

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

MERCANTILE LAW

- **G.R. No. 195872. March 12, 2014** Fortune Medicare, Inc. Vs. David Robert U. Amorin

ISSUE: LIABILITY OF HEALTHCARE PROVIDER

The Court finds no cogent reason to disturb the CA's finding that Fortune Care's liability to Amorin under the subject Health Care Contract should be based on the expenses for hospital and professional fees which he actually incurred, and should not be limited by the amount that he would have incurred had his emergency treatment been performed in an accredited hospital in the Philippines.

We emphasize that for purposes of determining the liability of a health care provider to its members, jurisprudence holds that a health care agreement is in the nature of non-life insurance, which is primarily a contract of indemnity. Once the member incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingent, the health care provider must pay for the same to the extent agreed upon under the contract.

To aid in the interpretation of health care agreements, the Court laid down the following guidelines in *Philamcare Health Systems v. CA*: When the terms of insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. **Being a contract of adhesion, the terms of an insurance contract are to be construed strictly against the party which prepared the contract – the insurer.** By reason of the exclusive control of the insurance company over the terms and phraseology of the insurance contract, ambiguity must be strictly interpreted against the insurer and liberally in favor of the insured, especially to avoid forfeiture. **This is equally applicable to Health Care Agreements.**

The phraseology used in medical or hospital service contracts, such as the one at bar, must be liberally construed in favor of the subscriber, and if doubtful or reasonably susceptible of two interpretations the construction conferring coverage is to be adopted, and exclusionary clauses of doubtful import should be strictly construed against the provider.

In *Philamcare Health Systems, Inc. v. CA*, we ruled that a health care agreement is in the nature of a non-life insurance. It is an established rule in insurance contracts that when their terms contain limitations on liability, they should be construed strictly against the insurer. These are contracts of adhesion the terms of which must be interpreted and enforced stringently against the insurer which prepared the contract. This doctrine is equally applicable to health care agreements.

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x x x [L]imitations of liability on the part of the insurer or health care provider must be construed in such a way as to preclude it from evading its obligations. Accordingly, they should be scrutinized by the courts with "**extreme jealousy**" and "**care**" and with a "**jaundiced eye**."

In the instant case, the extent of Fortune Care's liability to Amorin under the attendant circumstances was governed by Section 3(B), Article V of the subject Health Care Contract, considering that the appendectomy which the member had to undergo qualified as an emergency care, but the treatment was performed at St. Francis Medical Center in Honolulu, Hawaii, U.S.A., a non-accredited hospital.

The point of dispute now concerns the proper interpretation of the phrase "approved standard charges", which shall be the base for the allowable 80% benefit. The trial court ruled that the phrase should be interpreted in light of the

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provisions of Section 3(A), *i.e.*, to the extent that may be allowed for treatments performed by accredited physicians in accredited hospitals. As the appellate court however held, this must be interpreted in its literal sense, guided by the rule that any ambiguity shall be strictly construed against Fortune Care, and liberally in favor of Amorin.

The Court agrees with the CA. As may be gleaned from the Health Care Contract, the parties thereto contemplated the possibility of emergency care in a foreign country. As the contract recognized Fortune Care's liability for emergency treatments even in foreign territories, it expressly limited its liability only insofar as the percentage of hospitalization and professional fees that must be paid or reimbursed was concerned, pegged at a mere 80% of the approved standard charges.

The word "standard" as used in the cited stipulation was vague and ambiguous, as it could be susceptible of different meanings. Plainly, the term "standard charges" could be read as referring to the "hospitalization costs and professional fees" which were specifically cited as compensable even when incurred in a foreign country. Contrary to Fortune Care's argument, from nowhere in the Health Care Contract could it be reasonably deduced that these "standard charges" referred to the "Philippine standard", or that cost which would have been incurred if the medical services were performed in an accredited hospital situated in the Philippines. The RTC ruling that the use of the "Philippine standard" could be inferred from the provisions of Section 3(A), which covered emergency care in an accredited hospital, was misplaced. Evidently, the parties to the Health Care Contract made a clear distinction between emergency care in an accredited hospital, and that obtained from a non-accredited hospital. The limitation on payment based on "Philippine standard" for services of accredited physicians was expressly made applicable

only in the case of an emergency care in an accredited hospital.

