCH 19, 2014, J. PEREZ

The violation of Section 28 of the SRC has the following elements: (a) engaging in the business of buying or selling securities in the Philippines as a broker or dealer; or (b) acting as a salesman; or(c) acting as an associated person of any broker or dealer, unless registered as such with the SEC. Thus, a person is liable for violating Section 28 of the SRC where, acting as a broker, dealer or salesman, is in the employ of a corporation which sold or offered for sale unregistered securities in the Philippines.

FACTS

To do business in the Philippines, PIPC-BVI, a foreign corporation registered in the British Virgin Islands, was incorporated as Philippine International Planning Center Corporation (PIPC Corporation). When the head of PIPC Corporation had gone missing with the monies and investments of significant number of investors, the SEC was flooded with complaints against PICP Corporation, its directors, officers, employees, agents and brokers for the alleged violation of certain provisions of the Securities Regulation Code. Soon thereafter, the SEC filed a complaint-affidavit for the violation of Sections 8, 26 and 28 of the SRC before the DOC. Among the respondents were the directors, officers and employees of PIPC, including Oudine Santos.

Private complainants Luisa Lorenzo and Ricky Sy charged Santos in her capacity as investment consultant of PIPC who actively engaged in the solicitation and recruitment of investors. Private complainants maintain that Santos acted as the corporation's agent and made representations regarding tis investment products and that of the supposed global corporation PIPC-BVI. Facilitating Lorenzo's and Sy's investment with the corporation, Santos represented to the tow that investing with PIPC Corporation, an affiliate of PIPC-BVI, would be safe and full-proof.

Later on, the DOJ issued a resolution indicting, among others, Santos for the violation of Section 28 of the SRC. Specifically referring to Santos as Investment Consultant of the corporation, the DOJ found probable cause to indict her for violation of Section 28 of the SRC for engaging in the business of selling or offering for sale securities on behalf of the PIPC Corporation without her being registered as a broker, dealer, salesman or an associated person.

Upon separate motions for reconsideration, the DOJ panel issued a Resolution modifying its previous ruling and excluding one of the respondents therein. Santos filed a petition for review before the Office of the Secretary of the DOJ assailing the Resolution and claiming that she was a mere clerical employee/information provider who never solicited nor recruited investors, particularly Lorenzo and Sy. Thereafter, the Office of the Secretary of the DOJ issued a Resolution excluding Santos from prosecution for violation of Section 28 of the SRC.

After the denial of the motion for reconsideration, the SEC filed a petition for *certiorari* before the CA seeking to annul the Resolution of the DOJ. The CC dismissed SEC's petition. Hence, the appeal by *certiorari* raising the sole error of Santos' exclusion from the Information for violation of Section 28 of the SRC.

ISSUE

Whether or not the respondent is an Investment Consultant and the transaction between her and the petitioners constitutes as an investment contract.

RULING

Petition Granted.

We sustain the DOJ panel's findings which were not overruled by the Secretary of the DOJ and the appellate court, that PIPC Corporation and/or PIPC-BVI was: (1) an insurer of securities without the necessary registration or license form the SEC, and (2) engage in the business of buying or selling securities. In connection therewith, we look to Section 3 of the Securities Regulation Code for pertinent definition of terms:

Sec. 3. **Definition of Terms.**-xxx xxx

3.3. "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.4. "Dealer" means any person who buys and sells securities for his/her own account in the ordinary course of business.

3.5. "Associated person of a broker or dealer" is an employee thereof whom, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

Xxx

3.13. "Salesman" is a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

To determine whether the DOJ Secretary's Resolution was tainted with grave abuse of discretion, we pass upon the elements for violation of Section 28 of the SRC: (a) engaging in the business of buying or selling securities in the Philippines as a broker or dealer; or (b) acting as a salesman; or(c) acting as an associated person of any broker or dealer, unless registered as such with the SEC.

Trying it all in, there is no quarrel that Santos was in the employ of PIPC Corporation and/or PIPC-BVI, a corporation which sold or offered for sale unregistered securities in the Philippines. To escape probable culpability, Santos claims that she was a mere clerical employee of PIPC Corporation and/or PIPC-BVI and was never an agent or salesman who actually solicited the sale of or sold unregistered securities issued by PIPC Corporation and/or PIPC-BVI.

Solicitation is that act of seeking or asking for business or information; it is not a commitment to an agreement.

Santos, by the very nature of her function as when she now unaffectedly calls an information provider, brought about by the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by providing information on the investment products of PIPC Corporation and/or PIPC-BVI with the end in view of PIPC Corporation closing a sale.

While Santos was not a signatory to the contracts Sy's or Lorenzo's investments, Santos procured the sales of these unregistered securities to the two complainants by providing information on the investment products being offered for sale byPIPC Corporation and/or PIPC-BVI and convincing them to invest therein.

No matter Santos' strenuous objections, it is apparent that she connected the probable investors, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, acting as an ostensible agent of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was *prima facie* established.

In all of the documents presented by Santos, she never alleged or pointed out that she did not receive extra consideration for her simply providing information to Sy and Lorenzo about PIPC Corporation and/or PIPC-BVI. Santos only claims that the monies invested by Sy and Lorenzo did not pass though her hands. In short, Santos did not present in evidence her salaries as supposed "mere clerical employee or information provider" of PIPC-BVI. Such presentation would have foreclosed all questions on her status within PIPC Corporation and/or PIPC-BVI at the lowest rung of the ladder who only provided information and who did not use her discretion in any capacity.
The transaction initiated by Santos with Sy and Lorenzo, respectively, is an investment contract or participation in a profit sharing agreement that falls within the definition of law. When the investor is relatively uniformed and turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction generally is considered to be an investment contract. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.

At the bottom, the exculpation of Santos cannot be preliminarily established simply by asserting that she did not sign the investment contracts, as the facts alleged in this case constitute fraud perpetrated on the public. Specially so because the absence of Santo's signature in the contract is, likewise, indicative of a scheme to circumvent and evade liability should the pyramid fall apart.

- Abacus Capital and Investment Corp. v. Tabujara, G.R. No. 197624, [July 23, 2018]

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.

3. **Exempt Securities**

- Union Bank of the Philippines vs. Securities and Exchange Commission, G.R. No. 138949, June 6, 2001

Union Bank of The Philippines versus Security And Exchange Commission,
G.R. No. 138949; June 6, 2001, THIRD DIVISION, J.Panganiban

It must be emphasized that petitioner is a commercial banking corporation listed in a stock exchange. Thus, it must adhere not only to banking and other allied special laws, but also to the rules promulgated by Respondent SEC, the government entity tasked not only with the enforcement of the Revised Securities Act, but also the supervision of all corporations, partnerships or associations which are grantees of government-issued primary franchises and/or licenses or permits to operate in the Philippines.

FACTS

Petitioner, through its General Counsel and Corporate Secretary, sought the opinion of Chairman Perfecto Yasay, Jr. of respondent Commission as to the applicability and coverage of the Full Material Disclosure Rule on banks, contending that said rules, amend Section 5 (a) (3) of the Revised Securities Act which exempts securities issued or guaranteed by banking institutions from the registration requirement provided by Section 4 of the same Act. In reply, Chairman Yasay informed petitioner that while the requirements of registration do not apply to securities of banks which are exempt under the Revised Securities Act, however, banks with a class of securities listed for trading on the Philippine Stock Exchange, Inc. are covered by certain Revised Securities Act Rules governing the filing of various reports with respondent Commission, i.e., (1) Rule 11 (a)-1 requiring the filing of Annual, Quarterly, Current, Predecessor and Successor Reports; (2) Rule 34-(a)-1 requiring submission of Proxy Statements; and (3) Rule 34-(c)-1 requiring submission of Information Statements, among others. Not satisfied, petitioner informed Chairman Yasay that they will refer the matter to the Philippine Stock Exchange for clarification. Respondent Commission wrote petitioner, reiterating its previous position that petitioner is not exempt from the filing of certain reports. The letter further stated that the Revised Securities Act Rule 11 (a) requires the submission of reports necessary for full, fair and accurate disclosure to the investing public, and not the registration of its shares.

Respondent Commission wrote petitioner, enjoining the latter to show cause why it should not be penalized for its failure to submit a Proxy/Information Statement in connection with its annual meeting held on May 23, 1997, in violation of respondent Commission's Full Material Disclosure Rule. Failing to respond to the aforesaid communication, petitioner was given a 2nd Show Cause with Assessment' by respondent Commission. Petitioner was then assessed a fine of P50,000.00 plus P500.00 for every day that report [was] not filed. Petitioner was likewise advised by respondent Commission to submit the required reports and settle the assessment, or submit the case to a formal hearing. Petitioner wrote respondent Commission disputing the assessment. Respondent denied the appeal filed by the Union Bank of the Philippines. The Court of Appeals affirmed the questioned Orders.

ISSUE

1. Whether or not petitioner is required to comply with the respondent SEC's full disclosure rules.

2. Whether or not the SEC's full disclosure rules are contrary to and effectively amend section 5 (a) (3) of the Revised Securities Act.

RULING

1. YES. It must be emphasized that petitioner is a commercial banking corporation listed in a stock exchange. Thus, it must adhere not only to banking and other allied special laws, but also to the rules promulgated by Respondent SEC, the government entity tasked not only with the enforcement of the Revised Securities Act, but also the supervision of all corporations, partnerships or associations which are grantees of government-issued primary franchises and/or licenses or permits to operate in the Philippines.

RSA Rules 11 (a)-1, 34 (a)-1 and 34 (c)-1 require the submission of certain reports to ensure full, fair accurate disclosure of information for the protection of the investing public. These Rules were issued by the respondent pursuant to the authority conferred upon it by Section 3 of the RSA.

2. NO. The said Rules do not amend Section 5(a)(3) of the Revised Securities Act, because they do not revoke or amend the exemption from registration of the securities enumerated thereunder. They are reasonable regulations imposed upon petitioner as a banking corporation trading its securities in the stock market.

That petitioner is under the supervision of the Bangko Sentral ng Pilipinas (BSP) and the Philippine Stock Exchange (PSE) does not exempt it from complying with the continuing disclosure requirements embodied in the assailed Rules. Petitioner, as a bank, is primarily subject to the control of the BSP; and as a corporation trading its securities in the stock market, it is under the supervision of the SEC. It must be pointed out that even the PSE is under the control and supervision of respondent.14 There is no over-supervision here. Each regulating authority operates within the sphere of its powers. That stringent requirements are imposed is understandable, considering the paramount importance given to the interests of the investing public.

Otherwise stated, the mere fact that in regard to its banking functions, petitioner is already subject to the supervision of the BSP does not exempt the former reasonable disclosure regulations issued by the SEC. These regulations are meant to assure full, fair and accurate disclosure of information for the protection of investors in the stock market. Imposing such regulations is a function within the jurisdiction of the SEC. Since petitioner opted to trade its shares in the exchange, then it must abide by the reasonable rules imposed by the SEC.

4. **Exempt Transactions**

- Nestle Philippines, Inc.,vs. Court of Appeals, G.R. No. 86738, November 13, 1991

NESTLE PHILIPPINES, INC., petitioner, vs. COURT OF APPEALS and SECURITIES AND EXCHANGE COMMISSION, respondents.
G.R. No. 86738 November 13, 1991

An issuance of previously authorized but still unissued capital stock may be held to be an exempt transaction by the SEC under Section 6(b) so long as the SEC finds that the requirements of registration under the Revised Securities Act are "not necessary in the public interest and for the protection of the *investors" by reason, inter alia, of the small amount of stock that is proposed to be issued or because the potential buyers are very limited in number and are in a position to protect themselves.*

FACTS

On February 21, 1983, the Authorized Capital Stock (ACS) of petitioner Nestle was increased from P300 million divided into 3 million shares with a par value of P100 per share, to P600 million divided into 6 million shares with a par value of P100 per share. Nestle underwent the necessary procedures involving Board and stockholders approvals and the necessary filings to secure the approval of the increase of ACS. It was approved by respondent SEC.

Nestle issued 344,500 shares out of its previously authorized but unissued capital stock exclusively to its principal stockholders San Miguel Corporation and to Nestle S.A. San Miguel Corporation subscribed to and completely paid up 168,800 shares, while Nestle S.A. subscribed to and paid up the balance of 175,700 shares of stock.

In 1985, petitioner Nestle filed a letter to SEC seeking exemption of its proposed issuance of additional shares to its existing principal shareholders, from the registration requirement of Section 4 of the Revised Securities Act and from payment of the fee referred to in Section 6(c) of the same Act to wit:

"Sec. 6. Exempt transactions. — a) The requirement of registration under subsection (a) of Section four of this Act shall not apply to the sale of any security in any of the following transactions: xxx xxx xxx

(4) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus; or the issuance of securities to the security holder or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith and not for the purpose of avoiding the provisions of this Act, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock."

Nestle argued that Section 6(a) (4) of the Revised Securities Act embraces "not only an increase in the authorized capital stock but also the issuance of additional shares to existing stockholders of the unissued portion of the unissued capital stock".

SEC denied petitioner's requests and ruled that the proposed issuance of shares did not fall under Section 6 (a) (4) of the Revised Securities Act, since Section 6 (a) (4) is applicable only where there is an increase in the authorized capital stock of a corporation.

MR was denied and appeal to CA was also denied. Thus this Petition for Review.

ISSUE

Whether or Not the petitioner Nestle's application for exemptions should be granted.

RULING

No. Under Sec 38 of the Corporation Code, a corporation engaged in increasing its authorized capital stock, with the required vote of its *Board of Directors and of its stockholders*, must file a sworn statement of the treasurer of the corporation showing that at least 25% of "such increased capital stock" has been subscribed and that at least 25% of the amount subscribed has been paid either in actual cash or in property transferred to the corporation. The corporation must issue at least 25% of the newly or contemporaneously authorized capital stock in the course of complying with the requirements of the Corporation Code for increasing its authorized capital stock.

After approval by the SEC of the increase of its authorized capital stock, and from time to time thereafter, the corporation, by a vote of its *Board of Directors*, and *without need* of either stockholder or SEC approval, may issue and sell shares of its *already authorized but still unissued* capital stock to existing shareholders or to members of the general public.

In the case at bar, since the 344,500 shares of Nestle capital stock are proposed to be issued from *already authorized but still unissued* capital stock and since the present authorized capital stock of 6,000,000 shares with a par value of P100.00 per share is not proposed to be further increased, the SEC and the CA correctly rejected Nestle's petition.

When capital stock is issued in the course of and in compliance with the requirements of increasing its authorized capital stock under Section 38 of the Corporation Code, the SEC examines the financial condition of the corporation, and hence there is no real need for exercise of SEC authority under the Revised Securities Act. Thus, one of the requirements under the current regulations of the SEC in respect of filing a certificate of increase of authorized capital stock, is submission of "a financial statement duly certified by an independent CPA as of the latest date possible or as of the date of the meeting when stockholders approved the increase/decrease in capital stock or thereabouts. When all or part of the newly authorized capital stock is proposed to be issued as stock dividends, the SEC requirements are even more exacting; they require, in addition to the regular audited financial statements, the submission by the corporation of a "detailed or Long Form Report of the certifying Auditor." Moreover, since approval of an increase in authorized capital stock by the stockholders holding 2/3 of the outstanding capital stock is required by Section 38 of the Corporation Code, at a stockholders meeting held for that purpose, the directors and officers of the corporation may be expected to inform the shareholders of the financial condition and prospects of the corporation and of the proposed utilization of the fresh capital sought to be raised.

On the other hand, issuance of previously authorized but theretofore unissued capital stock by the corporation requires only Board of Directors approval. Neither notice to nor approval by the shareholders or the SEC is required for such issuance. There would be no opportunity for the SEC to see to it that shareholders (especially the small stockholders) have a reasonable opportunity to inform themselves about the very fact of such issuance and about the condition of the corporation and the potential value of the shares of stock being offered.

An issuance of previously authorized but still unissued capital stock may be held to be an exempt transaction by the SEC under Section 6(b) so long as the SEC finds that the requirements of registration under the Revised Securities Act are "not necessary in the public interest and for the protection of the investors" by reason, inter alia, of the small amount of stock that is proposed to be issued or because the potential buyers are very limited in number and are in a position to protect themselves.

Petitioner Nestle's second claim for exemption is from payment of the fee provided for in Section 6 (c) of the Revised Securities Act. Petitioner claims that to require it now to pay one-tenth of one percent (1%) of the issued value of the 344,500 shares of stock proposed to be issued, is to require it to pay a second time for the same service on the part of the SEC.

We think it clear that the fee collected in 21 February 1983 by the SEC was assessed in connection with the examination and approval of the certificate of increase of authorized capital stock then submitted by petitioner. The fee, on the other hand, provided for in Section 6 (c) which petitioner will be required to pay if it does file an application for exemption under Section 6 (b), is quite different; this is a fee specifically authorized by the Revised Securities Act, (not the Corporation Code) in connection with the grant of an exemption from normal registration requirements imposed by that Act. We do not find such fee either unreasonable or exorbitant.

WHEREFORE, Petition for Review on Certiorari is hereby DENIED for lack of merit.

E. Procedure for Registration of Securities

F. Prohibitions of Fraud, Manipulation and Insider Trading

- Onapal Phils. Commodities, Inc. vs. Court of Appeals, G.R. No. 90707, Feb. 1, 1993

ONAPAL PHILIPPINES COMMODITIES, INC., petitioner, vs.
THE HONORABLE COURT OF APPEALS and SUSAN CHUA, respondents.
G.R. No. 90707 February 1, 1993 SECOND DIVISION **CAMPOS, JR., *J.***

In America, it was unlawful to make contracts commonly called "futures". Such contracts were found to be mere gambling or wagering agreements covered and protected by the rules and regulations of exchange in which they were transacted under devices which rendered it impossible for the courts to discover their true character. The evil sought to be suppressed by legislation is the speculative dealings by means of such trading contracts, which degenerated into mere gambling in the future price of goods/commodities ostensibly but not actually, bought or sold.

FACTS

The petitioner, ONAPAL Philippines Commodities, Inc. (petitioner), a duly organized and existing corporation, was licensed as commission merchant/broker by the SEC, to engage in commodity futures trading in Cebu City under Certificate of Registration No. CEB-182. On April 27, 1983, petitioner and private respondent concluded a "Trading Contract". Like all customers of the petitioner, private respondent was furnished regularly with "Commodities Daily Quotations" showing daily movements of prices of commodity futures traded and of market reports indicating the volume of trade in different future exchanges in Hongkong, Tokyo and other centers. Every time a customer enters into a trading transaction with petitioner as broker, the trading order is communicated by telex to its principal, Frankwell Enterprises of Hongkong. If the transaction, either buying or selling commodity futures, is consummated by the principal, the petitioner issues a document known as "Confirmation of Contract and Balance Sheet" to the customer. An order of a customer of the petitioner is supposed to be transmitted from Cebu to petitioner's office in Manila. From Manila, it should be forwarded to Hongkong and from there, transmitted to the Commodity Futures Exchange in Japan.

The term "futures" has grown out of those purely speculative transactions in which there are nominal contracts to sell for future delivery, but where in fact no delivery is intended or executed. The nominal seller does not have or expect to have a stock of merchandise he purports to sell nor does the nominal buyer expect to receive it or to pay for the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up and down, and accounted for to the buyer. This is simple speculation, gambling or wagering on prices within a given time; it is not buying and selling and is illegal as against public policy.

The trading contract signed by private respondent and Albert Chiam, representing petitioner, is a contract for the sale of products for future delivery, in which either seller or buyer may elect to make or demand delivery of goods agreed to be bought and sold, but where no such delivery is actually made. By delivery is meant the act by which the *res* or subject is placed in the actual or constructive possession or control of another. It may be actual as when physical possession is given to the vendee or his representative; or constructive which takes place without actual transfer of goods, but includes symbolic delivery or substituted delivery as when the evidence of title to the goods, the key to the warehouse or bill of lading/warehouse receipt is delivered. As a contract in printed form, prepared by petitioner and served on private respondent, for the latter's signature, the trading contract bears all the indicia of a valid trading contract because it complies with the Rules and Regulations on Commodity Futures Trading as prescribed by the SEC. But when the transaction which was carried out to implement the written contract deviates from the true import of the agreement as when no such delivery, actual or constructive, of the commodity or goods is made, and final settlement is made by payment and receipt of only the difference in prices at the time of delivery from that prevailing at the time the sale is made, the dealings in futures become mere speculative contracts in which the parties merely gamble on the rise or fall in prices. A contract for the sale or purchase of goods/commodity to be delivered at future time, if entered into without the intention of having any goods/commodity pass from one party to another, but with an understanding that at the appointed time, the purchaser is merely to receive or pay the difference between the contract and the market prices, is a transaction which the law will not sanction, for being illegal.

ISSUE

Whether or Not their agreement is illegal (WON it is considered as gambling contract)

RULING

The written trading contract in question is not illegal **but the transaction between the petitioner and the private respondent purportedly to implement the contract is in the nature of a gambling agreement** and falls within the ambit of Article 2018 of the New Civil Code, which is quoted hereunder:

If a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void. The loser may recover what he has paid.

After considering all the evidence in this case, it appears that petitioner and private respondent did not intend, in the deals of purchasing and selling for future delivery, the actual or constructive delivery of the goods/commodity, despite the payment of the full price therefor. The contract between them falls under the definition of what is called "futures". The payments made under said contract were payments of difference in prices arising out of the rise or fall in the market price above or below the contract price thus making it purely gambling and declared null and void by law.

In England and America where contracts commonly called futures originated, such contracts were at first held valid and could be enforced by resort to courts. Later these contracts were held invalid for being speculative, and in some states in America, it was unlawful to make contracts commonly called "futures". Such contracts were found to be mere gambling or wagering agreements covered and protected by the rules and regulations of exchange in which they were transacted under devices which rendered it impossible for the courts to discover their true character. The evil sought to be suppressed by legislation is the speculative dealings by means of such trading contracts, which degenerated into mere gambling in the future price of goods/commodities ostensibly but not actually, bought or sold.

Under Article 2018, the private respondent is entitled to refund from the petitioner what she paid. There is no evidence that the orders of private respondent were actually transmitted to the petitioner's principal in Hongkong and Tokyo. There was no arrangement made by petitioner with the Central Bank for the purpose of remitting the money of its customers abroad. The money which was supposed to be remitted to Frankwell Enterprises of Hongkong was kept by petitioner in a separate account in a local bank. Having received the money and orders of private respondent under the trading contract, petitioner has the burden of proving that said orders and money of private respondent had been transmitted. But petitioner failed to prove this point.

5. **Manipulation of Security Prices**
6. **Short Sales**
7. **Fraudulent Transactions**

- Securities and Exchange Commission v. Price Richardson Corp., G.R. No. 197032, July 26, 2017, Justice Leonen

SECURITIES AND EXCHANGE COMMISSION VERSUS PRICE RICHARDSON CORPORATION, CONSUELO VELARDE-ALBERT, AND GORDON RESNICK
G.R. NO.197032, JULY 26, 2017, SECOND DIVISION, J. LEONEN

A corporation's personality is separate and distinct from its officers, directors, and shareholders. To be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.

FACTS

Respondent Price Richardson Corporation is a Philippine corporation duly incorporated under Philippine laws. Its primary purpose is "to provide administrative services which includes but is not limited to furnishing all necessary and incidental clerical, bookkeeping, mailing and billing services." Its former employee, Michelle S. Avelino, executed a sworn affidavit at the National Bureau of Investigation's Interpol Division, alleging that Price Richardson was "engaged in boiler room operations, wherein the company sells non-existent stocks to investors using high pressure sales tactics." Whenever this activity was discovered, the company would close and emerge under a new company name. Pertinent portions of her sworn statement read:

Q03 State your reason why you are here at the NBI Interpol?

A I am here to give a statement about the "boiler room" operation of PRICE RICHARDSON CORPORATION

Q04 What do you mean by "boiler room"?

A boiler room is a company which sells non-existent stocks to investors by using high pressure sales tactics. They had no intention of paying the duped investors and when their operation ha[s] been discovered this company would close and would spring up under a new name. I know this for a fact because I used to work before with New Millennium Market Research, Inc. which was shut down after the duped victims reported to authorities [its] illegal activities. New Millennium Market Research, Inc. eventually became Price Richardson. Boiler Room operation is an illegal activity considering that the company has no license from the Securities and Exchange Commission to deal on securities or stocks.

Q05 Why do you know that Price Richardson is a "boiler room"?

I used to work there as a telemarketer from September 3, 2001 to October 15, 2001.

Q06 As telemarketer at Price Richardson what do you do?

Our supervisor would give "leads" for me to call. "Leads" are names of prospective investors.Upon contracting a prospective investor, I would read a prepared "script" or presentation of the company's profile and the services it offers. If the prospect is interested, I will write all the information about this person and would forward the same to our supervisor JOVY AGUDO. All our leads or prospects are foreigners

Q07 As a telemarketer, how many calls do you make in a day and how many investors do you qualify?

I average 100 calls a day and I can qualify an average of six (6) would[-]be investors daily.

Q08 After you qualify a prospective investor, what happens next?

The company will send him a newsletter and then the salesman would contact him and [use] high-pressure sales tactics to make a sale of non-existent stocks. The salesmen would use the data and information gathered by the telemarketers and would make reference to the calls or initial contact made by telemarketers. If the investor agreed, the salesman would give him instructions on how to send the money to the company. Usually, the payment is made through telegraphic transfers. After the payment has been received, a confirmation receipt would then be sen[t] by the courier to the investor indicating therein the name of the company where the alleged investment was made, the number of shares, the amount per share, the tax and commissions paid. However, no hard copy of the stocks or certificates will be issued for in truth and in fact there was no actual sale or transfer of stocks or certificates for they are nonexistent. In the event that the investor would then sell his certificates or stocks, the salesman would try to convince the investor not to sell in order not to release the money. Eventually, the company would disappear and would spring up under a new name.

Q09 Who are these salesmen?

The salesmen are all foreigners of various nationalities. They used also a prepared script to induce the prospective client to invest.

Q10 Do you know if these salesmen are licensed stockbrokers duly authorized by the Securities and Exchange Commission?

They are not licensed by the Securities and Exchange Commission. They are tourists here in the country and they used aliases to hide their identities Janet C. Rillo corroborated Avelino's claims. She was a former employee of Capital International Consultants, Inc., a corporation that allegedly merged with Price Richardson. She claimed that their calls to prospective investors should be in Price Richardson's name.

Upon application of the National Bureau of Investigation Interpol Division and the Securities and Exchange Commission, RTC issued three (3) search warrants against Capital International and Price Richardson for violation of Section 2820 of the Securities Regulation Code. The RTC ordered the seizure of Price Richardson's and Capital International's office equipment, documents, and other items that were connected with the alleged violation.

The Securities and Exchange Commission filed before the Department of Justice its complaint against Price Richardson and its incorporators and directors alleging that Price Richardson was neither licensed nor registered "to engage in the business of buying and selling securities within the Philippines or act as salesman, or an associated person of any broker or dealer." Baybay, La Torre, Limpin, Rupido, and Taopo (the incorporators and directors) were Price Richardson's incorporators and directors. Velarde-Albert was its Director for Operations and Resnick was its Associated Person. The Securities and Exchange Commission claimed that Velarde-Albert and Resnick should be liable for acting as brokers or salesmen despite not being registered. Meanwhile, the incorporators and directors' liability was based on being responsible "for the corporate management with the obligation to ensure that Price Richardson operated within the bounds of law."

Price Richardson, Velarde-Albert, Resnick, and the incorporators and directors were also charged with Estafa under the Revised Penal Code. The Securities and Exchange Commission averred that they obtained their investors' confidence by comporting themselves as legitimate stock brokers. Thus, when they failed to return the investments they received, their act "constituted misappropriation with abuse of confidence."

In defense, the incorporators and directors denied knowing or agreeing to the offenses charged. They countered that they already transferred their respective shares to various individuals as shown by their registered Deeds of Absolute Sale of Shares of Stock. Velarde-Albert denied the Securities and Exchange Commission's allegations against her while Resnick did not submit any evidence refuting the charges.

State Prosecutor Aristotle M. Reyes issued a Resolution, dismissing the Securities and Exchange Prosecutor Reyes' Resolutions, which found no probable cause to file an information. Hence, the present petition by the SEC Commission's complaint "for lack of probable cause." The SEC filed a Petition for Certiorari before the CA. CA held that there was no grave abuse of discretion on the part of Secretary Gonzalez when he affirmed State Prosecutor Reyes' Resolutions, which found no probable cause to file an Information. Hence, the present petition by the SEC.

ISSUE

1. Whether or not there is probable cause to indict respondent Price Richardson for violation of Sections 26.3 and 28 of the Securities Regulation Code and Article 315(1)(b) of the Revised Penal Code.
2. Whether or not Respondents Velarde-Albert and Resnick can be indicted for violations of the Securities Regulation Code and the Revised Penal Code.

RULING

1. Yes, there is probable cause to indict respondents for violation of the Securities Regulation Code and the Revised Penal Code. Petitioner provided sufficient bases to form a belief that a crime was possibly committed by respondent Price Richardson.

An examination of the records reveals that probable cause exists to file an information against respondent Price Richardson for violating the laws. Based on the Certification issued by the Market Regulation Department of the Securities and Exchange Commission, respondent Price Richardson "has never been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities." Petitioner also certified that respondent Price Richardson "is not, under any circumstances, authorized or licensed to engage and/or solicit investments from clients." However, the documents seized from respondent Price Richardson's office show possible sales of securities.

Petitioner further supports its charges by submitting the complaint-affidavits and letters of individuals who transacted with Price Richardson:

The SEC has submitted the complaint of Mr. Don Sextus Nilantha, a citizen of Sri Lanka who clearly named Price Richardson as selling him 1000 shares of Hugo Intl. Telecom, Inc. sometime in April 2001. At such time, and until today, Price Richardson was not authorized to act as traders or brokers o[f] securities in the Philippines.
Furthermore, there are other complainants against Price Richardson who deserve to have their complaints aired and tried before the proper court. Mr. Johannes Jacob Van Prooyen filed a complaint against Price Richardson with the National Bureau of Investigation . In the said complaint, Mr. Van Prooyen clearly pointed to Price Richardson as the ones who contacted him to buy 2000 shares of Hugo Intl. Telecom, Inc. and to buy 2000 shares of GeoAlert. At no time at such relevant dates was Price Richardson licensed to act as traders or brokers of securities in the Philippines. Mr. Bjorn L. Nymann of Oslo, Norway wrote about Price Richardson to this very same Department of Justice, In

his letter Mr. Nymann admitted dealing with Price Richardson. He admitted to having bought 3000 shares of Hugo Intl. Telecom, Inc. Although Mr. Nymann is not a complaining witness against Price Richardson, his letter is relevant as at no time at such relevant date was Price Richardson licensed to act as traders or brokers of securities in the Philippines. In addition, respondent Price Richardson stated in its Memorandum:

If this Honorable Court were to consider the set-up of Price Richardson, it was as if it engaged in outsourced operations wherein persons located in the Philippines called up persons located in foreign locations to inform them of certain securities available in certain locations, and to determine if they wanted to buy these securities which are offered in a different country. The evidence gathered by petitioner and the statement of respondent Price Richardson are facts sufficient enough to support a reasonable belief that respondent is probably guilty of the offense charged.

2. No, Respondents Velarde-Albert and Resnick cannot be indicted for violations of the Securities Regulation Code and the Revised Penal Code.

Petitioner failed to allege the specific acts of respondents Velarde-Albert and Resnick that could be interpreted as participation in the alleged violations. There was also no showing, based on the complaints, that they were deemed responsible for Price Richardson's violations. There is no sufficient evidence to substantiate SEC's allegation that individual respondents, Connie Albert and Gordon Resnick, acted as broker, salesman or associated person without prior registration with the Commission. The evidence at hand merely proves that the above-named respondents were not licensed to act as broker, salesman or associated person. No further proof, however, was presented showing that said respondents have indeed acted as such in trading securities. Although complainant SEC presented several confirmation of trade receipts and document intended to establish respondents Albert and Resnick illegal activities, the said documents, standing alone as heretofore stated, could not warrant the indictment of the two respondents for the offense charged.

A corporation's personality is separate and distinct from its officers, directors, and shareholders. To be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.

8. Insider Trading

- Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, Oct. 6, 2008

SECURITIES AND EXCHANGE COMMISSION, petitioner, vs. INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIO RICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR., respondents.
G.R. No. 135808, Oct. 6, 2008 EN BANC CHICO-NAZARIO, *J.*

No implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper *rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.*

FACTS

6 Aug 1994 – **Board of Directors of IRC approved a Memorandum of Agreement (MoA) with Ganda Holdings Berhad (GHB)**.

Under the MoA, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc. (GEHI), which would own and operate a 102 megawatt gas turbine power-generating barge.

Also stipulated is that GEHI would assume a five-year power purchase contract with National Power Corp. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-Sept 1994.

In exchange, IRC will issue to GHB 55% of the expanded capital stock of IRC (amounting to 40.88 billion shares – total par value of P488.44 million) On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc. (PRCI). PRCI owns 25.724 hectares of real estate property in Makati.

Under the Agreement, GHB, a member of the Westmont Group of Companies in Malaysia, shall extend or arrange a loan required to pay for the proposed acquisition by IRC of PRCI.

8 Aug 1994 – IRC alleged that a press release announcing the approval of the agreement was sent through fax to Philippine Stock Exchange (PSE) and the SEC, but that the fax machine of SEC could not receive it. Upon the advice of SEC, IRC sent the press release on the morning of 9 Aug 1994.

SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors heavily traded IRC shares utilizing this material insider information.

16 Aug 1994 – SEC Chairman issued a directive requiring IRC to submit to SEC a copy of its aforesaid MoA with GHB and further directed all principal officers of IRC to appear at a hearing before the Brokers and Exchanges Dept (BED) of SEC to explain IRC's failure to immediately disclose the information as required by the Rules on Disclosure of Material Facts by Corporations Whose Securities are Listed in Any Stock Exchange or Registered/Licensed Under the Securities Act
IRC sent a letter to SEC, attaching copies of MoA and its directors appeared to explain IRC's alleged failure to immediately disclose material information as required under the Rules on Disclosure of Material Facts.

19 Sept 1994 – SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure when it failed to make timely disclosure, and that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Sec 30, in relation to Sec 36 of the Revised Securities Act.

IRC filed an Omnibus Motion (later an Amended Omnibus Motion) alleging that SEC had no authority to investigate the subject matter, since under Sec 8 of PD 902-A, as amended by PD 1758, jurisdiction was conferred upon the Prosecution and Enforcement Dept (PED) of SEC IRC also claimed that SEC violated their right to due process when it ordered that the respondents appear before SEC and show cause why no administrative, civil or criminal sanctions should be imposed on them, and thus, shifted the burden of proof to the respondents. They filed a Motion for Continuance of Proceedings.

No formal hearings were conducted in connection with the Motions.

25 Jan 1995 – SEC issued an Omnibus Order: creating a special investigating panel to hear and decide the case in accordance with Rules of Practice and Procedure before the PED, SEC; to recall the show cause orders; and to deny the Motion for Continuance for lack of merit.

Respondents filed a petition before the CA questioning the Omnibus Orders and filed a Supplemental Motion wherein they prayed for the issuance of a writ of preliminary injunction.

5 May 1995 – CA granted their motion and issued a writ of preliminary injunction, which effectively enjoined SEC from filing any criminal, civil or administrative case against the respondents.
20 Aug 1998 – CA promulgated a Decision

Determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which respondents allegedly violated.

It found no statutory authority for SEC to initiate and file any suit for civil liability under Sec 8, 30 and 36 of the Revised Securities Act, thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection.

It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders

Further decided that the **Rules of Practice and Procedure before the PED did not comply with the statutory requirements contained in the Administrative Code of 1997**. Section 9, Rule V of the Rules of Practice and Procedure before the PED affords a party the right to be present but without the right to cross-examine witnesses presented against him, in violation of Sec 12(3), Chap 3, Book VII of the Administrative Code.

ISSUES

1. Do sections 8, 30, and 36 of the Revised Securities Act require the enactment of implementing rules to make them binding and effective? No.

2. Does the right to cross-examination be demanded during investigative proceedings before the PED? No.

3. May a criminal case still be filed against the respondents despite the repeal of Sections 8, 30, and 36 of the Revised Securities Act? Yes.

4. Did SEC retain the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED? Yes.

5. Does the instant case prescribed already? No.

6. Is CA justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders? Yes.

RULING

The petition is impressed with merit.

** It should be noted that while the case was pending in SC, RA 8799 (Securities Regulation Code) took effect on 8 August 2000.*

Section 8 of PD 902-A, as amended, which created the PED, was already repealed as provided for in Sec 76 of Securities Regulation Code.
Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.

<u>On the merits:</u>

Sections 8, 30, and 36 of the Revised Securities Act (RSA) do not require the enactment of implementing rules to make them binding and effective.

The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given.

Absence of any constitutional or statutory infirmity, which may concern Secs 30 and 36 of RSA, the provisions are legal and binding.

Every law has in its favour the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.

The Court does not discern any vagueness or ambiguity in Sec 30 and 36 of RSA
Sec 30 – Insider's duty to disclose when trading
Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors:

the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.

The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor.

In some cases, however, there may be valid corporate reasons for nondisclosure of material information. Where such reasons exist, an issuer's decision not to make any public disclosures is not ordinarily considered as a violation of insider trading. At the same time, the undisclosed information should not be improperly used for non-corporate purposes, particularly to disadvantage other persons with whom an insider might transact, and therefore the insider must abstain from entering into transactions involving such securities.

Sec 36 – Directors, officers and principal stockholders

A straightforward provision that imposes upon: a beneficial owner of more than 10 percent of any class of any equity security or a director or any officer of the issuer of such security the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership.

Sections 30 and 36 of the RSA were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public.

Sec 30 prevented the unfair use of non-public information in securities transactions, while Sec 36 allowed the Sec to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies.

The lack of implementing rules cannot suspend the effectivity of these provisions.

The right to cross-examination is not absolute and cannot be demanded during investigative proceedings before the PED.

Sec 4, Rule 1 of the PED Rules of Practice and Procedure, categorically stated that the proceedings before the PED are summary in nature, not necessarily adhering to or following the technical rules of evidence obtaining in the courts of law

Rule V – Submission of documents, determination of necessity of hearing and disposition of case.

A formal hearing was not mandatory, it was within the discretion of the Hearing Officer whether there was a need for a formal hearing.

Since the holding of a hearing before the PED is discretionary, then the right to cross-examination could not have been demanded by either party.

Chapter 3, Book VII of the Administrative Code refers to "Adjudication" and does not affect the investigatory functions of the agencies.

The law creating PED empowers it to investigate violations of the rules and regulations promulgated by the SEC and to file and prosecute such cases.

It fails to mention any adjudicatory functions insofar as the PED is concerned. Thus, PED Rules of Practice need not comply with the provisions of the Administrative Code on adjudication.

The only powers which the PED was likely to exercise over the respondents were investigative in nature

In proceedings before administrative or quasi-judicial bodies, such as NLRC and POEA, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. It is enough that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favour, to comply with the due process requirements.

The Securities Regulation Code (SRC) did not repeal Sections 8, 30, and 36 of the Revised Securities Act since said provisions were re-enacted in the new law.

when the repealing law punishes the act previously penalized under the old law, the act committed before the re-enactment continues to be an offense and pending cases are not affected.

Sec 8 of RSA, which previously provided for the registration of securities and the information that needs to be included in the registration statements, was expanded under Sec 12 of the Securities Regulations Code. Further details of the information required to be disclosed by the registrant are explained.

Sec 30 of RSA has been re-enacted as Sec 27 of SRC, still penalizing an insider's misuse of material and non-public information about the issuer, for the purpose of protecting public investors
Sec 23 of SRC was practically lifted from Sec 36 of RSA.

The legislature had not intended to deprive the courts of their authority to punish a person charged with violation of the old law that was repealed

The SEC retained the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED.

Sec 53 of SRC clearly provides that criminal complaints for violations of rules and regulations enforced or administered by SEC shall be referred to the DOJ for preliminary investigation, while the SEC nevertheless retains limited investigatory powers. SEC may still impose the appropriate administrative sanctions under Sec 54.

The instant case has not yet prescribed.

Respondents point out that the prescription period applicable to offenses punished under special laws is 12 years. Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot.

It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed as offense.

The CA was justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders dated 23 October 1995.

Since it found other issues that were more important than whether or not the PED was the proper body to investigate the matter, CA denied SEC's motion for leave to quash SEC Omnibus Orders.

In all, the SC rules that no implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Secs 8, 30, and 36 of the Revised Securities Act.

SC – petition granted

G. Protection of Investors

- Phil. Veterans Bank vs. Callangan and/or SEC, G.R. No. 191995, Aug. 3, 2011

PHILIPPINE VETERANS BANK v. **JUSTINA CALLANGAN, in her capacity as Director of the Corporation Finance Department of the Securities and Exchange Commission and/or the SECURITIES AND EXCHANGE COMMISSION**
G.R. No. 191995, 3 August 2011, SECOND DIVISION (Brion, J.)

A public company, as contemplated by the SRC, is not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a specific group of people, are considered a public company, provided they meet the requirements enumerated under Subsections 17.1 and 17.2 of the SRC and *Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC.*

FACTS

Justina F. Callangan (Callangan), the Director of the Corporation Finance Department of the Securities and Exchange Commission (SEC), sent Philippine Veterans Bank (Bank) a letter informing it that it qualifies as a public company under Section 17.2 of the Securities Regulation Code (SRC) in relation with Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC. The Bank is thus required to comply with the reportorial requirements set forth in Section 17.1 of the SRC.
The Bank responded by explaining that it should not be considered a public company because it is a private company whose shares of stock are available only to a limited class or sector, *i.e.*, to World War II veterans, and not to the general public. Director Callangan rejected the Bank's explanation and assessed it a total penalty of One Million Nine Hundred Thirty-Seven Thousand Two Hundred Sixty-Two and 80/100 Pesos (P1,937,262.80) for failing to comply with the SRC reportorial requirements from 2001 to 2003. The Bank moved for the reconsideration of the assessment, but Director Callangan denied the motion. The SEC *En Banc* also dismissed the Bank's appeal for lack of merit prompting the Bank to file a petition for review with the Court of Appeals (*CA*).

The CA dismissed the petition and affirmed the assailed SEC ruling, with the modification that the assessment of the penalty be recomputed from May 31, 2004. The CA also denied the Bank's motion for reconsideration, opening the way for the Bank's petition for review on *certiorari* filed with the Supreme Court. The Supreme Court denied the Bank's petition for failure to show any reversible error in the assailed CA decision and resolution.

In its Motion for Reconsideration, the bank reiterates that it is not a public company subject to the reportorial requirements under Section 17.1 of the SRC because its shares can be owned only by a specific group of people, namely, World War II veterans and their widows, orphans and compulsory heirs, and is not open to the investing public in general. The Bank also asks the Court to take into consideration the financial impact to the cause of veteranism; compliance with the reportorial requirements under the SRC, if the Bank would be considered a public company, would compel the Bank to spend approximately P40 million just to reproduce and mail the Information Statement to its 400,000 shareholders nationwide.

ISSUE

Whether or not the Bank is a public company.

RULING

YES. It is clear that a public company, as contemplated by the SRC, is not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a specific group of people, are considered a public company, provided they meet the requirements enumerated under Subsections 17.1 and 17.2 of the SRC. We also cite Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC, which defines a public company as any corporation with a class of equity securities listed on an Exchange or with assets in excess of Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more holders, at least two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities.

The records establish, and the Bank does not dispute, that the Bank has assets exceeding P50,000,000.00 and has 395,998 shareholders. It is thus considered a public company that must comply with the reportorial requirements set forth in Section 17.1 of the SRC.

Additionally, and contrary to the Banks claim, the Bank's obligation to provide its stockholders with copies of its annual report is actually for the benefit of the veterans-stockholders, as it gives these stockholders access to information on the Banks financial status and operations, resulting in greater transparency on the part of the Bank. While compliance with this requirement will undoubtedly cost the Bank money, the benefit provided to the shareholders clearly outweighs the expense. For many stockholders, these annual reports are the only means of keeping in touch with the state of health of their investments; to them, these are invaluable and continuing links with the Bank that immeasurably contribute to the transparency in public companies that the law envisions.