The proper interpretation of the phrase "standard charges" could instead be correlated with and reasonably inferred from the other provisions of Section 3(B), considering that Amorin's case fell under the second case, *i.e.*, emergency care in a non-accredited hospital. Rather than a determination of Philippine or American standards, the first part of the provision speaks of the full reimbursement of "the **total hospitalization cost including the professional fee** (based on the total approved charges) to a member who receives emergency care in a non-accredited hospital" within the Philippines. Thus, for emergency care in non-accredited hospitals, this cited clause declared the standard in the determination of the amount to be paid, without any reference to and regardless of the amounts that would have been payable if the treatment was done by an affiliated physician or in an affiliated hospital. For treatments in foreign territories, the only qualification was only as to the percentage, or 80% of that payable for treatments performed in non-accredited hospital.

All told, in the absence of any qualifying word that clearly limited Fortune Care's liability to costs that are applicable in the Philippines, the amount payable by Fortune Care should not be limited to the cost of treatment in the Philippines, as to do so would result in the clear disadvantage of its member. If, as Fortune Care argued, the premium and other charges in the Health Care Contract were merely computed on assumption and risk under Philippine cost and, that the American cost standard or any foreign country's cost was never considered, such limitations should have been distinctly specified and clearly reflected in the extent of coverage which the company voluntarily assumed.

Settled is the rule that ambiguities in a

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contract are interpreted against the party that caused the ambiguity. "[A]ny ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.

- **G.R. No. 195542. March 19, 2014** Securities and Exchange Commission Vs. Oudine Santos

- Before us is another cautionary tale of an investment arrangement which, at the outset, appeared good, unraveling unhappily as a deal **too- good-to-be-true**.

Hence, this appeal by *certiorari* raising the sole error of Santos' exclusion from the Information for violation of Section 28 of the Securities Regulation Code.

In excluding Santos from the prosecution of the supposed violation of Section 28 of the Securities Regulation Code, the Secretary of the DOJ, as affirmed by the appellate court, debunked the DOJ panel's finding that Santos was *prima facie* liable for either: (1) selling securities in the Philippines as a broker or dealer, or (2) acting as a salesman, or an associated person of any broker or dealer on behalf of PIPC Corporation and/or PIPC-BVI without being registered as such with the SEC.

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 issuer of securities without the necessary registration or license from the SEC, and (2) engaged in the business of buying and selling securities.

Tying 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 the 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 what she now unaffectedly calls an information provider, brought about 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 on Sy's or Lorenzo's investments, Santos procured the sale of these unregistered securities to the two (2) complainants by providing information on the investment products being offered for sale by PIPC 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.

Individual complainants and the SEC have categorically alleged that Liew and PIPC Corporation and/or PIPC-BVI is not a legitimate investment company but a company which perpetrated a scam on 31 individuals where the president, a foreign national, Liew, ran away with their money. Liew's absconding with the monies of 31 individuals and that PIPC Corporation and/or PIPC-BVI were not licensed by the SEC to sell securities are uncontroverted

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facts.

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 the law. When the investor is relatively uninformed 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 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 Santos' signature in the contract is, likewise, indicative of a scheme to circumvent and evade liability should the pyramid fall apart.

Lastly, we clarify that we are only dealing herein with the preliminary investigation aspect of this case. We do not adjudge respondents' guilt or the lack thereof. Santos' defense of being a mere employee or simply an information provider is best raised and threshed out during trial of the case.

- **G.R. No. 199687/G.R. No. 201537. March 24, 2014** Pacific Rehouse Corporation Vs. Court of Appeals and Export and Industry Bank, Inc./Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc. Vs. Export and Industry Bank, Inc.

- 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 action by the RTC begs the question: may the RTC enforce the

alias writ of execution against Export Bank?

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.

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. Export Bank has consistently disputed the RTC jurisdiction, commencing from its filing of an Omnibus Motion by way of special appearance during the execution stage until the filing of its Comment before the Court wherein it was pleaded that "RTC [of] Makati[, Branch] 66 never acquired jurisdiction over Export [B]ank. Export [B]ank was not pleaded as a party in this case. It was never served with summons by nor did it voluntarily appear before RTC [of] Makati[, Branch] 66 so as to be

subjected to the latter's jurisdiction."

The Alter Ego Doctrine is not applicable

"The question of whether one corporation is merely an alter ego of

another is purely one of fact. So is the

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question of whether a corporation is a paper company, a sham or subterfuge or whether petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of

respondent's corporate entity."

"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."

"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 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. 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.

All the foregoing circumstances, with the exception of the admitted stock ownership, were however not properly pleaded and proved in accordance with the Rules of Court.