4. Tender Offer Rule

- Cemco Holdings, Inc. vs. National Life Ins. Co. of the Phil., G.R. No. 171815, Aug. 7. 2007

CEMCO HOLDINGS VERSUS NATIONAL LIFE INSURANCE COMPANY
G.R. 171815, AUGUST 7, 2007, THIRD DIVISION, J. CHICO-NAZARIO

We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions.

FACTS

Union Cement Corporation (UCC) has two principal stockholders UCHC with shares amounting to 60.51%, and petitioner Cemco with 17.03%. Majority of UCHCs stocks were owned by BCI with 21.31% and ACC with 29.69%. Cemco, on the other hand, owned 9% of UCHC stocks. BCI informed the Philippine Stock Exchange (PSE) that it and its subsidiary ACC had passed resolutions to sell to Cemco the BCIs stocks in UCHC equivalent to 21.31% and ACCs stocks in UCHC equivalent to 29.69%. as a result of petitioner Cemcos acquisition of BCI and ACCs shares in UCHC, petitioners total beneficial ownership, direct and indirect, in UCC has increased by 36% and amounted to at least 53% of the shares of UCC. As a consequence the PSE, inquired to SEC as to whether the Tender Offer Rule under Rule 19 of the Implementing Rules of the Securities Regulation Code is not applicable to the purchase by petitioner of the majority of shares of UCC.The SECs Corporate Finance Department responded to the query of the PSE that while it was the stance of the department that the tender offer rule was not applicable, the matter must still have to be confirmed by the SEC en banc. Thereafter, SEC confirmed that the SEC en banc had resolved that the Cemco transaction was not covered by the tender offer rule. Feeling aggrieved by the transaction, respondent National Life Insurance Company of the Philippines, Inc., a minority stockholder of UCC, sent a letter to Cemco demanding the latter to comply with the rule on mandatory tender offer. Cemco, however, refused.

Respondent filed a complaint with the SEC asking it to reverse its Resolution and to declare the purchase agreement of Cemco void and praying that the mandatory tender offer rule be applied to its UCC shares. In a Decision the SEC ruled in favor of the respondent by reversing and setting aside its Resolution and directed petitioner Cemco to make a tender offer for UCC shares to respondent and other holders of UCC shares similar to the class held by UCHC in accordance with Section 9(E), Rule 19 of the Securities Regulation Code. Petitioner filed a petition with the Court of Appeals challenging the SECs jurisdiction to take cognizance of respondents complaint and its authority to require Cemco to make a tender offer for UCC shares, and arguing that the tender offer rule does not apply.

A Cease and Desist Order was then issued and signed by SEC Commissioner Jesus Martinez to restrain the use of said proxies during the annual meeting. Nevertheless, Rosete continued the meeting despite the foregoing. The SEC then issued a Show Cause Order against Rosete ordering them togive an explanation why they should not be cited in contempt.

ISSUE

Whether or not, the SEC has jurisdiction over the respondent's complaint.

RULING

Yes, The Court affirmed the decision of the CA. SEC was acting pursuant to Rule 19(13) of the Amended Implementing Rules and Regulations of the Securities Regulation Code. The Commission shall have, among others, the following powers and functions: Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws. The foregoing provision bestows upon the SEC the general adjudicative power which is implied from the express powers of the Commission or which is incidental to, or reasonably necessary to carry out, the performance of the administrative duties entrusted to it. As a regulatory agency, it has the incidental power to conduct hearings and render decisions fixing the rights and obligations of the parties. And as held by the Court of Appeals: We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions. A regulatory body like the SEC may conduct hearings in the exercise of its regulatory powers, and if the case involves violations or conflicts in connection with the performance of its regulatory functions, it will have the duty and authority to resolve the dispute for the best interests of the public

5. Rules on Proxy Solicitation

- GSIS vs. Court of Appeals, G.R. No. 183905, Apr. 16, 2009

GOVERNMENT SERVICE, INSURANCE SYSTEM, Petitioner, vs. THE HON. COURT OF APPEALS, (8TH DIVISION), ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO, Respondents.
G.R. No. 183905, Apr. 16, 2009 SECOND DIVISION TINGA, *J.*

Under Section 20.1, the solicitation of proxies must be in accordance with rules and regulations issued by the SEC, such as AIRR-SRC Rule 4. And by virtue of Section 53.1, the SEC has the discretion "to make such investigations as it deems necessary to determine whether any person has violated" any rule issued by it, such as AIRR-SRC Rule 4. The investigatory power of the SEC established by Section 53.1 is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares. For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a motu proprio basis. At the same time, Meralco raises the substantial point that nothing in the SRC empowers the SEC to annul or invalidate improper proxies issued in contravention of Section 20

FACTS

The annual stockholders' meeting (annual meeting) of the Manila Electric Company (Meralco) was scheduled on 27 May 2008.1 In connection with the annual meeting, proxies2 were required to be submitted on or before 17 May 2008, and the proxy validation was slated for five days later, or 22 May.

In view of the resignation of Camilo Quiason, the position of corporate secretary of Meralco became vacant.5 On 15 May 2008, the board of directors of Meralco designated Jose Vitug6 to act as corporate secretary for the annual meeting. However, when the proxy validation began on 22 May, the proceedings were presided over by respondent Anthony Rosete (Rosete), assistant corporate secretary and in-house chief legal counsel of Meralco.8 Private respondents nonetheless argue that Rosete was the acting corporate secretary of Meralco.9 Petitioner Government Service Insurance System (GSIS), a major shareholder in Meralco, was distressed over the proxy validation proceedings, and the resulting certification of proxies in favor of the Meralco management.

On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as invalid.11 Three days later, on 26 May, GSIS filed a Notice with the RTC manifesting the dismissal of the complaint.12 On the same day, GSIS filed an Urgent Petition13 with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents Manuel Lopez,14 Felipe Alfonso,15 Jesus Francisco,16 Oscar Lopez, Christian Monsod,17 Elpidio Ibañez,18 Francisco Giles-Puno19 "or any officer representing MERALCO Management," and to annul and declare invalid said proxies.20 GSIS also prayed for the issuance of a Cease and Desist Order (CDO) to restrain the use of said proxies during the annual meeting scheduled for the following day.21 A CDO22 to that effect signed by SEC Commissioner Jesus Martinez was issued on 26 May 2008, the same day the complaint was filed. During the annual meeting held on the following day, Rosete announced that the meeting would push through, expressing the opinion that the CDO is null and void.

Many developments involving the Court of Appeals' handling of CA-G.R. SP No. 103692 and the conduct of several of its individual justices are recounted in our Resolution dated 9 September 2008 in A.M. No. 08-8-11-CA (Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. SP No. 103692).26 On 23 July 2008, the Court of Appeals Eighth Division promulgated a decision in the case: The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered.

The two remaining cases before us are docketed as G.R. No. 183905 and 184275. G.R. No. 183905 pertains to a petition for certiorari and prohibition filed by GSIS, against the Court of Appeals, and respondents Rosete, Lopez, Alfonso, Francisco, Monsod, Ibañez and Puno, all of whom serve in different corporate capacities with Meralco or First Philippines Holdings Corporation, a major stockholder of Meralco and an affiliate of the Lopez Group of Companies. This petition seeks of the Court to declare the 23 July 2008 decision of the Court of Appeals null and void, affirm the SEC's jurisdiction over the petition filed before it by GSIS, and pronounce that the CDO and the SCO orders are valid. This petition was filed in behalf of GSIS by the "GSIS Law Office;" it was signed by the Chief Legal Counsel and Assistant Legal Counsel of GSIS, and three self-identified "Attorney[s]," presumably holding lawyer positions in GSIS.

The OSG also filed the other petition, docketed as G.R. No. 184275. It identifies as its petitioners the SEC, Commissioner Martinez in his capacity as OIC of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC – the same petitioners in the aborted petition for review initially docketed as G.R. No. 183933. Unlike what was adverted to in the motion for extension filed by the same petitioners in G.R. No. 183933, the petition in G.R. No. 184275 is one for certiorari under Rule 65 as indicated on page 3 thereof,31 and not a petition for review. Interestingly, save for the first page which leaves the docket number blank, all 86 pages of this petition for certiorari carry a header wrongly identifying the pleading as the non-existent petition for review under G.R. No. 183933. This petition seeks the "reversal" of the assailed decision of the Court of Appeals, the recognition of the jurisdiction of the SEC over the petition of GSIS, and the affirmation of the CDO and SCO.

ISSUES

1. Whether the petitioner abused his discretion in nullifying the deeds of sale and in proceeding with the expropriation proceeding, that question is eclipsed by the concern of whether Judge Pedro T. Santiago may file this petition at all.
2. Whether private respondents are correct that the petition filed by the SEC in G.R. No. 184275 should be expunged
3. Whether the SEC has jurisdiction over the petition filed by GSIS. To recall, SEC has sought to enjoin the use and annul the validation, of the proxies issued in favor of several of the private respondents, particularly in connection with the annual meeting.

RULING

The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered, out of equitable considerations, as an election contest in the RTC, because the prescriptive period of 15 days from the May 27, 2008 Meralco election to file an election contest in the RTC had already run its course, pursuant to Sec. 3, Rule 6 of the interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, due to deliberate act of GSIS in filing a complaint in the SEC instead of the RTC.

With respect to the second issue, petitioners are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero.

The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on certiorari, but withheld giving due course to it.32 Under Section 1 of Rule 45, which governs appeals by certiorari, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for certiorari before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for certiorari filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents.

Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for certiorari filed with the Court of Appeals. Yet their involvement in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest.

Under Section 20.1, the solicitation of proxies must be in accordance with rules and regulations issued by the SEC, such as AIRR-SRC Rule 4. And by virtue of Section 53.1, the SEC has the discretion "to make such investigations as it deems necessary to determine whether any person has violated" any rule issued by it, such as AIRR-SRC Rule 4. The investigatory power of the SEC established by Section 53.1 is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares. For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a motu proprio basis.

At the same time, Meralco raises the substantial point that nothing in the SRC empowers the SEC to annul or invalidate improper proxies issued in contravention of Section 20. It cites that the penalties defined by the SEC itself for violation of Section 20 or AIRR-SRC Rule 20 are limited to a reprimand/warning for the first offense, and pecuniary fines for succeeding offenses.43 Indeed, if the SEC does not have the power to invalidate proxies solicited in violation of its promulgated rules, serious questions may be raised whether it has the power to adjudicate claims of violation in the first place, since the relief it may extend does not directly redress the cause of action of the complainant seeking the exclusion of the proxies.

As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC.44

Yet a closer reading of the provision indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers.

Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) the validation of proxies, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

Unlike either Section 20.1 or Section 53.1, which merely alludes to the rule-making or investigatory power of the SEC, Section 5 of Pres. Decree No. 902-A sets forth a definitive rule on jurisdiction, expressly granting as it does "original and exclusive jurisdiction" first to the SEC, and now to the regular courts. The fact that the jurisdiction of the regular courts under Section 5(c) is confined to the voting on election of officers, and not on all matters which may be voted upon by stockholders, elucidates that the power of the SEC to regulate proxies remains extant and could very well be exercised when stockholders vote on matters other than the election of directors.

That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation.

The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the CDO and SDO issued by that body. However, especially with respect to the CDO, there is need for this Court to squarely rule on the question pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC.

To recount the facts surrounding the issuance of the CDO, GSIS filed its petition with the SEC on 26 May 2008. The CDO, six (6) pages in all with three (3) pages devoted to the tenability of granting the injunctive relief, was issued on the very same day, 26 May 2008, without notice or hearing. The CDO bore the signature of Commissioner Jesus Martinez, identified therein as "Officer-in-Charge," and nobody else's.

6. Disclosure Rule

- Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, Oct. 6, 2008

SECURITIES AND EXCHANGE COMMISSION, petitioner,
vs.**INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIO RICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR.,** respondents.
G.R. No. 135808, Oct. 6, 2008 **EN BANC CHICO-NAZARIO, *J.***

No implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.

FACTS

6 Aug 1994 – **Board of Directors of IRC approved a Memorandum of Agreement (MoA) with Ganda Holdings Berhad (GHB)**.

Under the MoA, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc. (GEHI), which would own and operate a 102 megawatt gas turbine power-generating barge.

Also stipulated is that GEHI would assume a five-year power purchase contract with National Power Corp. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-Sept 1994.

In exchange, IRC will issue to GHB 55% of the expanded capital stock of IRC (amounting to 40.88 billion shares – total par value of P488.44 million)

On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc. (PRCI). PRCI owns 25.724 hectares of real estate property in Makati.

Under the Agreement, GHB, a member of the Westmont Group of Companies in Malaysia, shall extend or arrange a loan required to pay for the proposed acquisition by IRC of PRCI.

8 Aug 1994 – IRC alleged that a press release announcing the approval of the agreement was sent through fax to Philippine Stock Exchange (PSE) and the SEC, but that the fax machine of SEC could not receive it. Upon the advice of SEC, IRC sent the press release on the morning of 9 Aug 1994.

SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors heavily traded IRC shares utilizing this material insider information.

16 Aug 1994 – SEC Chairman issued a directive requiring IRC to submit to SEC a copy of its aforesaid MoA with GHB and further directed all principal officers of IRC to appear at a hearing before the Brokers and Exchanges Dept (BED) of SEC to explain IRC's failure to immediately disclose the information as required by the Rules on Disclosure of Material Facts by Corporations Whose Securities are Listed in Any Stock Exchange or Registered/Licensed Under the Securities Act IRC sent a letter to SEC, attaching copies of MoA and its directors appeared to explain IRC's alleged failure to immediately disclose material information as required under the Rules on Disclosure of Material Facts.

19 Sept 1994 – SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure when it failed to make timely disclosure, and that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Sec 30, in relation to Sec 36 of the Revised Securities Act. IRC filed an Omnibus Motion (later an Amended Omnibus Motion) alleging that SEC had no authority to investigate the subject matter, since under Sec 8 of PD 902-A, as amended by PD 1758, jurisdiction was conferred upon the Prosecution and Enforcement Dept (PED) of SEC IRC also claimed that SEC violated their right to due process when it ordered that the respondents appear before SEC and show cause why no administrative, civil or criminal sanctions should be imposed on them, and thus, shifted the burden of proof to the respondents. They filed a Motion for Continuance of Proceedings.

No formal hearings were conducted in connection with the Motions.

25 Jan 1995 – SEC issued an Omnibus Order: creating a special investigating panel to hear and decide the case in accordance with Rules of Practice and Procedure before the PED, SEC; to recall the show cause orders; and to deny the Motion for Continuance for lack of merit.

Respondents filed a petition before the CA questioning the Omnibus Orders and filed a Supplemental Motion wherein they prayed for the issuance of a writ of preliminary injunction.

5 May 1995 – CA granted their motion and issued a writ of preliminary injunction, which effectively enjoined SEC from filing any criminal, civil or administrative case against the respondents.

20 Aug 1998 – CA promulgated a Decision

Determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which respondents allegedly violated.

It found no statutory authority for SEC to initiate and file any suit for civil liability under Sec 8, 30 and 36 of the Revised Securities Act, thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection.

It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders

Further decided that the **Rules of Practice and Procedure before the PED did not comply with the statutory requirements contained in the Administrative Code of 1997**. Section 9, Rule V of the Rules of Practice and Procedure before the PED affords a party the right to be present but without the right to cross-examine witnesses presented against him, in violation of Sec 12(3), Chap 3, Book VII of the Administrative Code.

ISSUES

1. Do sections 8, 30, and 36 of the Revised Securities Act require the enactment of implementing rules to make them binding and effective? No.

2. Does the right to cross-examination be demanded during investigative proceedings before the PED? No.

3. May a criminal case still be filed against the respondents despite the repeal of Sections 8, 30, and 36 of the Revised Securities Act? Yes.

4. Did SEC retain the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED? Yes.

5. Does the instant case prescribed already? No.

6. Is CA justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders? Yes.

RULING

The petition is impressed with merit.

** It should be noted that while the case was pending in SC, RA 8799 (Securities Regulation Code) took effect on 8 August 2000.*

Section 8 of PD 902-A, as amended, which created the PED, was already repealed as provided for in Sec 76 of Securities Regulation Code.

Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.

<u>On the merits:</u>

Sections 8, 30, and 36 of the Revised Securities Act (RSA) do not require the enactment of implementing rules to make them binding and effective.

The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given.
Absence of any constitutional or statutory infirmity, which may concern Secs 30 and 36 of RSA, the provisions are legal and binding.

Every law has in its favour the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.

The Court does not discern any vagueness or ambiguity in Sec 30 and 36 of RSA

Sec 30 – Insider's duty to disclose when trading Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors: the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.

The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor.

In some cases, however, there may be valid corporate reasons for nondisclosure of material information. Where such reasons exist, an issuer's decision not to make any public disclosures is not ordinarily considered as a violation of insider trading. At the same time, the undisclosed information should not be improperly used for non-corporate purposes, particularly to disadvantage other persons with whom an insider might transact, and therefore the insider must abstain from entering into transactions involving such securities.

Sec 36 – Directors, officers and principal stockholders

A straightforward provision that imposes upon: a beneficial owner of more than 10 percent of any class of any equity security or a director or any officer of the issuer of such security the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership.

Sections 30 and 36 of the RSA were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public.

Sec 30 prevented the unfair use of non-public information in securities transactions, while Sec 36 allowed the Sec to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies.

The lack of implementing rules cannot suspend the effectivity of these provisions.

The right to cross-examination is not absolute and cannot be demanded during investigative proceedings before the PED.
Sec 4, Rule 1 of the PED Rules of Practice and Procedure, categorically stated that the proceedings before the PED are summary in nature, not necessarily adhering to or following the technical rules of evidence obtaining in the courts of law

Rule V – Submission of documents, determination of necessity of hearing and disposition of case.
A formal hearing was not mandatory, it was within the discretion of the Hearing Officer whether there was a need for a formal hearing

Since the holding of a hearing before the PED is discretionary, then the right to cross-examination could not have been demanded by either party.

Chapter 3, Book VII of the Administrative Code refers to "Adjudication" and does not affect the investigatory functions of the agencies.

The law creating PED empowers it to investigate violations of the rules and regulations promulgated by the SEC and to file and prosecute such cases.

It fails to mention any adjudicatory functions insofar as the PED is concerned. Thus, PED Rules of Practice need not comply with the provisions of the Administrative Code on adjudication.
The only powers which the PED was likely to exercise over the respondents were investigative in nature

In proceedings before administrative or quasi-judicial bodies, such as NLRC and POEA, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. It is enough that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favour, to comply with the due process requirements.

The Securities Regulation Code (SRC) did not repeal Sections 8, 30, and 36 of the Revised Securities Act since said provisions were re-enacted in the new law.

when the repealing law punishes the act previously penalized under the old law, the act committed before the re-enactment continues to be an offense and pending cases are not affected.

Sec 8 of RSA, which previously provided for the registration of securities and the information that needs to be included in the registration statements, was expanded under Sec 12 of the Securities Regulations Code. Further details of the information required to be disclosed by the registrant are explained.

Sec 30 of RSA has been re-enacted as Sec 27 of SRC, still penalizing an insider's misuse of material and non-public information about the issuer, for the purpose of protecting public investors
Sec 23 of SRC was practically lifted from Sec 36 of RSA.

The legislature had not intended to deprive the courts of their authority to punish a person charged with violation of the old law that was repealed

The SEC retained the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED.

Sec 53 of SRC clearly provides that criminal complaints for violations of rules and regulations enforced or administered by SEC shall be referred to the DOJ for preliminary investigation, while the SEC nevertheless retains limited investigatory powers. SEC may still impose the appropriate administrative sanctions under Sec 54.

The instant case has not yet prescribed.

Respondents point out that the prescription period applicable to offenses punished under special laws is 12 years. Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot.

It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed as offense.

The CA was justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders dated 23 October 1995.

Since it found other issues that were more important than whether or not the PED was the proper body to investigate the matter, CA denied SEC's motion for leave to quash SEC Omnibus Orders.

In all, the SC rules that no implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Secs 8, 30, and 36 of the Revised Securities Act.

SC – petition granted

H. Civil Liability

- Citibank, N.A. vs. Tanco-Gabaldon, et al., G.R. No. 198444, Sep. 4, 2013

Citibank N.A. and The Citigroup Private Bank versus Ester H. Tanco-Gabaldon, Arsenio Tanco & The Heirs Of Ku Tiong Lam
G.R. No. 198444, September 4, 2013, J. Reyes

The CA, therefore, did not commit any error when it ruled that "the phrase 'any liability' in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found."

FACTS

Respondents alleged that Gabaldon, Tanco and Lam were joint accountholders of petitioner Citigroup. Sometime in March 2000, the respondents met with petitioner Lim, who "induced" them into signing a subscription agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes. In September of the same year, they met again with Lim for another investment proposal, this time for the purchase of USD 500,000.00 worth of Aeries Finance II Ltd. Senior Subordinated Income Notes.

In a January 2003 statement issued by the Citigroup, the respondents learned that their investments declined, until their account was totally wiped out. Upon verification with the SEC, they learned that the Ceres II Finance Ltd. Notes and the Aeries Finance II Ltd. Notes were not duly registered securities. They also learned that Ceres II Finance Ltd., Aeries Finance II Ltd. and the petitioners, among others, are not duly-registered security issuers, brokers, dealers or agents.

On September 21, 2007, respondents filed with the Securities and Exchange Commission's Enforcement and Prosecution Department(SEC-EPD) a complaint for violation of the Revised Securities Act (RSA) and the Securities Regulation Code (SRC) against petitioners Citibank N.A. (Citibank) and its officials, Citigroup Private Bank (Citigroup) and its officials, and petitioner Carol Lim (Lim),who is Citigroup's Vice-President and Director.

The respondents prayed in their complaint that: (1) the petitioners be held administratively liable; (2) the petitioners be liable to pay an administrative fine pursuant to Section 54(ii), SRC; (3) the petitioners' existing registration/s or secondary license/s to act as a broker/dealer in securities, government securities eligible dealer, investment adviser of an investment house/underwriter of securities and transfer agent be revoked; and (4) criminal complaints against the petitioners be filed and endorsed to the Department of Justice (DOJ) for investigation.

Petitioners Citibank and Citigroup claimed that they did not receive a copy of the complaint and it was only after the Bangko Sentral ng Pilipinas (BSP) wrote them on October 26, 2007 that they were furnished a copy. They replied to the BSP disclaiming any participation by the Citibank or its officers on the transactions and products complained of. Citibank and Citigroup furnished a copy of its letter to the SEC-EPD and the respondents' counsel.

On August 1, 2008, the SEC-EPD asked from the petitioners certain documents to be submitted during a scheduled conference, to which they complied. The petitioners, however, reiterated its position that they are not submitting to the jurisdiction of the SEC. The petitioners were also required to submit other documents.

Thereafter, in an order dated December 8, 2008, the SEC-EPD terminated its investigation on the ground that the respondents' action has already prescribed. According to the SEC-EPD, "the aforesaid complaint was filed before the SEC-EPD on 21 September 2007 while a similar complaint was lodged before the DOJ on October 2005. Seven (7) years had lapsed before the filing of the action before the SEC while the complaint instituted before the DOJ was filed one month after the expiration of the allowable period." It appears that on October 24, 2005, the respondents had already filed with the Mandaluyong City Prosecutor's Office a complaint for violation of the RSA and SRC but it was referred to the SEC pursuant to Baviera v. Prosecutor Paglinawan.
In 2009, petitioners Citibank and Citigroup received a copy of the respondents' Notice of Appeal and Memorandum of Appeals but the officials did not, as according to them, the latter were not connected with them. Citibank also alleged that they did not receive any order to file a Reply Memorandum, in contravention of Section 11-5, Rule XI of the 2006SEC Rules of Procedure. It turned out, however, that an order was issued by the SEC, dated February 26, 2009, requiring the petitioners to file their reply.

On November 6, 2009, petitioners Citibank and Citigroup received the SEC en banc Decision dated October 15, 2009 reinstating the complaint and ordering the immediate investigation of the case.

Petitioner Lim, who was then based in Hong Kong, learned of the rendition of the SEC decision on November 20, 2009 through a teleconference with petitioner Citibank's counsel. Thus, petitioners Citibank and Citigroup filed a petition for review with the Court of Appeals (CA), docketed as CA-G.R. SP No.111501. Petitioner Lim filed her own petition for review with the CA, docketed as CA-G.R. SP No. 112309. These two petitions were then consolidated.

CA granted the petition.

ISSUES

1. Whether the criminal action for offenses punished under the SRC filed by the respondents against the petitioners has already prescribe

2. Whether the filing of the action for petitioners' administrative liability is barred by laches

RULING

1.No, it did not prescribe. Resolution of the issue raised by the petitioners call for an examination of the pertinent provisions of the SRC, particularly Section 62.

Section 62 provides for two different prescriptive periods. Section 62.1 specifically sets out the prescriptive period for the liabilities created under Sections 56, 57, 57.1(a) and 57.1(b).

Section 56 refers to Civil Liabilities on Account of False Registration Statement while Section 57 pertains to Civil Liabilities on Arising in Connection with Prospectus, Communications and Reports. Under these provisions, enforcement of the civil liability must be brought within two (2) years or five (5) years, as the case may be.

On the other hand, Section 62.2 provides for the prescriptive period to enforce any liability created under the SRC. It is the interpretation of the phrase "any liability" that creates the uncertainty. Does it include both civil and criminal liability? Or does it pertain solely to civil liability?

In order to put said phrase in its proper perspective, reference must be made to the rule of statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.
Section 62.2 should not be read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b).

Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 – Civil Liability For Manipulation of Security Prices; Section 60 – Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 – Civil Liability on Account of Insider Trading. Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1, namely Sections59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61, the trial court having jurisdiction over such actions, the persons liable and the extent of their liability

Clearly, the intent is to encompass in Section 62the prescriptive periods only of the civil liability in cases of violations of the SRC.

The CA, therefore, did not commit any error when it ruled that "the phrase 'any liability' in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found."

Given the absence of a prescriptive period for the enforcement of the criminal liability in violations of the SRC, Act No. 3326 now comes into play. Panaguiton, Jr. v. Department of Justice expressly ruled that Act No. 3326 is the law applicable to offenses under special laws which do not provide their own prescriptive periods.

Section 1 of Act No. 3326 provides:

Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c)after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

Under Section 73 of the SRC, violation of its provisions or the rules and regulations is punishable with imprisonment of not less than seven (7) years nor more than twenty-one (21) years. Applying Section 1 of Act No.3326, a criminal prosecution for violations of the SRC shall, therefore, prescribe in twelve (12) years.

Hand in hand with Section 1, Section 2 of Act No. 3326 states that" prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment." In Republic v. Cojuangco, Jr.the Court ruled that Section 2 provides two rules for determining when the prescriptive period shall begin to run: first, from the day of the commission of the violation of the law, if such commission is known; and second, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment.

The respondents alleged in their complaint that the transactions occurred between September 2000, when they purchased the Subscription Agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes, and July 31, 2003, when their Ceres II Finance Ltd. account was totally wiped out. Nevertheless, it was only sometime in November 2004 that the respondents discovered that the securities they purchased were actually worthless. Thereafter, the respondents filed on October 23, 2005 with the Mandaluyong City Prosecutor's Office a complaint for violation of the RSA and SRC. In Resolution dated July 18,2007, however, the prosecutor's office referred the complaint to the SEC. Finally, the respondents filed the complaint with the SEC on September 21,2007. Based on the foregoing antecedents, only seven (7) years lapsed since the respondents invested their funds with the petitioners, and three (3) years since the respondents' discovery of the alleged offenses, that the complaint was correctly filed with the SEC for investigation. Hence, the respondents' complaint was filed well within the twelve (12)- year prescriptive period provided by Section 1 of Act No. 3326.

2. No, it is not barred by laches

Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse inequity, which is, applied only in the absence of statutory law. And though aches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.

In this case, records bear that immediately after the respondents discovered in 2004 that the securities they invested in were actually worthless, they filed on October 23, 2005 a complaint for violation of the RSA and SRC with the Mandaluyong City Prosecutor's Office. It took the prosecutor three (3) years to resolve the complaint and refer the case to the SEC, in conformity with the Court's pronouncement in Baviera that all complaints for any violation of the SRC and its implementing rules and regulations should be filed with the SEC. Clearly, the filing of the complaint with the SEC on September 21, 2007 is not barred by laches as the respondents' judicious actions reveal otherwise.

- Jose U. Pua vs. Citibank, N.A., G.R. No. 180064, Sep. 16, 2013

Jose U. Pua and Benjamin Hanben U. Pua versus Citibank, N.A.
G.R. No. 180064, September 16, 2013, J. Perlas-Bernabe

Civil suits falling under the SRC are under the exclusive original jurisdiction of the regional trial courts and hence, need not be first filed before the SEC, unlike criminal cases wherein the latter body exercises primary jurisdiction.

FACTS

Jose Pua and Benjamin Pua alleged that they had been depositors of Citibank Binondo Branch (Citibank Binondo) since 1996.

Sometime in 1999, Guada Ang, Citibank Binondo's Branch Manager, invited Jose to a dinner party at the Manila Hotel where he was introduced to several officers and employees of Citibank Hongkong Branch (Citibank Hongkong).

A few months after, Chingyee Yau (Yau), Vice-President of Citibank Hongkong, came to the Philippines to sell securities to Jose. They averred that Yau required Jose to open an account with Citibank Hongkong as it is one of the conditions for the sale of the aforementioned securities.

After opening such account, Yau offered and sold to petitioners numerous securities issued by various public limited companies established in Jersey, Channel I sands. The offer, sale, and signing of the subscription agreements of said securities were all made and perfected at Citibank Binondo in the presence of its officers and employees.

Later on, petitioners discovered that the securities sold to them were not registered with the Securities and Exchange Commission (SEC) and that the terms and conditions covering the subscription were not likewise submitted to the SEC for evaluation, approval, and registration.

Asserting that respondent's actions are in violation of Republic Act No. 8799, entitled the "Securities Regulation Code" (SRC), they assailed the validity of the subscription agreements and the terms and conditions thereof for being contrary to law and/or public policy.

CITIBANK, N. A.'s CONTENTION:

It filed a motion to dismiss alleging that petitioners' complaint should be dismissed outright for violation of the doctrine of primary jurisdiction.

It pointed out that the merits of the case would largely depend on the issue of whether or not there was a violation of the SRC, in particular, whether or not there was a sale of unregistered securities. In this regard, respondent contended that the SRC conferred upon the SEC jurisdiction to investigate compliance with its provisions and thus, petitioners' complaint should be first filed with the SEC and not directly before the RTC.

PUAS' CONTENTION:

Petitioners opposed Citibank's motion to dismiss, maintaining that the RTC has jurisdiction over their complaint. They asserted that Section 63 of the SRC expressly provides that the RTC has exclusive jurisdiction to hear and decide all suits to recover damages pursuant to Sections 56 to 61 of the same law.

ISSUE

Whether Puas' action falls within the primary jurisdiction of the SEC.

RULING

No, Puas' action falls within the primary jurisdiction of the RTC, not before the SEC.

It is apparent that the SRC provisions governing criminal suits are separate and distinct from those which pertain to civil suits. On the one hand, Section 53 of the SRC governs criminal suits involving violations of the said law, viz.:

SEC. 53. Investigations, Injunctions and Prosecution of Offenses. –

53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: Provided, however, That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: Provided, further, That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court:

Provided, furthermore, That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: Provided, finally, That the investigation, prosecution, and trial of such cases shall be given priority.

On the other hand, Sections 56, 57, 58, 59, 60, 61, 62, and 63 of the SRC pertain to civil suits involving violations of the same law. Among these, the applicable provisions to this case are Sections 57.1 and 63.1 of the SRC which provide:

SEC. 57. Civil Liabilities Arising in Connection With Prospectus, Communications and Reports. – 57.1. Any person who: (a) Offers to sell or sells a security in violation of Chapter III; or

(b) Offers to sell or sells a security, whether or not exempted by the provisions of this Code, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

Xxxx

SEC. 63. Amount of Damages to be Awarded. – 63.1. All suits to recover damages pursuant to Sections 56, 57, 58, 59, 60 and 61 shall be brought before the Regional Trial Court which shall have exclusive jurisdiction to hear and decide such suits. The Court is hereby authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages.

x x x x (Emphases and underscoring supplied)

Based on the foregoing, it is clear that cases falling under Section 57of the SRC, which pertain to civil liabilities arising from violations of the requirements for offers to sell or the sale of securities, as well as other civil suits under Sections 56, 58, 59, 60, and 61 of the SRC shall be exclusively brought before the regional trial courts. It is a well-settled rule in statutory construction that the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.35 Likewise, it is equally revelatory that no SRC provision of similar import is found in its sections governing criminal suits; quite the contrary, the SRC states that criminal cases arising from violations of its provisions should be first referred to the SEC.

Therefore, based on these considerations, it stands to reason that civil suits falling under the SRC are under the exclusive original jurisdiction of the regional trial courts and hence, need not be first filed before the SEC, unlike criminal cases wherein the latter body exercises primary jurisdiction. All told, petitioners' filing of a civil suit against respondent for purported violations of the SRC was properly filed directly before the RTC

H. Miscellaneous Topics

1. Cases under the old rules where the SEC had jurisdiction over intra-corporate disputes

- Philex Mining Corporation vs. Reyes, 118 SCRA 602 (1982)

PHILEX MINING CORPORATION, petitioner, vs. HON. DOMINGO CORONEL REYES, Presiding Judge, Court of First Instance of Albay, 10th Judicial District, Branch IV, and RICHARD HUENEFELD, respondents.

G.R. No. L-57707 November 19, 1982 FIRST DIVISION MELENCIO-HERRERA, *J.*

*The controversy between the parties being clearly an **intra-corporate one, it is the SEC, and not respondent CFI, that has original and exclusive jurisdiction,** by express mandate of the law.*

FACTS

Private respondent, Richard Huenefeld, is a stockholder of petitioner Philex Mining Corporation. He originally owned 800,000 shares of stock.
Philex declared a 10% stock dividend. Stock Certificate No. 190579 for 80,000 shares was issued by Philex in favor of Huenefeld. On April 18, 1979, Philex sent the stock certificate to Huenefeld through its transfer agent, First Asian, Stock Transfer, Inc. Huenefeld claims that he never received the stock certificate.

First Asian wrote Huenefeld informing him that the stock certificate had been delivered to him at his address at Michelle Apartment, 2030 A. Mabini Street, Manila; and that if the certificate could not be located that Huenefeld execute an Affidavit of Loss, with the notice of loss to be published once a week for 3 consecutive weeks in a newspaper of general circulation in accordance with the procedure prescribed BY Republic Act No. 201 (now Section 73, Corporation Code).

Huenefeld, replied that RA 201 is not applicable because the stock certificate was not lost in the possession of the stockholder; that assuming it was, the expenses of publication and premiums for the bond should be at Philex's expense; and demanded the issuance of a replacement stock certificate. Huenefeld commenced suit for Specific Performance with Damages before the CFI of Albay, presided by respondent Judge, to compel the issuance of a replacement for the Stock Certificate, plus damages. Philex filed a Motion to Dismiss on the ground that the Court of First Instance has no jurisdiction over the case, the issue being one of intra-corporate relationship between a stockholder and a corporation, which under Presidential Decree No. 902-A, falls within the original and exclusive jurisdiction of the SEC.

Huenefeld filed an Opposition claiming that the refusal of Philex to issue a replacement certificate resulted in actual damages to him, and thus, it is no longer a case of intra-corporate conflict, but one which is civil or tortious in nature.

CFI: held in abeyance resolution of the incident as the grounds alleged did not appear to be indubitable. Philex moved for reconsideration.

In the interim, Philex filed a Petition with the SEC praying that the Commission hear the controversy; that Huenefeld be held to have received Stock Certificate No. 190579 and had subsequently lost the same; and that the provisions of RA 201, or Section 73 of the new Corporation Code, be followed for the issuance of a replacement certificate, at Huenefeld's expense.

CFI: denied Philex's Motion for Reconsideration for lack of merit..

SC issued a TRO enjoining respondent Judge from further proceeding with the case..

ISSUE

Whether respondent CFI has jurisdiction over the present controversy, which Philex contends is an intra-corporate one, but which Huenefeld denies.

RULING

NO. The controversy between the parties being clearly an **intra-corporate one, it is the SEC, and not respondent CFI, that has original and exclusive jurisdiction,** by express mandate of the law. Section 5 of Presidential Decree No. 902-A provides:
Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees; it shall have ***original*** **and** ***exclusive*** **jurisdiction to hear and decide cases involving:**

a) ...
b) Controversies arising out of ***intra-corporate*** or partnership relations, between and among stockholders, members, or associates; ***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 it concerns their individual franchise or right to exist as such entity

An intra-corporate 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. **<u>The issue of whether or not a corporation is bound to replace a stockholder's lost certificate of stock is a matter purely between a stockholder and the corporation. It is a typical intra-corporate dispute.</u>** The question of damages raised is merely incidental to that main issue.

Huenefeld's attempt to limit intra-corporate controversies is not well taken.

The phrase '*controversies, arising out of intra-corporate relations'* would seem to refer to controversies, cases or intramurals among or between stockholders and the corporation involving the exercise of stockholders' privileges, rights, benefits and their duties in a corporation, and the existence in law of a corporation.

Like, for instance, an example of '*controversies arising out of an intra- corporate relation*' are cases between stockholders in 1) contesting or vying for a seat in the Board of Directors, 2) questions on voting by proxy, 3) election and tenure of office and qualification of directors, 4) removal and resignation of Directors, 5) repeal and amendment of corporate charter and by-laws, 6) questions on corporation meetings and increase of capital stocks, etc. (pp. 70, 80, Rollo).

The foregoing interpretation does not square with the intent of the law, which is to segregate from the general jurisdiction of regular Courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution, in much the same way that labor disputes are now brought to the Ministry of Labor and Employment (MOLE) and the National Labor Relations Commission (NLRC), and not to the Courts.

- Union Glass & Container Corporation vs. Securities & Exchange Commission, 126 SCRA 21 (1983). See also Magalad vs. Premier Financing Corporation, 209 SCRA 260 (1992)

UNION GLASS & CONTAINER CORPORATION vs. THE SECURITIES AND EXCHANGE COMMISSION
G.R. No. L-64013 November 28, 1983 ESCOLIN, J.

Section 3 of PD No. 902---A confers upon the SEC "absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines ... "

Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.

The fact that the controversy at bar involves the rights of petitioner Union Glass who has no intra---corporate relation either with complainant or the DBP, places the suit beyond the jurisdiction of the respondent SEC.

FACTS

Private respondent Carolina Hofileña, complainant in SEC Case No. 2035, is a stockholder of Pioneer Glass Manufacturing Corporation, a domestic corporation engaged in the operation of silica mines and the manufacture of glass and glassware.

Pioneer Glass had obtained various loan accommodations from the [DBP], and also from other local and foreign sources which DBP guaranteed.; As security, Pioneer Glass mortgaged and/or assigned its assets, real and personal, to the DBP.

DBP was able to gain control of the outstanding shares of common stocks of Pioneer Glass, and to get two, later three, regular seats in the corporation's board of directors.

When Pioneer Glass suffered serious liquidity problems such that it could no longer meet its financial obligations with DBP, it entered into a dacion en pago agreement with the latter, whereby all its assets mortgaged to DBP were ceded to the latter in full satisfaction of the corporation's obligations in the total amount of P59M. ; Part of the assets transferred to the DBP was the glass plant in Rosario, Cavite, which DBP leased and subsequently sold to herein petitioner Union Glass.

Carolina Hofileña filed a complaint before the respondent SEC against the DBP, Union Glass and Pioneer Glass, based on the alleged illegality of the aforesaid dacion en pago resulting from: [1] the self---dealing indulged in by DBP, having acted both as stockholder/director and secured creditor of Pioneer Glass; and [2] the wrongful inclusion by DBP in its statement of account of P26M as due from Pioneer Glass when the same had already been converted into equity.

Hofileña asked that DBP be sentenced to pay Pioneer Glass actual, consequential, moral and exemplary damages, for its alleged illegal acts and gross bad faith;

Petitioners moved for dismissal of the case on the ground that the SEC had no jurisdiction over the subject matter or nature of the suit.
SEC: granted the motion to dismiss for lack of jurisdiction. ; MR filed by respondent. Hearing Officer: reversed and upheld the SEC's jurisdiction. ; The present action is in the form of a derivative suit instituted by a stockholder for the benefit of the corporation, respondent Pioneer Glass against another stockholder, respondent DBP, for alleged illegal acts and gross bad faith which resulted in the dacion en pago arrangement now being questioned by complainant.

Petitioners filed the instant petition for certiorari and to prevent respondent SEC from taking cognizance of SEC Case No. 2035.

ISSUE

Is it the regular court or the SEC that has jurisdiction over the case?

RULING

Petitioner Union Glass, as transferee and possessor of the glass plant covered by the dacion en pago agreement, should be joined as party---defendant under the general rule which requires the joinder of every party who has an interest in or lien on the property subject matter of the dispute. . --- But since petitioner Union Glass has no intra---corporate relation with either the complainant or the DBP, its joinder as party---defendant in SEC Case No. 2035 brings the cause of action asserted against it outside the jurisdiction of the respondent SEC.

The jurisdiction of the SEC is delineated by PD No. 902---A , sec.5

--- This grant of jurisdiction must be viewed in the light of the nature and function of the SEC under the law. Section 3 of PD No. 902---A confers upon the latter "absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines ... "

--- The principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.

--- Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.

Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must pertain to any of the following relationships: [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 in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves.

The fact that the controversy at bar involves the rights of petitioner Union Glass who has no intra----corporate relation either with complainant or the DBP, places the suit beyond the jurisdiction of the respondent SEC.
--- The case should be tried and decided by the court of general jurisdiction, the Regional Trial Court. This view is in accord with the rudimentary principle that administrative agencies, like the SEC, are tribunals of limited jurisdiction 6 and, as such, could wield only such powers as are specifically granted to them by their enabling statutes.

--- Since petitioner has no intra---corporate relationship with the complainant, it cannot be joined as party--- defendant in said case as to do so would violate the rule or jurisdiction.

--- Hofileñas complaint against petitioner for cancellation of the sale of the glass plant should therefore be brought separately before the regular court ; But such action, if instituted, shall be suspended to await the final outcome of SEC Case No. 2035, for the issue of the validity of the dacion en pago posed in the last mentioned case is a prejudicial question, the resolution of which is a logical antecedent of the issue involved in the action against petitioner Union Glass.

- Philippine School of Business Administration vs. Leano, 127 SCRA 778 (1984)

PHILIPPINE SCHOOL OF BUSINESS ADMINISTRATION, MANILA, ANTONIO M. MAGTALAS, JOSE ARANAS, JUAN D. LIM, JOSE F. PERALTA and BENJAMIN P. PAULINO, *Petitioners*, **v. LABOR ARBITER LACANDOLA S. LEANO of the National Labor Relations Commission and RUFINO R. TAN,** *Respondents*.
G.R. No. L-58468. February 24, 1984. FIRST DIVISION MELENCIO-HERRERA, *J.*

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of the PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President. Vis-a-vis the NLRC, these matters fall within the jurisdiction of the SEC.

FACTS

Rufino R. Tan is one of the principal stockholders of PSBA. Before September 5, 1981, he was a Director and the Executive Vice President enjoying salaries and allowances .On August 1, 1981, at the PSBA Board of Directors' regular meeting, three members were elected to fill vacancies in the seven-man body. On September 5, 1981, also during a regular meeting, the Board declared all corporate positions vacant except those of the Chairman and President, and at the same time elected a new set of officers. TAN was not re-elected as Executive Vice-President. TAN filed with the NLRC complaint for Illegal Dismissal against petitioners alleging that he was "summarily, illegally, irregularly and improperly removed from his position as Executive Vice-President . . . without cause, investigation or notice." TAN also filed a one-million-peso damage suit against petitioners before the then Court of First Instance of Rizal, Quezon City, for illegal and oppressive removal. And, TAN lodged before the Securities and Exchange Commission (SEC) another complaint against petitioners essentially questioning the validity of the PSBA elections of August 1, 1981 and September 5, 1981, and of his "ouster" as Executive Vice-President.

On October 13, 1981, SEC issued a subpoena duces tecum commanding the production of corporate documents, books and records. On October 15, 1981, respondent Labor Arbiter also issued a subpoena duces tecum to submit the same books and documents. 3

Before the NLRC, petitioners moved for the dismissal of TAN's complaint, invoking the principle against split jurisdiction.

ISSUE

Whether or not the SEC has jurisdiction over the case presented?

RULING

An intracorporate controversy would call for SEC jurisdiction. A labor dispute, that of the NLRC. Relevant and pertinent it is to note that the PSBA is a domestic corporation duly organized and existing under our laws. General management is vested in a Board of seven directors elected annually by the stockholders entitled to vote, who serve until the election and qualification of their successors. Any vacancy in the Board of Directors is filled by a majority vote of the subscribed capital stock entitled to vote at a meeting specially called for the purpose, and the director or directors so chosen hold office for the unexpired term. Corporate officers are provided for, among them, the Executive Vice-President, who is elected by the Board of Directors from their own number. The officers receive such salaries or compensation as the Board of Directors may fix. The By-Laws likewise provide that should the position of any officer of the corporation become vacant by reason of death, resignation, disqualification, or otherwise, the Board of Directors, by a majority vote, may choose a successor or successors who shall hold office for the expired term of his predecessor.

It was at a board regular monthly meeting that three directors were elected to fill vacancies. And, it was, also, at the regular Board Meeting that all corporate positions were declared vacant in order to effect a reorganization, and at the ensuing election of officers, TAN was not re-elected as Executive Vice-President.

Basically, therefore, the question is whether the election of directors on August 1, 1981 and the election of officers on September 5, 1981, which resulted in TAN's failure to be re-elected, were validly held. This is the crux of the question that TAN has raised before the SEC. Even in his position paper before the NLRC, TAN alleged that the election on August 1, 1981 of the three directors was in contravention of the PSBA By-Laws providing that any vacancy in the Board shall be filled by a majority vote of the stockholders at a meeting specially called for the purpose. Thus, he concludes, the Board meeting on September 5, 1981 was tainted with irregularity on account of the presence of illegally elected directors without whom the results could have been different.

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of the PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President. Vis-a-vis the NLRC, these matters fall within the jurisdiction of the SEC. Presidential Decree No. 902-A vests in the Securities and Exchange Commission:

". . . original and exclusive jurisdiction to hear and decide cases involving:

"a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or stockholders, partners, members of associations or organizations registered with the Commission.

"b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; 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 it concerns their individual franchise or right to exist as such entity;

"c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations. 10

This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of TAN's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

With the foregoing conclusion, it follows that the issuance of a subpoena duces tecum by the Labor Arbiter will have to be set aside.

- DMRC Enterprises vs. Este Del Sol Mountain Reserve, Inc., 132 SCRA 293 (1984)

DMRC ENTERPRISES, petitioner, vs. **ESTE DEL SOL MOUNTAIN RESERVE, INC.,** respondent.
G.R. No. L-57936 September 28, 1984 FIRST DIVISION **GUTIERREZ, JR., *J.:***

The case at bar does not involve intra-corporate matters as to make it fall within the original and exclusive jurisdiction of the Securities and Exchange Commission. It is clear that petitioner DMRC has no intra-corporate relation with the respondent corporation. Nor can petitioner's cause of action be said to involve or arise from an intra-corporate matter. The complaint merely states that a contract of lease of heavy equipment was entered into by the parties and that respondent lessee failed to pay the agreed consideration for said lease, and petitioner now seeks to enforce the contract seeking payment under the Civil Code of the Philippines.

FACTS

Petitioner DMRC entered into an agreement with respondent where the former would lease its heavy equipment on the condition that the latter would advance a certain sum and 30% of the collection would be invested in the purchase of shares of stock of DMRC. As a result of the agreement, DMRC performed its obligation but respondent despite repeated demands to it, refused to comply. Thus, petitioner filed a complaint before the trial court. Respondent moved to dismiss on the ground that since the nature of the suit involves intra-corporate matters, it is SEC that has jurisdiction. Trial court found for respondent.

ISSUE

Whether or not the suit involves intra-corporate controversy cognizable by SEC.

RULING

NO. A perusal of the complaint, styled "sum of money ", shows that the case at bar does not involve intra-corporate matters as to make it fall within the original and exclusive jurisdiction of the Securities and Exchange Commission. It is clear that petitioner DMRC has no intra-corporate relation with the respondent corporation. Nor can petitioner's cause of action be said to involve or arise from an intra-corporate matter. The complaint merely states that a contract of lease of heavy equipment was entered into by the parties and that respondent lessee failed to pay the agreed consideration for said lease, and petitioner now seeks to enforce the contract seeking payment under the Civil Code of the Philippines. It must be stressed that the plaintiff-petitioner submitted himself to the jurisdiction of the lower court as creditor and the respondent did so as debtor. The fact that the case involves shares of stock to be used as payment for lease rentals does not convert it into an intra-corporate controversy. In fact, the greater of the petitioner's claim is in terms of cash or money or pass upon a money claim under a lease contract would be beyond the competence of the Securities and Exchange Commission.

Further buttressing the petitioner's stand is the fact that it is not a shareholder of the respondent corporation, no transfer or registration of shares having been made in its name yet. Precisely, the petitioner prays that it be made a stockholder of the corporation by virtue of the agreement in the lease contract. Hence, there can be no intra-corporate controversy between a stockholder and the corporation in the case at bar. It must be remembered that a determination of the rights of the parties under the contract is necessary before any mention can be made of the issuance of shares of stock. Petitioner must first be shown to be entitled to its claim under the disputed contract. Such a determination falls under the jurisdiction of the Regional Trial Court, particularly as it involves not only a question of issuance of shares but more so, the interpretation of a contract of lease and a claim for a sum of money under the said contract. Only after a finding of entitlement and the implementation according to the contractual terms may the Securities and Exchange Commission assume jurisdiction in case a question later arises regarding said shares. To enforce the basic contract is clearly beyond the power of the Securities and Exchange Commission and would be excess of jurisdiction if it were to act thereon.

- Development Bank of the Philippines vs. Ilustre, Jr., 138 SCRA 11 (1985)

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner*, **v. HON. JOAQUIN ILUSTRE, JR., BERNARDO SILVERIO, LOURDES SILVERIO, MIGUEL ANGELO SILVERIO, ELIZABETH ANN SILVERIO, JOSE BERNARDO SILVERIO and ROBERTO NOEL SILVERIO,** *Respondents*.
G.R. No. L-57905. August 1, 1985. SECOND DIVISION ESCOLIN, *J.*

The illegal acts, devices and schemes allegedly employed by DBP which might have prompted the Silverios to sue for rescission of the memorandum agreement were done by the former in its capacity as such stockholder. It is evident that there exists an intra-corporate relationship between the parties: both the Silverios and the DBP are stockholders of ISAROG, while PHINMA acts as manager thereof.

FACTS

Isarog Pulp and Paper Co. Inc., ISAROG for short, was originally a family corporation owned or controlled by respondents Bernardo Silverio et al., Sometime in 1973, ISAROG entered into a contract with the French firm Creusot Loire Enterprise, CLE for short, for the construction, on a turn-key basis, of an abaca pulp and paper mill at Kilakao, Daraga, Albay. The erection of the mill was subsidized by a syndicate of French banks. To finance the purchase of the plant, ISAROG had applied for financial assistance with the DBP, and upon approval of the application, DBP extended a guaranty in the total amount of FF40, 329, 150. 00 in favor of the foreign financiers. Since the mill was to utilize abaca as raw material, DBP further granted ISAROG a P17.5 million agricultural loan for the rehabilitation and operation of its abaca plantation. chanrobles.com.ph : virtual law library

Soon after the completion of the plant m 1975, these arose a controversy between ISAROG and CLE on the question of the 'guarantee test run' of the mill. While ISAROG claimed that the plant was technically defective and could not produce its guaranteed capacity, CLE alleged that its inability to rectify the defects was due to ISAROG's failure to perform its obligation under the contract. As a result of this dispute CLE abandoned the project, prompting ISAROG to file an action against the French company before the Arbitration Court of the International Chamber of Commerce in Geneva, where CLE likewise filed its counterclaims.

ISAROG also instituted in the then Court of First Instance of Rizal a complaint against DBP to enjoin the latter from making further remittances on its guaranty in favor of the French financiers until CLE shall have fully complied with its obligation under the contract. It appears, however, that this case was eventually dismissed after the parties had forged a memorandum agreement. Pursuant to paragraph (b) of the above agreement, DBP approved additional financial accommodations in favor of ISAROG. Thus, DBP guaranteed ISAROG's restructured loan and it extended a foreign currency loan to ISAROG. As likewise stipulated in said agreement, ISAROG's past due obligation of P30 million was converted into preferred shares of DBP in ISAROG while ISAROG's arrearages in various industrial and agricultural loans, totalling P45 million, were converted into common shares of DBP. These transactions resulted in DBP obtaining approximately 91% of the total outstanding shares of ISAROG, thereby enabling it to elect a substantial majority in the board of directors. In 1977, the board of directors, in order to prevent the continuing financial losses of the company arising from alleged incompetence of the Silverio management, created an executive committee to assume direct management of the firm. Although respondent Bernardo Silverio nominally retained the position of president of the corporation, and his son Miguel Angelo Silverio continued as executive vice-president, all effective powers were lodged in the hands of the executive committee. The board of directors further contracted with the Philippine Investment Management, Inc., PHINMA for short, to act as management consultant for the company.

On May 18,1981, the Silverios sent DBP a letter, charging the latter with having violated the memorandum agreement of March 18, 1977, and giving notice that they were declaring the agreement rescinded. The Silverios further demanded the return of the ownership, management and control of ISAROG. Meanwhile, notices were sent out for the holding of the annual meeting of stockholders of ISAROG in Makati on June 30, 1981. Although notified thereof, the Silverios did not attend the meeting, but they sent a representative to record the proceedings. At said meeting, a new set of board of directors was elected by the majority stockholders representing 91% of the equity of the corporation. The new board appointed a new set of executive officers to manage the operations of the company. Respondents Bernardo Silverio and his son Miguel Angelo were not reappointed to their former positions of president and executive vice-president, respectively.

The Silverios instituted Civil Case in the Court of First Instance of Albay They prayed inter alia that the memorandum agreement of March 18, 1977 be declared rescinded; that the parties be restored to the positions they were occupying before the signing of said agreement; and that defendants DBP and PHINMA be ordered to pay actual, moral and exemplary damages as well as attorney's fees. The Silverios also sought the issuance, ex parte, of a writ of preliminary injunction or temporary restraining order to enjoin and prohibit defendants, their officers, attorneys, agents and all persons acting on their behalf from ousting the Silverio family from ISAROG, particularly Bernardo G. Silverio as president and Miguel Angelo Silverio as executive vice-president; from exercising any or all rights pertaining to the shares of stocks acquired by DBP; from withdrawing or removing funds deposited with the banks in the name of ISAROG; from making or effecting any reorganization in the management of the corporation; from acting and representing themselves as members of the ISAROG board of directors or as ISAROG's stockholders; from taking, exercising and in any manner interferring in, the control and management of ISAROG. DBP filed a motion to dismiss the complaint on the ground, among others, that the case falls within the exclusive jurisdiction of the SEC.

ISSUE

Whether the Security of Exchange Commision has the original and exclusive jurisdiction to hear and decide such case? (YES)

RULING

Although the Silverios challenge the legality of the conversion by DBP of the majority shares of stocks of ISAROG, it is undeniable that DBP is a stockholder of the corporation. In fact, the illegal acts, devices and schemes allegedly employed by DBP which might have prompted the Silverios to sue for rescission of the memorandum agreement were done by the former in its capacity as such stockholder.chanrobles virtual lawlibrary

Under Section 5 of PD No. 902-A, the Securities and Exchange Commission has original and exclusive jurisdiction to hear and decide cases involving:jgc:chanrobles.com.ph

"a] Devices and schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or the stockholders, partners, members of associations or organizations registered with the Commission;

"b] Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates, 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 it concerns their individual franchise or right to exist as such entity;

"c] Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."cralaw virtua1aw library

From the allegations of the complaint in Civil Case No. 6599, it is evident that there exists an intra-corporate relationship between the parties: both the Silverios and the DBP are stockholders of ISAROG, while PHINMA acts as manager thereof. And while the case was instituted in the guise of a complaint for rescission, it is clear that the action is essentially for recovery from the DBP and PHINMA of the control and management of ISAROG. Thus, the Silverios seek in their complaint to set aside the election of the directors and officers of ISAROG, as well as the appointment of PHINMA as its manager.

Obviously, therefore, jurisdiction over the case at bar pertains to the SEC; and petitioner DBP is correct in assailing the competence of the CFI, now RTC of Albay, to try and decide Civil Case No. 6599.

- Banez vs. Dimensional Construction Trade and Development Corporation, 140 SCRA 249 (1985)

MARIA LUISA FLOR C. BAÑEZ, SPOUSES PETRONILO ESTEVES AND LUISA ESTEVES AND CONSUELO M. CAULBOY, petitioners, vs. DIMENSIONAL CONSTRUCTION TRADE AND DEVELOPMENT CORPORATION AND THE REGIONAL TRIAL COURT, BRANCH XLV, URDANETA, PANGASINAN, respondents.
G.R. No. L-62648 November 22, 1985 SECOND DIVISION ALAMPAY, J.

There is no allegation nor any mention whatsoever in plaintiff's complaint that a device or scheme was resorted to by private respondent corporation amounting to fraud and misrepresentation. It is, therefore, difficult to consider that petitioners' case falls within the jurisdiction of the Securities and Exchange Commission pursuant to PD 902-A.

FACTS

The petitioners filed a civil case praying that the defendant Dimensional Construction Trade and Development Corporation, the private respondent in this case, be ordered to pay them the sums of money which were already due to them under the various promissory notes issued by said defendant. Defendant corporation was served copy of the summons and complaint on November 18, 1980, but it failed to file any responsive pleading, On August 20, 1981, or nine (9) months thereafter, petitioners moved to have private respondents declared in default. On october 14, 1981, the trial court declared private respondent in default and set the date for the reception of plaintiff's evidence. According to petitioners herein, they submitted their evidence ex-parte on November 25, 1981 before the Clerk of Court who was duly commissioned to receive plaintiff's evidence and that the case was thereafter submitted for decision.

Before a judgment in the case can be rendered, defendant corporation filed, an omnibus motion to: (a) annul all proceedings taken in the court below; (b) lift and dissolve all attachments, levies or executions and (c) to dismiss the case. It was defendant's contention that it is the Securities and Exchange Commission and not the Court of First Instance, ' that has exclusive jurisdiction over the subject matter of the case because of Section 5 (a) of Presidential Decree No. 902-A, which vests in the Securities and Exchange Commission original and exclusive jurisdiction to hear and decide cases involving the devices or schemes employed by or any acts of the Board of Directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission. Petitioners herein filed their opposition to said omnibus motion averring that defendant corporation has no right to be heard in any manner after losing its standing in court due to the default order issued against it. Petitioners argued that their complaint is simply a suit for the collection of sums of money on account of promissory notes which have already matured and therefore their case is originally and exclusively cognizable by the Court of First Instance. After defendant private respondent filed its rejoinder, the respondent court issued the questioned order of February 12, 1982, dismissing said Civil Case No. U-3569 and setting aside is previous orders declaring defendant in default and referring the case to the Clerk of Court for reception of plaintiff's evidence. The court below in effect held that it is the Securities and Exchange Commission which has jurisdiction to hear and decide the plaintiff's complaint.

ISSUE

Whether or not the Civil Court has jurisdiction over the case herein presented? (YES)

RULING

The recitals of the complaint in Civil Case No. 3569 disclose that plaintiff's cause of action is merely for the collection of the various sums of money that have already become payable to petitioners due to the promissory notes executed by defendant corporation which have already matured. There is no allegation nor any mention whatsoever in plaintiff's complaint that a device or scheme was resorted to by private respondent corporation amounting to fraud and misrepresentation. It is, therefore, difficult to consider that petitioners' case falls within the jurisdiction of the Securities and Exchange Commission pursuant to PD 902-A. Paradoxically, despite the absence of imputation of fraud and misrepresentation being alleged by plaintiff, it is the defendant corporation itself which insinuates the existence of fraud and misrepresentation on its part. Evidently, the defendant's challenge to the jurisdiction of the court below is principally intended to negate the effects of the order of default earlier issued against it as well as the evidence already adduced by petitioners in the court below. The tactical step resorted by the private respondent in the trial court appears to be its deliberate attempt to unduly delay the satisfaction of the reliefs claimed for by petitioners and to avoid the effects of its failure to file any answer to the complaint and controvert the evidence already adduced against it.

In the promissory notes issued by private Respondent Corporation, it is clearly indicated therein that the sums of money received by private respondent were in the nature of investments of the petitioners, agreed upon by the parties to be returned by the corporation upon the maturity of said promissory notes. As the money received by private respondent do not constitute payment of subscription of shares, the petitioners herein did not become members of respondent Dimensional Trade and Development Corporation.

In the case of Sunset View Condominium Corporation vs. Hon. Jose C. Campos, Jr., et al., 104 SCRA 295, it was ruled that where the stated party-litigants "are not shareholders of the condominium corporation, the instant cases for collection cannot be 'a controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates.' "

- Dy vs. The National Labor Relations Commission, 145 SCRA 211 (1986)

LORENZO C. DY, ZOSIMO DY, SR., WILLIAM IBERO, RICARDO GARCIA AND RURAL BANK OF AYUNGON, INC., petitioners, vs.
NATIONAL LABOR RELATIONS COMMISSION AND EXECUTIVE LABOR ARBITER ALBERTO L. DALMACION, AND CARLITO H. VAILOCES, respondents.
G.R. No. L-68544 October 27, 1986 FIRST DIVISION NARVASA, J.

The situation is that of a corporate office having been declared vacant, and of Tan's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

FACTS

Petitioners assail in this Court the resolution of the National Labor Relations Commission (NLRC) dismissing their appeal from the decision of the Executive Labor Arbiter 1 in Cebu City which found private respondent to have been illegally dismissed by them.

Said private respondent, Carlito H. Vailoces, was the manager of the Rural Bank of Ayungon (Negros Oriental), a banking institution duly organized under Philippine laws. He was also a director and stockholder of the bank.

On June 4, 1983, a special stockholders' meeting was called for the purpose of electing the members of the bank's Board of Directors. Immediately after the election the new Board proceeded to elect the bank's executive officers.

Pursuant to Article IV of the bank's by-laws, 2 providing for the election by the entire membership of the Board of the executive officers of the bank, i.e., the president, vice-president, secretary, cashier and bank manager, in that board meeting of June 4, 1983, petitioners Lorenzo Dy, William Ibero and Ricardo Garcia were elected president, vice-president and corporate secretary, respectively. Vailoces was not re-elected as bank manager, 3 Because of this development, the Board, on July 2, 1983, passed Resolution No. 5, series of 1983, relieving him as bank manager.

On August 3, 1983, Vailoces filed a complaint for illegal dismissal and damages with the Ministry of Labor and Employment against Lorenzo Dy and Zosimo Dy, Sr. The complaint was amended on September 22, 1983 to include additional respondents-William Ibero, Ricardo Garcia and the Rural Bank of Ayungon, and additional causes of action for underpayment of salary and non-payment of living allowance.

In his complaint and position paper, Vailoces asserted that Lorenzo Dy, after obtaining control of the majority stock of the bank by buying the shares of Marcelino Maximo, called an illegal stockholders' meeting and elected a Board of Directors controlled by him; that after its illegal constitution, said Board convened on July 2, 1983 and passed a resolution dismissing him as manager, without giving him the opportunity to be heard first; that his dismissal was motivated by Lorenzo Dy's desire to take over the management and control of the bank, not to mention the fact that he (Dy) harbored ill feelings against Vailoces on account of the latter's filing of a complaint for violation of the corporation code against him and another complaint for compulsory recognition of natural child with damages against Zosimo Dy, Sr.

In their answer, Lorenzo Dy, et al. denied the charge of illegal dismissal. They pointed out that Vailoces' position was an elective one, and he was not re-elected as bank manager because of the Board's loss of confidence in him brought about by his absenteeism and negligence in the performance of his duties; and that the Board's action was taken to protect the interest of the bank and was "designed as an internal control measure to secure the check and balance of authority within the organization."

Lorenzo Dy, et al. appealed to the NLRC, assigning error to the decision of the Labor Arbiter on various grounds. The NLRC, however bypassed the issues raised and simply dismissed the appeal for having been filed late.

While the comment of Vailoces traverses the averments of the petition, that of the Solicitor General on behalf of public respondents perceives the matter as an intracorporate controversy of the class described in Section 5, par. (c), of Presidential Decree No. 902-A, namely:

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

explicitly declared to be within the original and exclusive jurisdiction of the Securities and Exchange Commission, and recommends that the questioned resolution of the NLRC as well as the decision of the Labor Arbiter be set aside as null and void.

ISSUE

Whether or not the SEC, and not respondent NLRC, has jurisdiction over the dispute?

RULING

There is no dispute that the position from which private respondent Vailoces claims to have been illegally dismissed is an elective corporate office. He himself acquired that position through election by the bank's Board of Directors at the organizational meeting of November 17, 1979. 10 He lost that position because the Board that was elected in the special stockholders' meeting of June 4, 1983 did not re-elect him. And when Vailoces, in his position paper submitted to the Labor Arbiter, impugned said stockholders' meeting as illegally convoked and the Board of Directors thereby elected as illegally constituted, 11 he made it clear that at the heart of the matter was the validity of the directors' meeting of June 4, 1983 which, by not re-electing him to the position of manager, in effect caused termination of his services.
The case thus falls squarely within the purview of Section 5, par. (c), No. 902-A just cited. In *PSBA vs. Leaño,* 12 this Court, confronted with a similar controversy, ruled that the Securities and Exchange Commission, not the NLRC, has jurisdiction:

It was at a Board regular monthly meeting held on August 1, 1981, that three directors were elected to fill vacancies. And, it was at the regular Board meeting of September 5, 1981 that all corporate positions were declared vacant in order to effect a reorganization, and at the ensuing election of officers, Tan was not re-elected as Executive Vice-President.

Basically, therefore, the question is whether the election of directors on August 1, 1981 and the election of officers on September 5, 1981, which resulted in Tan's failure to be re-elected, were validly held. This is the crux of the question that Tan has raised before the SEC. Even in his position paper before the NLRC, Tan alleged that the election on August 1, 1981 of the three directors was in contravention of the PSBA By-Laws providing that any vacancy in the Board shall be filled by a majority vote of the stockholders at a meeting specially called for the purpose. Thus, he concludes, the Board meeting on September 5, 1981 was tainted with irregularity on account of the presence of illegally elected directors without whom the results could have been different.

Tan invoked the same allegations in his complaint filed with the SEC. So much so, that on December 17, 1981, the SEC (Case No. 2145) rendered a Partial Decision annulling the election of the three directors and ordered the convening of a stockholders' meeting for the purpose of electing new members of the Board. The correctness of d conclusion is not for us to pass upon in this case. Tan was present at said meeting and again sought the issuance of injunctive relief from the SEC.

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of the PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President. Vis-a-vis the NLRC, these matters fall within the jurisdiction of the SEC. Presidential Decree No. 902-A vests in the Securities and Exchange Commission:
... Original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation) which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intracorporate or partnership relations, between and among stockholders, members or associates; between any of 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 it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnership or associations.
This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of Tan's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

Respondent Vailoces' invocation of estoppel as against petitioners with respect to the issue of jurisdiction is unavailing. In the first place, it is not quite correct to state that petitioners did not raise the point in the lower tribunal. Although rather off handedly, in their appeal to the NLRC they called attention to the Labor Arbiter's lack of jurisdiction to rule on the validity of the meeting of July 2, 1983, but the dismissal of the appeal for alleged tardiness effectively precluded consideration of that or any other question raised in the appeal. More importantly, estoppel cannot be invoked to prevent this Court from taking up the question of jurisdiction, which has been apparent on the face of the pleadings since the start of litigation before the Labor Arbiter. It is well settled that the decision of a tribunal not vested with appropriate jurisdiction is null and void.

- Abejo vs. Dela Cruz, 149 SCRA 654 (1987)

SPOUSES JOSE ABEJO AND AURORA ABEJO, TELEC. TRONIC SYSTEMS, INC., petitioners, vs. HON. RAFAEL DE LA CRUZ, JUDGE OF THE REGIONAL TRIAL COURT (NATIONAL CAPITAL JUDICIAL REGION, BRANCH CLX-PASIG), SPOUSES AGAPITO BRAGA AND VIRGINIA BRAGA, VIRGILIO BRAGA AND NORBERTO BRAGA, respondents. G.R. No. L-63558 May 19, 1987 FIRST DIVISION TEEHANKEE, *C.J.*

As the SEC maintains, "There is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take Cognizance of a suit seeking to enforce his rights as such stockholder." This is because the SEC by express mandate has "absolute jurisdiction, supervision and control over all corporations" and is called upon to enforce the provisions of the Corporation Code, among which is the stock purchaser's right to secure the corresponding certificate in his name under the provisions of Sec 65 of the Code.

FACTS

These two cases, jointly heard, are jointly herein decided. They involve the question of who, between the Regional Trial Court and the Securities and Exchange Commission (SEC), has original and exclusive jurisdiction over the dispute between the principal stockholders of the corporation Pocket *Bell Philippines, Inc.* (Pocket Bell), a "tone and voice paging corporation," namely, the spouses Jose Abejo and Aurora Abejo (hereinafter referred to as the Abejos) and the purchaser, Telectronic Systems, Inc. (hereinafter referred to as Telectronics) of their 133,000 minority shareholdings (for P5 million) and of 63,000 shares registered in the name of Virginia Braga and covered by five stock certificates endorsed in blank by her (for P1,674,450.00), and the spouses Agapito Braga and Virginia Braga (hereinafter referred to as the Bragas), erstwhile majority stockholders. With the said purchases, Telectronics would become the majority stockholder, holding 56% of the outstanding stock and voting power of the corporation Pocket Bell.

With the said purchases in 1982, Telectronics requested the corporate secretary of the corporation, Norberto Braga, to register and transfer to its name, and those of its nominees the total 196,000 Pocket Bell shares in the corporation's transfer book, cancel the surrendered certificates of stock and issue the corresponding new certificates of stock in its name and those of its nominees.

Norberto Braga, the corporate secretary and son of the Bragas, refused to register the aforesaid transfer of shares in t e corporate oo s, asserting that the Bragas claim preemptive rights over the 133,000 Abejo shares and that Virginia Braga never transferred her 63,000 shares to Telectronics but had lost the five stock certificates representing those shares.

This triggered off the series of intertwined actions between the protagonists, all centered on the question of jurisdiction over the dispute, which were to culminate in the filing of the two cases at bar.

ISSUE

Whether or Not the corporate secretry may refuse to register the transfer of shares in the corporate books?

RULING

No. As pointed out by the Abejos, Pocket Bell is not a close corporation, and no restriction over the free transferability of the shares appears in the Articles of Incorporation, as well as in the by laws and the certificate of stock themselves, as required by law for the enforcement of such restriction. As the SEC maintains, "There is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take Cognizance of a suit seeking to enforce his rights as such stockholder." This is because the SEC by express mandate has "absolute jurisdiction, supervision and control over all corporations" and is called upon to enforce the provisions of the Corporation Code, among which is the stock purchaser's right to secure the corresponding certificate in his name under the provisions of Sec 65 of the Code.

- Malayan Intergrated Industries Corporation vs. Mendoza, 154 SCRA 548 (1987) Please see Reyes vs. RTC of Makati, *infra.*

MALAYAN INTEGRATED INDUSTRIES CORPORATION, *Petitioner*, vs. **HON. RAFAEL T. MENDOZA, Presiding Judge of REGIONAL TRIAL COURT OF MAKATI, METRO MANILA, BRANCH 135, RAQUEL ABUYEN, LETICIA A. GOHING and AGUEDA ABUYEN,** *Respondents*.
G.R. No. 75238 September 30, 1987 SECOND DIVISION PARAS, *J*

As is clearly evident in the complaint and prayer filed with the trial court the plaintiffs (private respondents herein), are asking defendant corporation (herein petitioner) for an accounting and distribution to them of their father's shares (and dividends) in the corporation. There can be no clearer example of an intra-corporate conflict as in the case at bar in view of the corporation's denial of said demands. Exclusive jurisdiction thus appertains to the SEC.

FACTS

A Civil Case for "Accounting and For Payment of the Fair Value of the Shares of Bonifacio Abuyen to his heirs and Settlement of Estate" was instituted by private respondents in the Regional Trial Court of Makati against petitioner, a corporation duly organized and existing under Philippine Laws. The private respondents alleged that "their late father, Bonifacio Abuyen, was an incorporator of petitioner corporation and has never received any dividend, salary and benefits from the said corporation from the time it was incorporated until his death." Private respondents then played for: -

a) An accounting and inventory of all the assets, consisting of cash, real and personal properties of the corporation;
b) That after the accounting and inventory of the assets of the corporation, the share of the deceased Bonifacio Abuyen be appraised and determined by competent appraiser;

c) That after appraising the share of the deceased Bonifacio Abuyen, the same be divided into three (3) equal parts for partition and distribution among the heirs of the deceased Bonifacio Abuyen; and d) defendant (herein petitioner) be ordered to pay an equivalent to twenty five percent (25%) of whatever amount plaintiffs (private respondents herein) are entitled to collect as their inheritance claim as and for attorney's fees. (p. 3, Rollo).

The Petitioner filed an Answer alleging that the Court has no jurisdiction over the subject-matter and over the nature of the action which is an intracorporate affair brought in the instant complaint, which is clearly asking for the accounting and payment of the fair value of the alleged shares of the late Bonifacio Abuyen, for the reason that the subject-matter and nature of the action involved fall within the original, exclusive and absolute jurisdiction of the Securities and Exchange Commission

ISSUE

Whether or Not the Regional Trial Court validly assumed the jurisdiction pertaining to this case?

RULING

In assailing the jurisdiction assumed by the court (Regional Trial Court) the petitioner corporation invokes Section 5 of PD No. 902-A which reads: -

Sec. 5. In addition to the regulatory and adjudicative function of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and devices, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices and schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be determined to the interest of the public and/or the stockholders, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intracorporate or partnership relations, between and among stockholders, members or associates; 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 it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

Thus, it is petitioner's contention that the lower court has no jurisdiction over the nature of the action or suit by virtue of the aforequoted decree. On the other hand, private respondents maintain that since the complaint is simply an action for accounting and payment of the fair value of the shares of Bonifacio Abuyen to his heirs, the same is properly within the competence of the regular courts. law library

Whether or not a court has jurisdiction over the subject matter of a case is determined from the allegations of the complaint. Nowhere in the complaint do We find any averments, of fraud or misrepresentation which may have been committed by petitioner against private respondents to bring par. (a) of the said Decree into play. Nor would par. (c) be of significance. The bone of contention is thus par. (b) on controversies arising out of intra-corporate or partnership relation.

As is clearly evident in the complaint and prayer filed with the trial court the plaintiffs (private respondents herein), are asking defendant corporation (herein petitioner) for an accounting and distribution to them of their father's shares (and dividends) in the corporation. There can be no clearer example of an intra-corporate conflict as in the case at bar in view of the corporation's denial of said demands. Exclusive jurisdiction thus appertains to the SEC. In Philex Mining Corp. vs. Reyes, 118 SCRA 602, 605-606 (1982) per Melencio-Herrera, J.), the Court spelled out that (intra-corporate 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 are kinds of controversies between stockholders and corporations. The issue of whether or not a corporation is bound to replace a stockholder's lost certificate of stock is a matter purely between a stockholder and the corporation. It is a typical intra-corporate dispute. The question of damages raised is merely incidental to that main issue." The Court rejected the stockholders' theory of excluding his complaint (for replacement of a lost stock (dividend) certificate which he claimed to have never received) from the classification of intra-corporate controversies as one that "does not square with the intent of the law, which is to segregate from the general jurisdiction of regular Courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution, in much the same way that labor disputes are now brought to the Ministry of Labor and Employment (MOLE) and the National Labor Relations Commission (NLRC), and not to the Courts.

- Boman Environmental Corp. vs. Court of Appeals, 167 SCRA 540 (1988)

Boman Environmental Development Corporation versus Hon. Court of Appeals and Nilcar Y. Fajilan - G.R. No. 77860, November 22, 1988, J. Grino-Aquino

This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement (Annex C) and the promissory note (Annex D) arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy.

FACTS

On May 7, 1984, respondent Nilcar Y. Fajilan offered in writing to resign as President and Member of the Board of Directors of petitioner, Boman Environmental Development Corporation (BEDECO), and to sell to the company all his shares, rights, and interests therein for P 300,000 plus the transfer to him of the company's Isuzu pick-up truck which he had been using.

At a meeting of the Board of Directors of BEDECO on June 14, 1984, Fajilan's resignation as president was accepted and new officers were elected. Fajilan's offer to sell his shares back to the corporation was approved, the Board promising to pay for them on a staggered basis from July 15, 1984 to December 15, 1984. The resolution of the Board was communicated to Fajilan through a letter-agreement to which he affixed his conformity.

However, BEDECO paid only P50,000 on July 15, 1984 and another P50,000 on August 31, 1984 and defaulted in paying the balance of P200,000. On April 30, 1985, Fajilan filed a complaint in the Regional Trial Court of Makati for collection of that balance from BEDECO.

In an order dated September 9, 1985, the trial court, through Judge Ansberto Paredes, dismissed the complaint for lack of jurisdiction. It ruled that the controversy arose out of intracorporate relations, hence, the Securities and Exchange Commission has original and exclusive jurisdiction to hear and decide it.

His motion for reconsideration of that order having been denied, Fajilan filed a "Petition for Certiorari, and mandamus with Preliminary Attachment" in the Intermediate Appellate Court.

In a decision dated March 2, 1987, the Court of Appeals set aside Judge Paredes' order of dismissal and directed him to take cognizance of the case. BEDECO's motion for reconsideration was denied in a resolution dated March 24, 1987 of the Court of Appeals. The CA ruled that the intra-corporate matter of the resignation of petitioner as Member of the Board of Directors and President of respondent corporation has long been settled without issue.

The Board of Directors of respondent corporation has likewise long settled the sale by petitioner of all his shares, rights and interests in favor of the corporation. No controversy arose out of this transaction. The jurisdiction of the Securities and Exchange Commission therefore need not be invoked on this matter.

ISSUE

Whether or not a suit brought by a withdrawing stockholder against the corporation to enforce payment of the balance due on the consideration (evidenced by a corporate promissory note) for the surrender of his shares of stock and interests in the corporation, involves an intra-corporate dispute ?

RULING

Yes, it is an intra-corporate controversy.

Section 5(b) of P.D. No. 902-A, as amended, grants the SEC original and exclusive jurisdiction to hear and decide cases involving—

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; ... (Emphasis supplied.)

This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement (Annex C) and the promissory note (Annex D) arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy. Fajilan's offer to resign as president and director "effective as soon as my shares and interests thereto (sic) are sold and fully paid" (Annex A-1, p. 239, Rollo) implied that he would remain a stockholder until his shares and interests were fully paid for, for one cannot be a director or president of a corporation unless he is also a stockholder thereof. The fact that he was replaced as president of the corporation did not necessarily mean that he ceased to be a stockholder considering how the corporation failed to complete payment of the consideration for the purchase of his shares of stock and interests in the goodwill of the business. There has been no actual transfer of his shares to the corporation. In the books of the corporation he is still a stockholder.

Fajilan's suit against the corporation to enforce the latter's promissory note or compel the corporation to pay for his shareholdings is cognizable by the SEC alone which shall determine whether suchpayment will not constitute a distribution of corporate assets to a stockholder in preference over creditors of the corporation. The SEC has exclusive supervision, control and regulatory jurisdiction to investigate whether the corporation has unrestricted retained earnings to cover the payment for the shares, and whether the purchase is for a legitimate corporate purpose as provided in Sections 41 and 122 of the Corporation Code, which reads as follows:

SEC. 41. Power to acquire own shares.—A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: Provided, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired;

1. To eliminate fractional shares arising out of stock dividends;

Sec. 12. Corporate liquidation. ... xxx xxx xxx

2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and
3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code,

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities, (77a, 89a, 16a).

These provisions of the Corporation Code should be deemed written into the agreement between the corporation and the stockholders even if there is no express reference to them in the promissory note. The principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties' expressly making reference to it (Lakas ng Manggagawang Makabayan vs. Abiera, 36 SCRA 437).

The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. "Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock ..."(Steinberg vs. Velasco, 52 Phil. 953.)

- Fortune Cement Corporation vs. National Labor Relations Commission, 193 SCRA 391 (1991)

FORTUNE CEMENT CORPORATION, vs NATIONAL LABOR RELATIONS COMMISSION (First Division) and ANTONIO M. LAGDAMEO
G.R. No. 79762 January 24, 1991, FIRST DIVISION, GRIÑO-AQUINO, *J.*

A person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.

FACTS

Private respondent is stockholder of Fortune Cement Corp (FCC). He was elected executive vice-president by the FCC board. Later on he was dismissed from his post so he filed before the NLRC a complaint for illegal dismissal against FCC alleging that his dismissal was done without a formal hearing and investigation and, therefore, without due process. FCC moved for the dismissal on the complaint on the ground that his dismissal as a corporate officer is a purely **intra-corporate controversy** over which the Securities and Exchange Commission (SEC) has original and exclusive jurisdiction. The Labor Arbiter granted the motion to dismiss. On appeal, however, the NLRC set aside the Labor Arbiter's order and remanded the case to the Arbitration.

ISSUE

Whether or Not such dismissal is a purely intra-corporate controversy and therefore SEC has jurisdiction and not NLRC

RULING

Yes it is a purely intra-corporate controversy. NLRC has NO jurisdiction. SEC has jurisdiction. A person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.

Note: In summary, if a company through its board fires a stockholder who holds a position like an executive vice-president such is not under the jurisdiction of the NLRC. It should be under SEC because it is an intra-corporate controversy. Basis of SEC jurisdiction is Section 5 of Presidential Decree No. 902-A

- Andaya vs. Abadia, 228 SCRA 705 (1993)

NOE S. ANDAYA, petitioner, vs.LISANDRO C. ABADIA, RENE R. CRUZ, VICTOR M. PUNZALAN, LYSIAS C. CABUSAO, JOSE O. BARNUEVO, JOSE M. FORONDA, LAMBERTO TORRES, EDGAR C. GALVANTE, EMERSON C. TANGAN, PRIMITIVO A. SOMERA, and BENJAMIN N. SANTOS, SR., respondents.
G.R. No. L-104033 December 27, 1993 EN BANC BELLOSILLO, *J.*

While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, its directors, trustees, officers, shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC.

FACTS

The petitioner argues that the court *a quo* should not have dismissed Civil Case filed by him against herein respondents, who were original defendants in the court below. He asserts that "actually, the complaint is based not so much on plaintiff's attempted removal but rather on the *manner of his removal and the consequent effects thereof*." Specifically, he alleges in his petition that —" the respondents, as directors of the Armed Forces and Police Savings and Loan Association, Inc., (AFPSLAI) . . . acting in concerts and pursuant to an illegal and nefarious scheme to oust petitioner from his then positions as President and General Manager of the AFPSLAI, with grave abuse of authority and in gross and deliberate violation of the norms of human relations and of petitioner's right to due process, illegally, maliciously and with evident bad faith, convened a meeting of the AFPSLAI Board of Directors and illegally reorganized the management of AFPSLAI by ousting and removing, without just and lawful cause, petitioner from his positions therein, causing petitioner moral and exemplary damages, and praying . . . for the issuance of a temporary restraining order . . . and . . . a writ of preliminary injunction, restraining respondents from implementing the result of the irregularity convened and illegally conducted reorganization of the management of AFPSLAI, as well as respondents Punzalan and Tangan from assuming and taking over from petitioner the offices of President and General Manager of said AFPSLAI and from performing and exercising the functions and powers thereof pending final determination of the case."

The respondents filed an Urgent Motion to Dismiss on the ground that the complaint raised intra-corporate controversies over which the Securities and Exchange Commission, and not the court *a quo*, has exclusive original jurisdiction.

ISSUE

Whether or not the case involves intra-corporate controversies in order to be under the jurisdiction of the SEC?

RULING

The allegations against herein respondents in the amended complaint unquestionably reveal intra-corporate controversies cleverly concealed, although unsuccessfully, by use of civil law terms and phrases. The amended complaint impleads herein respondents who, in their capacity as directors of AFPSLAI, allegedly convened an illegal meeting and voted for the reorganization of management resulting in petitioner's ouster as corporate officer. While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, its directors, trustees, officers, shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC.

Moreover, mere allegations of violation of the provisions of the Civil Code on human relations do not necessarily call for the application of the provisions of the Civil Code in place of AFPSLAI By-Laws

The determination of the rights of petitioner arising from the alleged illegal convening of the meeting of AFPSLAI Board of Directors and his subsequent ouster from corporate offices as a result of the voting for the reorganization of management are obviously intra-corporate controversies subject to the jurisdiction of SEC as provided in P.D. No. 902-A which states:

Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations . . . it shall have original and exclusive jurisdiction to hear and decide cases involving . . . . (b) Controversies arising out of intra-corporate . . . relations . . . . (c) Controversies in the election or appointment of directors, trustees, officers or managers of such corporations . . . .
The same may also be said of petitioner's prayer for damages, considering that his right thereto either depends on, or is inextricably linked with, the resolution of the corporate controversies. For instance, the prayer for moral damages is grounded on "defendants' gross and evident bad faith, insidious machinations and conspirational acts, false and derogatory misinterpretations and imputations against plaintiff and other malevolent and illegal acts calculated to realize and accomplish the threatened illegal removal of plaintiff from his positions aforesaid . . . .;" 14 while the prayer for exemplary damages is dependent on alleged respondents' "concerted illegal effort to maliciously set him up for, and fraudulently consummate, his illegal ouster from his positions in the AFPSLAI . . . ." 15

Even the supposed allegations of violation of the provisions of the Civil Code on human relations, as in par. 7 of the Complaint which states that "certain parties, including defendant SANTOS, "masterminded a plot to degrade plaintiff and to denigrate his accomplishments in the AFPSLAI by spreading false and derogatory rumors against plaintiff," are all treated in the complaint as mere components of the general scheme allegedly perpetrated by respondents as directors to oust him from his corporate offices, and not as causes of action independent of intra-corporate matters. Moreover, the injunction prayed for in the complaint is within the jurisdiction of SEC pursuant to Sec. 6, par. (a), of P.D. 902-A which states: "(i)n order to effectively exercise such jurisdiction, the Commission shall possess the following powers . . . . (t)o issue preliminary or permanent injunction, whether prohibitory or mandatory, in all cases in which it has jurisdiction . . . ."

- Torio vs. Court of Appeals, 230 SCRA 626 (1994)

MARIANO TORIO, MARIA BAUTISTA, FLORENTINA, BAUTISTA AND RENATO BAUTISTA, *Petitioners*, **v. THE COURT OF APPEALS and MEDEL COMPOUND TENANTS ASSOCIATION, INC.,** *Respondents*.
G.R. No. 107293. March 2, 1994. SECOND DIVISION NOCON, *J*

Indeed a contrary interpretation would distort the meaning and intent of P.D. 902-A, the law reorganizing the Securities and Exchange Commission. The better policy in determining which body has jurisdiction over a case would be to consider not only the relationship of the parties but also the nature of the question that is the subject of their controversy

FACTS

In 1986, the tenants of Medel Compound, desirous of owning the land they were leasing, which some of them have been occupying since their birth, organized themselves to form the Medel Compound Tenants Association, Inc. The Association was later registered with the Securities and Exchange Commission with some 300 or so original members, including herein petitioners.

With the full support and assistance of the Mandaluyong Municipal Government and the National Home Mortgage Finance Corp (NHMFC),the land was finally acquired and its five titles were transferred in favor of the Association in February 1989. The land was subdivided among the Association members pursuant to the guidelines set by the NHMFC in relation to the Community Mortgage Program of the government.