Albeit the RTC bore emphasis on the alleged control exercised by

Export Bank upon its subsidiary E-Securities, "[c]ontrol, 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

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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

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.

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."

- **G.R. No. 195580. April 21, 2014** Narra Nickel Mining and Development Corp., et al. Vs. Redmont Consolidated Mines Dissenting Opinion **J. Leonen**

- The main issue in this case is centered on the issue of petitioners' nationality, whether Filipino or foreign.

Basically, there are two acknowledged tests in determining the nationality of a corporation: the control test and the grandfather rule.

Corporate layering" is admittedly allowed by the FIA; but if it is used to circumvent the Constitution and pertinent laws, then it becomes illegal. It is apparent that it is the intention of the framers of the Constitution to apply the grandfather rule in cases where corporate layering is present.

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.

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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

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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.** (emphasis supplied)

- **G.R. No. 195615. April 21, 2014** Bank of Commerce Vs. Radio Philippines Network, Inc., et al. Concurring Opinion **J. Velasco, Jr.** Dissenting Opinion **J. Mendoza, J. Leonen**

- *Merger and De Facto Merger*
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- Merger is a re-organization of two or more corporations that results in their consolidating into a single corporation, which is one of the constituent corporations, one disappearing or dissolving and the other surviving. To put it another way, merger is the absorption of one or more corporations by another existing corporation, which retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s). The absorbing corporation continues its existence while the life or lives of the other corporation(s) is or are terminated.¹³
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- The Corporation Code requires the following steps for merger or consolidation:
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 - (1) The board of each corporation draws up a plan of merger or consolidation. Such plan must include any amendment, if necessary, to the articles of incorporation of the surviving corporation, or in case of consolidation, all the statements required in the articles of

incorporation of a corporation.

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- (2) Submission of plan to stockholders or members of each corporation for approval. A meeting must be called and at least two (2) weeks' notice must be sent to all stockholders or members, personally or by registered mail. A summary of the plan must be attached to the notice. Vote of two-thirds of the members or of stockholders representing two-thirds of the outstanding capital stock will be needed. Appraisal rights, when proper, must be respected.
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- (3) Execution of the formal agreement, referred to as the articles of merger o[r] consolidation, by the corporate officers of each constituent corporation. These take the place of the articles of incorporation of the consolidated corporation, or amend the articles of incorporation of the surviving corporation.
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- (4) Submission of said articles of merger or consolidation to the SEC for approval.
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- (5) If necessary, the SEC shall set a hearing, notifying all corporations concerned at least two weeks before.
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- (6) Issuance of certificate of merger or consolidation.¹⁴
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- 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.¹⁵ 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

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provides that the merger shall be effective only upon the issuance by the Securities and Exchange Commission (SEC) of a certificate of merger.

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- 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. Indeed, the dissenting opinions of Justices Jose Catral Mendoza and Marvic Mario Victor F. Leonen are of the same opinion. In strict sense, no merger or consolidation took place as the records do not show any plan or articles of merger or consolidation. More importantly, the SEC did not issue any certificate of merger or consolidation.

The dissenting opinion of Justice Mendoza finds, however, that a "*de facto*" merger existed between TRB and Bancommerce considering that (1) the P & A Agreement between them involved substantially all the assets and liabilities of TRB; (2) in an *Ex Parte* Petition for Issuance of Writ of Possession filed in a case, Bancommerce qualified TRB, the petitioner, with the words "now known as Bancommerce;" and (3) the BSP issued a Circular Letter (series of 2002) advising all banks and non-bank financial intermediaries that the banking activities and transaction of TRB and Bancommerce were consolidated and that the latter continued the operations of the former.

- The idea of a *de facto* merger came about because, prior to the present Corporation Code, no law authorized the merger or

consolidation of Philippine Corporations, except insurance companies, railway corporations, and public utilities.¹⁶ And, except in the case of insurance corporations, no procedure existed for bringing about a merger.¹⁷ Still, the Supreme Court held in *Reyes v. Blouse*,¹⁸ that authority to merge or consolidate can be derived from Section 28^{1/2} (now Section 40) of the former Corporation Law which provides, among others, that a corporation may "sell, exchange, lease or otherwise dispose of all or substantially all of its property and assets" if the board of directors is so authorized by the affirmative vote of the stockholders holding at least two-thirds of the voting power. The words "or otherwise dispose of," according to the Supreme Court, is very broad and in a sense, covers a merger or consolidation.