In October 27, 1989, spouses Mariano Torio and Maria Bautista, Florentina Bautista, and Renato Bautista, were sent a letter by the Association, through its lawyer, demanding that they vacate Lot Nos. 135, 145, and 147, which were respectively held by them as tenant-lessees. When petitioners refused to do so, respondent filed a complaint for "Unlawful Detainer with Damages." Respondent alleged that petitioners never became active members and refused to participate in the acquisition of the lot, that although they were one of the incorporators of the Association, they did not pay a single centavo of the membership dues, other assessments, the critical downpayment for the respective lots they were leasing and rentals despite demands and grace period given them.chanrobles.com : virtual law library

On the other hand, petitioners raised as defense that they never relinquished their membership. However, they could not immediately pay their obligation to the Association because they allegedly had to put up the money to pay their dues. When they were ready to pay, the Association allegedly ignored them. They further claimed that they never received any formal notices of deadline for payment of membership dues as most of the time they were staying in Wawa, Baras, Rizal.

RULING

On the question of jurisdiction, we cite the decision in Viray v. Court of Appeals, 19 penned by Mr. Justice Isagani Cruz, which states that:jgc:chanrobles.com.ph

"It should be obvious that not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers. If, for example, a person leases an apartment owned by a corporation of which he is a stockholder, there should be no question that a complaint for his ejectment for non-payment of rentals would still come under the jurisdiction of the regular courts and not of the SEC." 20

Indeed a contrary interpretation would distort the meaning and intent of P.D. 902-A, the law reorganizing the Securities and Exchange Commission. The better policy in determining which body has jurisdiction over a case would be to consider not only the relationship of the parties but also the nature of the question that is the subject of their controversy.chanrobles virtual lawlibrary

Petitioners tried to substantiate their second argument with the proposition that the contract between the Association and its members is not a lease contract, but a contract of sale on installment and presented as proof a purported contract signed by the Association President and one of its members.

We are not persuaded by petitioner's second argument for the following reasons: 1) the alleged contract was not presented in the trial court thus its genuineness, authenticity and due execution was not established; 2) if petitioners had entered into such a Lease/Purchase Agreement with the respondent, they should have attached to the complaint said document which they allegedly signed, but this they did not do; and 3) the document presented to sustain their allegation is a pro-forma lease/purchase agreement which does not even name the lessor and is bare of other essential facts. 24

In short, there is nothing in the record to show that petitioners entered into a Lease/Purchase Agreement with the Association and that petitioners never paid their rent to the Association, despite demands and grace period given them. Hence, even if, for the sake of argument, we are to apply the provisions of the purported contract to petitioners, as they want us to do, it is but right to evict them having defaulted in their payments.

Petitioner's third argument is a mere reiteration of their argument in the trial court to apply Section 5, 2nd paragraph, of B.P. Blg. 877 which we have previously disposed of.c law library

As aptly observed by the MTC:

". . . But then, where were they (petitioners) when their help was most needed. Had they put in their share into the concerted communal effort of the membership toward the attainment of the association's goal? Should their indifference be rewarded? Understandably, defendants having transferred their residence to Baras, Rizal long before the acquisition process had reached its peak, they could be the least concerned. To them, the project would not really mean land for the poor. Having rented out their houses, it is more of the entrepreneur's instinct that moved them to hold on to the premises.

- Pearson & George, (S.E. Asia), Inc. vs. National Labor Relations Commission, 253 SCRA 136 (1996)

PEARSON & GEORGE, (S.E. ASIA), INC., vs. NATIONAL LABOR RELATIONS COMMISSION and LEOPOLDO LLORENTE,
G.R. No. 113928 February 1, 1996 THIRD DIVISION DAVIDE, JR., J.

Any question relating or incident to the election of the new Board of Directors, the non-reelection of Llorente as a Director, his loss of the position of Managing Director, or the abolition of the said office are intra-corporate matters. Disputes arising therefrom are intra-corporate disputes which, if unresolved within the corporate structure of the petitioner, may be resolved in an appropriate action only by the SEC pursuant to its authority under paragraphs (b) and (c), Section 5 of P.D. No. 902-A.

FACTS

Private respondent Leopoldo Llorente (hereinafter Llorente) was a member of the Board of Directors of the petitioner. In its organizational meeting on 12 January 1989, the Board of Directors elected among themselves the corporate officers. Llorente was elected as Vice-Chairman of the Board and as Managing Director for a term of one year and until his successor should have been duly elected pursuant to the petitioner's by-laws. On 29 January 1990, Llorente was preventively suspended, with pay, by reason of alleged anomalous transactions entered by him, which were prejudicial to the interest of the petitioner.

In a letter dated 1 February 1990, Llorente demanded from the petitioner access to his room which the latter allegedly sealed; compensation for his suspension or termination; and delivery of his stock certificates for 9,998 shares. The petitioner sent Llorente a letter requiring him to explain the acts enumerated therein which he allegedly committed.

At the regular stockholders' meeting on 5 March 1990, the stockholders of the petitioner elected a new set of directors. Llorente was not reelected. On the same day, the new Board of Directors held a meeting wherein it elected a new set of officers and abolished the position of Managing Director. the petitioner's counsel informed Llorente of his non-reelection, the abolition of the position of Managing Director, and his termination for cause.

On 11 April 1990, Llorente filed with the Labor Arbiter a complaint for unfair labor practice, illegal dismissal, and illegal suspension alleging therein that he was dismissed without due process of law. The petitioner insists that the Labor Arbiter and the NLRC do not have jurisdiction over the private respondent's complaint for illegal dismissal arising out of his removal as Managing Director of the petitioner due to his non-reelection and the abolition of the said position. It claims that the matter is intra-corporate and thus falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC) pursuant to Section 5(c) of P.D. No. 902-A.

ISSUE

Whether it is the SEC or the NLRC which has jurisdiction over the complaint for illegal dismissal which the private respondent had filed with the NLRC? (SEC)

RULING

We agree with both the petitioner and the Office of the Solicitor General that the removal of Llorente as Managing Director is purely an intra-corporate dispute which falls within the exclusive jurisdiction of the SEC and not of the NLRC.

In reality, Llorente was not dismissed. If he lost the position of Managing Director, it was primarily because he was not reelected as Director during the regular stockholders' meeting on 5 March 1990. The office of Managing Director presupposes that its occupant is a Director; hence, one who is not a Director of the petitioner or who has ceased to be a Director cannot be elected or appointed as a Managing Director. Elsewise stated, the holding of the position of Director is a prerequisite for the election, appointment, or designation of Managing Director. If a Managing Director should lose his position because he ceased to be a Director for any reason, such as non-reelection as in the case of Liorente, such loss is not dismissal but failure to qualify or to maintain a prerequisite for that position. Then too, the position of Managing Director was abolished.

Any question relating or incident to the election of the new Board of Directors, the non-reelection of Liorente as a Director, his loss of the position of Managing Director, or the abolition of the said office are intra-corporate matters. Disputes arising therefrom are intra-corporate disputes which, if unresolved within the corporate structure of the petitioner, may be resolved in an appropriate action only by the SEC pursuant to its authority under paragraphs (b) and (c), Section 5 of P.D. No. 902-A.

Thus, in *Philippine School of Business Administration vs. Leano,*[5] we ruled that a complaint for illegal dismissal arising from a Board of Directors' action declaring vacant all corporate positions except that of Chairman and President, and from the non-reelection of the former Executive Vice-President during the ensuing election of officers is not cognizable by the NLRC. Pertinent portions of our opinion therein read as follows:

Basically, therefore, the question is whether the election of directors on August 1, 1981 and the election of officers on September 5, 1981, which resulted in TAN's failure to be re-elected, were validly held. This is the crux of the question that TAN has raised before the SEC. Even in his position paper before the NLRC, TAN alleged that the election on August 1, 1981 of the three directors was in contravention of the PSBA By-Laws providing that any vacancy in the Board shall be filled by a majority vote of the stockholders at a meeting specially called for the purpose. Thus, he concludes, the Board meeting on September 5, 1981 was tainted with irregularity on account of the presence of illegally elected directors without whom the results could have been different.

TAN invoked the same allegations in his complaint filed with the SEC. So much so, that on December 17, 1981, the SEC (Case No. 2145) rendered a Partial Decision annulling the election of the three directors and ordered the convening of a stockholders' meeting for the purpose of electing new members of the Board. The correctness of said conclusion is not for us to pass upon in this case. TAN was present at said meeting and again sought the issuance of injunctive relief from the SEC.

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of the PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President. Vis-a-vis the NLRC, these matters fall within the jurisdiction of the SEC.
xxx

This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of TAN's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

We reiterated this rule in Dy vs. National Labor Relation Commission,[6] which involved an action for illegal dismissal filed by a bank manager who was not reelected as such, and in *Fortune Cement Corporation vs. National Labor Relations Commission,*[7] which involved a complaint for illegal dismissal instituted by an Executive Vice-President of the corporation who lost that position when he was dismissed as such by the Board of Directors for loss of trust and confidence.

- Ongkingco vs. National Labor Relations Commission, 270 SCRA 613 (1997)

BIENVENIDO ONGKINGCO, as President and GALERIA DE MAGALLANES CONDOMINIUM ASSOCIATION, INC., *Petitioners*, *v.* **NATIONAL LABOR RELATIONS COMMISSION and FEDERICO B. GUILAS,** *Respondents.*
G.R. No. 119877. March 31, 1997 FIRST DIVISION KAPUNAN, ***J.***

It cannot be gainsaid that the complainant's cause of action in his complaint is illegal dismissal which issue falls four square within the jurisdiction of the NLRC. This is so, because while it may be true that the termination of the complainant was effected allegedly by a resolution of the Board of Directors of the respondent association, this did not make the dispute intracorporate in nature. Moreover, We have taken note of the fact that the complainant is neither a member of the association nor an officer thereof. Hence, We are more convinced that he is an employee of the respondent association occupying the position of administrator who is in (sic) charged with the function of managing and administering the building or condominium owned by the members.

FACTS

Petitioner Galeria de Magallanes Condominium Association, Inc. (Galeria for brevity) is a non-stock, non-profit corporation formed in accordance with R.A. No. 4726,"Its primary purpose is to hold title to the common areas of the Galeria de Magallanes Condominium Project and to manage and administer the same for the use and convenience of the residents and/or owners." Petitioner Bienvenido Ongkingco was the president of Galeria at the time private respondent filed his complaint.

On 1 September 1990, Galeria's Board of Directors appointed private respondent Guilas as Administrator/Superintendent. As Administrator, private respondent was tasked with the maintenance of the "performance and elegance of the common areas of the condominium and external appearance of the compound thereof for the convenience and comfort of the residents as well as to keep up the quality image, and hence the value of the investment for the owners thereof." However, through a resolution passed by the Board of Directors of Galeria, private respondent was not re-appointed as Administrator, hence he filed a complaint for illegal dismissal and non-payment of salaries with the NLRC.

In response petitioners filed a motion to dismiss alleging that it is the SEC, and not the labor arbiter, which has jurisdiction over the subject matter of the complaint.

ISSUE

Whether or not the intracorporate controversy exists?

RULING

As obtaining in this case, no intracorporate controversy exists, hence, the jurisdiction of the NLRC should be sustained.

It cannot be gainsaid that the complainant's cause of action in his complaint is illegal dismissal which issue falls four square within the jurisdiction of the NLRC. This is so, because while it may be true that the termination of the complainant was effected allegedly by a resolution of the Board of Directors of the respondent association, this did not make the dispute intracorporate in nature. Moreover, We have taken note of the fact that the complainant is neither a member of the association nor an officer thereof. Hence, We are more convinced that he is an employee of the respondent association occupying the position of administrator who is in (sic) charged with the function of managing and administering the building or condominium owned by the members. Indeed, there is a whale of difference between a member of the association who is a part owner of the building and a mere employee performing managerial and administrative functions which are necessary in the usual undertaking of the respondent Association. The complainant falls under the second category. And, to the point of being repetitious, it needs to be stressed that the fact that the complainant was removed by the Board of Directors did not change the issue from an illegal dismissal case to an intracorporate one. For, what remains to be resolved here is whether or not the complainant's removal from his position as Administrator was for a just and valid cause and in compliance with due process. And, as the facts now stand, the issue is within the scope of authority of the National Labor Relations Commission to resolve.

- Garcia vs. Eastern Telecommunications Philippines, Inc 585 SCRA 450 (2009)

ATTY. VIRGILIO R. GARCIA, *Petitioner*, *v.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. and ATTY. SALVADOR C. HIZON,** *Respondents*.
G.R. NO. 173115, April 16, 2009, THIRD DIVISION CHICO-NAZARIO, *J.*

We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves

FACTS

Atty. Virgilio R. Garcia was the Vice President and Head of Business Support Services and Human Resource Departments of the Eastern Telecommunications Philippines, Inc. (ETPI).

ETPI is a corporation duly organized and existing under the laws of the Republic of the Philippines. Atty. Salvador C. Hizon is the President/Chief Executive Officer of ETPI.

On 16 January 2000, Atty. Garcia was placed under preventive suspension based on three complaints for sexual harassment filed by Atty. Maria Larrie Alinsunurin, former manager of ETPI's Office of the Legal Counsel; Ms. Emma Valeros-Cruz, Assistant Vice President of ETPI and former secretary of Atty. Garcia; and Dr. Mercedita M. Macalintal, medical retainer/company physician of ETPI. In response to the complaints, the Human Resources Department constituted a Committee on Decorum to investigate the complaints. By reason of said complaints, Atty. Garcia was placed in preventive suspension. The committee conducted an investigation where Atty. Garcia was given copies of affidavits of the witnesses against him and a chance to defend himself and to submit affidavits of his witnesses. The Committee submitted a report which recommended his dismissal.[3] In a letter dated 14 April 2000, Atty. Hizon advised Atty. Garcia that his employment with ETPI was, per recommendation of the Committee, terminated effective 16 April 2000.

A complaint-affidavit for illegal dismissal was filed on 11 July 2000 by Atty. Virgilio R. Garcia against ETPI and Atty. Salvador C. Hizon. Labor Arbiter Reyes found the preventive suspension and subsequent dismissal of Atty. Garcia illegal. ETPI and Atty. Hizon appealed the decision to the NLRC, filing a Notice of Appeal and Memorandum of Appeal,[33] which appeal was opposed by Atty. Garcia. The Commission ruled that the dismissal of Atty. Garcia, being ETPI's Vice President, partook of the nature of an intra-corporate dispute cognizable by Regional Trial Courts and not by Labor Arbiters. It added that ETPI and Atty. Hizon were not barred by estoppel from challenging the jurisdiction of the Labor Arbiter over the instant case.

ISSUE

Whether the question of legality or illegality of the removal or termination of employment of an officer of a corporation is an intra-corporate controversy that falls under the original exclusive jurisdiction of the regional trial courts?

RULING

The Supreme Court, in a long line of cases, has decreed that a corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy, over which the Securities and Exchange Commission [SEC] (now the Regional Trial Court) has original and exclusive jurisdiction.[8]

We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[89] In Lozon v. National Labor Relations Commission,[90] we declared that Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments x x x. Before a dismissal or removal could properly fall within the jurisdiction of the SEC, it has to be first established that the person removed or dismissed was a corporate officer.[91] "Corporate officers" in the context of Presidential Decree No. 902-A[92] are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws.[93] There are three specific officers whom a corporation must have under Section 25 of the Corporation Code.[94] These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.chanrobles virtual law library.

In the case before us, the by-laws of ETPI provide:

ARTICLE V officers

Section 1. Number. - The officers of the Company shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Treasurer, a Secretary, an Assistant Secretary, and such other officers as may be from time to time be elected or appointed by the Board of Directors. One person may hold any two compatible offices.

Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia's complaint-affidavit that he was Vice President for Business Support Services and Human Resource Departments of ETPI when his employment was terminated effective 16 April 2000. It is therefore clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. One who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee.[96] Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

We agree with both the NLRC and the Court of Appeals that Atty. Garcia's ouster as Vice-President, who is a corporate officer of ETPI, partakes of the nature of an intra-corporate controversy, jurisdiction over which is vested in the SEC (now the RTC). The Labor Arbiter thus erred in assuming jurisdiction over the case filed by Atty. Garcia, because he had no jurisdiction over the subject matter of the controversy

2. Cases under the new rule that the RTC exercises jurisdiction over intra-corporate disputes

- Calleja vs. Panday 483 SCRA 680 (2006)

MA. LUTGARDA P. CALLEJA, JOAQUIN M. CALLEJA, JR., JADELSON PETER P. CALLEJA, MA. JESSICA T. FLORES, MERCIE C. TIPONES and PERFECTO NIXON C. TABORA, Petitioners, vs. **JOSE PIERRE A. PANDAY, AUGUSTO R. PANDAY and MA. THELNA P. MALLARI,** Respondents.
G.R. No. 168696 February 28, 2006 FIRST DIVISION**AUSTRIA-MARTINEZ, *J.:***

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. Therefore, actions of quo warranto against persons who usurp an office in a corporation, which were formerly cognizable by the Securities and Exchange Commission under PD 902-A, have been transferred to the courts of general jurisdiction. But, *this does not change the fact that Rule 66 of the 1997 Rules of Civil Procedure does not apply to quo warranto cases against persons who usurp an office in a private corporation.*

FACTS

On May 16, 2005, respondents filed a petition with the Regional Trial Court of San Jose, Camarines Sur for quo warranto with Damages and Prayer for Mandatory and Prohibitory Injunction, Damages and Issuance of Temporary Restraining Order against herein petitioners. Respondents alleged that from 1985 up to the filing of the petition with the trial court, they had been members of the board of directors and officers of St. John Hospital, Incorporated, but sometime in May 2005, petitioners, who are also among the incorporators and stockholders of said corporation, forcibly and with the aid of armed men usurped the powers which supposedly belonged to Respondents. May 24, 2005, RTC-Br. 58 issued an Order transferring the case to the Regional Trial Court in Naga City. According to RTC-Br. 58, since the verified petition showed petitioners therein (herein respondents) to be residents of Naga City, then pursuant to Section 7, Rule 66 of the 1997 Rules of Civil Procedure, the action for quo warranto should be brought in the Regional Trial Court exercising jurisdiction over the territorial area where the respondents or any of the respondents resides. However, the Executive Judge of RTC, Naga City refused to receive the case folder of the subject case for quo warranto, stating that improper venue is not a ground for transferring a quo warranto case to another administrative jurisdiction.

RTC-Br. 58 then proceeded to issue and serve summons on herein petitioners (respondents below). Petitioner Tabora filed his Answer dated June 8, 2005, raising therein the affirmative defenses of (1) improper venue, (2) lack of jurisdiction, and (3) wrong remedy of quo warranto. Thereafter, the other petitioners also filed their Answer, also raising the same affirmative defenses.

July 13, 2005, RTC-Br. 58 issued the assailed Order that upon the advent of RA 8799 approved on July 19, 2000, otherwise known as the Securities and Regulation Code, the Commission's jurisdiction over all cases enumerated in Section 5, Presidential Decree 902-A were transferred to the Court of general jurisdiction or the appropriate Regional Trial Court with a proviso that the "Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases." Also, Motion to Dismiss is DENIED pursuant to the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC) which mandates that motion to dismiss is a prohibited pleading (Section 8) and in consonance with Administrative Order 8-01 of the Supreme Court dated March 1, 2001, the pcase is hereby ordered remanded to the Regional Trial Court Branch 23, Naga City which under A.M. No. 00-11-03-SC has been designated as special court to try and decide intra-corporate controversies under R.A. 8799.

ISSUE

1. Whether or not quo warranto proceeding under rule 66 is the proper remedy
2. Whether or not RTC Branch 58 has jurisdiction.

RULING

1. No. R.A. No. 8799 was passed and Section 5.2 thereof provides as follows5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court

branches that shall exercise jurisdiction over these cases. Therefore, actions of quo warranto against persons who usurp an office in a corporation, which were formerly cognizable by the Securities and Exchange Commission under PD 902-A, have been transferred to the courts of general jurisdiction. But, this does not change the fact that Rule 66 of the 1997 Rules of Civil Procedure does not apply to quo warranto cases against persons who usurp an office in a private corporation. As explained in the Unilongo v. Court of Appeals case, Section 1(a) of Rule 66 of the present Rules no longer contains the phrase "or an office in a corporation created by authority of law" which was found in the old Rules. Clearly, the present Rule 66 only applies to actions of quo warranto against persons who usurp a public office, position or franchise; public officers who forfeit their office; and associations which act as corporations without being legally incorporated despite the passage of R.A. No. 8799. It is, therefore, The Interim Rules of Procedure Governing Intra-Corporate Controversies Under R.A. No. 8799 (hereinafter the Interim Rules) which applies to the petition for quo warranto filed by respondents before the trial court since what is being questioned is the authority of herein petitioners to assume the office and act as the board of directors and officers of St. John Hospital, Incorporated.

The Interim Rules provide thus:

Section 1. (a) Cases covered. – These Rules shall govern the procedure to be observed in civil cases involving the following:
x x x x
(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates, and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

1. (3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations

2. Evidently, the RTC-Br. 58 in San Jose, Camarines Sur is bereft of jurisdiction over respondents' petition for quo warranto. Based on the allegations in the petition, the case was clearly one involving an intra-corporate dispute. The trial court should have been aware that under R.A. No. 8799 and the aforementioned administrative issuances of this Court, RTC-Br. 58 was never designated as a Special Commercial Court; hence, it was never vested with jurisdiction over cases previously cognizable by the SEC.

Such being the case, RTC-Br. 58 did not have the requisite authority or power to order the transfer of the case to another branch of the Regional Trial Court. The only action that RTC-Br. 58 could take on the matter was to dismiss the petition for lack of jurisdiction. In HLC Construction and Development Corp. v. Emily Homes Subdivision Homeowners' Association,13 the Court held that the trial court, having no jurisdiction over the subject matter of the complaint, should dismiss the same so the issues therein could be expeditiously heard and resolved by the tribunal which was clothed with jurisdiction.

Note, further, that respondents' petition for quo warranto was filed as late as 2005. A.M. No. 03-03-03-SC took effect as early as July 1, 2003 and it was clearly provided therein that such petitions shall be filed in the Office of the Clerk of Court in the official station of the designated Special Commercial Court. Since the official station of the designated Special Commercial Court for Camarines Sur is the Regional Trial Court in Naga City, respondents should have filed their petition with said court.

- Orendain vs. BF Homes, Inc., 506 SCRA 348 (2006)

FLORENCIO ORENDAIN, *Petitioner*, *v.* **BF HOMES, INC.,** *Respondent*.
G.R. NO. 146313 : October 31, 2006 THIRD DIVISIONVELASCO, JR., ***J*.:**

Clearly, the controversy involves matters purely civil in character and is beyond the ambit of the limited jurisdiction of the SEC.

Section 5 of PD No. 902-A does not apply in the instant case. The LSFSIPI is neither an officer nor a stockholder of BF Homes, and this case does not involve intra-corporate proceedings. In addition, the seller, petitioner Orendain, is being sued in his individual capacity for the unauthorized sale of the property in controversy.

FACTS

Respondent BF Homes, a domestic corporation involved in developing and selling residential lots filed a petition for rehabilitation and suspension of payments as it incurred liabilities in the course of its operations. SEC ordered the appointment of a rehabilitation receiver with herein petitioner Orendain as its Chairman. Sometime later, BF Homes represented by petitioner Orendain sold a parcel of land to the Local Superior of the Franciscan Sisters of the Immaculate Phils. Inc (LSFSIPI). SEC ordered a new committee of receivers and relieved petitioner of its duties. BF Homes then filed before the court an action for reconveyance of the property sold to LSFSIPI alleging petitioner acted in its individual capacity and therefore had no title over the property. Petitioner argues RTC had no jurisdiction over the case since BF Homes' suit was instituted against him as its former receiver. The trial court and CA found for BF Homes.

ISSUE

Whether or not the reconveyance suit involves intra-corporate dispute cognizable by SEC.

RULING

NO. Clearly, the controversy involves matters purely civil in character and is beyond the ambit of the limited jurisdiction of the SEC.

Section 5 of PD No. 902-A does not apply in the instant case. The LSFSIPI is neither an officer nor a stockholder of BF Homes, and this case does not involve intra-corporate proceedings. In addition, the seller, petitioner Orendain, is being sued in his individual capacity for the unauthorized sale of the property in controversy. Hence, we find no cogent reason to sustain petitioner's manifestation that the resolution of the instant controversy depends on the ratification by the SEC of the acts of its agent or the receiver because the act of Orendain was allegedly not within the scope of his authority as receiver. Furthermore, the determination of the validity of the sale to LSFSIPI will necessitate the application of the provisions of the Civil Code on obligations and contracts, agency, and other pertinent provisions. In addition, jurisdiction over the case for reconveyance is clearly vested in the RTC as provided in paragraph (2), Section 19, B.P. Blg. 129.

- Ujuico vs. Quiambao 513 SCRA 243 (2007)

ALDERITO Z. YUJUICO, BONIFACIO C. SUMBILLA, and DOLNEY S. SUMBILLA, Petitioners,vs. CEZAR T. QUIAMBAO, JOSE M. MAGNO III, MA. CHRISTINA F. FERREROS, ANTHONY K. QUIAMBAO, SIMPLICIO T. QUIAMBAO, JR., ERIC C. PILAPIL, ALBERT M. RASALAN, and REGIONAL TRIAL COURT, BRANCH 48, URDANETA CITY, Respondents.
G.R. No. 168639, January 29, 2007 FIRST DIVISION **SANDOVAL-GUTIERREZ, *J.***

Upon the enactment of R.A. No. 8799, otherwise known as "The Securities Regulation Code" which took effect on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A has been transferred to the courts of general jurisdiction, or the appropriate RTC. Pursuant to R.A. No. 8799, the Court issued a Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide cases enumerated in Section 5 of P.D. No. 902-A. Branch 48 of RTC, Urdaneta City, the court a quo, is among those designated as a Special Commercial Court. Clearly, the RTC has the power to hear and decide the intra-corporate controversy of the parties herein. Concomitant to said power is the authority to issue orders necessary or incidental to the carrying out of the powers expressly granted to it. Thus, the RTC may, in appropriate cases, order the holding of a special meeting of stockholders or members of a corporation involving an intra-corporate dispute under its supervision.

FACTS

Strategic Alliance Development Corporation (STRADEC) is a domestic corporation engaged in the business of providing financial and investment advisory services and investing in projects through consortium or joint venture information. March 1, 2004, STRADEC held its annual stockholders' meeting in its Pasig City office as indicated in the notices sent to the stockholders.4 At the said meeting, the following were elected members of the Board of Directors: Alderito Z. Yujuico, Bonifacio C. Sumbilla, Dolney S. Sumbilla (petitioners herein), Cesar T. Quiambao, Jose M. Magno III and Ma. Christina Ferreros (respondents herein). Petitioners Alderito Yujuico was elected Chairman and President, while Bonifacio Sumbilla was elected Treasurer.

After five (5) months, or on August 16, 2004, respondents filed with the (RTC) of San Carlos City, Pangasinan a Complaint against STRADEC (represented by herein petitioners as members of its Board of Directors). Subsequently, respondents filed an Amended Complaint dated September 2, 2004 further praying for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin petitioners from discharging their functions as directors and officers of STRADEC. As the controversy involves an intra-corporate dispute, the trial court, on October 4, 2004, issued an Order transferring the case to RTC, Branch 48, Urdaneta City, being a designated Special Commercial Court.5 The case was then re-docketed as Civil (SEC) Case No. U-14.

Since Branch 48 of RTC, Urdaneta City had no presiding judge then, Judge Meliton G. Emuslan acted as pairing judge of that branch to take cognizance of the cases therein until the appointment and assumption to duty of a regular judge. petitioners filed their Answer with Counterclaim in Civil (SEC) Case No. U-14. They prayed for the dismissal of the complaint on the following grounds, among others: (a) the complaint does not state a cause of action; (b) the action is barred by prescription for it was filed beyond the 15-day prescriptive period provided by Section 2, Rule 6 of the Interim Rules and Procedure Governing Intra-Corporate Controversies under Republic Act (R.A.) No. 8799.

Meanwhile, Judge Aurelio R. Ralar, Jr. was appointed presiding judge of RTC, Branch 48, Urdaneta City. Significantly, on November 9, 2004, he took his oath of office before Associate Justice Diosdado M. Peralta of the Sandiganbayan, and on November 12, 2004, he assumed his duties.9 Subsequently, or on November 25, 2004, pairing Judge Meliton Emuslan still issued an Order10 granting respondents' application for preliminary injunction ordering (1) the holding of a special stockholders' meeting of STRADEC on December 10, 2004 "in the principal office of the corporation in Bayambang, Pangasinan. CA dismissed the petition.

ISSUE

1. WON RTC and not SEC has jurisdiction over the intra corporate dispute?
2. WON there was a grave abuse of discretion on the part of Judge Emuslan?

RULING

1. YES. Upon the enactment of R.A. No. 8799, otherwise known as "The Securities Regulation Code" which took effect on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A has been transferred to the courts of general jurisdiction, or the appropriate RTC. Pursuant to R.A. No. 8799, the Court issued a Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide cases enumerated in Section 5 of P.D. No. 902-A. Branch 48 of RTC, Urdaneta City, the court a quo, is among those designated as a Special Commercial Court. Clearly, the RTC has the power to hear and decide the intra-corporate controversy of the parties herein. Concomitant to said power is the authority to issue orders necessary or incidental to the carrying out of the powers expressly granted to it. Thus, the RTC may, in appropriate cases, order the holding of a special meeting of stockholders or members of a corporation involving an intra-corporate dispute under its supervision.

2. YES. Indeed, as early as November 12, 2004, Judge Aurelio Ralar, Jr. assumed his duties as presiding judge of RTC, Branch 48, Urdaneta City. Evidently, Judge Emuslan's authority, as pairing judge of Branch 48, to act on Civil (SEC) Case No. U-14 automatically ceased on that date. Therefore, he no longer had the authority to issue the Order of November 25, 2004, or thirteen (13) days after Judge Ralar, Jr. had assumed office. This is clear from this Court's Circular No. 19-98 dated February 18, 1998.

Also, A writ of preliminary injunction is a provisional remedy, an adjunct to a main suit. It is also a preservative remedy, issued to preserve the status quo of the things subject of the action or the relations between the parties during the pendency of the suit. To repeat, the purpose of the writ of preliminary injunction is to preserve the status quo until the court could hear the merits of the case. The status quo is the last actual peaceable uncontested status that preceded the controversy which, in the instant case, is the holding of the annual stockholders' meeting on March 1, 2004 and the ensuing election of the directors and officers of STRADEC. But instead of preserving the status quo, Judge Emuslan's Order messed it up when, in compliance therewith, a special stockholders' meeting was held anew and a new set of directors and officers of STRADEC was elected. That effectively resolved respondents' principal action without even a full-blown trial on the merits since the Order impliedly ruled that the March 1, 2004 annual stockholders' meeting and election are void. Verily, the issuance of the questioned Order violates the established principle that courts should avoid granting a writ of preliminary injunction that would in effect dispose of the main case without trial.

Lastly, As pointed out by petitioners in their answer with counterclaim, under Section 3, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, an election contest must be "filed within 15 days from the date of the election."36 It was only on August 16, 2004 that respondents instituted an action questioning the validity of the March 1, 2004 stockholders' election, clearly beyond the 15-day prescriptive period.

- Reyes vs. RTC of Makati, 561 SCRA 593 (2008)

OSCAR C. REYES, petitioner,
vs.
HON. REGIONAL TRIAL COURT OF MAKATI, Branch 142, ZENITH INSURANCE CORPORATION, and RODRIGO C. REYES, respondents.
G.R. No. 165744 August 11, 2008 SECOND DIVISION BRION, *J.*:

Applying the first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or associates; 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 it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

FACTS

Oscar and private respondent Rodrigo C. Reyes (Rodrigo) are two of the four children of the spouses Pedro and Anastacia Reyes. Pedro, Anastacia, Oscar, and Rodrigo each owned shares of stock of Zenith Insurance Corporation (Zenith), a domestic corporation established by their family. Pedro died in 1964, while Anastacia died in 1993. Although Pedro's estate was judicially partitioned among his heirs sometime in the 1970s, no similar settlement and partition appear to have been made with Anastacia's estate, which included her shareholdings in Zenith. As of June 30, 1990, Anastacia owned 136,598 shares of Zenith; Oscar and Rodrigo owned 8,715,637 and 4,250 shares, respectively.

May 9, 2000, Zenith and Rodrigo filed a complaint4 with the Securities and Exchange Commission (SEC) against Oscar, docketed as SEC Case No. 05-00-6615. The complaint stated that it is "a derivative suit initiated and filed by the complainant Rodrigo C. Reyes to obtain an accounting of the funds and assets of ZENITH INSURANCE CORPORATION which are now or formerly in the control, custody, and/or possession of respondent [herein petitioner Oscar] and to determine the shares of stock of deceased spouses Pedro and Anastacia Reyes that were arbitrarily and fraudulently appropriated [by Oscar] for himself [and] which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased spouses, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares."

October 22, 2002, Oscar filed a Motion to Declare Complaint as Nuisance or Harassment Suit. He claimed that the complaint is a mere nuisance or harassment suit and should, according to the Interim Rules of Procedure for Intra-Corporate Controversies, be dismissed; and that it is not a bona fide derivative suit as it partakes of the nature of a petition for the settlement of estate of the deceased

Anastacia that is outside the jurisdiction of a special commercial court. The RTC, in its Order dated November 29, 2002 (RTC Order), denied the motion

Oscar thereupon went to the CA on a petition for certiorari, prohibition, and mandamus11 and prayed that the RTC Order be annulled and set aside and that the trial court be prohibited from continuing with the proceedings. The appellate court affirmed the RTC Order and denied the petition in its Decision dated May 26, 2004.

ISSUE

WON the trial court, sitting as a special commercial court, has jurisdiction over the subject matter of Rodrigo's complaint?

RULING

No The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy.

Applying the first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or associates; 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 it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

Article 777 of the Civil Code declares that the successional rights are transmitted from the moment of death of the decedent. Accordingly, upon Anastacia's death, her children acquired legal title to her estate (which title includes her shareholdings in Zenith), and they are, prior to the estate's partition, deemed co-owners thereof.25 This status as co-owners, however, does not immediately and necessarily make them stockholders of the corporation. Unless and until there is compliance with Section 63 of the Corporation Code on the manner of transferring shares, the heirs do not become registered stockholders of the corporation. Rodrigo must, therefore, hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. First, he must prove that there are shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. Second, he must register the transfer of the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and prima facie ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court.

The controversy it presents is purely civil rather than corporate, although it is controversy it presents is purely civil rather than corporate, although it is denominated as a "complaint for accounting of all corporate funds and assets."denominated as a "complaint for accounting of all corporate funds and assets."

- Unlad Resources Dev't., Corp., et al. vs. Renato P. Dragon, 560 SCRA 63 (2008)

UNLAD RESOURCES DEVELOPMENT CORPORATION v. RENATO P. DRAGON
G.R. NO. 149338 : July 28, 2008 THIRD DIVISION NACHURA, *J.*

The issue of receivership does not arise from the parties' obligations under the Memorandum of Agreement, but rather from specific acts attributed to petitioners as members of the Board of Directors of the Bank. Clearly, the rescission of the Memorandum of Agreement is a cause of action within the jurisdiction of the trial courts, notwithstanding the fact that the parties involved are all directors of the same corporation

FACTS

On December 29, 1981, the Plaintiffs (herein respondents) and defendant (herein petitioner) Unlad Resources, through its Chairman[,] Helena Z. Benitez[,] entered into a Memorandum of Agreement wherein it is provided that [respondents], as controlling stockholders of the Rural Bank [of Noveleta] shall allow Unlad Resources to invest four million eight hundred thousand pesos (P4,800,000.00) in the Rural Bank in the form of additional equity. On the other hand, [petitioner] Unlad Resources bound itself to invest the said amount of 4.8 million pesos in the Rural Bank; upon signing, it was, likewise, agreed that [petitioner] Unlad Resources shall subscribe to a minimum of four hundred eighty thousand pesos (P480,000.00) (sic) common or preferred non-voting shares of stock with a total par value of four million eight hundred thousand pesos (P4,800,000.00) and pay up immediately one million two hundred thousand pesos (P1,200,000.00) for said subscription; that the [respondents], upon the signing of the said agreement shall transfer control and management over the Rural Bank to Unlad Resources. According to the [respondents], immediately after the signing of the agreement, they complied with their obligation and transferred control of the Rural Bank to Unlad Resources and its nominees and the Bank was renamed the Unlad Rural Bank of Noveleta, Inc. However, [respondents] claim that despite repeated demands, Unlad Resources has failed and refused to comply with their obligation under the said Memorandum of Agreement when it did not invest four million eight hundred thousand pesos (P4,800,000.00) in the Rural Bank in the form of additional equity and, likewise, it failed to immediately infuse one million two hundred thousand pesos (P1,200,000.00) as paid in capital upon signing of the Memorandum of Agreement.

On August 10, 1984, the Board of Directors of [petitioner] Unlad Resources passed Resolution No. 84-041 authorizing the President and the General Manager to lease a mango plantation situated in Naic, Cavite. Pursuant to this Resolution, the Bank as [lessee] entered into a Contract of Lease with the [petitioner] Helena Z. Benitez as [lessor]. The management of the mango plantation was undertaken by Unlad Commodities, Inc., a subsidiary of Unlad Resources[,] under a Management Contract Agreement. The Management Contract provides that Unlad Commodities, Inc. would receive eighty percent (80%) of the net profits generated by the operation of the mango plantation while the Bank's share is twenty percent (20%). It was further agreed that at the end of the lease period, the Rural Bank shall turn over to the lessor all permanent improvements introduced by it on the plantation.

July 3, 1987, herein respondents filed before the Regional Trial Court (RTC) of Makati City, Branch 61 a Complaint[4] for rescission of the agreement and the return of control and management of the Rural Bank from petitioners to respondents, plus damages. After trial, the RTC rendered a Decision in favor of respondent. CA affirmed the decision. Petitioners question the jurisdiction of the trial court, something they have done from the beginning of the controversy, contending that the issues that respondents raised before the trial court are intra-corporate in nature and are, therefore, beyond the jurisdiction of the trial court. They point out that respondents' complaint charged them with mismanagement and alleged dissipation of the assets of the Rural Bank. Since the complaint challenges corporate actions and decisions of the Board of Directors and prays for the recovery of the control and management of the Rural Bank, these matters fall outside the jurisdiction of the trial court.

ISSUE

Whether or not the trial court has jurisdiction over the case?

RULING

Yes. main issue in this case is the rescission of the Memorandum of Agreement. This is to be distinguished from respondents' allegation of the alleged mismanagement and dissipation of corporate assets by the petitioners which is based on the prayer for receivership over the bank. The two issues, albeit related, are obviously separate, as they pertain to different acts of the parties involved. The issue of receivership does not arise from the parties' obligations under the Memorandum of Agreement, but rather from specific acts attributed to petitioners as members of the Board of Directors of the Bank. Clearly, the rescission of the Memorandum of Agreement is a cause of action within the jurisdiction of the trial courts, notwithstanding the fact that the parties involved are all directors of the same corporation.

Still, the petitioners insist that the trial court had no jurisdiction over the complaint because the issues involved are intra-corporate in nature. Republic Act (R.A.) No. 8799, also known as the Securities Regulation Code. This law, which took effect in 2000, has transferred jurisdiction over such disputes to the RTC. Specifically, R.A. 8799 provides:

Sec. 5. Powers and Functions of the Commission

x x x x

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

Consequently, whether the cause of action stems from a contractual dispute or one that involves intra-corporate matters, the RTC already has jurisdiction over this case.

- Roberto L. Abad, et al vs. Philippine Communications Satellite Corporation, G.R. No. 200620, March 18, 2015

ROBERTO L. ABAD, ET AL VS. PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION, G.R. NO. 200620, MARCH 18, 2015

Upon the enactment of Republic Act No. 8799, the jurisdiction of the SEC over intra- corporate controversies and the other cases enumerated in Section 5 of P.D. No. 902-A was transferred to the Regional Trial Court. The jurisdiction of the Sandiganbayan has been held not to extend even to a case involving a sequestered company notwithstanding that the majority of the members of the board of directors were PCGG nominees.

FACTS

Respondent Philippine Communications Satellite Corporation (PHILCOMSAT), along with Philippine Overseas Telecommunications Corporation (POTC) were among those private companies sequestered by the Philippine Commission on Good Government (PCGG) after the EDSA People Power Revolution in 1986. PHILCOMSAT owns 81% of the outstanding capital stock of Philcomsat Holdings Corporation (PHC). PHILCOMSAT owns 81% of the outstanding capital stock of Philcomsat Holdings Corporation (PHC). The majority shareholders of PHILCOMSAT are also the seven families who have owned and controlled POTC (Ilusorio, Nieto, Poblador, Africa, Benedicto, Ponce Enrile and Elizalde).

Thereafter, the two factions took various legal steps including the filing of suits and countersuits to gain legitimacy for their respective election as directors and officers of POTC and PHILCOMSAT. The Africa group had sought the invalidation of the proxy issued in favor of Nieto, Jr. and/or Locsin and consequent nullification of the elections held during the annual stockholders' meeting of PHC on August 31, 2004 (Civil Case No. 04-1049 of RTC, Makati City, Branch 138). Prior to this, there was the pending case involving the compromise agreement dated June 28, 1996 entered into by Atty. Potenciano Ilusorio with the Republic of the Philippines and the PCGG relative to the Ilusorio family's shareholdings in POTC, including those shares forcibly taken from him by former President Ferdinand Marcos which were placed in the name of Independent Realty Corporation (IRC) and Mid-Pasig Land Development (Mid-Pasig). Th, this Court affirmed the validity of the said compromise agreement in G.R. Nos. 141796 and 141804. As a result of the compromise agreement, the Ilusorio, Africa, Poblador, Benedicto and Ponce Enrile families gained majority control (51.37%) and the Nieto family and PCGG became the minority.

November 17, 2005, Africa in his capacity as President and CEO of PHILCOMSAT, and as stockholder in his own right, wrote the board and management of PHC that PHILCOMSAT will exercise its right of inspection over the books, records, papers, etc. pertinent to the business transactions of PHC for the 3rd quarter of 2005, specifically the company's financial documents.

day of the scheduled inspection, PHILCOMSAT sent its representatives, Atty. Samuel Divina and Enrico Songco. However, Brodett disallowed the conduct of the inspection which prompted PHILCOMSAT through its counsel to make a written query whether the refusal of Brodett to permit the conduct of PHC's inspection of corporate books and financial documents was with the knowledge and authority of PHC's board of directors. But no reply or communication was received by Africa from the PHC.
On February 2, 2006, PHILCOMSAT filed in the RTC a Complaint8 for Inspection of Books against the incumbent PHC directors and/or officers, to enforce its right under Sections 74 and 75 of the Corporation Code of the Philippines. RTC dismissed the complaint for lack of jurisdiction. CA reversed

ISSUE

Whether or Not it is the Sandiganbayan or RTC which has jurisdiction over a stockholders' suit to enforce its right of inspection under Section 74 of the Corporation Code

RULING

It is the RTC and not the Sandiganbayan which has jurisdiction over cases which do not involve a sequestration-related incident but an intra-corporate controversy

Section 5 of Presidential Decree (P.D.) No. 902-A vested the original and exclusive jurisdiction over cases:

involving the following in the SEC, to wit:

x x x x

(a) Devices or schemes employed by, or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organization registered with the Commission;ChanRoblesVirtualawlibrary

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; 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 it concerns their individual franchise or right as such entity

The enactment of Republic Act No. 8799 (The Securities Regulation Code), effective on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and the other cases enumerated in Section 5 of P.D. No. 902-A was transferred to the Regional Trial Court pursuant to Section 5.2 of the law

2. The Commission's jurisdiction over all cases enumerated in Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court; Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

Conformably with Republic Act No. 8799, and with the ensuing resolutions of the Court on the implementation of the transfer of jurisdiction to the Regional Trial Court, the RTC (Branch 138) in Makati had the authority to hear and decide the election contest between the parties herein. There should be no disagreement that jurisdiction over the subject matter of an action, being conferred by law, could neither be altered nor conveniently set aside by the courts and the parties.

Moreover, the jurisdiction of the Sandiganbayan has been held not to extend even to a case involving a sequestered company notwithstanding that the majority of the members of the board of directors were PCGG nominees

In the case at bar, the complaint concerns PHILCOMSAT's demand to exercise its right of inspection as stockholder of PHC but which petitioners refused on the ground of the ongoing power struggle within POTC and PHILCOMSAT that supposedly prevents PHC from recognizing PHILCOMSAT's representative (Africa) as possessing such right or authority from the legitimate directors and officers. Clearly, the controversy is intra-corporate in nature as they arose out of intra-corporate relations between and among stockholders, and between stockholders and the corporation.

- Dy Teban Trading, Inc. v. Dy, G.R. No. 185647, July 26, 2017, Justice Jardeleza

DY TEBAN TRADING, INC., Petitioner, v. PETER C. DY, JOHNNY C. DY AND RAMON C. DY, Respondents.
G.R. No. 185647, July 26, 2017, J. Jardeleza

The existence of an intra-corporate dispute must be properly alleged in a complaint filed before a commercial court because the allegations in the complaint determine a tribunal's jurisdiction over the subject matter. This means that the complaint must make out a case that meets both the relationship and the nature of the controversy tests. Under the relationship test, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. The nature of the controversy test, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association

FACTS

DTTI is a domestic closed corporation owned by the Dy siblings. Due to certain disagreements relating to its management, DTTI instituted an action for injunction against Peter C. Dy, Johnny C. Dy and Ramon C. Dy (respondents) before the RTC on September 7, 2004. This was docketed as an intra-

corporate case. Respondents, on the other hand, filed an action for dissolution of the corporation. petition before the RTC, DTTI alleged that Johnny C. Dy (Johnny), an employee in its Montilla branch, had "squandered cash sales and stocks" from the branch either for his personal benefit or that of Peter C. Dy (Peter) and Ramon C. Dy (Ramon).To prevent further losses, DTTI decided to close its Montilla branch and had the doors of the branch store welded shut. This notwithstanding, DTTI claimed that respondents forcibly opened the branch store and have continuously deprived it of the use of the same.
Both actions were raffled to Branch 33 of the RTC which, incidentally, was also the designated commercial court. The RTC heard the cases jointly. The action for the dissolution of the corporation was, however, eventually dismissed due to the respondents' failure to pay the proper docket fees.

During the trial, DTTI presented Lorencio C. Dy (Lorencio) as a witness on June 28, 2005. Lorencio's cross-examination by respondents did not push through on the same date but was scheduled to continue on August 30, 2005. Due to several reasons, the examination of Lorencio was continuosly suspended and onJune 18, 2007, however, neither Atty. Go nor Atty. Rabor(counsel for respondents) attended the hearing for respondents and consequently disallowed Lorencio cross examination.

On August 22, 2008, the RTC rendered its Decision,32 ruling in DTTI's favor. October 8, 2008, DTTI filed a motion for execution of the RTC Decision.34 Respondents, on the other hand, filed a second supplemental petition35 before the CA in the certiorar case to challenge the RTC Decision. This, however, was ordered by the CA to be stricken off the records. In a Decision37 dated December 17, 2008, the CA held that the RTC acted with grave abuse of discretion when it issued the June 18, 2007. DTTI thus filed this petition for review on certiorari

ISSUE

(1) Whether the action filed before the RTC was an intra-corporate case properly heard by the RTC acting as a special commercial court

RULING

NO. Section 5 of the Securities Regulation Code transferred the jurisdiction of the Securities and Exchange Commission (SEC) over intra-corporate disputes to RTCs designated by the Supreme Court as commercial courts. The existence of an intra-corporate dispute must be properly alleged in a complaint filed before a commercial court because the allegations in the complaint determine a tribunal's jurisdiction over the subject matter. This means that the complaint must make out a case that meets both the relationship and the nature of the controversy tests. Under the relationship test, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders,partners or associates themselves.The nature of the controversy test, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association

Applying the foregoing tests, we agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and not an intra-corporate disputes.

First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. Notably, the complaint even identified Johnny as a DTTI employee. The complaint also does not allege that the other defendants therein have acted in their capacity as stockholders in depriving DTTI of access to its Montilla branch. Second, the nature of the controversy does not involve an intra- corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. In claiming that respondents illegally possessed the branch store, the complaint does not allege that it arose out of a disagreement between the stockholders. Rather, the complaint states that Johnny, DTTI's employeecolluded with co-respondents Peter and Ramon in forcibly opening the Montilla branch store and preventing DTTI from using the property. Third, DTTI, in its complaint, asked the RTC to: (1) prevent respondents from physically possessing its branch store; and (2) allow DTTI to have access and control of the building.47 Nowhere in its complaint did DTTI ask for a determination of the parties' rights under the Corporation Code, its articles of incorporation or its by-laws.

Also, Thus, that DTTI's civil action for injunction was raffled to, and heard by, an RTC sitting as a commercial court, is more an issue of procedure than one of jurisdiction. Gonzales, in fact, directs that when an ordinary civil case is mistakenly raffled to a branch designated as a Special Commercial Court, the remedy is to refer said case to the Executive Judge for re-docketing and re-raffling among "all courts of the same RTC (including its designated special branches which, by statute, arc equally capable of exercising general jurisdiction same as regular branches), as provided for under existing rules."52 In any case, we find that respondents have waived any objection on this issue when they submitted to the authority of the RTC, asked for remedies therein, and participated in the proceedings. They are not allowed to raise this question of procedural propriety only on appeal

- BELO MEDICAL GROUP INC. v. JOSE SANTOS and VICTORIA BELO, G.R. No. 185894, August 30, 2017, Third Division, LEONEN, J.

BELO MEDICAL GROUP INC. v. JOSE SANTOS and VICTORIA BELO, G.R. No. 185894, August 30, 2017, Third Division, LEONEN, J.

A conflict between two (2) stockholders of a corporation does not automatically render their dispute as intra-corporate. The nature of the controversy must also be examined.

FACTS

The controversy began on May 5, 20085 when Belo Medical Group received a request from Santos for the inspection of corporate records.6 Santos claimed that he was a registered shareholder and a co-owner of Belo's shares, as these were acquired while they cohabited as husband and wife. Santos sought advice on his probable removal as director of the corporation considering that he was not notified of meetings where he could have been removed. He also inquired on the election of Alfredo Henares (Henares) as Corporate Secretary in 2007 when Santos had not been notified of a meeting for Henares' possible election. Finally, he sought explanation on the corporation's failure to inform him of the 2007 annual meeting and the holding of an annual meeting in 2008.8 Santos' concern over the corporate operations arose from the alleged death of a patient in one (1) of its clinics.

Santos was unsuccessful in inspecting the corporate books as Henares, the officer-in-charge of corporate records, was travelling. Belo Medical Group asked for time in order for Henares to accommodate Santos' request. There were subsequent attempts to inspect the books but to no avail. Belo Medical Group filed a Complaint for Interpleader with Branch 149, Regional Trial Court, Makati City on May 21, 2008. Belo Medical Group alleged that while Santos appeared to be a registered stockholder, there was nothing on the record to show that he had paid for the shares under his name. The Complaint was filed "to protect its interest and compel [Belo and Santos] to interplead and litigate their conflicting claims of ownership of, as well as the corresponding right of inspection arising from, the twenty-five (25) [Belo Medical Group] shares between themselves pursuant to Rule 62 of the 1997 Rules of Civil Procedure. On May 29, 2008, Belo Medical Group filed a Supplemental Complaint23 for declaratory relief under Rule 63 of the Rules of Court. In its Supplemental Complaint, Belo Medical Group relied on Section 74of the Corporation Code to deny Santos' request for inspection. Belo Medical Group's Complaint and Supplemental Complaint were raffled to Branch 149 of the Regional Trial Court of Makati, a special commercial court, thus classifying them as intra-corporate. On July 4, 2008, Belo Medical Group filed an Omnibus Motion for Clarificatory Hearing and for Leave to File Consolidated Reply, praying that the case be tried as a civil case and not as an intra-corporate controversy. It argued that the Interim Rules of Procedure Governing Intra-Corporate Controversies did not include special civil actions for interpleader and declaratory relief found under the Rules of Court. Belo Medical Group clarified that the issue on ownership of the shares of stock must first be resolved before the issue on inspection could even be considered ripe for determination.

Belo Medical Group later on moved that Santos be declared in default. Instead of filing an answer Santos filed a Motion to Dismiss. The trial court declared the case as an intra-corporate controversy but dismissed the Complaints.

ISSUE

Whether or Not the trial court was correct in dismissing the complaints?

RULING

NO as the case is intra-corporate in nature. Applying the relationship test, this Court notes that both Belo and Santos are named shareholders in Belo Medical Group's Articles of Incorporation and General Information Sheet for 2007. The conflict is clearly intra-corporate as it involves two (2) shareholders although the ownership of stocks of one stockholder is questioned. Unless Santos is adjudged as a stranger to the corporation because he holds his shares only in trust for Belo, then both he and Belo, based on official records, are stockholders of the corporation.

Applying the nature of the controversy test, this is still an intra--corporate dispute. The Complaint for interpleader seeks a determination of the true owner of the shares of stock registered in Santos' name. Ultimately, however, the goal is to stop Santos from inspecting corporate books. This goal is so apparent that, even if Santos is declared the true owner of the shares of stock upon completion of the interpleader case, Belo Medical Group still seeks his disqualification from inspecting the corporate books based on bad faith. Therefore, the controversy shifts from a mere question of ownership over movable property to the exercise of a registered stockholder's proprietary right to inspect corporate books.

As an intra-corporate dispute, Santos should not have been allowed to file a Motion to Dismiss. The trial court should have continued on with the case as an intra-corporate dispute considering that it called for the judgments on the relationship between a corporation and its two warring stockholders and the relationship of these two stockholders with each other.

- Cacho v. Balagtas, G.R. No. 202974, [February 7, 2018]

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 <u>expressly</u> 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 <u>Vice President</u>* 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]

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.

FACTS

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.

- Ellao y Dela Vega v. Batangas I Electric Cooperative, Inc., G.R. No. 209166, [July 9, 2018]

DEMETRIO ELLAO Y DELA VEGA, Petitioner, v. BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), RAQUEL ROWENA RODRIGUEZ BOARD PRESIDENT, Respondents.

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.

FACTS

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]

STEPHEN Y. KU, Petitioner, v. RCBC SECURITIES, INC., Respondent.
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.

- Tumagan v. Kairuz, G.R. No. 198124, [September 12, 2018]

JOHN CARY TUMAGAN, ALAM HALIL, AND BOT PADILLA, *Petitioners***,** *v.* **MARIAM K. KAIRUZ,** *Respondent***.**
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.

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.

- Eizmendi Jr. v. Fernandez, G.R. No. 215280, [September 5, 2018]

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*.

3. Regulatory Jurisdiction

- Peneyra vs. Intermediate Appellate Court, 181 SCRA 244 (1990)

JOSE PENEYRA and MILAGROS CALDERON, petitioners,vs.
HON. INTERMEDIATE APPELLATE COURT and HONORABLE GODOFREDO RILLORAZA, respondents.

Under Section 3 of Presidential Decree 902-A, the jurisdiction of the SEC is limited to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such entities. P.D. 902-A does not confer in the SEC absolute jurisdiction and control over all matters affecting corporations. To uphold the appellate court's ruling would remove without legal imprimatur from the regular courts all controversies over matters involving or affecting corporations regardless of the nature of the transactions which give rise to such disputes.

FACTS

On May 7, 1976, the Board of Trustees of the Corregidor College Inc. awarded the management and operation of its canteen at a monthly rental of P80.00 to petitioners herein who are stockholders of the said College. Subsequently, upon instructions of Eulogio Dizon, Chairman of the Board of Trustees of Corregidor College, Inc., the rental payments of petitioners were refused, and on August 6, 1980, partial demolition of the canteen was effected. Consequently, on September 9, 1980, petitioners filed in the then Court of First Instance of Nueva Ecija an action against Eulogio R. Dizon for damages with preliminary mandatory injunction. On September 2, 1983, petitioners filed a motion for leave to amend the complaint so as to include Corregidor College, Inc. as additional defendant. Dizon opposed the motion since petitioners had already presented their evidence.

In its order of September 15, 1983, the trial court denied petitioners' motion, ruling that the proposed amendment would substantially alter petitioners' cause of action; that defendant Dizon would be required to answer new issues wholly different from those which were stated in the original complaint; and that petitioners having rested their case, the amendment was too late. On December 23, 1983, petitioners filed their motion for reconsideration of the order denying the admission of their amended complaint. Two days later or on December 25, 1983, Eulogio Dizon died. Thereafter, his counsel moved to dismiss the complaint by reason thereof.

In its order dated March 27, 1984, the trial court dismissed petitioners' complaint on the ground that the action for damages did not survive the death of Eulogio Dizon. 10 Petitioners moved to reconsider but were unsuccessful.

Arguing that the trial court gravely abused its discretion in denying admission of their amended complaint and in subsequently dismissing their case, petitioners filed a special civil action of certiorari and mandamus against respondent judge before the IAC.

On September 28, 1984, the Appellate Court dismissed the petition holding that the Securities and Exchange Commission (SEC) has jurisdiction over the case, the same being an intracorporate dispute, that the amendment to include Corregidor College, Inc. cannot be allowed and that the action for damages against Eulogio Dizon was extinguished by his death.

ISSUE

Whether or Not SEC has jurisdiction over the case?

RULING

NO. While it is true that petitioners herein are stockholders of Corregidor College, Inc., the. complaint in Civil Case No. 774-G did not stem directly from such relationship, but rather from the award to petitioners of the management and operation of its canteen at a monthly rental of P80.00. The management of a canteen, even if awarded to a stockholder, is outside or merely incidental to the central operations of an educational institution. Petitioners thus convincingly argue that "the controversy is not one where petitioners are bringing the action as stockholders but rather as operators of the canteen under an agreement with said Board. In short, the cause of action here is for damages arising from a violation of a contract of management operation of the College canteen by defendant Dizon. 12 Certainly, the present controversy cannot qualify as an intra-controversy, its root being a contractual breach separate and distinct from the corporate relationship between petitioners and Corregidor College, Inc., which, it must be noted, was not even named as a defendant in the original complaint. It was therefore patent error for the Court of Appeals to immediately rule that the present case belongs to the SEC just because petitioners alleged that they are stockholders of Corregidor College, Inc.

Under Section 3 of Presidential Decree 902-A, the jurisdiction of the SEC is limited to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such entities. P.D. 902-A does not confer in the SEC absolute jurisdiction and control over all matters affecting corporations. To uphold the appellate court's ruling would remove without legal imprimatur from the regular courts all controversies over matters involving or affecting corporations regardless of the nature of the transactions which give rise to such disputes.

- Securities and Exchange Commission vs. Court of Appeals, 246 SCRA 738 (1995)

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*, v. THE HONORABLE COURT OF APPEALS, CUALOPING SECURITIES CORPORATION AND FIDELITY STOCK TRANSFERS, INC., *Respondents*.
G.R. Nos. 106425 & 106431-32. July 21, 1995. THIRD DIVISION VITUG, *J*

The Securities and Exchange Commission ("SEC") has both regulatory and adjudicative functions. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' associations, and labor unions); compel legal and regulatory compliance; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

FACTS

Cualoping Securities Corporation (CUALOPING for brevity) is a stockbroker, Fidelity Stock Transfer, Inc. (FIDELITY for brevity), on the hand, is the stock transfer agent of Philex Mining corporation (PHILEX for brevity). On or about the first half of 1988, certificates of stock of PHILEX representing one million four hundred [thousand] (1, 400,000) shares were stolen from the premises of FIDELITY. These stock certificates consisting of stock dividends of certain PHILEX shareholders had been returned to FIDELITY for lack of forwarding addresses of the shareholders concerned. Later, the stolen stock certificates ended in the hands of a certain Agustin Lopez, a messenger of New World Security, Inc., an entirely different stock brokerage firm. In the first half of 1989, Agustin Lopez brought the stolen stock certificates to CUALOPING for trading and sale with the stock exchange. When the said stocks were brought to CUALOPING, all of the said stock certificates bore the 'apparent' indorsement (signature) in blank of the owners (the stockholders to whom the stocks were issued by PHILEX) thereof. At the side of these indorsements (signatures), the words 'Signature Verified' apparently of FIDELITY were stamped on each and every certificate. Further, on the words 'Signature Verified' showed the usual initials of the officers of FIDELITY. Upon receipt of the said certificates from Agustin Lopez, CUALOPING stamped each and every certificates with the words 'Indorsement Guaranteed,' and thereafter traded the same with the Stock Exchange. After the Stock Exchange awarded and confirmed the sale of the stock represented by said certificates to different buyers, the same were delivered to FIDELITY for the cancellation of the stocks certificates and for issuance of new certificates in the name of the new buyers. Agustin Lopez on the other hand was paid by CUALOPING with several checks for Four Hundred Thousand (P400,000.00) Pesos for the value of the stocks. After acquiring knowledge of the pilferage, FIDELITY conducted an investigation with assistance of the National Bureau of Investigation (NBI) and found that two of its employees were involved and signed the certificates. After two (2) months from receipt of said stock certificates, FIDELITY rejected the issuance of new certificates in favor of the buyers for reasons that the signatures of the owner of the certificates were allegedly forged and thus the cancellation and new issuance thereof cannot be effected."

On 11 August 1988, FIDELITY sought an opinion on the matter from SEC. On 26 October 1988, the Brokers and Exchange Department ("BED") of the SEC disposed of the matter against Fidelity and Cualoping. Later, the Commission En Banc, finding both Cualoping Securities Corporation and Fidelity Stock Transfers, Inc. equally negligent.

ISSUE

Whether or not the Court of Appeals erred in their ruling?

RULING

The Securities and Exchange Commission ("SEC") has both regulatory and adjudicative functions. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' associations, and labor unions); compel legal and regulatory compliance; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted. Relative to its adjudicative authority, the SEC has original and exclusive jurisdiction to hear and decide controversies and cases involving — (a.) Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments; (b.) State and corporate affairs in relation to the legal existence of corporation, partnership and associations or to their franchises; and (c.) Investors and corporate affairs, particularly in respect of devices and scheme, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms; (d.) Petitions for suspension of payment filed by corporations. partnership or associations possessing sufficient property to cover all their debts but which foresee the impossibility of meeting them when they respectively fall due, or possessing insufficient assets to cover their liabilities and said entities are upon petition or motu proprio, placed under the management of a Rehabilitation Receiver or

Management Committee. The petition before this Court relates to the exercise by the SEC of its powers in a case involving a stockbroker (CUALOPING) and a stock transfer agency (FIDELITY).

In the case at bench, the proper parties that can bring the controversy and can cause an exercise by the SEC of its original and exclusive jurisdiction would be all or any of those who are adversely affected by the transfer of the pilfered certificates of stock. Any peremptory judgment by the SEC, without such proceedings having initiated, would be precipitate. We thus see nothing erroneous in the decision of the Court of Appeals, albeit not for the reason given by it, to set aside the SEC's adjudication "without prejudice" to the right of persons injured to file the necessary proceedings for appropriate relief.

On the legal propriety of the imposition by the SEC of a fine on each of FIDELITY and CUALOPING. This time, it is the regulatory power of the SEC which is involved. When, on appeal to the Court of Appeals, the latter set aside the fines imposed by they the SEC, the latter, in its instant petition, can no longer be deemed just a nominal party but a real party in interest sufficient to pursuant appeals to this Court.

The Revised Securities Act (Batas Pambansa Blg. 178) is designed, in main, to protect public investors from fraudulent schemes by regulating the sale and disposition of securities, creating, for this purpose, a Securities and Exchange Commission to ensure proper compliance with the law. Here, the SEC has aptly invoked the provisions of Section 29, in relation to Section 46, of the Revised Securities Act. There is, to our mind, no question that both FIDELITY and CUALOPING have been guilty of negligence in the conduct of their affairs involving the questioned certificates of stock. To constitute, however, a violation of the Revised Securities Act that can warrant an imposition of a fine under Section 29 (3), in relation to Section 46 of the Act, fraud or deceit, not mere negligence, on the part of the offender must be established. Fraud here is akin to bad faith which implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is unlike that of the negative idea of negligence in that fraud or bad faith contemplates a state of mind affirmatively operating with furtive objective. Given the factual circumstances found by the appellate court, neither FIDELITY and CUALOPING, albeit indeed remiss in the observance of due diligence, can be held liable under the above provisions of the Revised Securities Act. We do not imply, however, that the negligence committed by private respondents would not at all be actionable; upon the other hand, as we have earlier intimated, such an action belongs not to the SEC but to those whose rights have been injured.

- Philippine Stock Exchange vs. Securities & Exchange Commission, 281 SCRA 232 (1997)

PHILIPPINE STOCK EXCHANGE, INC., petitioner, vs. THE HONORABLE COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION and PUERTO AZUL LAND, INC., respondents.
GR No. 125469 October 27, 1997 SECOND DIVISIONTORRES, JR., *J.*

The SEC's power to look into the subject ruling of the PSE, therefore, may be implied from or be considered as necessary or incidental to the carrying out of the SEC's express power to insure fair dealing in securities traded upon a stock exchange or to ensure the fair administration of such exchange. It is likewise, observed that the principal function of the SEC is the supervision and control over corporations, *partnerships and associations with the end in view that investment in these entities may be encouraged and protected and their activities for the promotion of economic development.*

FACTS

The Puerto Azul Land Inc. (PALI), a domestic real estate corporation, had sought to offer its shares to the public in order to raise funds allegedly to develop its properties and pay its loans with several banking institutions. In January, 1995, PALI was issued a permit to sell its shares to the public by the Securities and Exchange Commission (SEC). To facilitate the trading of its shares among investors, PALI sought to course the trading of its shares through the Philippine Stock Exchange Inc. (PSEi), for which purpose it filed with the said stock exchange an application to list its shares, with supporting documents attached pending the approval of the PALI's listing application, a letter was received by PSE from the heirs of Ferdinand Marcos to which the latter claims to be the legal and beneficial owner of some of the properties forming part of PALI's assets. As a result, PSE denied PALI's application which caused the latter to file a complaint before the SEC. The SEC issued an order to PSE to grant listing application of PALI on the ground that PALI have certificate of title over its assets and properties and that PALI have complied with all the requirements to enlist with PSE.

ISSUE

Whether or not the denial of PALI's application is proper.

RULING

Yes. This is in accord with the "Business Judgement Rule" whereby the SEC and the courts are barred from intruding into business judgements of corporations, when the same are made in good faith. The same rule precludes the reversal of the decision of the PSE, to which PALI had previously agreed to comply, the PSE retains the discretion to accept of reject applications for listing. Thus, even if an issuer has complied with the PSE listing rules and requirements, PSE retains the discretion to accept or reject the issuer's listing application if the PSE determines that the listing shall not serve the interests of the investing public.

It is undeniable that the petitioner PSE is not an ordinary corporation, in that although it is clothed with the markings of a corporate entity, it functions as the primary channel through which the vessels of capital trade ply. The PSEi's relevance to the continued operation and filtration of the securities transaction in the country gives it a distinct color of importance such that government intervention in its affairs becomes justified, if not necessarily. Indeed, as the only operational stock exchange in the country today, the PSE enjoys monopoly of securities transactions, and as such it yields a monopoly of securities transactions, and as such, it yields an immerse influence upon the country's economy.

The SEC's power to look into the subject ruling of the PSE, therefore, may be implied from or be considered as necessary or incidental to the carrying out of the SEC's express power to insure fair dealing in securities traded upon a stock exchange or to ensure the fair administration of such exchange. It is likewise, observed that the principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected and their activities for the promotion of economic development.

A corporation is but an association of individuals, allowed to transact under an assumed corporate name, and with a distinct legal personality. In organizing itself as a collective body, it waives no constitutional immunities and requisites appropriate to such a body as to its corporate and management decisions, therefore, the state will generally not interfere with the same. Questions of policy and management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgements for the judgement of the board of directors. The board is the business manager of the corporation and so long as it acts in good faith, its orders are not reviewable by the courts.

In matters of application for listing in the market the SEC may exercise such power only if the PSE's judgement is attended by bad faith.

The petitioner was in the right when it refused application of PALI, for a contrary ruling was not to the best interest of the general public.

- TCL Sales Corporation vs. Court of Appeals, 349 SCRA 35 (2001)

CL SALES CORPORATION and ANNA TENG, petitioners, vs. HON. COURT OF APPEALS and TING PING LAY, respondents.
G.R. No. 129777 January 5, 2001 SECOND DIVISION QUISUMBING, *J*.

Determination of whether or not a Share Holder is entitled to exercise the rights of a Share Holder is within jurisdiction of the SEC. The SEC en banc found that TCL did not refute the validity of the transfers of the shares of stock – they conceded that they could not assail the documents evincing the transfer of the shares to Lay. Lay was able to establish prima facie ownership through the deeds of transfer of shares of stock of TCL. A listing of TCL's Share Holders & their respective shares before & after the execution of a certain deed of assignment shows that Lay is indeed listed as a Share Holder of TCL. The dispute is an intra-corp controversy involving Share Holders of TCL.

FACTS

Ting Ping Lay, not one of the original subscribers of the shares of stock of TCL Sales Corporation, acquired his shares by purchasing those of some of the original subscribers. In order to protect his shareholdings with TCL, Lay requested Anna Teng, TCL Corporate Secretary to enter the transfer of shares of stock for proper recording of his acquisitions in the Stock & Transfer Book of TCL. He too demanded issuance of new certificates of stock in his favor.

TCL, however, even after repeated demands, refused. Lay filed a case with the SEC for mandamus against TCL and Teng. This was in turn granted by the SEC denying a later MR as well. The CA dismissed TCL's petition as well for being filed out of time.

ISSUES

(1) WON SEC has jurisdiction over the petition for mandamus filed by Lay.
(2) WON the alleged transfer of shares in favor of Lay are valid and can be ordered recorded.

RULING

Denied and CA decision affirmed. Even if Lay were not a Share Holder, he is still a member of the public whose investment in the corporate the law seeks to protect and encourage, as his purchase of shares of stock has been established. Principal function of SEC is supervision and control of corps, partnerships, assoc with the view of protecting and encouraging investments for the protection of economic development. SEC has power of control & supervision over all corps to encourage active public participation in the affairs of private corps through investments.

Jurisdiction over an action for mandamus lies with the SEC even if the proponent is not yet a SH of record, as in the case of Abejo v. de la Cruz. SEC by express mandate has absolute jurisdiction to enforce the provisions of the Corp Code among which is the stock purchaser's right to secure the corresponding certificate of stock in his name.

Determination of whether or not a Share Holder is entitled to exercise the rights of a Share Holder is within jurisdiction of the SEC. The SEC en banc found that TCL did not refute the validity of the transfers of the shares of stock – they conceded that they could not assail the documents evincing the transfer of the shares to Lay. Lay was able to establish prima facie ownership through the deeds of transfer of shares of stock of TCL. A listing of TCL's Share Holders & their respective shares before & after the execution of a certain deed of assignment shows that Lay is indeed listed as a Share Holder of TCL. The dispute is an intra-corp controversy involving Share Holders of TCL.

As held in Lim Tay v. CA, the duty of the corporate secretary to record transfers of stocks is ministerial. It however, cannot be compelled when the transferee's title has no prima facie validity or is uncertain. Mandamus will not issue to establish a right but only to enforce one already established.

Although during the trial before the SEC, TCL admitted that they ignored Lay's request was based simply on the fact that they did not want to grant it. Having been capricious, whimsical & unwarranted, it constitutes bad faith. However, the SEC en banc modified & deleted the said award for damages imposed on the corp. The matter of damages now concerns only Teng, the corporate secretary. It was Teng's refusal as corp secretary to record the transfer of the shares, without evidence that such refusal was authorized by TCL's BOD, that caused damage. No error was committed by the respondent court in refusing to disturb the SEC's findings.

- Pilipinas Loan Company, Inc. vs. Securities and Exchange Commission, 356 SCRA 193 (2001)

Pilipinas Loan Company, Inc. vs. Securities and Exchange Commission
G.R. No. 104720, April 4, 2001, Third Division, GONZAGA-REYES, *J.*

Indispensable therefore to the determination of whether or not petitioner had violated its articles of incorporation, was an inquiry by the SEC if petitioner was holding out itself to the public as a pawnshop. It must be stressed that the determination of whether petitioner violated PD 114 was merely incidental to the regulatory powers of the SEC, to see to it that a corporation does not go beyond the powers granted to it by its articles of incorporation.

FACTS

Private respondent Filipinas Pawnshop, Inc. is a duly organized corporation registered with the Securities and Exchange Commission on February 9, 1959. The articles of incorporation of private respondent states that its primary purpose is to extend loans at legal interest on the security of either personal properties or on the security of real properties, and to finance installment sales of motor vehicles, home appliances and other chattels.

Petitioner is a lending corporation duly registered with the SEC on July 27, 1989. Based on its articles of incorporation, the primary purpose of petitioner is "to act as a lending investor or, otherwise, to engage in the practice of lending money or extending loans on the security of real or personal, tangible or intangible properties whether as pledge, real or chattel mortgage or otherwise, xxx without however, engaging in pawnbroking as defined under PD 114."

Private respondent filed a complaint with the Prosecution and Enforcement Department (PED) of the SEC and alleged that: (1) petitioner, contrary to the restriction set by the Commission, has been operating and doing business as a pawnbroker, pawnshop or "sanglaan" in the same neighborhood where private respondent has had its own pawnshop for 30 years in violation of its primary purpose and without the imprimatur of the Central Bank to engage in the pawnshop business thereby causing unjust and unfair competition with private respondent. Petitioner denied that it is engaged in the pawnshop business, alleging that it is a lending investor duly registered with the Central Bank.

ISSUE

Whether or not petitioner violated its primary franchise.

RULING

A corporation, under the Corporation Code, has only such powers as are expressly granted to it by law and by its articles of incorporation, those which may be incidental to such conferred powers, those reasonably necessary to accomplish its purposes and those which may be incident to its existence.

In the case at bar, the limit of the powers of petitioner as a corporation is very clear, it is categorically prohibited from "engaging in pawnbroking as defined under PD 114". Hence, in determining what constitutes pawnbrokerage, the relevant law to consider is PD 114.

Indispensable therefore to the determination of whether or not petitioner had violated its articles of incorporation, was an inquiry by the SEC if petitioner was holding out itself to the public as a pawnshop. It must be stressed that the determination of whether petitioner violated PD 114 was merely incidental to the regulatory powers of the SEC, to see to it that a corporation does not go beyond the powers granted to it by its articles of incorporation.

Clearly, the recital in the complaint of private respondent that petitioner is engaged in the pawnshop business when it is not authorized to do so by its articles of incorporation amounts to fraud, detrimental not only to the corporation but also to the stockholders and the public. The relationship involved in this controversy is a category of relationship over which the SEC has exclusive jurisdiction

- Philippine National Construction Corporation vs. Pabion, 320 SCRA 188 (1999)

Philippine National Construction Corporation vs. Ernesto Pabion and Louella Ramiro
G.R. No. 131715, December 8, 1999,THIRD DIVISION, PANGANIBAN, *J*.

The President does not "determine" whether a corporation is a GOCC or not. It is the law that does. PNCC's status as a GOCC can be ruled upon by SEC based on law.

FACTS

Private respondents Ernesto Pabion and Lovella Ramiro, claiming to be stockholders of the PNCC filed with SEC a verified petition, therein alleging that since 1982 or for a period of 12 years, there has been no stockholders' meeting of the PNCC to elect the corporation's BOD, thus enabling the incumbent directors to hold on to their position beyond their 1-yr term, in violation of PNCC's By-Laws and the Corporation Code. Private respondents, therefore prayed the SEC to issue an order "ordering the officers of PNCC or, in the alternative, authorizing petitioners, to call and hold a meeting of the stockholders for the purpose of electing new directors. The care was assigned to SEC Hearing Officer Manuel Perea.

The Commission en banc held that PNCC being incorporated under the Corporation Code is therefore, subject to Section 50 of the Corporation Code which requires the holding of regular stockholders' meeting for the purpose of selecting PNCC's BOD.

ISSUES

1) Can SEC determine the corporate status of PNCC?
2) Does SEC have jurisdiction over GOCC's? Does it have the authority to compel PNCC to hold a stockholders' meeting for the purpose of electing members of a BOD?
3) Is PNCC an acquired-asset corporation?

RULING

1) Yes. It is certainly absurd to say that SEC is without jurisdiction to determine if PNCC is a GOCC simply because the latter claims to be one. The President does not "determine" whether a corporation is a GOCC or not. It is the law that does. PNCC's status as a GOCC can be ruled upon by SEC based on law.

2) Yes. GOCCs may either be (1) with original charter or created by special law; or (2) incorporated under general law, via either the Old Corporation Code or the New Corporation Code. SEC has no jurisdiction over corporations of the first type primarily because they are governed by their charters. But even this is not absolute, since the corporation Code may apply suppletorily, either by operation of law or through express provision in the charter.

On the other hand, over GOCCs established or organized under Corporation Code, the SEC can exercise jurisdiction. These GOCCs are regarded as private corporations despite common misconception. That the government may own the controlling shares in the corporation does not diminish the fact that the latter owes its existence to the Corporation Code. Prescinding from such premises, it necessarily follows that SEC can compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's BOD as clearly provided for by Section 50 of the Corporation Code.

3) Yes. PNCC is indeed an acquired asset corporation as defined in Section 2 (a) of A.O. 59, to wit: a corporation "under private ownership, the voting or outstanding share of which (i) were conveyed to the government financial institutions in satisfaction of debts".

Moreover, there is no inconsistency between AO 59 and EO 292 otherwise known as Revised Administrative Code. AO 59 does not purport to have established a new kind of corporation that supersedes EO 292. Neither does the former seek to revise the definition of GOCC given in the latter. What AO 59 in fact does is to distinguish GOCCs in general from those that are sought to be privatized. In fact, the definition given in EO 292 itself stated that the GOCCs "may be further categorized". This caveat suggests that the definition is broad enough to admit distinctions as to the kinds of GOCCs defined under AC 59.

Hence, PNCC is as a GOCC under EO 292. However, for purposes of AO 59, particularly in the application of Section 16 thereof, PNCC is an acquired asset corporation. In this light, the alleged inconsistency is more apparent than real.

- Mobilia Products, Inc., vs. Umezawa 452 SCRA736 (2005)

Mobilia Products Inc. v. Alan G. Demecillo, Christopher S. Daligdig, Manuelito vs. Suson, Marciano Suarez and Antonio Montecillo, Jr.
G.R. NO. 170669 : February 4, 2009 SECOND DIVISION QUISUMBING, *J.*

As gleaned from the material allegations of the Informations, the RTC had exclusive jurisdiction over the crimes charged. According to Section 20 of B.P. Blg. 129 Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

FACTS

Umezawa, then the President and General Manager of MPI, organized another company with his wifeKimiko, and his sister, Mitsuyo Yaguchi, to be known as Astem Philippines Corporation, withoutknowledge of the Board of Directors of MPI. The said company would be engaged in the same businessas Mobilia. Umezawa stole products from MPI amounting to P3,219,875.00. MPI and public prosecutor filed criminal complaints against Umezawa. The trial court asserted that thecontroversy involving the criminal cases was between Umezawa and the other stockholders of MPI. It also held that the SEC, not the trial court, had jurisdiction over intra-corporate controversies.CA affirmed the ruling of the RTC that the dispute between Umezawa and the other stockholders and officers over the implementation of the MPI's standard procedure is intra-corporate in nature; hence,within the exclusive jurisdiction of the SEC. The petitioner MPI filed the instant petition for review oncertiorari

ISSUE

Whether or Not the CA is correct.

RULING

Patently, then, based on the material allegations of the Informations, the court *a quo* had exclusive jurisdiction over the crimes charged. CA erred in holding that the dispute between it and the respondent is intra-corporate in nature; hence, within the exclusive jurisdiction of the SEC. As gleaned from the material allegations of the Informations, the RTC had exclusive jurisdiction over the crimes charged. According to Section 20 of B.P. Blg. 129 Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body,except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter. Case law has it that in order to determine the jurisdiction of the court in criminal cases, the complaint or Information must be examined for the purpose of ascertaining whether or not the facts set out therein and the prescribed period provided for by law are within the jurisdiction of the court, and where the said Information or complaint is filed. It is settled that the jurisdiction of the court in criminal cases is determined by the allegations of the complaint or Information and not by the findings based on the evidence of the court after trial. Jurisdiction is conferred only by the Constitution or by the law in force at the time of the filing of the Information or complaint. Once jurisdiction is vested in the court, it is retained up to the end of the litigation.

- Abacus Securities vs. Ampil 483 SCRA 315 (2006)

ABACUS SECURITIES CORPORATION, PETITIONER, VERSUS RUBEN U. AMPIL, RESPONDENT, G.R. NO. 160016 FEBRUARY 27, 2006, FIRST DIVISION, PANGANIBAN, CJ.

It should be clear that Congress had imposed the margin requirements to protect the general economy, not to give the customer a free ride at the expense of the broker. Not to require respondent to pay for his April 10 and 11 trades would put a premium on his circumvention of the laws and would enable him to enrich himself unjustly at the expense of petitioner.
By failing to ensure his payment of his first purchase transactions within the period prescribed by law, thereby allowing him to make subsequent purchases, petitioner effectively converted his cash account into a credit account. The extension or maintenance of credits on nonmargin transactions, however, were specifically prohibited under Section 23(b).

FACTS

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation. In particular, the laws and regulations requiring payment of traded shares within specified periods are meant to protect the economy from excessive stock market speculations, and are thus mandatory.

In the present case, respondent cannot escape payment of stocks validly traded by petitioner on his behalf. These transactions took place before both parties violated the trading law and rules. Hence, they fall outside the purview of the pari delicto rule.

Petitioner corporation was engaged in business as a broker and dealer of securities of listed companies at the Philippine Stock Exchange Center. On April 8, 1997, respondent opened a cash account with petitioner for his transactions in securities and, on April 10, started trading on that account. As a result of his trading activities, he accumulated an outstanding obligation in favor of the corporation in the principal sum of P6,617,036.22 as of April 30, 1997.

Respondent failed to settle his account upon the lapse of the required period and the extension given by petitioner, prompting it to sell his securities on May 6, 1997, to offset his unsettled obligations. After the sale of his securities and the application of the proceeds against his account, his remaining accountabilities to petitioner totalled P3,364,313.56. This obligation he failed to settle despite its demands.

The trial court and the Court of Appeals (CA) both held that the parties were in pari delicto and, hence, without recourse against each other. The lower courts said that petitioner had violated Sections 23 and 25 of the Revised Securities Act (RSA) and Rule 25-1 of the Rules Implementing the Act (RSA Rules). The violation was committed when it failed 1) to require respondent to pay for his stock purchases within three (T+3) or four days (T+4) from trading; and 2) to request from the appropriate authority an extension of time for the payment of his cash purchases. The trial court noted that despite his nonpayment within the required period, petitioner did not cancel his purchases. Neither did it require him to deposit cash payments before it executed buy and/or sell orders subsequent to the first unsettled transaction.

ISSUE

Whether the pari delicto rule was applicable to the present case and whether the trial court had jurisdiction over the case.

RULING

With regard to the in pari delicto issue, sections 23 and 25 and Rule 25-1, otherwise known as the "mandatory close-out rule,"[1] clearly vested an obligation, not just a right, in petitioner. That obligation was to cancel or otherwise liquidate a customer's order, if payment was not received within three days from the date of purchase. Subsequent to an unpaid order, the broker should require its customer to deposit funds in the account sufficient to cover each purchase, prior to the execution of the transaction. These duties were imposed upon the broker to ensure faithful compliance with the margin requirements of the law, which forbade the broker from extending undue credit to a "cash" customer.

Nonetheless, these margin requirements were applicable only to transactions entered into by the parties subsequent to the initial trades of April 10 and 11, 1997. Thus, petitioner could still collect from respondent to the extent of the difference between his outstanding obligation as of April 11, 1997, less the proceeds from the mandatory sellout of the shares pursuant to the RSA Rules. Its right to collect was justified under the general law on obligations and contracts.

Petitioner could not be denied the right to collect, as the initial transactions had been entered into pursuant to the instructions of respondent. His obligation for stock transactions made and entered into on April 10 and 11, 1997, remained outstanding. Those transactions were valid, and the obligations he incurred in regard to his stock purchases on those dates subsisted. At the time, there was yet no violation of the RSA. Petitioner committed a fault only when it failed 1) to liquidate the transactions on April 14 and 15, 1997, or the fourth day following the stock purchases; and 2) to complete its liquidation no later than ten days after, by applying the proceeds as payment for his outstanding obligation.

Elucidating further, since the buyer was not able to pay for the transactions that had taken place on April 10 and 11 -- that is, at T+4 -- the broker was duty-bound to advance the payment to the settlement banks, without prejudice to its right to collect from the client later on. It should be clear that Congress had imposed the margin requirements to protect the general economy, not to give the customer a free ride at the expense of the broker. Not to require respondent to pay for his April 10 and 11 trades would put a premium on his circumvention of the laws and would enable him to enrich himself unjustly at the expense of petitioner.

By failing to ensure his payment of his first purchase transactions within the period prescribed by law, thereby allowing him to make subsequent purchases, petitioner effectively converted his cash account into a credit account. The extension or maintenance of credits on nonmargin transactions, however, were specifically prohibited under Section 23(b).

Thus, petitioner was remiss in its duty and could not be said to have come to court with "clean hands," insofar as it intended to collect on transactions subsequent to the initial trades of April 10 and 11, 1997.

On the other hand, respondent was found to be equally guilty of entering into transactions in violation of the RSA and RSA Rules. The Court was not prepared to accept his self-serving assertions of being an "innocent victim" in all the transactions. Obviously, he knowingly speculated on the market by taking advantage of the "nocash-out" arrangement extended to him by petitioner. It was respondent's privilege to gamble or speculate, as he apparently did by asking for extensions of time and refraining from giving orders to his broker to sell, in the hope that the prices would rise. Sustaining his argument would have amounted to relieving him of the risks of his own speculation and saddling petitioner with the consequences after the result turned out to be unfavorable. His conduct as an investor was precisely the sort deplored by the law. Thus, with respect to his counterclaim for damages for having been allegedly induced by petitioner to generate additional purchases despite his outstanding obligations, the Court held that he deserved no legal or equitable relief. In the final analysis, both parties had acted in violation of the law and did not come to court with clean hands as regards the transactions subsequent to the initial one made on April 10 and 11, 1997. In this case, the pari delicto rule applied only to transactions entered into after those initial trades. Pursuant to RSA Rule 25-1, petitioner should have liquidated the transactions (sold the stocks) on the fourth day after (at T+4) and completed its liquidation not later than ten days following the last day for the customer to pay (effectively at T+14). Respondent's outstanding obligation, therefore, was to be determined on the basis of the closing prices -- at T+14 -- of the stocks purchased.

With regard to jurisdiction, the instant controversy related to acts committed by the parties in the course of their business relationship. An ordinary civil case seeking to enforce rights arising from the Agreement (AOF) between the parties, the suit was intended to enable petitioner to collect on the alleged outstanding debt incurred by respondent for his stock purchases. To be sure, the RSA and its Rules were to be read into the Agreement that the parties had entered into. Thus, to determine whether they had fulfilled their obligations under this Agreement, the Court passed upon their compliance with the RSA and its Rules. In no way did it thereby deprive the Securities and Exchange Commission (SEC) of the authority to determine willful violations of the RSA and impose appropriate sanctions, as provided under Sections 45 and 46 of the Act.

- Securities and Exchange Commission vs. Performance Foreign Exchange Corporation 495 SCRA 579 (2006)

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*, *v.* **PERFORMANCE FOREIGN EXCHANGE CORPORATION,** *Respondent*.
G.R. NO. 154131 : July 20, 2006 SECOND DIVISION SANDOVAL-GUTIERREZ, ***J*.**

Under Section 64 of R.A. No. 8799, there are two essential requirements that must be complied with by the SEC before it may issue a cease and desist order: ***First****, it must conduct proper investigation or verification; and* ***Second****, there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.*

FACTS

Performance Foreign Exchange Corporation, herein respondent, is a domestic corporation duly registered on June 23, 1998 under Securities and Exchange Commission (SEC), with the following purpose;

> Primary Purpose
>
> To operate as a broker/agent between market participants in transactions involving, but not limited to, foreign exchange, deposits, interest rate instruments, fixed income securities, bonds/bills, repurchased agreements of fixed income securities, certificate of deposits, bankers acceptances, bills of exchange, over-the-counter option of the aforementioned instruments, Lesser Developed Country's (L.D.C.) debt, energy and stock indexes and all related, similar or derivative products, other than acting as a broker for the trading of securities pursuant to the Revised Securities Act of the Philippines.
>
> Secondary Purpose
>
> To engage in money changer or exchanging foreign currencies into domestic currency, Philippine currency or other foreign currencies into another currencies.