In his book, *Philippine Corporate Law*,²⁰ 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." (*Emphasis supplied*)

- 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. 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.*²¹
- The Bureau of Internal Revenue

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(BIR) treated the transaction between the two banks purely as a sale of specified assets and liabilities when it rendered its opinion²² on the tax consequences of the transaction given that there is a difference in tax treatment between a sale and a merger or consolidation.

- **Aderito Z. Yujuico and Bonifacio C. Sumbilla Vs. Cezar T. Quiambao and Eric C. Pilapil** G.R. No. 180416. June 2, 2014

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.

Section 74 is the provision of the Corporation Code that deals with the books a corporation is required to keep.

XXXXXX**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.**

Any officer or agent of the corporation who shall refuse to allow any director, trustees, 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.

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

Section 144 of the Corporation Code, on the other hand, is the general penal provision of the Corporation Code. It reads:

Section 144. Violations of the Code. - Violations of **any** of the provisions of this Code or its amendments **not otherwise specifically penalized therein** shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate

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proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190 112 a) (Emphasis supplied)

In the assailed *Orders*, the RTC expressed its opinion that the act of refusing to allow inspection of the stock and transfer book, even though it may be a violation of Section 74(4), is not punishable as an offense under the Corporation Code.²⁹ 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 "*refus[ing] 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.

We do not agree.

While Section 74 of the Corporation Code expressly mentions the application of Section 144 only in relation to the act of "*refus[ing] to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from [the corporation's] records or minutes*," 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 "[v]iolations" 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.

Indeed, we find no cogent reason why

Section 144 of the Corporation Code cannot be made to apply to violations of the right of a stockholder to inspect the stock and transfer book of a corporation under Section 74(4) given the already unequivocal intent of the legislature to penalize violations of a parallel right, *i.e.*, the right of a stockholder or member to examine the other records and minutes of a corporation under Section 74(2). Certainly, all the rights guaranteed to corporators under Section 74 of the Corporation Code are mandatory for the corporation to respect. All such rights are just the same underpinned by the same policy consideration of keeping public confidence in the corporate vehicle thru an assurance of transparency in the corporation's operations.

Verily, we find inaccurate the pronouncement of the RTC that the act of refusing to allow inspection of the stock and transfer book is not a punishable offense under the Corporation Code. Such refusal, when done in violation of Section 74(4) of the Corporation Code, properly falls within the purview of Section 144 of the same code and thus may be penalized as an offense.

A criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer book of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code can only be maintained against corporate officers or any other persons acting on behalf of such corporation.

The foregoing notwithstanding, and independently of the reasons provided therefor by the RTC, we sustain the dismissal of Criminal Case No. 89724.

Criminal Case No. 89724 accuses respondents of denying petitioners' right to examine or inspect the *corporate records* and the *stock and transfer book* of STRADEC. It is thus a criminal action that

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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 the second and fourth paragraphs 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 petitioners' complaint and the evidence that they submitted during preliminary investigation is that they do not establish that respondents were acting on behalf of STRADEC. Quite the contrary, the scenario painted by the complaint is that the respondents are merely outgoing officers of STRADEC who, for some reason, withheld and refused to turn-over the company records of STRADEC; that it is the petitioners who are actually acting on behalf of STRADEC; and that STRADEC is actually merely trying to recover custody of the withheld records.

In other words, petitioners 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. That is simply not the situation contemplated by the second and fourth paragraphs of Section 74 of the Corporation Code.

For this reason, we affirm the dismissal of Criminal Case No. 89724 for lack of probable cause.

- **Alvin Patrimonio Vs. Napoleon Gutierrez and Octavio Marasigan III** G.R. No. 187769. June 4, 2014

We note at the outset that the issues raised in this petition are essentially factual in nature. The main point of inquiry of whether the contract of loan may be nullified, hinges on the very existence of the contract of loan – a question that, as presented, is essentially, one of fact. Whether the petitioner authorized the borrowing; whether Gutierrez completely filled out the subject check strictly under the petitioner's authority; and whether Marasigan is a holder in due course are also questions of fact, that, as a general rule, are beyond the scope of a Rule 45 petition.

I. Liability Under the Contract of Loan

The petitioner seeks to nullify the contract of loan on the ground that he never authorized the borrowing of money. He points to Article 1878, paragraph 7 of the Civil Code, which explicitly requires a written authority when the loan is contracted through an agent. The petitioner contends that absent such authority in writing, he should not be held liable for the face value of the check because he was not a party or privy to the agreement.