After two years of operation, respondent received a letter dated November 28, 2000 from the SEC, herein petitioner, requiring it to appear before the Compliance and Enforcement Department (CED) on December 14, 2000 for a clarificatory conference regarding its business operations. Respondent's officers complied and explained before the CED the nature of their business.

On January 16, 2001, Emilio B. Aquino, Director of CED, issued a Cease and Desist Order,[3] in CED Case No. 99-2297, stating that his department conducted an inquiry on respondent's business operations for **possible violation** of Republic Act (R.A.) No. 8799 (otherwise known as The Securities Regulation Code); that the outcome of the inquiry shows that respondent is engaged in the trading of *foreign currency futures contracts* in behalf of its clients without the necessary license; that such transaction can be deemed as a direct violation of Section 11 of R.A. No. 8799[4] and the related provisions of its Implementing Rules and Regulations; and that it is imperative to enjoin respondent from further operating as such to protect the interest of the public.

On February 8, 2001, then SEC Chairman Lilia R. Bautista, **in her desire to know with certainty the nature of respondent's business**, sent a letter[7] to the Bangko Sentral ng Pilipinas (BSP), **requesting a definitive statement** that respondent's business transactions are a form of *financial derivatives* and, therefore, can only be undertaken by banks or non-bank financial intermediaries performing quasi-banking functions.

Without waiting for BSP's determination of the matter, petitioner, the following day (February 9, 2001), issued an Order[8] denying respondent's motion for the lifting of the Cease and Desist Order and directing that the same **stays until respondent shall have submitted the appropriate "endorsement" from the BSP that it can engage in** *financial derivative transactions*. The Order states that the contracts entered into, offered and sold by respondent are in the nature of *commodity futures contracts*;[9] and that such contracts may be considered a form of *financial derivatives instruments*, the trading of which is regulated by BSP.

On February 16, 2001, respondent filed a Manifestation With Urgent Motion[10] praying that, pending determination by the BSP of the real nature of its business, the implementation of the February 9, 2001 Order be temporarily suspended to allow it to continue its operations.
SEC issued an Order[11] making the Cease and Desist Order **permanent.** Meanwhile, on August 13, 2001, Amado M. Tetangco, Jr., then Officer-in-Charge, Office of the Governor, BSP, in answer to SEC Chairman Lilia Bautista's letter-request of February 8, 2001, stated that respondent's business activity "**does not fall under the category of futures trading**"and"**can not be classified as financial derivatives transactions**."

ISSUE

Whether petitioner SEC acted with grave abuse of discretion in issuing the Cease and Desist Order and its subsequent Order making it permanent.

RULING

Under Section 64 of R.A. No. 8799, there are two essential requirements that must be complied with by the SEC before it may issue a cease and desist order: **First**, it must conduct proper investigation or verification; and **Second**, there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Here, the **first requirement** is not present. Petitioner did not conduct proper investigation or verification before it issued the challenged orders. The clarificatory conference undertaken by petitioner regarding respondent's business operations cannot be considered a proper investigation or verification process to justify the issuance of the Cease and Desist Order. It was merely an **initial** stage of such process, considering that after it issued the said order following the clarificatory conference, petitioner still **sought verification from the BSP** on the nature of respondent's business activity. Its letter to the BSP dated February 8, 2001 states in part:

The Securities and Exchange Commission **has been investigating** corporations which engage in foreign currency trading abroad. The following illustrates their operations:

x x x

Enclosed are pertinent documents which were submitted by a corporation showing how its transactions operate. It is claimed by the corporation in question that theirs are all spot transactions and are not covered by the *Bangko Sentral ng Pilipinas*. We understand, however, that in other jurisdiction, this type of activity can only be done by banks.

Previous inquiries from the *Bangko Sentral ng Pilipinas*, specifically Department of Commercial Banks II, and your department, Commercial Banks I, lead to conclude that this kind of trading in foreign currencies may be a form of financial derivatives.

May we, therefore, request a definitive statement that the above-described transactions, and as illustrated in the attached documents, are a form of financial derivatives and, therefore, can only be undertaken by banks, or non-bank financial intermediaries performing quasi-banking functions and/or its subsidiaries/affiliates.[20] (*Underscoring supplied*)cralawlibrary
Petitioner's act of referring the matter to the BSP is an **essential part of the investigation and verification process**. In fact, such referral indicates that petitioner concedes to the BSP's expertise in determining the nature of respondent's business. It bears stressing, however, that such investigation and verification, to be proper, must be conducted by petitioner **before**, not after, issuing the Cease and Desist Order in question. This, petitioner utterly failed to do. The issuance of such order **even before it could finish its investigation and verification** on respondent's business activity obviously contravenes Section 64 of R.A. No. 8799 earlier quoted.

Worse, when respondent filed a motion praying that the same order be lifted for being premature, petitioner, in its Order dated February 9, 2001, even denied the motion despite its **admission** therein that it **cannot determine certain material facts** involving respondent's transactions and, as such, the matter must be referred to the BSP for determination, thus:

In the light of the above circumstances, and **the fact that the Commission cannot determine whether such transactions are actually executed in Singapore or Hongkong** as alleged, **and whether the foreign currency rates used in the transactions are verifiable, it is our position that the same be endorsed to the BSP**.

In view of the foregoing, the cease and desist order stays against the corporation until the latter shall be able to submit the appropriate endorsement from the *Bangko Sentral ng Pilipinas* that it can engage in financial derivative transactions.

SO ORDERED.[21] (*Underscoring supplied*)cralawlibrary

And worst, without waiting for BSP's action, petitioner proceeded to issue its Order dated April 23, 2001 making the Cease and Desist Order permanent. In the same Order, petitioner further directed respondent "to show cause x x x why its certificate of registration should not be revoked for alleged violation of the Securities Regulation Code and/or Presidential Decree No. 902-A, specifically on the ground of **serious misrepresentation as to what the corporation can do or is doing to the great**

prejudice or damage to the general public." Obviously, without BSP's determination of the nature of respondent's business, there was no factual and legal basis to justify the issuance of such order.

Which brings us to the **second requirement.** Before a cease and desist order may be issued by the SEC, there must be a showing that the act or practice sought to be restrained will operate as a fraud on investors or is likely to cause grave, irreparable injury or prejudice to the investing public. Such requirement implies that the act to be restrained has **been determined after conducting the proper investigation/verification**. In this case, the nature of the act to be restrained can only be determined **after** the BSP shall have submitted its findings to petitioner. However, there is nothing in the questioned Orders that shows how the public is greatly prejudiced or damaged by respondent's business operation.

- Philippine Association of Stock Transfer and Registry Agencies, Inc.,v. CA et al. 539 SCRA 61 (2007)

PHILIPPINE ASSOCIATION OF STOCK TRANSFER AND REGISTRY AGENCIES, INC., Petitioner,
vs.
THE HONORABLE COURT OF APPEALS; THE HONORABLE SECURITIES AND EXCHANGE COMMISSION; AND SEC CHAIRMAN PERFECTO R. YASAY, JR., Respondents.
G.R. No. 137321 October 15, 2007 SECOND DIVISION **QUISUMBING, *J.***

Section 47 of The Revised Securities Act clearly gave the SEC the power to enjoin the acts or practices of securities-related organizations even without first conducting a hearing if, upon proper investigation or verification, the SEC is of the opinion that there exists the possibility that the act or practice may cause grave or irreparable injury to the investing public, if left unrestrained

FACTS

Petitioner Philippine Association of Stock Transfer and Registry Agencies, Inc.(PASTRA) is an association of stock transfer agents principally engaged in the registration of stock transfers in the stock-and-transfer book of corporations.

On May 10, 1996, petitioner's Board of Directors unanimously approved a resolution allowing its members to increase the transfer processing fee they charge their clients.

After a dialogue with petitioner, public respondent Securities and Exchange Commission (SEC) allowed petitioner to impose the P75 per certificate transfer fee and P20 per certificate cancellation fee effective July 1, 1996. But, approval of the additional increase of the transfer fees to P100 per certificate effective October 1, 1996, was withheld until after a public hearing. The SEC issued a letter-authorization to this effect.

The Philippine Association of Securities Brokers and Dealers, Inc. registered its objection to the measure advanced by petitioner and requested the SEC to defer its implementation. On June 27, 1996, the SEC advised petitioner to hold in abeyance the implementation of the increases until the matter was cleared with all the parties concerned.

Petitioner nonetheless proceeded with the implementation of the increased fees.

Petitioner's Contention: that the SEC cannot restrict petitioner's members from increasing the transfer and processing fees they charge their clients because there is no specific law, rule or regulation authorizing it. Section 40 of the then Revised Securities Act, according to petitioner, only lays down the general powers of the SEC to regulate and supervise the corporate activities of organizations related to or connected with the securities market like petitioner. It could not be interpreted to justify the SEC's unjustified interference with petitioner's decision to increase its transfer fees and impose processing fees, especially since the decision involved a management prerogative and was intended to protect the viability of petitioner's members.

On July 8, 1996, the SEC issued Order No. 104, series of 1996, enjoining petitioner from imposing the new fees (pursuant to Sec. 40 of the Revised Securities Act) and to show a cause why no administrative sanctions should be imposed upon the board and officers of PASTRA.

Subsequently on July 11, 1996, after hearing SEC ordered petitioner to pay a basic fine of P5,000 and a daily fine of P500 for continuing violations; it is hereby ordered to immediately cease and desist from imposing the new rates for issuance and cancellation of stock certificates, until further orders from this Commission.

CA affirmed. Hence this petition.
(While this case was pending, The Revised Securities Act by authority of which the assailed orders were issued was repealed by Republic Act No. 8799 or The Securities Regulation Code,6 which became effective on August 8, 2000. Nonetheless,.. July 11, 1996 Order had not been obliterated by the repeal of The Revised Securities Act and there is still present a need to rule on whether petitioner was liable for the fees imposed upon it).

ISSUE

Whether the SEC acted with grave abuse of discretion or lack or excess of jurisdiction in issuing the controverted Orders of July 8 and 11, 1996.

RULING

NO. We find the instant petition bereft of merit.

The Court notes that before its repeal, Section 47 of The Revised Securities Act clearly gave the SEC the power to enjoin the acts or practices of securities-related organizations even without first conducting a hearing if, upon proper investigation or verification, the SEC is of the opinion that there exists the possibility that the act or practice may cause grave or irreparable injury to the investing public, if left unrestrained. Section 47 clearly provided,

SEC. 47. *Cease and desist order*.—The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained may cause grave or irreparable injury or prejudice to the investing public or may amount to fraud or violation of the disclosure requirements of this Act and the rules and regulations of the Commission. (Emphasis supplied.)

Said section enforces the power of general supervision of the SEC under Section 40 of the then Revised Securities Act.

As a securities-related organization under the jurisdiction and supervision of the SEC by virtue of Section 40 of The Revised Securities Act and Section 3 of Presidential Decree No. 902-A,10 petitioner was under the obligation to comply with the July 8, 1996 Order. Defiance of the order was subject to administrative sanctions provided in Section 4611 of The Revised Securities Act.

Petitioner was fined for violating the SEC's cease-and-desist order which the SEC had issued to protect the interest of the investing public, and not simply for exercising its judgment in the manner it deems appropriate for its business.

The regulatory and supervisory powers of the Commission under Section 40 of the then Revised Securities Act, in our view, were broad enough to include the power to regulate petitioner's fees. Indeed, Section 47 gave the Commission the power to enjoin *motu proprio* any act or practice of petitioner which could cause grave or irreparable injury or prejudice to the investing public. The intentional omission in the law of any qualification as to what acts or practices are subject to the control and supervision of the SEC under Section 47 confirms the broad extent of the SEC's regulatory powers over the operations of securities-related organizations like petitioner.
PETITION DENIED.

- Eustacio Atwel, et al. vs. Conception Progressive Association, Inc., 551 SCRA 272 (2008)

EUSTACIO ATWEL, LUCIA PILPIL and MANUEL MELGAZO, *Petitioners, v.* **CONCEPCION PROGRESSIVE ASSOCIATION, INC.,** *Respondent.*
G.R. NO. 169370 : April 14, 2008 FIRST DIVISION CORONA, *J.*

Originally, Section 5 of Presidential Decree (PD) 902-A[13] conferred on the SEC original and exclusive jurisdiction over the following:

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; or association of which they are stockholders, members, or associates, respectively;

Upon the enactment of RA 8799 in 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of PD 902-A was transferred to the courts of general jurisdiction. Under this authority, Branch 8 of the Tacloban City RTC, acting as a special commercial court, deemed the mandatory injunction case filed by CPAI an intra-corporate dispute falling under subparagraph (2) of the aforecited provision as it involved the officers and members thereof.

FACTS

In 1948, then Assemblyman Emiliano Melgazo[4] founded and organized Concepcion Progressive Association (CPA) in Hilongos, Leyte. The organization aimed to provide livelihood to and generate income for his supporters.

In 1968, after his election as CPA president, Emiliano Melgazo bought a parcel of land in behalf of the association. The property was later on converted into a wet market where agricultural, livestock and other farm products were sold. It also housed a cockpit and an area for various forms of amusement. The income generated from the property, mostly rentals from the wet market, was paid to CPA.

When Emiliano Melgazo died, his son, petitioner Manuel Melgazo, succeeded him as CPA president and administrator of the property. On the other hand, petitioners Atwel and Pilpil were elected as CPA vice-president and treasurer, respectively.

In 1997, while CPA was in the process of registering as a stock corporation, its other elected officers and members formed their own group and registered themselves in the Securities and Exchange Commission (SEC) as officers and members of respondent Concepcion Progressive Association, Inc. (CPAI). Petitioners were not listed either as officers or members of CPAI. Later, CPAI objected to petitioners' collection of rentals from the wet market vendors.

In 2000, CPAI filed a case in the SEC for mandatory injunction.[5] With the passage of RA 8799, the case was transferred to Branch 24 of the Southern Leyte RTC and subsequently, to Branch 8 of the Tacloban City RTC. Both were special commercial courts.
In the complaint, CPAI alleged that it was the owner of the property and petitioners, without authority, were collecting rentals from the wet market vendors.

In their answer, petitioners refuted CPAI's claim saying that it was preposterous and impossible for the latter to have acquired ownership over the property in 1968 when it was only in 1997 that it was incorporated and registered with the SEC. Petitioners added that since the property was purchased using the money of petitioner Manuel Melgazo's father (the late Emiliano Melgazo), it belonged to the latter.

The special commercial court ruled that the deed of sale covering the property was in the name of CPA, not Emiliano Melgazo. In the dispositive portion of the decision, the court, however, considered CPA to be one and the same as CPA. Aggrieved, petitioners went to the CA and contested the jurisdiction of the special commercial court over the case. According to them, they were not CPAI members, hence the case did not involve an intra-corporate dispute "between and among members" so as to warrant the special commercial court's jurisdiction over it. CPAI, on the other hand, argued that petitioners were already in estoppel as they had participated actively in the court proceedings.

RULING

Originally, Section 5 of Presidential Decree (PD) 902-A[13] conferred on the SEC original and exclusive jurisdiction over the following:

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; or association of which they are stockholders, members, or associates, respectively;

Upon the enactment of RA 8799 in 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of PD 902-A was transferred to the courts of general jurisdiction. Under this authority, Branch 8 of the Tacloban City RTC, acting as a special commercial court, deemed the mandatory injunction case filed by CPAI an intra-corporate dispute falling under subparagraph (2) of the aforecited provision as it involved the officers and members thereof.

To determine whether a case involves an intra-corporate controversy to be heard and decided by the RTC, two elements must concur:

(1) the status or relationship of the parties and
(2) the nature of the question that is subject of their controversy.

The first element requires that the controversy must arise out of intra-corporate or partnership relations: (a) between any or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; (b) between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates and (c) between such corporation, partnership or association and the State insofar as it concerns their individual franchises. On the other hand, the second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation.[15] If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

In the case at bar, these elements are not present. The records reveal that petitioners were never officers nor members of CPAI. CPAI itself admitted this in its pleadings. In fact, petitioners were the only remaining members of CPA which, obviously, was not the CPAI that was registered in the SEC. Moreover, the issue in this case does not concern the regulation of CPAI (or even CPA). The determination as to who is the true owner of the disputed property entitled to the income generated therefrom is civil in nature and should be threshed out in a regular court. Cases of this nature are cognizable by the RTC under BP 129.[17] Therefore, the conflict among the parties here was outside the jurisdiction of the special commercial court.

But did the doctrine of estoppel bar petitioners from questioning the jurisdiction of the special commercial court? No.

In *Lozon v. NLRC*,[18] this Court came up with a clear rule on when jurisdiction by estoppel applies and when it does not:

The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or ***by estoppel*****."** However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position - that the lower court had jurisdiction.... (*emphasis supplied*)

- Baviera vs. Standard Chartered Bank, et al. 515 SCRA 170 (2007)

MANUEL V. BAVIERA *VERSUS* ESPERANZA PAGLINAWAN, IN HER CAPACITY ASDEPARTMENT OF JUSTICE STATE PROSECUTOR; LEAH C. TANODRA-ARMAMENTO, IN HER CAPACITY AS ASSISTANT CHIEF STATE PROSECUTOR ANDCHAIRWOMAN OF TASK FORCE ON BUSINESS SCAM; JOVENCITO R. ZUNO,IN HIS CAPACITY AS DEPARTMENT OF JUSTICE CHIEF STATE PROSECUTOR; STANDAR CHARTERED BANK, PAUL SIMON MORRIS, AJAY KANWAL, SRIDHAR RAMAN, MARIVEL GONZALES, CHONA REYES, MARIA ELLEN VICTOR, AND ZENAIDA IGLESIAS, G.R. No. 168380, February 8, 2007, J.Sandoval-Gutierrez.

A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact.12 The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC.

FACTS

Manuel Baviera, petitioner, was the former head of the HR Service Delivery and Industrial Relations of Standard Chartered Bank-Philippines (SCB), one of herein respondents. SCB is a foreign banking corporation duly licensed to engage in banking, trust, and other fiduciary business in the Philippines. Pursuant to Resolution No. 1142 of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP), the conduct of SCB's business in this jurisdiction is subject to the following conditions:

1. At the end of a one-year period from the date the SCB starts its trust functions, at least 25% of its trust accounts must be for the account of non-residents of the Philippines and that actual foreign exchange had been remitted into the Philippines to fund such accounts or that the establishment of such accounts had reduced the indebtedness of residents (individuals or corporations or government agencies) of the Philippines to non-residents. At the end of the second year, the above ratio shall be 50%, which ratio must be observed continuously thereafter;

2. The trust operations of SCB shall be subject to all existing laws, rules and regulations applicable to trust services, particularly the creation of a Trust Committee; and

3. The bank shall inform the appropriate supervising and examining department of the BSP at the start of its operations.

Apparently, SCB did not comply with the above conditions. Instead, it acted as a stock broker, soliciting from local residents foreign securities called "GLOBAL THIRD PARTY MUTUAL FUNDS" (GTPMF), denominated in US dollars. These securities were not registered with the SEC. These were then remitted outwardly to SCB-Hong Kong and SCB-Singapore.

SCB's counsel, Romulo Mabanta Buenaventura Sayoc and Delos Angeles Law Office, advised the bank to proceed with the selling of the foreign securities although unregistered with the SEC, under the guise of a "custodianship agreement;" and should it be questioned, it shall invoke Section 72 of the General Banking Act (Republic Act No.337). In sum, SCB was able to sell GTPMF securities to some 645 investors. However, SCB's operations did not remain unchallenged.

Investment Capital Association of the Philippines (ICAP) filed with the SEC a complaint alleging that SCB violated the Revised Securities Act, particularly the provision prohibiting the selling of securities without prior registration with the SEC; and that its actions are potentially damaging to the local mutual fund industry.

SCB denied offering and selling securities, contending that it has been performing a "purely informational function" without solicitations for any of its investment outlets abroad; that it has a trust license and the services it renders under the "Custodianship Agreement" for offshore investments are authorized by Section 72 of the General Banking Act; that its clients were the ones who took the initiative to invest in securities; and it has been acting merely as an agent or "passive order taker" for them.

SEC issued a Cease and Desist Order against SCB, holding that its services violated Sections 4(a) and 19 of the Revised Securities Act.
Meantime, the SEC indorsed ICAP's complaint and its supporting documents to the BSP. SEC informed the Secretary of Finance that it withdrew GTPMF securities from the market and that it will not sell the same without the necessary clearances from the regulatory authorities. Meanwhile, the BSP directed SCB not to include investments in global mutual funds issued abroad in its trust investments portfolio without prior registration with the SEC.

SCB sent a letter to the BSP confirming that it will withdraw third-party fund products which could be directly purchased by investors.

However, notwithstanding its commitment and the BSP directive, SCB continued to offer and sell GTPMF securities in this country. This prompted petitioner to enter into an Investment Trust Agreement with SCB wherein he purchased securities upon the bank's promise of 40% return on his investment and a guarantee that his money is safe. After six (6) months, however, petitioner learned that the value of his investment went down. He tried to withdraw his investment but was persuaded by de los Reyes of SCB to hold on to it for another six (6) months in view of the possibility that the market would pick up.

Meanwhile, the BSP found that SCB failed to comply with its directive. Consequently, it was fined. The trend in the securities market, however, was bearish and the worth of petitioner's investment went down further.

Petitioner learned from Gonzales, head of the SCB Legal and Compliance Department, that the latter had been prohibited by the BSP to sell GPTMF securities. Petitioner then filed with the BSP a letter-complaint demanding compensation for his lost investment. But SCB denied his demand on the ground that his investment is "regular."

Petitioner filed with the DOJ a complaint charging the above-named officers and members of the SCB Board of Directors and other SCB officials with syndicated estafa.

For their part, private respondents filed the following as counter-charges against petitioner: (1) blackmail and extortion; and blackmail and perjury. Petitioner also filed a complaint for perjury against private respondents Paul Simon Morris and Marivel Gonzales.

SEC issued a Cease and Desist Order against SCB restraining it from further offering, soliciting, or otherwise selling its securities to the public until these have been registered with the SEC. Subsequently, the SEC and SCB reached an amicable settlement.

SEC lifted its Cease and Desist Order and approved the settlement offered by SCB. Thereupon, SCB made a commitment not to offer or sell securities without prior compliance with the requirements of the SEC.

Petitioner filed with the DOJ a complaint for violation of Section 8.1 of the Securities Regulation Code against private respondents. DOJ rendered its Joint Resolution dismissing petitioner's complaint for syndicated estafa; private respondents' complaint for blackmail and extortion; private respondents' complaint for blackmail and perjury; and petitioner's complaint for perjury against private respondents Morris and Gonzales.

Meanwhile, in a Resolution, the DOJ dismissed petitioner's complaint in violation of Securities Regulation Code, holding that it should have been filed with the SEC. Petitioner's motions to dismiss his complaints were denied by the DOJ. Thus, he filed with the Court of Appeals a petition for certiorari. He alleged that the DOJ acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing his complaint for syndicated estafa.

He also filed with the Court of Appeals a separate petition for certiorari assailing the DOJ Resolution dismissing the case for violation of the Securities Regulation Code. Petitioner claimed that the DOJ acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in holding that the complaint should have been filed with the SEC.

Court of Appeals promulgated its Decision dismissing the petition. It sustained the ruling of the DOJ that the case should have been filed initially with the SEC.

Petitioner filed a motion for reconsideration but it was denied. Meanwhile, the Court of Appeals rendered its Decision in the case involving petitioner's charges and respondents' counter charges dismissing the petition on the ground that the purpose of a petition for certiorari is not to evaluate and weigh the parties' evidence but to determine whether the assailed Resolution of the DOJ was issued with grave abuse of discretion tantamount to lack of jurisdiction. Again, petitioner moved for a reconsideration but it was denied.

Hence, the instant petitions for review on certiorari.

ISSUE

Whether the DOJ committed grave abuse of discretion in dismissing petitioner's complaint for violation of Securities Regulation Code.

RULING

No. No grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.
Section 53.1 of the Securities Regulation Code provides:

SEC. 53. Investigations, Injunctions and Prosecution of Offenses.–

53. 1. The Commission may, in its discretion, make such investigation as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: Provided, however, That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation:
Provided, further, that all criminal complaints for violations of this Code and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: Provided, furthermore, That in instances where the law allows independent civil or criminal proceedings of violations arising from the act, the Commission shall take appropriate action to implement the same: Provided, finally; That the investigation, prosecution, and trial of such cases shall be given priority.

The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint.

A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact.12 The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC.

Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.

The Court, thus, agrees with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.

- Cemco Holdings vs. National Life Insurance Company, 529 SCRA 355 (2007)

CEMCO HOLDINGS VERSUS NATIONAL LIFE INSURANCE COMPANY
G.R.171815, August 7, 2007, J. Chico-Nazario

We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions.

FACTS

Union Cement Corporation (UCC) has two principal stockholders UCHC with shares amounting to 60.51%, and petitioner Cemco with 17.03%. Majority of UCHCs stocks were owned by BCI with 21.31% and ACC with 29.69%. Cemco, on the other hand, owned 9% of UCHC stocks. BCI informed the Philippine Stock Exchange (PSE) that it and its subsidiary ACC had passed resolutions to sell to Cemco the BCIs stocks in UCHC equivalent to 21.31% and ACCs stocks in UCHC equivalent to 29.69%. as a result of petitioner Cemcos acquisition of BCI and ACCs shares in UCHC, petitioners total beneficial ownership, direct and indirect, in UCC has increased by 36% and amounted to at least 53% of the shares of UCC. As a consequence the PSE, inquired to SEC as to whether the Tender Offer Rule under Rule 19 of the Implementing Rules of the Securities Regulation Code is not applicable to the purchase by petitioner of the majority of shares of UCC.The SECs Corporate Finance Department responded to the query of the PSE that while it was the stance of the department that the tender offer rule was not applicable, the matter must still have to be confirmed by the SEC en banc. Thereafter, SEC confirmed that the SEC en banc had resolved that the Cemco transaction was not covered by the tender offer rule. Feeling aggrieved by the transaction, respondent National Life Insurance Company of the Philippines, Inc., a minority stockholder of UCC, sent a letter to Cemco demanding the latter to comply with the rule on mandatory tender offer. Cemco, however, refused.

Respondent filed a complaint with the SEC asking it to reverse its Resolution and to declare the purchase agreement of Cemco void and praying that the mandatory tender offer rule be applied to its UCC shares. In a Decision the SEC ruled in favor of the respondent by reversing and setting aside its Resolution and directed petitioner Cemco to make a tender offer for UCC shares to respondent and other holders of UCC shares similar to the class held by UCHC in accordance with Section 9(E), Rule 19 of the Securities Regulation Code. Petitioner filed a petition with the Court of Appeals challenging the SECs jurisdiction to take cognizance of respondents complaint and its authority to require Cemco to make a tender offer for UCC shares, and arguing that the tender offer rule does not apply.

A Cease and Desist Order was then issued and signed by SEC Commissioner Jesus Martinez to restrain the use of said proxies during the annual meeting. Nevertheless, Rosete continued the meeting despite the foregoing. The SEC then issued a Show Cause Order against Rosete ordering them to give an explanation why they should not be cited in contempt.

ISSUE

Whether or not, the SEC has jurisdiction over the respondent's complaint.

RULING

Yes, The Court affirmed the decision of the CA. SEC was acting pursuant to Rule 19(13) of the Amended Implementing Rules and Regulations of the Securities Regulation Code. The Commission shall have, among others, the following powers and functions: Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws. The foregoing provision bestows upon the SEC the general adjudicative power which is implied from the express powers of the Commission or which is incidental to, or reasonably necessary to carry out, the performance of the administrative duties entrusted to it. As a regulatory agency, it has the incidental power to conduct hearings and render decisions fixing the rights and obligations of the parties. And as held by the Court of Appeals: We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions. A regulatory body like the SEC may conduct hearings in the exercise of its regulatory powers, and if the case involves violations or conflicts in connection with the performance of its regulatory functions, it will have the duty and authority to resolve the dispute for the best interests of the public

- Provident International Resources Corp., et al. vs. Joaquin T. Venus, et al. 554 SCRA 540 (2008)

PROVIDENT INTERNATIONAL RESOURCES CORPORATION, REPRESENTED BY EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LYDIA J. CHUANICO, DANIEL T. PASCUAL, LINDA J. MARCELO, JOHN MARCELO, CELIA C. CABURNAY AND CELEDONIO P. ESCAÑO, JR., AND CELEDONIO ESCAÑO, JR., VERSUS JOAQUIN T. VENUS, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA AND SANTIAGO ALVAREZ, JR.,
G.R. No. 167041, June 17, 2008

The SEC's regulatory authority vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.

FACTS

Petitioner Provident International Resources Corporation is a corporation duly organized under Philippine law. The Marcelo group, were its incorporators, original stockholders, and directors. Another group, known as the Asistio group, claimed that the Marcelo group acquired shares in PIRC as mere trustees for the Asistio group. The Marcelo group allegedly executed a waiver of pre-emptive right, blank deeds of assignment, and blank deeds of transfer; endorsed in blank their respective stock certificates over all of the outstanding capital stock registered in their names; and completed the blank deeds in 2002 to effect transfers to the Asistio group.

The SEC issued a certification stating that verification made on the available records of PIRC showed failure to register its stock and transfer book. It also appears that the Supervision and Monitoring

Department of the SEC had issued a show cause letter to PIRC for its supposed failure to register its STB.

The Asistio group registered PIRC's STB. Upon learning of this, PIRC's assistant corporate secretary, Celedonio Escaño, Jr., requested the SEC for a certification of the registration in 1979 of PIRC's STB. Escaño presented the 1979-registered STB bearing the SEC stamp and the signature of the officer in charge of book registration.

Meanwhile, the Asistio group filed in the Regional Trial Court a complaint against the Marcelo group. The Asistio group prayed that the Marcelo group be enjoined from acting as directors of PIRC, from physically holding office at PIRC's office, and from taking custody of PIRC's corporate records.
Then, the SEC issued a letter recalling the certification it had issued and canceling the 2002-registered STB. However, one Kennedy B. Sarmiento requested the SEC not to cancel the 2002-registered STB. The SEC thus scheduled a conference to determine which of the two STBs is valid.

On February 12, 2003, the hearing officer ruled that the 1979 stock and transfer book authentic and duly executed, the Commission recall the certification issued on 6 August 2002 and cancel the stock and transfer book registered on October 2002. Accordingly, the stock and transfer book registered on 25 September 1979 shall remain valid.

The Asistio group appealed to the SEC Board of Commissioners. They claimed that the issue of which of the two STBs is valid is intra-corporate in nature; hence, the RTC, not the SEC, has jurisdiction.
The SEC denied the appeal. The SEC ratiocinated that the determination of which of the two STBs is valid calls for regulatory, not judicial power and is therefore within its exclusive jurisdiction. The Asistio group elevated the case to the Court of Appeals, which ruled in their favor. The Court of Appeals held that the issue of which of the two STBs is valid is intra-corporate and thus subject to the jurisdiction of the RTC. The appellate court reversed the SEC ruling

ISSUE

1. Whether or not the SEC has the jurisdiction to recall and cancel a stock and transfer book which it issued in 2002 because of its mistaken assumption that no stock and transfer book had been previously issue in 1979

RULING

YES. The SEC's regulatory authority vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.

In instant case, the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.
As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the August 6, 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC.

- Securities and Exchange Commission vs. Interport Resources Corporation 567 SCRA 354 (2008)

SECURITIES AND EXCHANGE COMMISSION, petitioner,
vs.
INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIO RICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR., respondents.
G.R. No. 135808, Oct. 6, 2008 **EN BANC CHICO-NAZARIO, *J.***

No implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.

FACTS

6 Aug 1994 – **Board of Directors of IRC approved a Memorandum of Agreement (MoA) with Ganda Holdings Berhad (GHB)**.

Under the MoA, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc. (GEHI), which would own and operate a 102 megawatt gas turbine power-generating barge.

Also stipulated is that GEHI would assume a five-year power purchase contract with National Power Corp. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-Sept 1994.

In exchange, IRC will issue to GHB 55% of the expanded capital stock of IRC (amounting to 40.88 billion shares – total par value of P488.44 million)

On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc. (PRCI). PRCI owns 25.724 hectares of real estate property in Makati.

Under the Agreement, GHB, a member of the Westmont Group of Companies in Malaysia, shall extend or arrange a loan required to pay for the proposed acquisition by IRC of PRCI.

8 Aug 1994 – IRC alleged that a press release announcing the approval of the agreement was sent through fax to Philippine Stock Exchange (PSE) and the SEC, but that the fax machine of SEC could not receive it. Upon the advice of SEC, IRC sent the press release on the morning of 9 Aug 1994.
SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors heavily traded IRC shares utilizing this material insider information.

16 Aug 1994 – SEC Chairman issued a directive requiring IRC to submit to SEC a copy of its aforesaid MoA with GHB and further directed all principal officers of IRC to appear at a hearing before the Brokers and Exchanges Dept (BED) of SEC to explain IRC's failure to immediately disclose the information as required by the Rules on Disclosure of Material Facts by Corporations Whose Securities are Listed in Any Stock Exchange or Registered/Licensed Under the Securities Act IRC sent a letter to SEC, attaching copies of MoA and its directors appeared to explain IRC's alleged failure to immediately disclose material information as required under the Rules on Disclosure of Material Facts.

19 Sept 1994 – SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure when it failed to make timely disclosure, and that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Sec 30, in relation to Sec 36 of the Revised Securities Act.

IRC filed an Omnibus Motion (later an Amended Omnibus Motion) alleging that SEC had no authority to investigate the subject matter, since under Sec 8 of PD 902-A, as amended by PD 1758, jurisdiction was conferred upon the Prosecution and Enforcement Dept (PED) of SEC IRC also claimed that SEC violated their right to due process when it ordered that the respondents appear before SEC and show cause why no administrative, civil or criminal sanctions should be imposed on them, and thus, shifted the burden of proof to the respondents. They filed a Motion for Continuance of Proceedings.

No formal hearings were conducted in connection with the Motions.

25 Jan 1995 – SEC issued an Omnibus Order: creating a special investigating panel to hear and decide the case in accordance with Rules of Practice and Procedure before the PED, SEC; to recall the show cause orders; and to deny the Motion for Continuance for lack of merit.

Respondents filed a petition before the CA questioning the Omnibus Orders and filed a Supplemental Motion wherein they prayed for the issuance of a writ of preliminary injunction.
5 May 1995 – CA granted their motion and issued a writ of preliminary injunction, which effectively enjoined SEC from filing any criminal, civil or administrative case against the respondents.

20 Aug 1998 – CA promulgated a Decision

Determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which respondents allegedly violated.

It found no statutory authority for SEC to initiate and file any suit for civil liability under Sec 8, 30 and 36 of the Revised Securities Act, thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection.

It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders

Further decided that the **Rules of Practice and Procedure before the PED did not comply with the statutory requirements contained in the Administrative Code of 1997**. Section 9, Rule V of the Rules of Practice and Procedure before the PED affords a party the right to be present but without the right to cross-examine witnesses presented against him, in violation of Sec 12(3), Chap 3, Book VII of the Administrative Code.

ISSUES

1. Do sections 8, 30, and 36 of the Revised Securities Act require the enactment of implementing rules to make them binding and effective? No.

2. Does the right to cross-examination be demanded during investigative proceedings before the PED? No.

3. May a criminal case still be filed against the respondents despite the repeal of Sections 8, 30, and 36 of the Revised Securities Act? Yes.

4. Did SEC retain the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED? Yes.

5. Does the instant case prescribed already? No.

6. Is CA justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders? Yes.

RULING

The petition is impressed with merit.

** It should be noted that while the case was pending in SC, RA 8799 (Securities Regulation Code) took effect on 8 August 2000.*

Section 8 of PD 902-A, as amended, which created the PED, was already repealed as provided for in Sec 76 of Securities Regulation Code.

Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.

On the merits:

Sections 8, 30, and 36 of the Revised Securities Act (RSA) do not require the enactment of implementing rules to make them binding and effective.
The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given.

Absence of any constitutional or statutory infirmity, which may concern Secs 30 and 36 of RSA, the provisions are legal and binding.

Every law has in its favour the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.

The Court does not discern any vagueness or ambiguity in Sec 30 and 36 of RSA
Sec 30 – Insider's duty to disclose when trading

Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors:

the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.

The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor.

In some cases, however, there may be valid corporate reasons for nondisclosure of material information. Where such reasons exist, an issuer's decision not to make any public disclosures is not ordinarily considered as a violation of insider trading. At the same time, the undisclosed information should not be improperly used for non-corporate purposes, particularly to disadvantage other persons with whom an insider might transact, and therefore the insider must abstain from entering into transactions involving such securities.

Sec 36 – Directors, officers and principal stockholders

A straightforward provision that imposes upon:

a beneficial owner of more than 10 percent of any class of any equity security or
a director or any officer of the issuer of such security

the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership.

Sections 30 and 36 of the RSA were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public.

Sec 30 prevented the unfair use of non-public information in securities transactions, while Sec 36 allowed the Sec to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies.

The lack of implementing rules cannot suspend the effectivity of these provisions.

The right to cross-examination is not absolute and cannot be demanded during investigative proceedings before the PED.

Sec 4, Rule 1 of the PED Rules of Practice and Procedure, categorically stated that the proceedings before the PED are summary in nature, not necessarily adhering to or following the technical rules of evidence obtaining in the courts of law Rule V – Submission of documents, determination of necessity of hearing and disposition of case.

A formal hearing was not mandatory, it was within the discretion of the Hearing Officer whether there was a need for a formal hearing

Since the holding of a hearing before the PED is discretionary, then the right to cross-examination could not have been demanded by either party.

Chapter 3, Book VII of the Administrative Code refers to "Adjudication" and does not affect the investigatory functions of the agencies.

The law creating PED empowers it to investigate violations of the rules and regulations promulgated by the SEC and to file and prosecute such cases.

It fails to mention any adjudicatory functions insofar as the PED is concerned. Thus, PED Rules of Practice need not comply with the provisions of the Administrative Code on adjudication.

The only powers which the PED was likely to exercise over the respondents were investigative in nature

In proceedings before administrative or quasi-judicial bodies, such as NLRC and POEA, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. It is enough that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favour, to comply with the due process requirements.

The Securities Regulation Code (SRC) did not repeal Sections 8, 30, and 36 of the Revised Securities Act since said provisions were re-enacted in the new law.

when the repealing law punishes the act previously penalized under the old law, the act committed before the re-enactment continues to be an offense and pending cases are not affected.

Sec 8 of RSA, which previously provided for the registration of securities and the information that needs to be included in the registration statements, was expanded under Sec 12 of the Securities Regulations Code. Further details of the information required to be disclosed by the registrant are explained.

Sec 30 of RSA has been re-enacted as Sec 27 of SRC, still penalizing an insider's misuse of material and non-public information about the issuer, for the purpose of protecting public investors
Sec 23 of SRC was practically lifted from Sec 36 of RSA.

The legislature had not intended to deprive the courts of their authority to punish a person charged with violation of the old law that was repealed

The SEC retained the jurisdiction to investigate violations of the Revised Securities Act, re-enacted in the Securities Regulations Code, despite the abolition of the PED.

Sec 53 of SRC clearly provides that criminal complaints for violations of rules and regulations enforced or administered by SEC shall be referred to the DOJ for preliminary investigation, while the SEC nevertheless retains limited investigatory powers. SEC may still impose the appropriate administrative sanctions under Sec 54.

The instant case has not yet prescribed.

Respondents point out that the prescription period applicable to offenses punished under special laws is 12 years. Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot.

It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed as offense.
The CA was justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders dated 23 October 1995.

Since it found other issues that were more important than whether or not the PED was the proper body to investigate the matter, CA denied SEC's motion for leave to quash SEC Omnibus Orders.

In all, the SC rules that no implementing rules were needed to render effective Sections 8, 30, and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents maybe investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Secs 8, 30, and 36 of the Revised Securities Act.
SC – petition granted

- GSIS vs. Court of Appeals 585 SCRA 679 (2009)

GOVERNMENT SERVICE, INSURANCE SYSTEM, *Petitioner* –versus- **THE HON. COURT OF APPEALS, ANTHONY V. ROSETE, et. al., *Respondent***
G.R. No. 183905, April 16, 2009, SECOND DIVISION, TINGA, *J.*

Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.

FACTS

During the annual stockholders meeting of the Manila Electric Company (MERALCO,) due to the resignation of the corporate secretary Quiason, the Board of Directors (BoD) of MERALCO designated Vitug to act as corporate secretary. However, the proxy validation was presided over by respondent Rosete, assistant corporate secretary and in-house chief legal counsel of MERALCO. GSIS, a major shareholder in Meralco, was distressed over the proxy validation proceedings and the resulting certification of proxies.

GSIS thereafter filed a complaint with the RTC of Pasay City seeking the nullification of the proxies which were validated during the aforementioned proceeding. On the very same day, a Cease and Desist Order (CDO) was then issued and signed by SEC Commissioner Jesus Martinez to restrain the use of said proxies during the annual meeting. Nevertheless, Rosete continued the meeting despite the foregoing.

The SEC then issued a Show Cause Order (SCO) against Rosete ordering them to give an explanation why they should not be cited in contempt. On appeal, the CA Eighth Division held that the complaint filed by **GSIS is dismissed for lack of jurisdiction**, forum shopping by splitting of causes of action. Thereafter, three different action arose therefrom, one of which involves the jurisdiction of the SEC over the contested petition as well as the validity of the CDO and SCO.

ISSUE:

Whether or not the SEC has jurisdiction over the petition filed by GSIS against private respondents.

RULING:

NO. Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, (2) **the validation of proxies**, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners.

Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.

The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A.

4. Corporate Rehabilitation

- Metropolitan Bank & Trust Co. v. Fortuna Paper Mill & Packaging Corp., G.R. No. 190800, [November 7, 2018]

METROPOLITAN BANK & TRUST COMPANY, Petitioner, VS. FORTUNA PAPER MILL & PACKAGING CORPORATION, Respondent

G.R. No. 190800, November 07, 2018, SECOND DIVISION, REYES, A. JR., J.

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.

FACTS

MBTC extended various credit accommodations and loan facilities to Fortuna principally amounting to Php 259,981,915.33. Fortuna eventually ended up defaulting on its obligations to MBTC. Instead of paying the overdue obligations to MBTC, Fortuna filed a Petition for Corporate Rehabilitation (Rehabilitation Petition) with the RTC of Malabon, Branch 74.

Finding the Rehabilitation Petition sufficient in form and substance, the RTC issued a Stay Order setting the initial hearing involving the Rehabilitation Petition and directing all of Fortuna's creditors and other interested parties to file their verified comments/opposition. The court likewise ordered for the appointment of a rehabilitation receiver, Atty. Rafael F. Teston.

Subsequently, 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.

Despite opposition, the Rehabilitation Petition was given due course. After reviewing the same, Atty. Teston submitted a Rehabilitation Receiver's Report and Comments to the Rehabilitation Plan (Receiver's Report), the said report recommending that the proposed Rehabilitation Plan be adopted, but subject to certain timelines and benchmarks. On the basis of this, the RTC issued an Order approving the Rehabilitation Plan. The trial court found the proposed Rehabilitation Plan feasible and viable and noted Fortuna's effort to improve its financial standing by establishing a new business of realty development in Malabon City.

ISSUE

Whether or not Fortuna is qualified to file a petition for rehabilitation under the Interim Rules.

RULING

YES. Rehabilitation refers to the restoration of the debtor to a condition 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, more if the debtor continues as a going concern than if it is immediately liquidated.

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. (Emphasis Ours)

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. This is the plain meaning rule or *verha legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.

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.

Upon cursory reading of the report and recommendation of Atty. Teston, it can be seen that Fortuna maintains a status of solvency, having more assets than its liabilities with a Php 71,000,000.00 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 busines's 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."

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.

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.

FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA)

- Tyson's Super Concrete, Inc. vs. Court of Appeals 461 SCRA 69 (2005)

TYSONS SUPER CONCRETE, INC., GREGORIO S. NAVARRO, in his capacity as the Chairman of the Management Committee as created by the Securities and Exchange Commission, GENARO HAO, WILLIAM HAO, NANCY HAO and LYDIA HAO, *Petitioner* –versus- COURT OF APPEALS, HON. PABLO S. INVENTOR, in his capacity as the Presiding Judge of the Regional Trial Court of Kalookan City, Branch 123, HON. BELEN ORTIZ, in her capacity as the Presiding Judge of the Metropolitan Trial Court of Caloocan City, Branch 49, Deputy Sheriff ILDEFONSO CABANG, Metropolitan Trial Court of Kalookan City, Branch 49, and ROMANA DELA CRUZ, *Respondents*

G.R. No. 140081. June 23, 2005, J. Austria-Martinez

The fact that a management committee had already been created by the SEC does not divest the first level courts of their exclusive jurisdiction.

FACTS

Romana Dela Cruz (Dela Cruz) herein private respondent leased a parcel of land in favor of Tysons Super Concrete Inc. (Tysons). During the pendency of the lease, internal squabbling took place within Tysons. Thus, upon motion filed, the SEC ordered the creation of a Management Committee, to undertake the management of Tysons.

Thereafter, Dela Cruz filed a complaint for ejectment against Tysons with the MeTC on the ground of failure of Tysons to pay its rentals despite repeated demands. The MeTC adjudged Tysons liable to pay the rentals in favor of Dela Cruz. On appeal, the RTC and CA affirmed the decision of the MeTC, hence this petition.

ISSUE

Whether the civil proceedings should be nullified on the ground that there is a management committee created to manage Tysons?

RULING

NO. The civil proceedings should not be nullified despite the creation of the management committee. While there may be merit in petitioners contention that the action for ejectment filed with the MeTC should have been suspended on the ground that the SEC has already created a management committee under P.D. No. 902-A, considering the peculiar circumstances of the case and in the higher interest of substantial justice, we do not find any cogent reason or useful purpose to nullify all the proceedings taken in the courts below and order the suspension of the complaint for ejectment at this stage of the proceedings.

The fact that a management committee had already been created by the SEC does not divest the first level courts of their exclusive jurisdiction. Under P.D. No. 902-A, the existence of an executive committee merely suspends the proceedings in civil actions.

The management committee has been unduly burdened enough, its time and resources wasted by the proceedings that took place before the RTC and the appellate court. Hence, to decree the annulment of the previous proceedings in the lower courts will only result in further delay. The greater interest of justice demands that we now dispose of the issues raised in the present petition.

- Spouses Sobrejuanite vs. ASB Development Corporation 471 SCRA 763 (2005)

SPOUSES EDUARDO AND FIDELA SOBREJUANITE, *Petitioner*, -versus- ASB DEVELOPMENT CORPORATION, *Respondent*

G.R. No. 165675, September 30, 2005, J. Ynares-Santiago

Upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

FACTS

Eduardo and Fidela Sobrejuanite (Sobrejanite) herein petitioners, entered into a contract to sell with ASB Development Corporation (ASBDC) herein respondent, over the sale of a condominium unit by the latter in favor of the former. However, ASBDC failed to deliver the property on the date agreed upon by the parties. This prompted the Sobrejuanite to file a complaint for rescission, refund and damages before the Housing and Land Use Regulatory Board (HLURB). During the pendency of the case, ASBDC filed a motion to dismiss or suspend proceedings in view of the approval of the rehabilitation plan and appointment of the rehabilitation receiver of the ASB Group of Companies which includes ASBDC. The HLURB decided in favor of the Sobrejuanite. The Office of the President likewise decided in favor of the Sobrejanite. However on appeal with the CA.

The CA reversed, hence this petition.

ISSUE

Whether the civil proceeding for rescission, refund and damages should be suspended on the ground that a rehabilitation receiver has been appointed?

RULING

YES. The law provides that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. The interim rules define a claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.

Clearly then, the complaint filed by Sobrejuanite is a claim as defined under the law. Hence therefore, the complaint for rescission with damages would fall under the category of claim considering that it is for pecuniary considerations which should be suspended pending the execution of the receivership plan of ASBDC.

- Sy Chim vs. Sy Siy Ho & Sons, Inc., 480 SCRA 465 (2006)

SY CHIM and FELICIDAD CHAN SY, *Petitioners,* -versus- SY SIY HO & SONS, INC., doing business under the name and style GUAN YIAC HARDWARE, *Respondents*
G.R. No. 164958, 27 January 2006, J. Callejo Sr.

Appointment of a management committee is not proper where there is no imminent danger of dissipation, loss, wastage or destruction of assets or other properties of the corporation and paralysis of its business operations.

FACTS

Sy Chim and Felicidad Chan Sy (Sps. Sy) herein petitioners, are officers and members of the board of directors of Sy Siy Ho & Sons Inc. doing business under the name Guan Yac Hardware (SSH&SI). Because of alleged mismanagement and misappropriation of funds by the Sps. Sy, SSH&SI filed a complaint with the Trial Court for account and damages against Sps. Sy. During the pendency of the suit, the Sps. Sy filed a motion for appointment of a Management Committee for SSH&SI, on the ground that SSH&SI is under imminent danger of further dissipation, loss, wastage or destruction of its corporate funds and assets. The Trial Court, among others, granted the aforementioned motion for the creation of the management committee. This prompted SSH&SI to elevate the case to the CA insofar as to the order of the Trial Court granted the creation of the management committee. The CA reversed the decision of the Trial Court and set aside the order for the creation of the Management Committee. Thus, Sps. Sy elevated the case to the SC, hence this petition.

ISSUE

Whether a management committee for SSH&SI may be validly created?

RULING

NO. A management committee cannot be validly created for SSH&SI. We do not agree with petitioners contention that the word "and" in Section 1, Rule 9 of the Interim Rules should be interpreted to mean "or." Section 1, Rule 9 of the Interim Rules provides:

SECTION 1. Creation of a management committee. As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:

(1) Dissipation, loss, wastage or destruction of assets or other properties; and
(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.

In the present case, petitioners failed to make a strong showing that there was an imminent danger of dissipation, loss, wastage or destruction of assets or other properties of respondent corporation and paralysis of its business operations which may be prejudicial to the interest of the parties-litigants, petitioners, or the general public. The RTC thus committed grave abuse of its discretion amounting to excess of jurisdiction in creating a management committee and the subsequent appointment of a comptroller.

- Ao-As vs. CA 491 SCRA 339 (2006)

REV. LUIS AO-AS, REV. JOSE LAKING, EUSQUICIO GALANG, REV. ISABELO MONONGGIT, REV. EDWINO MERCADO, REV. DANIEL PONDEVIDA, REV. TEODORICO TARAN and DR. BENJAMIN GALAPIA, v HON. COURT OF APPEALS,

THOMAS P. BATONG, JUANITO BASALONG, AUGUSTO CATANGI, PAUL GARCIA, QUIDO RIVERA, VICTORIO Y. SAQUILAYAN and DANILO ZAMORA
G.R. No. 128464, June 20, 2006, J. Chico-Nazario

The appointment of a receiver for a going corporation is a last resort remedy, and should not be employed when another remedy is available.

FACTS

The Lutheran Church of the Philippines (LCP) consists of the Batong group herein private respondent, who are the duly elected board of directors and officers of the LCP were accused with the misconduct of causing the dissipation, loss and wastage of LCP funds and assets by the Ao-As group herein petitioners and have served in various capacities as directors or officers of LCP. Thus, Ao-As group filed a complaint with the SEC for accounting and damages, as well as appointment of a management committee.

The Ao-As group alleges that the concurrence of only two (2) other directors to authorize the release of surplus funds and the power of the Board of Directors of the LCP to prepare the annual budget and annual auditing of properties of LCP pursuant to the LCP by-laws, would result to the dissipation, loss and wastage of the assets of LCP. The SEC ruled in favor of the Ao-As group and ordered the creation of the management group for LCP. The SEC en banc affirmed the decision of the SEC division. However, upon appeal with the CA, the CA reversed and set aside the decision of the SEC en banc. Thus, the appeal to the SC by the Ao As group, hence this petition.

ISSUE

Whether the creation of the management committee for LCP is valid?

RULING

NO. The creation of the management committee for LCP is invalid. The appointment of a receiver for a going corporation is a last resort remedy, and should not be employed when another remedy is available. Relief by receivership is an extraordinary remedy and is never exercised if there is an adequate remedy at law or if the harm can be prevented by an injunction or a restraining order. Bad judgment by directors, or even unauthorized use and misapplication of the company's funds, will not justify the appointment of a receiver for the corporation if appropriate relief can otherwise be had.

The fact that the President of the LCP needs the concurrence of only two other directors to authorize the release of surplus funds plainly contradicts the conclusion of conspiracy among the presently 11-man board. Neither does the fact that the Board of Directors of the LCP prepares the annual budget and the annual auditing of properties of the LCP justify the conclusion that the alleged acts of respondent Batong was done in concert with the other directors. There should have been evidence that such dissipation took place with the knowledge and express or implied consent of most or the entire board.

Good faith is always presumed. As it is the obligation of one who alleges bad faith to prove it, so should he prove that such bad faith was shared by all persons to whom he attributes the same. The last resort remedy of replacing the entire board, therefore, with a management committee, is uncalled for.

- Danilo G. Punongbayan vs. Perfecto G. Punongbayan, Jr. 491 SCRA 581 (2006)

DANILO G. PUNONGBAYAN v PERFECTO G. PUNONGBAYAN, JR., MARILOU P. VISITACION, and SOTERO A. PUNONGBAYAN
G.R. No. 157671, June 20, 2006, J. Sandoval-Gutierrez

The RTC has the power and authority to reorganize the management committee created by the SEC.

FACTS

Danilo Punongbayan (Danilo)herein petitioner, Perfecto Punongbayan Jr (Perfecto), Marilou Visitacion (Marilou), and Sotero Punongbayan (Sotero), herein respondents are members and members of the board of St. Peter's College. Because of the assumption of Danilo of the position of president, Perfecto as Treasurer and Marilou as Corporate Secretary, Sotero filed a Petition for Disqualification against Danilo, Perfecto and Marilou on the ground that there was no Board meeting which appointed them to the abovementioned official positions. The petition also included a prayer for the immediate creation of a management committee on the ground of lack of quorum among the members of the board. The SEC granted the prayer for the creation of the management committee.

The SEC created management committee consists of five (5) members, four (4) of which represented St. Peter's College, Sotero, Danilo, and Perfecto. The fifth (5th) member subsequently, inhibited herself as member and chairperson of the committee thus resulting to a deadlock among the remaining members of the management committee. Thereafter, the said case pursuant to law was transferred to the RTC. Sotero then filed a motion with the RTC praying for the abolition of the said management committee, Sotero further prayed that the original members of the board namely, Sotero, Danilo and Perfecto be required to reconvene and run the affairs of the school. The RTC denied Sotero's motion and instead directed Sotero, and Danilo to tender their nominees for the new management committee to be created by the RTC. Thus a new management committee was created. This prompted Perfecto to assail the decision of the RTC with the CA. The CA decided in favor of Perfecto and reversed the decision of the RTC insofar as to the creation of the new management committee. Hence therefore, Danilo elevated the case to the SC assailing the decision of the CA, hence this petition.

ISSUE

Whether the RTC has the power and authority to reorganize the management committee created by the SEC?

RULING

YES. The RTC has the authority to reorganize the management committee created by the SEC. Republic Act No. 8799, which became effective on August 8, 2000, transferred the jurisdiction of the

SEC over cases involving intra-corporate disputes to the Regional Trial Courts. Thus, the RTC assumed powers provided under Sections 5 and 6 of Presidential Decree No. 902-A quoted earlier. As such, it has the discretion to grant or deny an application for the creation of a management committee. This discretion, however, must be exercised with great caution and circumspection. Having the power to create a management committee, it follows that the RTC can order the reorganization of the existing management committee. Here, knowing that the deadlock among the members of the committee (appointed by the SEC) may lead to the paralyzation of the school's business operations, the RTC removed the said members and appointed new members.

Such appointment of new members does not mean the creation of a new management committee. The existing management committee was not abolished. The RTC merely reorganized it by appointing new members. The management committee created by the SEC continues to exist. However, when it failed to function due to the division among the members, the RTC replaced them. Clearly, there was no revocation of the final Order of the SEC.

- New Frontier Sugar Corporation vs. RTC of Ilo-ilo and Equitable PCI Bank, 513 SCRA 601 (2007)

NEW FRONTIER SUGAR CORPORATION v RTC OF ILOILO CITY and EQUITABLE PCI BANK

G.R. No. 165001, January 31, 2007, Austria-Martinez, J

A corporation that no longer has any assets is not qualified for corporate rehabilitation.

FACTS

New Frontier Sugar Corporation (NFSC) herein petitioner, foreseeing that it cannot meet its obligations with its creditors as they fell due, petitioned with the RTC of Iloilo City for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan. However, Equitable PCI Bank (EPCIB) herein private respondent and one of the secured creditors, by way of mortgage, of NFSC, filed its opposition, alleging that NFSC is not qualified for corporate rehabilitation as it can no longer operate because it has no assets left and that NFSC still owes EPCIB deficiency liability.

The RTC of Iloilo City dismissed the petition of NFSC. On appeal with the CA, the CA affirmed the decision of the RTC. Left without any remaining remedy, NFSC comes before the SC assailing decision of the CA, hence this petition.

ISSUE

Whether it the dismissal of the rehabilitation plan in favour of NFSC was proper.

RULING

YES, the dismissal of the rehabilitation plan in favour of NFSC was proper. In this case, respondent bank instituted the foreclosure proceedings against petitioner's properties on March 13, 2002 and a Certificate of Sale at Public Auction was issued on May 6, 2002, with respondent bank as the highest

bidder. The mortgage on petitioner's chattels was likewise foreclosed and the Certificate of Sale was issued on May 14, 2002. It also appears that titles over the properties have already been transferred to respondent
bank.

On the other hand, the petition for corporate rehabilitation was filed only on August 14, 2002 and the Rehabilitation Receiver appointed on August 20, 2002. Respondent bank, therefore, acted within its prerogatives when it foreclosed and bought the property, and had title transferred to it since it was made prior to the appointment of a rehabilitation receiver.

The fact that there is a pending case for the annulment of the foreclosure proceedings and auction sales is of no moment. Until a court of competent jurisdiction, which in this case is the RTC of Dumangas, Iloilo, Branch 68, annuls the foreclosure sale of the properties involved, petitioner is bereft of a valid title over the properties. In fact, it is the trial courts ministerial duty to grant a possessory writ over the properties.

Consequently, the CA was correct in upholding the RTCs dismissal of the petition for rehabilitation in view of the fact that the titles to petitioners properties have already passed on to respondent bank and petitioner has no more assets to speak of, especially since petitioner does not dispute the fact that the properties which were foreclosed by respondent bank comprise the bulk, if not the entirety, of its assets.

- Philippine Airlines vs. Zamora 514 SCRA 584 (2007)

PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV, PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D. ABUYUAN v BERNARDIN J ZAMORA

G.R. No. 166996, September 3, 2008, Chico-Nazario, J

The suspension of an illegal dismissal case against a corporation undergoing corporate rehabilitation is proper.

FACTS

Bernardin Zamora (Zamora) herein respondent, and employee of Philippine Airlines Inc (PAL) herein petitioner, filed a complaint with the Labor Arbiter of the NLRC for illegal dismissal, unfair labour practice, non-payment of wages, damages and attorney's fees. The LA, NLRC and CA decided in favour of Zamora and ordered his reinstatement as employee and granting his monetary claims against PAL. On the other hand, PAL sought the suspension of the proceedings since it has been undergoing rehabilitation which prompted PAL to elevate the case to the SC, hence this petition.

ISSUE

Whether the suspension of the proceedings on the ground of rehabilitation of PAL was proper.

RULING

YES the suspension of the proceedings on the ground of rehabilitation of PAL was proper. On 6 February 2007, this Court resolved to suspend the proceedings of the instant petition in view of the ongoing rehabilitation of PAL. However, on 28 September 2007, PAL successfully exited rehabilitation by virtue of the Securities and Exchange Commission finding of the airlines firm commitment to settle its outstanding obligations as well as the fact that its operations and its financial condition have been normalized and stabilized in conformity with the Amended and Restated Rehabilitation Plan.

- Union Bank of the Philippine vs. ASB Devt. Corp., 560 SCRA 578 (2008)

Union Bank of the Philippines vs. ABS Development Corporation
GR No. 172895, June 30, 2008, Chico-Nazario, *J.*:

(1) An actually insolvent debtor; (b) a technically insolvent debtor; or (3) a creditor or stockholder of the debtor, can file a petition for rehabilitation.

FACTS

Respondent ASB Development Corporation (ASBDC), a domestic corporation organized and existing under Philippine laws, executed a Mortgage Trust Indenture (MTI) and, thereafter, supplemental indentures, in favor of Rizal Commercial Banking Corporation (RCBC), as trustee for the following creditor banks: RCBC itself, petitioner Union Bank of the Philippines (UBP) and United Coconut Planters Bank (UCPB). Under said MTI and supplemental indentures, the creditor banks granted respondent ASBDC a loan in the total amount of P1.198 billion, P122 million of which was extended bypetitioner UBP. As security for the loan, respondent ASBDC mortgaged to RCBC real properties. Petitioner UBP has an aliquot share of 10.32% in said mortgages as security for its loan to respondent ASBDC.

Respondent ASBDC, together with ASB Holdings Inc., ASB Realty Corporation, ASB Land Inc., ASB Finance Inc., Makati Hope Christian School Inc., Bel-Air Holdings Corporation, Winchester Trading Inc., VYL Development Corporation, and Neighborhood Holdings Inc. (collectively referred to as the ASB Group of Companies), as affiliated companies filed with the SEC Securities and Investigations Clearing Department (SICD) a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings. To take cognizance of the said Petition, the SEC Hearing Panel was formed composed of three hearing officers from SICD.

Petitioner UBP, Metropolitan Bank and Trust Company (Metrobank), RCBC, Philippine National Bank (PNB), Prudential Bank, UCPB and Equitable-PCI Bank opposed the petition for rehabilitation of the ASB Group of Companies. SEC approved the petition for rehabilitation. Petitioner contended that ASBDC was not insolvent therefore rehabilitation shall not prosper.

ISSUE

Whether or not SEC has jurisdiction over petition for rehabilitation even though
ASBDC was not insolvent

RULING

YES, SEC has jurisdiction. Being a Petition for Rehabilitation, the Petition of respondent ASBDC must comply with the jurisdictional requirements under Rule IV of the Rules of Procedure on Corporate Recovery. Section 4-1 of the said Rules provides that any of the following: (1) an actually insolvent debtor; (b) a technically insolvent debtor; or (3) a creditor or stockholder of the debtor, can file a petition for rehabilitation.

Although respondent ASBDC admitted in its Petition that it had sufficient assets to cover its liabilities, it also alleged that it had foreseen its inability to pay its obligations within a period of one year. This is the very definition of technical insolvency: the inability of the petitioning corporation to pay, although temporarily, for a period longer than one year from the filing of the petition.

As a technically insolvent corporation, respondent ASBDC can seek recourse from the SEC through a Petition for Rehabilitation. Neither can the Court sustain the allegation of petitioner UBP that respondent ASBDC failed to prove that it was technically insolvent. Whether respondent ASBDC is indeed technically insolvent is a question of fact.

More importantly, on 27 February 2007, this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB Holdings, Inc*. Metropolitan Bank & Trust Company (MBTC) was one of the creditor-mortgagee banks of the ASBDC. MBTC challenged the validity of the Petition for Rehabilitation of the ASB Group of Companies approved by the SEC Hearing Panel on 26 April 2001. We already upheld in said case the validity of the Rehabilitation Plan. We also denied with finality on 6 June 2007 the Motion for Reconsideration of MBTC. The Rehabilitation Plan, like the 4 May 2000 Suspension Order, resulted from the very same proceedings held herein by the SEC Hearing Panel pursuant to the Petition for Rehabilitation filed by the ASB Group of Companies. As we have already settled the validity of the Rehabilitation Plan, the jurisdictional issues on the Petition for Rehabilitation should also be considered laid to rest. Intrinsic to this Courts affirmation of the validity of the Rehabilitation Plan is its recognition of the jurisdiction acquired by the SEC Hearing Panel over the Petition for Rehabilitation of the ASB Group of Companies.

- China Banking Corporation vs. ASB Holdings, Inc., 575 SCRA 247 (2008)

China Banking Corporation v. ABS Holdings Inc.
G.R. No. 172192, December 23, 2008 REYES, R.T., *J.*:

Rehabilitation plan does not violate the principle of mutuality of contracts if the other party is given the choice as to accept or deny the proposed plan.

FACTS

ASB Development Corporation applied for and was granted a credit line by petitioner China Bank in the principal amount of P35,000,000.00. The loan was secured by a real estate mortgage constituted over two contiguous lots with a combined area of 1,332.5 square meters in Grace Park, Caloocan City. Respondent corporations defaulted in the payment of the agreed loan amortizations, interest, and other charges. Demands to pay were left unheeded.

ASB Development Corporation and its affiliates filed before the SEC a petition for rehabilitation with prayer for suspension of actions and proceedings. In filing the petition for rehabilitation, respondents contended that while they have sufficient capitalization, the company will be hard-pressed to service its obligations in favor of petitioner bank and its other creditors due to a glut in the real estate market, the depreciation of the currency and decreased investor confidence in the Philippine economy. SEC approved petition for rehabilitation.

ASB Development Corporation submitted the rehabilitation plan for approval of the SEC. The plan, in part, provides: x x x Based on the program, secured creditors claims amounting to PhP5.192 billion will be paid in full including interest up to April 30, 2000. Secured creditors have been asked to waive all penalties and other charges. This *dacion en pago* program is essential to eventually pay all creditors and rehabilitate the ASB Group of Companies. If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public, and the economy.ASB rehabilitation plan was approved by the SEC.

Aggrieved, petitioner bank appealed the plans approval to the SEC *En Banc*. According to petitioner bank, the SEC order compelling the bank to surrender its present collateral and accept certain properties located in Pasig City and Paranaque City as payment of the obligations due it violates the constitutional proscription against impairment of contracts. It was likewise argued that the value of the properties being offered by ASB via *dacion en pago* is insufficient to cover the amount of its outstanding loans; and that the preference conferred by law to the bank as a secured creditor has been rendered illusory which was denied by SEC with finality.

ISSUE

Whether or not the ASB Rehabilitation plan violates the principles of mutuality of contracts which curtails the freedom to enter into contracts

RULING

NO, it does not violate the principle of mutuality of contracts. The Supreme Court is not convinced that the approval of the Rehabilitation Plan impairs petitioner banks lien over the mortgaged properties. Section 6[c] of P.D. No. 902- A provides that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended.

By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspend the actions for claims against respondent corporations. Petitioner banks preferred status over the unsecured creditors relative to the mortgage liens is retained, but the enforcement of such preference is suspended. The loan agreements between theparties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.

As we stressed in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, such suspension shall not prejudice or render ineffective the status of a secured creditor as compared to a totally unsecured creditor, for what P.D. No. 902-A merely provides is that all actions for claims against the distressed corporation, partnership or association shall be suspended. This arrangement provided by law is intended to give the receiver a chance to rehabilitate the corporation if there should still be a possibility for doing so, without being unnecessarily disturbed by the creditors actions against the distressed corporation. However, in the event that rehabilitation is no longer feasible and the claims against the distressed corporation would eventually have to be settled, the secured creditors, like petitioner bank, shall enjoy preference over the unsecured creditors.

Likewise, there is no compulsion on the part of petitioner bank to accept a *dacion en pago* arrangement of the mortgaged properties based on ASB Group of Companies transfer values and to condone interests and penalties.

The Rehabilitation Plan the *dacion en pago* program and the intent of respondent ASB Group of Companies to ask creditors to waive the interests, penalties and related charges are not compulsory in nature. They are merely proposals for the creditors to accept. In fact, as explained, there was already an initial discussion on these proposals and the majority of the secured creditors showed their desire to complete *dacion en pago* transactions, but they must be based on MUTUALLY AGREED UPON TERMS.

- Garcia vs. Philippine Airlines. G.R. No. 164856 576 SCRA 479 (2009)

Juanito A. Garcia and Alberto J. Dumago v. Philippine Airlines Inc
G.R. No. 164856, January 20, 2009, Carpio-Morales, J.

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall ipso jure be suspended.

FACTS

PAL filed an administrative charged against its employees-herein petitioners after they were allegedly caught in the act of sniffing shabu when a team of company security personnel and law enforcers raided the PAL Technical Centers Toolroom Section. After due notice, PAL dismissed petitioners for transgressing the PAL Code of Discipline which prompted them to file a complaint for illegal dismissal and damages which was granted by the Labor Arbiter and later on an order of reinstatement was made. However, NLRC reversed its decision. Prior to the promulgation of the Labor Arbiters decision, the Securities and Exchange Commission (SEC) placed PAL which was suffering from severe financial losses, under an Interim Rehabilitation Receiver, who was subsequently replaced by a Permanent Rehabilitation Receiver. Later on SEC granted the request of PAL to exit from rehabilitation proceedings. Petitioners insisted for payment of wages during the period between the Labor Arbiters order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter

ISSUE

Whether or not petitioners may collect their wages during the period between the Labor Arbiters order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that PAL has exited from rehabilitation proceedings

RULING

NO, after the labor arbiter decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer**.** The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employers unjustified act or omission. If the delay is due to the employers unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiters decision.

In the case at bar, petitioners exerted efforts to execute the Labor Arbiters order of reinstatement until they were able to secure a writ of execution, albeit issued on October 5, 2000 *after* the reversal by the NLRC of the Labor Arbiters decision. Technically, there was still actual delay which brings to the question of whether the delay was due to respondents unjustified act or omission. It is apparent that there was inaction on the part of respondent to reinstate them, but whether such omission was justified depends on the onset of the exigency of corporate rehabilitation. It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of petitioners complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory. This injunction or suspension of claims by legislative fiat partakes of the nature of a restraining order that constitutes a legal justification for respondents non-compliance with the reinstatement order. Respondents failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondents obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

- Malayan Insurance Company, Inc. vs. Victorias Milling Company, Inc. 586 SCRA 45 (2009)

Malayan Insurance Company, Inc. v. Victorias Milling Company Inc.
G.R No. 167768, April 17, 2009, Nachura, J.

I*t is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall ipso jure be suspended without any distinction*

FACTS

Victorias employee filed labor case against Victorias Milling Corporation alleging that they were illegally dismissed. Victoria thereafter procured from the Malayan Insurance a surety bond to secure the satisfaction of the judgment rendered against it.

Under the said surety bond, Malayan bound itself to be jointly and severally liable with Victorias Milling for the sum of P6,605,275.24 in the event judgment in the labor case was decided against it. Thereupon, the case was decided in favor of the employees. Malayan indemnified the employees. It later on sought payment from Victorias Milling. Later on Victoria was declared to undergo for rehabilitation and SEC issued an stay order suspending all pending actions against Victorias.

Malayan maintains that the Order applies only to claims existing prior to or at thetime of the issuance of the said order. It avers that Sec. 6(c) of P.D. No. 902-A is clear and categorical that the suspension covers *actions for claims* which are *pending* before any court at the time of the appointment of the management committee or rehabilitation receiver and, not being a pre-existing claim, payment of Malayans claim will not result in undue preference which is the mischief sought to be prevented by a stay order.

ISSUE

Whether or not the claims suspended only applies to those existing prior to or at the time of the issuance of the order

RULING

NO, In *Finasia Investments and Finance Corp. v. Court of Appeals,* The Supreme Court construed claim to refer to debts or demands of a pecuniary nature. It means the assertion of a right to have money paid. Also in *Arranza v. B.F. Homes, Inc.*, The Supreme Court referred to it as an action involving monetary considerations. And in *Philippine Airlines v. Kurangking,* we said it is a right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. More importantly, the *Interim Rules of Procedure on Corporate Rehabilitation* provides an allencompassing definition of the term and thus includes all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

Clearly then, the complaint filed by petitioner against respondent falls under the category of claim whether under our rulings in *Finasia, Arranza* or *Kurangking*, or as defined in the *Interim Rules,* considering that it is for pecuniary considerations. The suspension uniformly applies to all actions for claims filed against a corporation, partnership or association under management or receivership, without distinction. And very recently, in this Superme Courts *en banc* Decision in the same *Garcia v. Philippine Airlines,* had the occasion to restate this oft-repeated verdict, thus:

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of petitioners complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. Otherwise stated, what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims.

Furthermore, the actions that are suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature

- Puerto Azul Land Inc. vs. Pacific Wide Realty Development Corporation, G.R. No. 184000, September 17, 2014

Puerto Azul Land, Inc. v. Pacific Wide Realty Development Corporation
G.R. No. 184000, September 17, 2014, Perlas-Bernabe, J.

The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest.

FACTS

PALI is a domestic corporation engaged in the business of developing the Puerto Azul Complex located in Ternate, Cavite into a "satellite city," described as a "selfsufficient and integrated tourist destination community with residential areas, resort/tourism, and retail commercial centers with recreation areas like golf courses, jungle trails, and white sand lagoons." To finance the full operation of its business, PALI obtained loans in the total principal amount of P640,225,324.00 from several creditors, among which were East Asia Capital, Export and Industry Bank , Philippine National Bank, and Equitable PCI Bank. Foreseeing the impossibility of meeting its debts and obligations to its creditors as they fall due, PALI filed a Petition for Suspension of Payments and Rehabilitation before the RTC.

RTC, finding PALI's petition to be sufficient in form and substance, issued a Stay Order pursuant to Section 6, Rule 4 of the Interim Rules on Corporate. PALI submitted Rehabilitation Plan which is fifty percent (50%) reduction of the principal obligation; condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service was later on approved by the RTC.

Dissatisfied, CGAM filed a petition for review before the CA objecting to the approval of PALI's Revised Rehabilitation Plan. CA granted PWRDC's petition for review and reversed the RTC Decision, thereby dismissing PALI's petition for rehabilitation. It found that the 50% "haircut" reduction on the principal loan and the condonation of penalties and interests to be an impairment of the parties' loan agreements.

ISSUE

Whether or not the CA erred in reversing RTC Decision, thereby dismissing PALI's Revised Rehabilitation Plan

RULING

YES, the rehabilitation plan is contested on the ground that the same is unreasonable and results in the impairment of the obligations of contract. PWRDC contests the following stipulations in PALI's rehabilitation plan: fifty percent (50%) reduction of the principal obligation; condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service.

The Supreme Court find nothing onerous in the terms of PALI's rehabilitation plan. The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago,* or sale of assets or of the controlling interest.

The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor. Enlightening is the observation of the CA in this regard, *viz*.:

There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court a quo, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor.

- Robinson's Bank Corporation vs. Hon. Samuel H. Gaerlan, G.R. No. 195289, September 24, 2014

Robinsons Bank Corporation v. Hon Samuel Gaerlan
G.R. No. 195289, September 24, 2014, Del Castillo, J.

In a petition for rehabilitation, anyone affected may have the right to participate in the proceeding.

FACTS

World Granary Corporation (WGC) is engaged in the business of mechanized bulk handling, transport and storage, warehousing, drying, and milling of grains. It incurred loans amounting to P2.66 billion from RBC and other banks and entities such as herein private respondent Trade and Investment Development Corporation of the Philippines (TIDCORP). It appears that RBC is both a secured and unsecured creditor, while TIDCORP is a secured creditor. WGC filed a petition for rehabilitation in the RTC and later on was approved. It issued a stay order for prohibiting WGC from disposing or encumbering its properties and paying its outstanding liabilities; prohibiting its suppliers from withholding their goods and services; appointing a rehabilitation receiver; and directing creditors and interested parties to file their respective comments to the Petition.

RBC filed its Opposition to the Petition for Rehabilitation. WGC proposed a plan of pari passu or equal sharing between the secured and unsecured creditors. RTC gave due course to the Petition for Rehabilitation. TIDCORP in its comment contended being a secured creditor it should enjoy preference over the unsecured thus the law on preference of credits shall be observed in resolving claims against corporations under rehabilitation. RBC filed an opposition and insisted pari passu sharing.

Thus TIDCORP filed a Petition for review on Trial Courts decision. RBC filed an Urgent Motion for Intervention with attached Comment in Intervention, which is anchored on its original claim and objection to TIDCORP's position – that the latter may not enjoy preferential treatment over the other WGC creditors. Additionally, RBC argued that as an unsecured creditor which stood to be affected by the outcome of TIDCORP's Petition, it should have been impleaded in the Petition; since it was not impleaded, the Petition for review should be dismissed. Finally, RBC pointed out that TIDCORP actually knew of the additional loans WGC obtained as it approved. RBC therefore prayed that TIDCORP's Petition for Review be dismissed. TIDCORP maintained that intervention is not allowed in rehabilitation proceeding under the interim rules even on appeal, since an appeal is merely a continuation of the original action for rehabilitation.

RBC filed a Motion for Reconsideration, arguing that the Interim Rules covering prohibited pleadings apply only during rehabilitation proceedings and before the rehabilitation court decides the case; after a decision is rendered, the Rules of Court apply

Issue

Whether or not RBC has the legal right to participate in the rehabilitation proceeding of WGC

RULING

YES. To recall, TIDCORP's Petition for Review sought to 1) nullify the *pari passus* haring scheme directed by the trial court; 2) declare RBC and the other creditor banks – which granted additional loans to WGC after the latter executed its Indemnity Agreement with TIDCORP – guilty of violating TIDCORP's rights; and 3) grant preferential and special treatment to TIDCORP over other WGC creditors. These remedies would undoubtedly affect not merely the rights of RBC, but of all the other WGC creditors as well, as their standing or status as creditors would be somewhat downgraded, and the manner of recovery of their respective credits will be altered if TIDCORP's prayer is granted. Not to mention that some of them are in danger of being held liable on TIDCORP's accusations relative to its Indemnity Agreement with WGC. Surely, if TIDCORP's arguments are to be considered and its remedies granted, the other creditors should be given the opportunity to be heard by way of comment or opposition; they are entitled to due process. "In its most basic sense, the right to due process is simply that every man is accorded a reasonable opportunity to be heard. Its very concept contemplates freedom from arbitrariness, as what it requires is fairness or justice. It abhors all attempts to make an accusation synonymous with liability." Thus, the nature of TIDCORP's Petition is such that the other creditors like RBC must be allowed to participate in the proceedings. They have an interest in the controversy where a final decree would necessarily affect their rights. Indeed, the appellate court, on its own, should have seen that the rights of RBC stand to be adversely affected by the remedies prayed for by TIDCORP. Thus, the CA could have ordered RBC to file its comment and allowed to participate therein. Just as the trial court allowed RBC and TIDCORP to participate in the proceedings below, the CA should have likewise allowed RBC to participate in the proceedings before it. This is only fair and logical considering that, as admitted by TIDCORP, RBC is already a party in the rehabilitation case, and that the instant Petition for Review is merely a continuation of the proceedings below.

To disallow the participation of RBC constitutes an evasion of the appellate court's positive duty to observe due process, a gross and patent error that can be considered as grave abuse of discretion. Likewise, when an adverse effect on the substantial rights of a litigant results from the exercise of the court's discretion, *certiorari* may issue. If not, this Court possesses the prerogative and initiative to take corrective action when necessary to prevent a substantial wrong or to do substantial justice.

While TIDCORP is correct in arguing that intervention is not the proper mode for RBC coming to the CA since it is already a party to the rehabilitation proceedings, this merely highlights the former's error in not allowing the latter to participate in the proceedings just as it underscores the appellate court's blunder in not ordering that RBC be allowed to comment or participate in the case so that they may be given the opportunity to be heard on TIDCORP's allegations and accusations. And while RBC chose the wrong mode for interposing its comments and objections in, this does not necessarily warrant the outright denial of its chosen remedy; the Court is not so rigid as to be precluded from adopting measures to insure that justice would be administered fairly to all parties concerned. If TIDCORP must pursue its Petition for Review, then RBC should be allowed to comment and participate in the proceedings. There is no other solution to the impasse.

Finally, the CA committed another patent error in declaring that RBC's proper remedy was not to move for intervention, but to file a Petition for Review of the trial court's order. It failed to perceive the obvious fact that there is nothing about the trial court's order that RBC questioned; quite the contrary, it sought to affirm the said order *in toto* and simply prayed for the dismissal of TIDCORP's Petition for Review. There is thus no legal and logical basis for its conclusion that RBC should have resorted to a Petition for Review just the same.

- Philippine Bank of Communications vs. Basic Polyprinters and Packaging Corporation, G.R. No. 187581, October 20, 2014

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation

G.R. No. 187581, October 20, 2014, BERSAMIN, J.

Under Republic Act No. 10142 (Financial Rehabilitation and Insolvency Act (FRIA) of 2010), a corporate debtor as a corporation duly organized and existing under Philippine laws that has become insolvent. The term insolvent is defined as "the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets." Hence, being insolvent is not a ground to deny corporate rehabilitation.

FACTS

Basic Polyprinters and Packaging Corporation was a domestic corporation engaged in the business of printing greeting cards, gift wrappers, gift bags, calendars, posters, labels and other novelty items. Basic Polyprinters filed a petition for suspension of payments with approval of the proposed rehabilitation in the RTC. Accordingly, Basic Polyprinters its primary business is in the printing business. Based on its updated financial report, the financial condition has greatly improved. However, because of the indebtedness and the slowdown in sales brought about by a depressed economy, the present income from the operations will be insufficient to pay off its maturing obligations.

Included in its overall Rehabilitation Program was the full payment of its outstanding loans in favor of Philippine Bank of Communications. However it was opposed by PBCOM because of the insolvency of Basic Polyprinters. RTC approved the rehabilitation plan which was later on affirmed by CA. PBCOM contends that the sole issue in corporate rehabilitation is one of liquidity; hence, the petitioning corporation should have sufficient assets to cover all its indebtedness because it only foresees the impossibility of paying the indebtedness falling due. It claims that rehabilitation became inappropriate because Basic Polyprinters was insolvent due to its assets being inadequate to cover the outstanding obligations

ISSUE

Whether or not the rehabilitation is inappropriate due to the fact the Basic Polyprinters was insolvent

RULING

NO. Under the Interim Rules, rehabilitation is the process of restoring *"the debtor 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 more if the corporation continues as a going concern that if it is immediately liquidated.*" It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.

In *Asiatrust Development Bank v. First Aikka Development, Inc.,* The Supreme court said that rehabilitation proceedings have a two-pronged purpose, namely: (*a*) to efficiently and equitably distribute the assets of the *insolvent* debtor to its creditors; and (b) to provide the debtor with a fresh start. 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. Consequently, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the petitioning corporation. The determination of such issues was to be carried out by the court-appointed rehabilitation receiver.

Moreover, Republic Act No. 10142 (*Financial Rehabilitation and Insolvency Act (FRIA) of 2010*), a law that is applicable hereto, has defined a corporate debtor as a corporation duly organized and existing under Philippine laws that *has become insolvent.* The term insolvent is defined in Republic Act No. 10142 as *"the financial condition of a debtor that is generally unable to pay its or his liabilities as they* *fall due in the ordinary course of business or has liabilities that are greater than its or his assets*." As such, the contention that rehabilitation becomes inappropriate because of the perceived insolvency of Basic Polyprinters was incorrect.

- Marilyn Victorio-Aquino vs. Pacific Plans Inc., and Mamareto A. Marcelo Jr., G.R. No. 193108, December 10, 2014

Marilyn Victorio-Aquino v. Pacific Plans Inc and Mamerto A. Marcelo, Jr.
G.R. No. 193108, December 10, 2014, Peralta, J.

Under the cram-down power the court may approve a rehabilitation plan over the opposition of creditors, holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

FACTS

Respondent Pacific Plans, Inc. is engaged in the business of selling pre-need plans and educational plans, including traditional open-ended educational plans (PEPTrads). PEPTrads are educational plans where it guarantees to pay the planholder, without regard to the actual cost at the time of enrolment, the full amount of tuition and other school fees of a designated beneficiary. Marilyn was a holder of two (2) units of respondent's PEPTrads.

On April 7, 2005, foreseeing the impossibility of meeting its obligations to the availing planholders as they fall due, it filed a Petition for Corporate Rehabilitation with the Regional Trial Court (Rehabilitation Court), praying that it be placed under rehabilitation and suspension of payments. Which was later on approved by the Rehabilitation Court. Pacific Plan proposed a rehabilitation plan but later on Rehabilitation Receiver submitted Alternative Rehabilitation Plan (ARP) which was approved by the Rehabilitation Court. In this ARP it provided for tuition support for each enrolment period until SY 2009-2010 depending on the prevailing market rate of the NAPOCOR Bonds and Peso-Dollar exchange rate. However, the value of Philippine Peso strengthen. In view of this development, and considering that the trust fund of Pacific Plan is mainly composed of NAPOCOR bonds that are denominated in US Dollars.

Rehabilitation Receiver filed a Manifestation with Motion to Admit the Modified Rehabilitation Plan (MRP) be approved by the Rehabilitation Court. Under the MRP, the ARP previously approved by the Rehabilitation Court is modified as follows: (a) suspension of the tuition support; (b) converting the Philippine Peso liabilities to U.S. Dollar liabilities by assigning to each planholder a share of the remaining asset in proportion to the share of liabilities in 2010; and (c) payments of the trust fund assets in U.S. Dollars at maturity. Which was later on approved by the Rehabilitation Court.

Marilyn contends that the MRP is ultra vires insofar as it reduces the original claim and even the original amount that petitioner was to receive under the ARP. She also claims that it was beyond the authority of the Rehabilitation Court to sanction a rehabilitation plan, or the modification thereof, when the essential feature of the plan involves forcing creditors to reduce their claims against respondent.

ISSUE

Whether or not the courts have the power to approve a rehabilitation plan over the objection of creditors and even when such proposed rehabilitation plan involves the impairment of contractual obligations

RULING

YES, the "cram-down" power of the Rehabilitation Court has long been established and even codified under Section 23, Rule 4 of the Interim Rules, to wit: Section 23. Approval of the Rehabilitation Plan. – The court may approve a rehabilitation plan over the opposition of creditors, holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. Such prerogative was carried over in the Rehabilitation Rules, which maintains that the court may approve a rehabilitation plan over the objection of the creditors if, in its judgment, the rehabilitation of the debtors is feasible and the opposition of the creditors is manifestly unreasonable.

This legal precept is not novel and has, in fact, been reinforced in recent decisions such as in Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation, where the Court elucidated the rationale behind Section 23, Rule 4 of the Interim Rules, thus: Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) states that a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery. As well as in Pryce Corporation v. China Banking Corporation, to wit:

In any case, the Interim Rules or the rules in effect at the time the petition for corporate rehabilitation was filed in 2004 adopts the cram down principle which "consists of two things: (i) approval despite opposition and (ii) binding effect of the approved plan xx x."

First, the Interim Rules allows the rehabilitation court to "approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable."

Second, it also provides that upon approval by the court, the rehabilitation plan and its provisions "shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled."

- MERVIC REALTY, INC. AND VICCY REALTY, INC., Petitioners, v. CHINA BANKING CORPORATION, Respondent. (G.R. No. 193748, February 03, 2016, BRION, J.)

MERVIC REALTY, INC. AND VICCY REALTY, INC., *Petitioners*, *v.* **CHINA BANKING CORPORATION**, *Respondent*.

G.R. No. 193748, February 03, 2016, BRION, *J.*

The Court, however, finds no legal basis to retroactively apply the 2008 Rules. Rule 9, Section 2 of the 2008 Rules allows the retroactive application of the 2008 Rules to pending rehabilitation proceedings only when these have not yet undergone the initial hearing stage at the time of the effectivity of the 2008 Rules. In the present case, the rehabilitation court conducted the ***initial hearing on January 22, 2007****, and* ***approved the rehabilitation plan on April 15, 2008*** *- long before the* ***effectivity of the 2008 Rules on January 16, 2009****.*

Clearly, the 2008 Rules cannot be retroactively applied to the rehabilitation petition filed by the petitioners.

FACTS

On **October 16, 2006**, Mervic Realty, Inc. and Viccy Realty, Inc. (the *petitioners*) **jointly filed** a petition for the declaration of state of suspension of payments with a proposed rehabilitation plan (*rehabilitation petition*) before the **Regional Trial Court of Malabon City**, Branch 74 (*rehabilitation court*) for approval. The rehabilitation petition was filed under A.M. No. 00-8-10-SC dated November 21, 2000, or the **2000 Interim Rules of Procedure on Corporate Rehabilitation** (the *Interim Rules*).

The rehabilitation court issued a stay order that suspended the enforcement of all claims against the petitioners. The respondent China Banking Corporation *(China Bank),* a creditor of the petitioners, opposed the rehabilitation petition. It alleged that it had acquired title to and initiated extrajudicial foreclosure proceedings over some of Mervic Realty, Inc.'s real properties. It argued that the petitio*ners are separate entities and should have filed separate petitions* even if the majority of their common stockholders and officers belong to the Siochi family.

The rehabilitation court approved the rehabilitation plan and denied China Bank's opposition. The Court of Appeals granted China Bank's petition for review and dismissed the petition for rehabilitation.

ISSUE

Whether the petitioners, which are close family corporations, can jointly file the petition for rehabilitation under the Interim Rules;

RULING

No. The petitioners cannot jointly file the petition for rehabilitation under the Interim Rules.

The rules in effect at the time the rehabilitation petition was filed were the Interim Rules. The Interim Rules took effect on **December 15, 2000,** ***and did not allow the joint or consolidated filing of rehabilitation petitions***.

In *Asiatrust*, the Court held that the consolidation of petitions involving two separate entities is not proper. Although the corporations had interlocking directors, owners, officers, as well as intertwined loans, the two corporations were separate, each one with its own distinct personality. In determining the feasibility of rehabilitation, the court evaluates the assets and liabilities of each of these corporations separately and not jointly with other corporations.

The petitioners beg the Court to liberally apply the Interim Rules. As mentioned, they also invoke the *2008 Rules* which allow a group of companies to file a joint rehabilitation petition. In short, the petitioners ask the Court to apply a rule that did not exist when they filed the rehabilitation petition.

The Court, however, finds no legal basis to retroactively apply the 2008 Rules. Rule 9, Section 2 of the 2008 Rules allows the retroactive application of the 2008 Rules to pending rehabilitation proceedings only when these have not yet undergone the initial hearing stage at the time of the effectivity of the 2008 Rules. In the present case, the rehabilitation court conducted the **initial hearing on January 22, 2007**, and **approved the rehabilitation plan on April 15, 2008 -** long before the **effectivity of the 2008 Rules on January 16, 2009**. Clearly, the 2008 Rules cannot be retroactively applied to the rehabilitation petition filed by the petitioners.

- VIVA SHIPPING LINES, INC., Petitioner, v. KEPPEL PHILIPPINES MINING, INC., METROPOLITAN BANK & TRUST COMPANY, PILIPINAS SHELL PETROLEUM CORPORATION, CITY OF BATANGAS, CITY OF LUCENA, PROVINCE OF QUEZON, ALEJANDRO OLIT, NIDA MONTILLA, PIO HERNANDEZ, EUGENIO BACULO, AND HARLAN BACALTOS, Respondents. (G.R. No. 177382, February 17, 2016, LEONEN, J.)

VIVA SHIPPING LINES, INC., *Petitioner, v.* **KEPPEL PHILIPPINES MINING, INC., METROPOLITAN BANK & TRUST COMPANY, PILIPINAS SHELL PETROLEUM CORPORATION, CITY OF BATANGAS, CITY OF LUCENA, PROVINCE OF QUEZON, ALEJANDRO OLIT, NIDA MONTILLA, PIO HERNANDEZ, EUGENIO BACULO, AND HARLAN BACALTOS**, *Respondents*.
G.R. No. 177382, February 17, 2016, LEONEN, J.

Rule 43 of the Rules of Court prescribes the procedure to assail the final orders and decisions in corporate rehabilitation cases filed under the Interim Rules of Procedure on Corporate Rehabilitation. Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.

The Interim Rules of Procedure on Corporate Rehabilitation covers petitions for rehabilitation filed before the Regional Trial Court. Thus, Rule 2, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation, which refers to liberal construction, is limited to the Regional Trial Court. The liberality was given "to assist the parties in obtaining a just, expeditious, and inexpensive disposition of the case."

The Regional Trial Court correctly dismissed petitioner's rehabilitation plan. It found that petitioner's assets are non-performing. Petitioner admitted this in its Amended Petition when it stated that its vessels were no longer serviceable. In Wonder Book Corporation v. Philippine Bank of Communications, a rehabilitation plan is infeasible if the assets are nearly fully or fully depreciated. This reduces the probability that rehabilitation may restore and reinstate petitioner to its former position of successful operation and solvency.

The plan of selling properties of petitioner's sister company to generate cash flow cannot be a basis for the approval of the rehabilitation plan. As pointed out by the Regional Trial Court, this plan requires *conformity from the sister company. Even if the two companies have the same directorship and ownership, they are still two separate juridical entities.*

FACTS

On October 4, 2005, Viva Shipping Lines, Inc. (Viva Shipping Lines) filed a Petition for Corporate Rehabilitation before the Regional Trial Court of Lucena City. The Regional Trial Court initially denied the Petition for failure to comply with the requirements in Rule 4, Sections 2 and 3 of the Interim Rules of Procedure on Corporate Rehabilitation. On October 17, 2005, Viva Shipping Lines filed an Amended Petition.

On October 19, 2005, the Regional Trial Court found that Viva Shipping Lines' Amended Petition to be "sufficient in form and substance," and issued a stay order. Before the initial hearing, the City of Batangas, Keppel Philippines Marine, Inc., and Metropolitan Bank and Trust Company (Metrobank) filed their respective comments and oppositions to Viva Shipping Lines' Amended Petition. Some of the former employees of Viva Shipping Lines, also filed a Manifestation and Registration of Monetary Claim against Viva Shipping Lines.

In the Order dated October 30, 2006, the Regional Trial Court lifted the stay order and dismissed Viva Shipping Lines' Amended Petition for failure to show the company's viability and the feasibility of rehabilitation.

Aggrieved, Viva Shipping Lines filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals. It only impleaded Hon. Adolfo V. Encomienda, the Presiding Judge of the trial court that rendered the assailed decision. It did not implead any of its creditors, but served copies of the Petition on counsels for Metrobank, Keppel Philippines Marine, Inc., Pilipinas Shell, City of Batangas, Province of Quezon, and City of Lucena. Viva Shipping Lines neither impleaded nor served a copy of the Petition on its former employees or their counsels.

The Court of Appeals dismissed Viva Shipping Lines' Petition for Review. It found that Viva Shipping Lines failed to comply with procedural requirements under Rule 43. The Court of Appeals ruled that due to the failure of Viva Shipping Lines to implead its creditors as respondents, "there are no respondents who may be required to file a comment on the petition, pursuant to Section 8 of Rule 43.

ISSUES

1. Whether the Court of Appeals erred in dismissing petitioner Viva Shipping Lines' Petition for Review on procedural grounds;
2. Whether the RTC erred in its finding that rehabilitation is no longer viable for the petitioner.

RULING

1. **The CA correctly dismissed the petition.**

Any final order or decision of the Regional Trial Court may be subject of an appeal. In *Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission*, the SC clarified that all decisions and final orders falling under the Interim Rules of Procedure on Corporate

Rehabilitation shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court. Rule 43 prescribes the mode of appeal for corporate rehabilitation cases:

Sec. 5. *How appeal taken*. - Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, *with proof of service of a copy thereof on the adverse party and on the court or agency a quo*. xxx
....
Sec. 6. *Contents of the petition*. - The petition for review shall *(a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents;* xxx

Petitioner did not comply with the requirements under Rule 43. First, it *did not implead its creditors as respondents. Instead, petitioner only impleaded the Presiding Judge of the Regional Trial Court, contrary to Section 6(a) of Rule 43*. Second, it *did not serve a copy of the Petition on some of its creditors, specifically, its former employees*. Finally, it *did not serve a copy of the Petition on the Regional Trial Court*.

A corporate rehabilitation case cannot be decided without the creditors' participation. The court's role is to balance the interests of the corporation, the creditors, and the general public. Impleading creditors as respondents on appeal will give them the opportunity to present their legal arguments before the appellate court. The courts will not be able to balance these interests if the creditors are not parties to a case. Ruling on petitioner's appeal in the absence of its creditors will not result in judgment that is effective, complete, and equitable.

The failure of petitioner to implead its creditors as respondents cannot be cured by serving copies of the Petition on its creditors. Since the creditors were not impleaded as respondents, the copy of the Petition only serves to inform them that a petition has been filed before the appellate court. Their participation was still significantly truncated.

Petitioner's failure to implead them deprived them of a fair hearing. The appellate court only serves court orders and processes on parties formally named and identified by the petitioner. Since the creditors were not named as respondents, they could not receive court orders prompting them to file remedies to protect their property rights.

The Court of Appeals correctly dismissed petitioner's Rule 43 Petition as a consequence of non-compliance with procedural rules. Rule 43, Section 7 of the Rules
of Court states:

Sec. 7. *Effect of failure to comply with requirements.* - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit of costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Petitioner argues that the Court of Appeals should have given due course to its Petition and excused its non-compliance with procedural rules. For petitioner, the Interim Rules of Procedure on Corporate Rehabilitation mandates a liberal construction of procedural rules, which must prevail over the strict application of Rule 43 of the Rules of Court.

However, the Interim Rules of Procedure on Corporate Rehabilitation covers petitions for rehabilitation filed before the Regional Trial Court. Thus, Rule 2, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation, which refers to liberal construction, is limited to the Regional Trial Court. The liberality was given "to assist the parties in obtaining a just, expeditious, and inexpensive disposition of the case."

2. The RTC is correct in its finding that rehabilitation is no longer viable for the petitioner.

The dismissal of the Amended Petition emanate from trial court's finding that rehabilitation is no longer viable for petitioner. Under the Interim Rules of Procedure on Corporate Rehabilitation, a "petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing."
The proceedings are also deemed terminated upon the trial court's disapproval of a rehabilitation plan, "or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions."

The Regional Trial Court correctly dismissed petitioner's rehabilitation plan. It found that petitioner's assets are non-performing. Petitioner admitted this in its Amended Petition when it stated that its vessels were no longer serviceable. In *Wonder Book Corporation v. Philippine Bank of Communications*, a rehabilitation plan is infeasible if the assets are nearly fully or fully depreciated. This reduces the probability that rehabilitation may restore and reinstate petitioner to its former position of successful operation and solvency.

Petitioner's rehabilitation plan should have shown that petitioner has enough serviceable assets to be able to continue its business. Yet, the plan showed that the source of funding would be to sell petitioner's old vessels. Disposing of the assets constituting petitioner's main business cannot result in rehabilitation. A business primarily engaged as a *shipping* line cannot operate without its ships. On the other hand, the plan to purchase new vessels sacrifices the corporation's cash flow. This is contrary to the goal of corporate rehabilitation, which is to allow present value recovery for creditors. The plan to buy new vessels after selling the two vessels it currently owns is neither sound nor workable as a
business plan.

The other part of the rehabilitation plan entails selling properties of petitioner's sister company. As pointed out by the Regional Trial Court, this plan requires conformity from the sister company. Even if the two companies have the same directorship and ownership, they are still two separate juridical entities. The Regional Trial Court rendered a decision in accordance with facts and law.

- PHILIPPINE ASSET GROWTH TWO, INC. (Successor-In-Interest of Planters Development Bank) and PLANTERS DEVELOPMENT BANK vs. FASTECH SYNERGY PHILIPPINES, INC. (Formerly First Asia System Technology, Inc.), FASTECH MICROASSEMBLY & TEST, INC., FASTECH ELECTRONIQUE, INC., and FASTECH PROPERTIES, INC. (G.R. No. 206528, June 28, 2016, PERLAS-BERNABE, J.)

PHILIPPINE ASSET GROWTH TWO, INC. (Successor-In-Interest of Planters Development Bank) and PLANTERS DEVELOPMENT BANK vs. **FASTECH SYNERGY PHILIPPINES, INC.**

(Formerly First Asia System Technology, Inc.), FASTECH MICROASSEMBLY & TEST, INC., FASTECH ELECTRONIQUE, INC., and FASTECH PROPERTIES, INC.
G.R. No. 206528, June 28, 2016, PERLAS-BERNABE, *J.*

The failure of the Rehabilitation Plan to state any ***material financial commitment*** *to support rehabilitation, as well as to include a* ***liquidation analysis****, renders the CA's considerations for approving the same as actually* ***unsubstantiated,*** *and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules.* ***Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.***

FACTS

On April 8, 2011, respondents filed a verified Joint Petitions for corporate rehabilitation (rehabilitation petition) before the RTC-Makati, with prayer for the issuance of a Stay or Suspension Order. Among the common creditors listed in the rehabilitation petition was PDB, which had earlier filed a petition for extra judicial foreclosure of mortgage over the two (2) parcels of land listed as common assets of respondents in the rehabilitation petition. The foreclosure sale was held on April 13, 2011, with PDB emerging as the highest bidder.

Respondents submitted for the court's approval their proposed Rehabilitation Plan, which sought: *(a)* a waiver of all accrued interests and penalties; *(b)* a grace period of two (2) years to pay the principal amount of respondents' outstanding loans, with the interests accruing during the said period capitalized as part of the principal, to be paid over a twelve (12)-year period after the grace period; and (c) an interest rate of four percent (4%) and two percent (2%) per annum (p.a.) for creditors whose credits are secured by real estate and chattel mortgages, respectively.

The RTC-Makati dismissed the rehabilitation petition despite the favorable recommendation of its appointed Rehabilitation Receiver. On appeal, the CA reverse the RTC-Makati ruling. It ruled that the RTC-Makati grievously erred in disregarding the report/opinion of the Rehabilitation Receiver that respondents may be successfully rehabilitated, despite being highly qualified to make an opinion on accounting in relation to rehabilitation matters. The CA likewise declared that the Rehabilitation Plan is feasible and should be approved. Accordingly, the CA reinstated the rehabilitation petition, approved respondents' Rehabilitation Plan, and remanded the case to the RTC-Makati to supervise its implementation. Considering that respondents' creditors are placed in equal footing as a necessary consequence, it permanently enjoined PDB from "effecting the foreclosure" of the subject properties during the implementation of the Rehabilitation Plan.

In the interim, PDB was substituted by Philippine Asset Growth Two, Inc. (PAGTI) through a motion filed by its lead counsel, DivinaLaw, averring that PAGTI had acquired PDB 's claims and interests in the instant case.

ISSUE

Whether or not the rehabilitation plan is feasible.

RULING

NO, the rehabilitation plan is not feasible.

Case law explains that corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation, all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan.

In the present case, however, the Rehabilitation Plan failed to comply with the minimum requirements, *i.e.: (a)* material financial commitments to support the rehabilitation plan; and (*b)* a proper liquidation analysis, under Section 18, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation (Rules), which Rules were in force at the time respondents' rehabilitation petition was filed on April 8, 2011.

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.**

In this case, respondents' Chief Operating Officer in his executed Affidavit of General Financial Condition averred that respondents will not require the infusion of additional capital as he, instead, proposed to have all accrued penalties, charges, and interests waived, and a reduced interest rate prospectively applied to all respondents' obligations, in addition to the implementation of a two (2)-year grace period.Thus, there appears to be no concrete plan to build on respondents' beleaguered financial position through substantial investments as the plan for rehabilitation appears to be pegged merely on financial reprieves. Anathema to the true purpose of rehabilitation, a distressed corporation cannot be restored to its former position of successful operation and regain solvency by the sole strategy of delaying payments/waiving accrued interests and penalties at the expense of the creditors.

The Court also notes that while respondents have substantial total assets, a large portion of the assets of Fastech Synergy and Fastech Properties is comprised of noncurrent assets, such as advances to affiliates which include Fastech Microassembly, and investment properties which form part of the common assets of Fastech Properties, Fastech Electronique, and Fastech Microassembly. Moreover, while there is a claim that *unnamed* customers have made investments by way of consigning production equipment, and advancing money to fund procurement of various equipment intended to increase production capacity, this can hardly be construed as a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful.

Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment. Here, no such binding investment was presented.

Respondents likewise failed to include any liquidation analysis in their Rehabilitation Plan. The total liquidation assets and the estimated liquidation return to the creditors, as well as the fair market value vis-à-vis the forced liquidation value of the fixed assets were not shown. As such, the Court could not ascertain if the petitioning debtor's creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. This is a crucial factor in a corporate rehabilitation case, which the CA, unfortunately, failed to address.

*The failure of the Rehabilitation Plan to state any **material financial commitment** to support rehabilitation, as well as to include a **liquidation analysis**, renders the CA's considerations for approving the same as actually **unsubstantiated,** and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. **Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.***

Even if the Court were to set aside the failure of the Rehabilitation Plan to comply with the fundamental requisites of material financial commitment to support the rehabilitation and an accompanying liquidation analysis, a review of the financial documents presented by respondents fails to convince the Court of the feasibility of the proposed plan.

In the recent case of *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.,*the Court took note of the characteristics of an **economically feasible rehabilitation plan**. Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:

a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.
c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.

These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated. In addition to the tests of ***economic feasibility***, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better ***present value recovery*** for its creditors. Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future. It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.

Verily, respondents' Rehabilitation Plan should have shown that they have enough serviceable assets to be able to continue its business operation. In fact, as opposed to this objective, the revised Rehabilitation Plan still requires "front load Capex spending" to replace common equipment and facility equipment to ensure sustainability of capacity and capacity robustness, thus, further sacrificing respondents' cash flow. In addition, the Court is hard-pressed to see the effects of the outcome of the streamlining of respondents' manufacturing operations on the carrying value of their existing properties and equipment.

- METROBANK VS. LIBERTY CORRUGATED (GR 184317, January 25 2017, J. Leonen)

METROPOLITAN BANK and TRUST COMPANY *v.* LIBERTY CORRUGATED BOXES MANUFACTURING CORP.
G.R. No. 184317, January 25, 2017, Second Division, LEONEN, J.:

A bank cannot contest the filing for Rehabilitation by a corporation using as grounds the fact that the corporation's debts have already matured.

FACTS

Liberty Corrugated Boxes Manufacturing Corp. (Liberty) obtained various credit accommodations and loan facilities from Metropolitan Bank and Trust Company (Metrobank) amounting to ₱19, 940,000. The loans were secured by a real estate mortgage over properties in Valenzuela City.

Liberty defaulted on the loans and on June 27, 2007 filed a Petition for Corporate Rehabilitation before the RTC. Liberty claimed it could not meet its obligations to Metrobank because of the Asian Financial Crisis and the serious sickness of its Founder and President, Ki Kiao Koc.

Metrobank argued that Liberty can no longer file a Petition for Rehabilitation considering the phrase in Rule 4, Section 4 of the Interim rules which states "who foresees the impossibility of meeting its debts when they respectively fall due" to be construed as meaning that an element of foresight is required. Hence, if the debts are already due, rehabilitation would not be proper.

ISSUE

Whether a corporation, whose debts have already matured, is qualified to file a Petition for Rehabilitation under PD No. 902-A and Rule 4 of the Interim Rules.

RULING

YES. A corporation that may seek corporate rehabilitation is characterized not by its debt but by its capacity to pay this debt. There is no reason why corporations with dents that may have already matured should not be given the opportunity to recover and pay their debtors in an orderly fashion. The opportunity to rehabilitate the affairs of an economic entity, regardless of the status of its debts, redounds to the benefit of its creditors, owners, and to the economy in general. Rehabilitation, rather than collection of debts from a company already near bankruptcy, is a better use of judicial rewards.

Thus, the condition that triggers rehabilitation is not the maturation of a corporation's debts by the inability of the debtor to pay these debts.

- LAND BANK of the PHILIPPINES v. WEST BAY COLLEGES, INC., PBR MANAGEMENT and DEVELOPMENT CORP. and BCP TRADING CO., INC., G.R. No. 211287, April 17, 2017, Third Division, REYES, J.:

LAND BANK of the PHILIPPINES *v.* WEST BAY COLLEGES, INC., PBR MANAGEMENT and DEVELOPMENT CORP. and BCP TRADING CO., INC.
G.R. No. 211287, April 17, 2017, Third Division, REYES, J.:

A belated application of the insurance proceeds to the obligations of West Bay or PBR and BCP would violate the Stay Order dated July 10, 2002 issued by the RTC.

FACTS

West Bay Colleges, Inc. (West Bay) applied for interim financing with Land Bank of the Philippines (Land Bank) in the amount of ₱125 Million for the construction of a school building. PBR Management and Development Corp. (PBR) also availed of a ₱100Million term loan from Land Bank for which West Bay acted as an accommodation mortgagor by executing a chattel mortgage over its training vessel as security for PBR's loan.

In November 2000 the training vessel mortgaged to Land Bank sank during Typhoon Seniang and the net proceeds of the insurance coverage in the amount of ₱21,980,000.00 were released to Land Bank. In 2002 West Bay, PBR and BCP Trading Corp. (BCP) experienced financial difficulties and requested that Land Bank restructure their loans. Under their restructuring agreements with Land Bank executed on May 10, 2002, Land Bank would reimburse West Bay with the insurance proceeds that Land Bank previously received. However, on June 28, 2002 West Bay and PRB filed for corporate rehabilitation with the RTC-Muntinlupa City.

While the rehabilitation proceedings were ongoing, Lank Bank was substituted by the Philippine Distressed Asset Asia Pacific (PDAAP), with the latter objecting the applying the insurance proceeds to the loan of PBR. West Bay filed an Urgent Motion with the RTC claiming that although the RTC approved the rehabilitation plans authorizing the application of the insurance proceeds to the obligations of West Bay, it was never implemented. The RTC decided in favor of Land Bank due to the alleged failure of West Bay to comply with the terms of the restructuring agreement. On appeal to the Court of Appeals, the Court of Appeals decided in favor of West Bay since Land Bank failed to apply the proceeds of the insurance in the context of the restructured loan.

ISSUE

Whether West Bay is entitled to the reimbursement of the proceeds and if such right has been fully established so as to be compellable by Mandamus.

RULING

The Supreme Court decided in favor of West Bay and PBR. As correctly pointed out by the Court of Appeals, despite several amendments to the rehabilitation plan which repeatedly provided for the application of the insurance proceeds to the debts of West Bay, then to PBR and BCP, there is no showing that Land Bank complied with the rehabilitation plan and applied the amount of the insurance proceeds to the loans.

A belated application of the insurance proceeds to the obligations of West Bay or PBR and BCP would violate the Stay Order dated July 10, 2002 issued by the RTC. Section 6 of Rule 4 of the 2000 Interim Rules of Procedure on Corporate Rehabilitation, which was in force at the time of the filing of the petition for corporate rehabilitation, provides:

SEC. 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; **(d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition;** (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

- BUREAU of INTERNAL REVENUE, ASSISTANT COMMISSIONER ALFREDO v. MISAJON, GROUP SUPERVISOR ROLANDO M. BALBIDO, and EXAMINER REYNANTE DP. MARTIREZ v.LEPANTO CERAMICS, INC., G.R. No. 224764, April 24, 2017, First Division, PERLAS-BERNABE, J.

BUREAU of INTERNAL REVENUE, ASSISTANT COMMISSIONER ALFREDO *v.* MISAJON, GROUP SUPERVISOR ROLANDO M. BALBIDO, and EXAMINER

REYNANTE DP. MARTIREZ *v.*LEPANTO CERAMICS, INC.
G.R. No. 224764, April 24, 2017, First Division, PERLAS-BERNABE, J.:

The acts of sending a notice of informal conference and a Formal Letter of Demand during the rehabilitation period are in clear defiance of the Commencement Order.

FACTS

Lepanto Ceramics, Inc. (LCI) filed a petition for corporate rehabilitation. Finding the same to be sufficient in form and substance, the Rehabilitation Court issued a Commencement Order dated January 13, 2012 which, *inter alia:* (a) declared LCI to be under corporate rehabilitation; (b) suspended all actions or proceedings, in court or otherwise, for the enforcement of claims against LCI; (c) prohibited LCI from making any payment of its outstanding liabilities as of even date, except as may be provided under RA 10142; and (d) directed the BIR to file and serve on LCI its comment or opposition to the petition, or its claims against LCI.

BIR - personally and by publication - was notified of the rehabilitation proceedings involving LCI and the issuance of the Commencement Order related thereto. Despite the foregoing, the BIR, through Misajon, *et al.,* still opted to send LCI: (a) a notice of informal informing the latter of its deficiency internal tax liabilities for the Fiscal Year ending June 30, 2010; and (b) a Formal Letter of Demand requiring LCI to pay deficiency taxes in the amount of ₱567,5 l 9,348.39, notwithstanding the written reminder coming from LCI's court-appointed receiver of the pendency of rehabilitation proceedings concerning LCI
and the issuance of a commencement order.

ISSUE

Whether or not Misajon, *et al.* defied the Commencement Order, hence guilty for indirect contempt.

RULING

YES. The acts of sending a notice of informal conference and a Formal Letter of Demand are part and parcel of the entire process for the assessment and collection of deficiency taxes from a delinquent taxpayer, - an action or proceeding for the enforcement of a claim which should have been suspended pursuant to the Commencement Order. Unmistakably, Misajon, *et al.*'s foregoing acts are in clear defiance of the Commencement Order.

Petitioners' insistence that: (a) Misajon, *et al.* only performed such acts to toll the prescriptive period for the collection of deficiency taxes; and (b) to cite them in indirect contempt would unduly interfere with their function of collecting taxes due to the government, cannot be given any credence. They could have easily tolled the running of such prescriptive period, and at the same time, perform their functions as officers of the BIR, without defying the Commencement Order and without violating the laudable purpose of RA 10142 by simply ventilating their claim before the Rehabilitation Court.

After all, they were adequately notified of the LCI's corporate rehabilitation and the issuance of the corresponding Commencement Order. In sum, it was improper for Misajon, *et al.* to collect, or even attempt to collect, deficiency taxes from LCI outside of the rehabilitation proceedings concerning the latter, and in the process, willfully disregard the Commencement Order lawfully issued by the Rehabilitation Court. Hence, the RTC Br. 35 correctly cited them for indirect contempt.

- PEOPLE of the PHILIPPINES v. ERVIN Y. MATEO, EVELYN E. MATEO, CARMELITA B. GALVEZ, ROMEO L. ESTEBAN, GALILEO J. SAPORSANTOS and NENITA S. SAPORSANTOS, ERVIN Y. MATEO, G.R. No. 210612, October 9, 2017, Second Division, PERALTA, J.

PEOPLE of the PHILIPPINES *v.* ERVIN Y. MATEO, EVELYN E. MATEO, CARMELITA B. GALVEZ, ROMEO L. ESTEBAN, GALILEO J. SAPORSANTOS and NENITA S. SAPORSANTOS, ERVIN Y. MATEO
G.R. No. 210612, October 9, 2017, Second Division, PERALTA, J.:

The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities.

FACTS

In March 2001, private complainant Herminio Alcid, Jr. *Herminio Jr.)* met Geraldine Alejandro *(Geraldine)* who introduced herself as the head of the Business Center of MMG International Holdings Co., Ltd. *(MMG)*. Alejandro presented a brochure showing MMG's investments and businesses in order to encourage Herminio Jr. to invest. The Articles of Partnership of the corporation, as evidence of its registration with the SEC was also shown.

The Articles of Partnership showed accused-appellant as a general partner who has contributed ₱49,750,000.00 to MMG while the other accused were shown to be limited partners who have contributed ₱50,000.00 each. On April 20, 2022, Alcid decided to invest ₱50,000. Subsequently, all the interests and principal were promptly paid, which induced him to make a bigger investment of ₱200,000 with his father, Herminio Sr. Private complainant's sister, Melanie was also convinced to make a ₱50,000 investment with MMG.

The private complainants' investments were covered by a notarized Memorandum of Agreement *(MOA)*, signed by accused-appellant, which stipulated, among others, that MMG was being represented by its President, herein accused-appellant, and that the investors will be earning 2.5% monthly interest income and commissions from the capital they have invested. Subsequently, the complainants received several post-dated checks covering their investments. However, when they tried to deposit the checks, their banks informed them that these were dishonored because MMG's accounts in the bank from which the checks were drawn were already closed. Their demands for payment as well as those of other investors were left unheeded.

Therefore, private complainants and other investors filed a complaint with the SEC. There, they discovered that MMG was not a registered issuer of securities. The SEC forwarded their complaint to the City Prosecutor of Makati wherein the accused appellant, together with Evelyn E.Mateo, Carmelita B. Galvez, Romeo L. Esteban,

Galileo J. Saporsantos and Nenita S. Saporsantos were charged with the crime of syndicated estafa. The Informations were similarly worded, except as to the dates of the commission of the crime. Amended Informations were then made to reflect the following line "being partners, officers, employees and/or agents of MMG, International Holdings Company, Ltd." Similar cases for estafa and syndicated estafa, totalling 209, were also filed against the accused. Among the accused, only accused-appellant was arrested and when arraigned on February 19, 2004, he pleaded not guilty to all the charges.

The RTC found the accused-appellant to be guilty and the CA affirmed in toto. One of the issues raised by the appellant is whether the suspension of all claims as an incident to MMG Group of Companies' corporate rehabilitation also contemplate the suspension of criminal charges filed against accused-appellant as an officer of the distressed corporation.

ISSUE

Whether or not criminal charges against corporate officers will be suspended pending rehabilitation procedure.

RULING

NO. Citing the case of *Rosario v. Co*, the Court said:

There is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. As correctly observed in *Rosario*, it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.

The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court.

- Steel Corporation of the Philippines v. Bureau of Customs, G.R. No. 220502, [February 12, 2018]

STEEL CORPORATION OF THE PHILIPPINES, *Petitioner* -versus- BUREAU OF CUSTOMS (BOC), BUREAU OF INTERNAL REVENUE (BIR), DEPARTMENT OF FINANCE (DOF), OFFICE OF THE PRESIDENT (OP), and MUNICIPALITY OF BALAYAN, BATANGAS, *Respondents*

G.R. No. 220502, February 12, 2018, SECOND DIVISION, PERALTA, *J.*

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment *or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.*

FACTS

On September 11, 2006, Equitable PCI Bank, Inc. initiated a petition for rehabilitation of Steel Corporation of the Philippines *(STEELCORP),* with principal place of business in Batangas. The case was pending before the RTC of Batangas City which directed, among others, the *"[stay] [of] all claims against [STEELCORP], by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.*". While the rehabilitation proceedings were pending, Republic Act *(R.A.)* No. 10142, or the *Financial Rehabilitation and Insolvency Act (FRIA) of 2010* was enacted. Section 19 of which mandates:

SEC. 19. *Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs).* - Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.

The representatives of STEELCORP and the Municipality of Balayan, Batangas met to discuss the effects of the aforequoted provision. As agreed, the municipal government waived the taxes and other fees that may be due from STEELCORP starting the year 2011 and until a final rehabilitation plan is approved by the court.

In a letter addressed to Bureau of Customs *(BOC)* Commissioner Angelito A. Alvarez, STEELCORP manifested its intent to avail of the privileges granted by Section 19 of R.A. No. 10142, stressing that the import duties and *fees/VAT* which the BOC wanted to impose on and collect cannot be made without violating the aforesaid provision. It appears that STEELCORP had imported raw materials for use in its manufacture of steel products, which the BOC assessed with taxes in the sum of ₱41,206,120.00.

In a Memorandum, Commissioner Alvarez, approved the waiver of all taxes and fees which are due to STEELCORP. Subsequently, DOF Undersecretary Carlo A. Carag issued 2nd Indorsement, which disapproved the recommendation of Commissioner Alvarez based on two grounds: (1) the Stay Order relied upon by STEELCORP is not the same as the Commencement Order required by law to consider the taxes and customs duties waived; and (2) assuming that the Stay Order is the same as the Commencement Order, the waiver contemplated under Section 19 does not include taxes and customs duties due on importations or shipments that were made by STEELCORP after the issuance of the Commencement Order.

STEELCORP elevated the matter to the Office of the President which deferred resolution until the finality of the Civil Case for Temporary Preliminary Injunction filed by STEELCORP.

The Office of the Solicitor General (OSG), filed a Motion to Dismiss. It was argued that the RTC has no jurisdiction to hear and determine the complaint because, under Section 602 (g) of Presidential Decree *(P.D.)* No. 1464 or the TCCP, the BOC acquires exclusive jurisdiction over imported goods for purposes of enforcement of the customs laws from the moment the goods ·are actually in its possession or control; thus, the *Status Quo* Order is null and void. Also, under Section 2315 of the TCCP, the 2nd Indorsement dated May 26, 2011 should be appealed to the CTA

ISSUE

Whether or not a corporation placed under corporate rehabilitation can avail the benefits of Section 19 of R.A. No. 10142, which issue is cognizable by the RTC and whose decision may be appealed to the CA or the Supreme Court and not to any other court like the CTA.

RULING

NO. The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

- Allied Banking Corp. v. Equitable PCI Bank, Inc., G.R. No. 191939, [March 14, 2018]

ALLIED BANKING CORPORATION, *Petitioner*, -versus- IN THE MATTER 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., *Respondent.*
G.R. No. 191939, March 14, 2018, THIRD DIVISION, Martires, J.

Under the 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.

EPCIB alleged, among others, that due to the onslaught of the 1997 Asian Financial Crisis, SCP began experiencing a downward trend in its financial condition which prompted various banks and financial institutions to grant it with term loan facilities and working capital lines; that SCP failed to make timely payments on its term loan facilities; and that 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.*"

The RTC issued an Order granting EPCIB's petition, and **staying all claims against SCP, by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation**. Steel Corporation of the Philippines is hereby prohibited from selling, encumbering, transferring or disposing in any manner of its assets and properties except in the ordinary course of its business and as may be approved by the Rehabilitation Receiver.

Petitioner ABC nonetheless applied the remaining proceeds of SCP's Current Account No. 1801-004-87-6 in the amount of P6,750,000.00, maintained with its Aguirre Branch, to its obligations under the TR.

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 the other hand, the petitioner argues that it did not violate the stay order, as it had no notice of its issuance at the time of the legal compensation; ABC asserts that it was not yet bound by the 12 September 2006 stay order when it made the setoff on 15 September 2006 because jurisdiction over it had not yet been acquired by the rehabilitation court; the stay order was only published on 16 September 2006.

ISSUE

Whether or not petitioner was bound by the Stay Order.

RULING

YES. The Rehabilitation Rules provides that the court shall issue a commencement order once it finds the petition for rehabilitation sufficient in form and substance.[9] 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,[11] 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, to wit:

SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. - The effects of the court's issuance of a Commencement Order shall retroact to the date of the filing of the petition and, in addition to the effects of a Stay or Suspension Order described in the foregoing section, shall

Xxx

(B) prohibit or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed under these Rules, subject to the provisions of Section 49 of this Rule;

(C) serve as legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors; (emphasis supplied)

Xxx

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.

- Mañalac v. Gellada, A.M. No. RTJ-18-2535, [October 8, 2018]

CARLOS GAUDENCIO M. MAÑALAC, *Complainant*, -*versus*- HON. EPITO B. GELLADA, PRESIDING JUDGE, BRANCH 53, REGIONAL TRIAL COURT, BACOLOD, CITY, NEGROS OCCIDENTAL, *Respondent*.
A.M. No. RTJ-18-2535, October 08, 2018, FIRST DIVISION, DEL CASTILLO, *J*

Neither will Judge Gellada's explanation, that the motion to revive the proceedings was wrongfully granted for being based on the outdated 2000 Rules and 2008 Rules, merit an exoneration from administrative liability. Even if this Court were to consider such mistaken interpretation of the amendments to the Rules on Corporate Rehabilitation, his explanation in itself highlighted his gross ignorance of the law in failing to apply the latest law on the matter, i.e., FRIA. Considering that RTC Bacolod City Branch 53 is a commercial court, it all the more makes Judge Gellada's ignorance of the applicable law glaring. "This Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law."

FACTS

PI One is a corporation existing under and by virtue of the laws of the Philippines, it was organized as a Special Purpose Vehicle by virtue of Republic Act No. 9182 and is thus "empowered to acquire or purchase assets from banking and financial institutions". MADCI obtained a loan from the Development Bank of the Philippines (DBP) secured by a mortgage over a property. MADCI defaulted in its obligations and its loan eventually became past due. Subsequently, DBP transferred to PI One all its rights, title, and interest on the non-performing loan of MADCI.

MADCI filed an action for corporate rehabilitation which was raffled to RTC Bacolod City Branch 53 presided by Judge Gellada. After due proceedings, the RTC an Order terminating the rehabilitation proceedings for failure of MADCI to comply with its obligations under the rehabilitation plan. Thereafter, PI One proceeded to foreclose on the mortgage. When MADCI failed to redeem, the ownership of the property was eventually consolidated to PI which then obtained a writ of possession from RTC Kabankalan City and effectively acquired lawful possession of the property. Meanwhile, the RTC Bacolod City Branch 53 issued an Order denying with finality MADCI's motion for reconsideration. On October 7, 2015, MADCI filed a Complaint for Declaration of Nullity of foreclosure Proceedings which. Complainant alleged that, notwithstanding the termination of the rehabilitation proceedings, MADCI filed a Motion to allow petitioner to avail of the Provisions of Rule 2 Sec. 73 of the Financial Rehabilitation Rules of Procedure, MADCI prayed that it be allowed to revive or reopen the rehabilitation proceedings which was then granted. The court ordered MADCI to comply with the provisions of the rehabilitation plan within 15 days; declared null and void the foreclosure and the proceedings taken after such foreclosure; and ordered PI One to restore MADCI in possession of the subject property. MADCI thus filed an *Ex-Parte Motion for Execution* to enforce the Order. This ex-parte motion was granted and a Writ of Execution was issued on even date. Thereafter, PI One charged Judge Gellada with gross ignorance of the law for granting the motion of MADCI.

Judge Denied the allegation. He claimed that PI ONE's motion to terminate the rehabilitation proceedings was anchored on Section 27, Rule 4 of the old Rules on Corporate Rehabilitation of2000 (2000 Rules) which rule later became the Interim Rules on Corporate Rehabilitation of 2008 (2008 Rules); that MADCI's motion to revive the proceedings was grounded on the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), Section 75 of which repealed Section 27 of the 2000 Rules and Section 23 of the 2008 Rules. Judge Gellada averred that he granted MADCI's aforesaid motion to avail of provisions of the FRIA because the rehabilitation case had not been properly terminated in accordance with Section 74 thereof. According to Judge Gellada, the FRIA provides that, in the event the rehabilitation proceedings fail, the same may be converted into liquidation proceedings which disallows foreclosure for a period of 180 days. Judge Gellada noted that when MADCI did not comply with the provisions of the Rehabilitation Plan, PI ONE immediately moved for the termination of the rehabilitation proceedings instead of asking for its conversion to liquidation proceedings; moreover, it immediately foreclosed on the mortgage and consolidated its ownership over the subject property. According to Judge Gellada, the aforesaid acts of PI ONE did not comply with the express and mandatory terms of FRIA and in violation of due process Office of the Court Administrator (OCA) found respondent judge guilty of gross ignorance of the law

ISSUE

Whether or not Judge Gellada is guilty of Ignorance of the Law.

RULING

YES. The March 19, 2015 Order terminating the rehabilitation proceedings became final and executory after Judge Gellada denied MADCI's motion for reconsideration to reverse the same. It, thus, became imperative for Judge Gellada to respect his own final and executory decision in keeping with the basic principle of finality or immutability of judgments. "The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, elates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law." To do otherwise, as what Judge Gellada did by issuing the May 5, 2016 Order, rendered him administratively liable for gross ignorance of the law.

Neither will Judge Gellada's explanation, that the motion to revive the proceedings was wrongfully granted for being based on the outdated 2000 Rules and 2008 Rules, merit an exoneration from administrative liability. Even if this Court were to consider such mistaken interpretation of the amendments to the Rules on Corporate Rehabilitation, his explanation in itself highlighted his gross ignorance of the law in failing to apply the latest law on the matter, *i.e.*, FRIA. Considering that RTC Bacolod City Branch 53 is a commercial court, it all the more makes Judge Gellada's ignorance of the applicable law glaring. "This Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law."

Even if this Court were to brush aside the impropriety of Judge Gellada's May 5, 2016 Order, his act of granting MADCI's *ex-parte* motion for execution infringes on the time-honored principle that "the notice requirement in a motion is mandatory"[35] because a "notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that [a party's] right be not affected without an opportunity to be heard." What is striking was Judge Gellada's act of granting MADCI's *ex-parte* motion despite being aware of PI ONE's previous writ of possession over the assailed property before RTC Kabankalan City Branch 61; and of his nullifying the foreclosure and subsequent proceedings despite the pendency of a complaint for nullification of foreclosure proceedings before the RTC Bacolod City Branch 54. Not only was this a wanton disregard of PI ONE's right to due process but it also interfered with the orders and processes of a co-equal court.

- Dela Torre v. Primetown Property Group, Inc., G.R. No. 221932, [February 14, 2018], Second Division, PERALTA, J

PATRICIA CABRIETO DELA TORRE, REPRESENTED BY BENIGNO T. CABRIETO, JR., *Petitioner*, *v.* PRIMETOWN PROPERTY GROUP, INC., *Respondent*.
G.R. No. 221932, February 14, 2018, SECOND DIVISION, PERALTA, J.

The applicable law is the Interim Rules of Procedure on Corporate Rehabilitation. Under Section 6, Rule 4, all creditors and interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition not later than 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, any comment or opposition to the petition should have been filed on or before September 24, 2003, which is the date of the initial hearing. Since Dela Torre was not able to file any comment or opposition, she is already barred from participating in the proceedings. Furthermore, the Motion for Intervention filed by Dela Torre is prohibited under Section 1, Rule 3 of the Interim Rules. Hence, the RTC should not have entertained the petition for intervention at all.

FACTS

Primetown Property Group experienced financial difficulties due to the devaluation of the Philippine Peso, increase in interest rates and lack of access to adequate credit. Thus, it filed a **petition for corporate rehabilitation** with prayer for suspension of payments and actions with the RTC of Makati City. Thereafter, the Court issued a Stay Order. Petitioner Dela Torre filed a Motion for Leave to Intervene, seeking judicial order for Specific Performance, for Respondent to execute in her favor a Deed of Sale covering a condominium unit, which she bought from the former as she had allegedly paid the purchase price.

Primetown opposed the Motion saying that it was filed out of time considering that the Stay Order was issued on August 15, 2003.

- 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 10 days before the date of the initial hearing.
- Since the Stay Order was issued on August 15, 2003, and the initial hearing set on September 24, 2003, the Motion should have been filed on or before September 14, 2003.

The RTC granted the Motion for Intervention, ordering Primetown to issue the corresponding deed of sale and issue a new title in favor of the Intervenor, and to immediately transfer possession of the unit.

- Primetown filed a Motion for Reconsideration, alleging that Dela Torre is still liable to pay P1,902, 210.48 as unpaid interest and penalty charges, and it is the HLURB which has exclusive and original jurisdiction of the subject Unit.
- The RTC denied the MR. Hence, Primetown filed with the CA, a petition for certiorari.
- The CA granted the petition, annulling and setting aside the Order of the RTC.

Petitioner's Contention:

- Her claim against Primetown is not suspended with the issuance of the Stay Order because when the order was issued, she had already fully paid the purchase price of the Unit. Her claim is not a demand of pecuniary nature but for the execution of a Deed of Sale, which is not covered under the Stay Order.

ISSUE

Whether or not Dela Torre may rightfully intervene in the Petition for Corporate Rehabilitation

RULING

NO. The applicable law is the **Interim Rules of Procedure on Corporate Rehabilitation**. Under Section 6, Rule 4, all creditors and interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition not later than 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, any comment or opposition to the petition should have been filed on or before September 24, 2003, which is the date of the initial hearing. Since Dela Torre was not able to file any comment or opposition, she is already barred from participating in the proceedings. Furthermore, the Motion for Intervention filed by Dela Torre is prohibited under Section 1, Rule 3 of the Interim Rules. Hence, the RTC should not have entertained the petition for intervention at all.

Second, while Primetown is undergoing rehabilitation, the enforcement of all claims against it is stayed. Rule 2, Section 1 of the Interim Rules defines a claim as referring to all claims and demands of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.

- Dela Torre's prayer in intervention is a claim as defined under the Interim Rules which is already stayed as early as August 15, 2003. The Stay Order prohibited Primetown from selling, encumbering, transferring, or disposing in any manner of any of its properties, except in the ordinary course of business. The RTC's Order, granting the Motion for Intervention, is a violation of the law.

Lastly, Dela Torre's allegation that she had fully paid the purchase price was disputed by Primetown based on their Memorandum of Agreement, where Dela Torre acknowledged that she had paid the principal obligation but had yet to pay the penalty charges and interest. 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.