***Contracts of Agency May be Oral Unless
The Law Requires a Specific Form***

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Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

As a general rule, a contract of agency may be oral.⁶ However, it must be written when the law requires a specific form, for example, in *a sale of a piece of land or any interest therein through an agent*.

Article 1878 paragraph 7 of the Civil Code expressly requires a special power of authority before an agent can loan or borrow money in behalf of the principal, to wit:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x

(7) **To loan or borrow money**, unless the latter act be urgent and indispensable for the preservation of the things which are under administration. (*emphasis supplied*)

Article 1878 does not state that the authority be in writing. As long as the mandate is express, such authority may be either oral or written. We unequivocally declared in *Lim Pin v. Liao Tian, et al.*,⁷ that the requirement under Article 1878 of the Civil Code refers to the nature of the authorization and not to its form. Be that as it may, the authority must be duly established by competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given, thus:

The requirements of a special power

of attorney in Article 1878 of the Civil Code and of a special authority in Rule 138 of the Rules of Court refer to the nature of the authorization and not its form. The requirements are met if there is a clear mandate from the principal specifically authorizing the performance of the act. As early as 1906, this *Court in Strong v. Gutierrez-Repide* (6 Phil. 680) stated that **such a mandate may be either oral or written, the one vital thing being that it shall be express.** And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence:

x x x the Rules require, for attorneys to compromise the litigation of their clients, a special authority. And while the same does not state that the special authority be in writing the Court has every reason to expect that, **if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him.** (*Home Insurance Company vs. United States lines Company, et al.*, 21 SCRA 863; 866: *Vicente vs. Geraldez*, 52 SCRA 210; 225)

The Contract of Loan Entered Into by Gutierrez in Behalf of the Petitioner Should be Nullified for Being Void; Petitioner is Not Bound by the Contract of Loan.

A review of the records reveals that Gutierrez did not have any authority to borrow money in behalf of the petitioner. Records do not show that the petitioner executed any special power of attorney (SPA) in favor of Gutierrez. In fact, the petitioner's testimony confirmed that he never authorized Gutierrez (or anyone for that matter), whether verbally or in writing, to borrow money in his behalf, nor was he aware of any such transaction:

In the absence of any authorization, Gutierrez could not enter into a contract of loan in behalf of the petitioner. As held in *Yasuma v. Heirs of De Villa*,⁹ involving a

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loan contracted by de Villa secured by real estate mortgages in the name of East Cordillera Mining Corporation, in the absence of an SPA conferring authority on de Villa, there is no basis to hold the corporation liable, to wit:

The power to borrow money is one of those cases where corporate officers as agents of the corporation need a special power of attorney. In the case at bar, **no special power of attorney conferring authority on de Villa was ever presented.** x x x There was no showing that respondent corporation ever authorized de Villa to obtain the loans on its behalf.

x x x x

Therefore, on the first issue, the loan was personal to de Villa. There was no basis to hold the corporation liable since there was no authority, express, implied or apparent, given to de Villa to borrow money from petitioner. Neither was there any subsequent ratification of his act.

In the absence of any showing of any agency relations or special authority to act for and in behalf of the petitioner, the loan agreement Gutierrez entered into with Marasigan is null and void. Thus, the petitioner is not bound by the parties' loan agreement.

Furthermore, that the petitioner entrusted the blank pre-signed checks to Gutierrez is not legally sufficient because the authority to enter into a loan can never be presumed. The contract of agency and the special fiduciary relationship inherent in this contract must exist as a matter of fact. The person alleging it has the burden of proof to show, not only the fact of agency, but also its nature and extent.¹

The records show that Marasigan merely relied on the words of Gutierrez without securing a copy of the SPA in favor of the latter and without verifying from the petitioner whether he had authorized the

borrowing of money or release of the check. He was thus bound by the risk accompanying his trust on the mere assurances of Gutierrez.

No Contract of Loan Was Perfected Between Marasigan And Petitioner, as The Latter's Consent Was Not Obtained.

Another significant point that the lower courts failed to consider is that a contract of loan, like any other contract, is subject to the rules governing the requisites and validity of contracts in general.¹³ Article 1318 of the Civil Code¹⁴ enumerates the essential requisites for a valid contract, namely:

1. **consent of the contracting parties;**
2. object certain which is the subject matter of the contract; and
3. cause of the obligation which is established.

In this case, the petitioner denied liability on the ground that the contract lacked the essential element of consent. We agree with the petitioner. As we explained above, Gutierrez did not have the petitioner's written/verbal authority to enter into a contract of loan. While there may be a meeting of the minds between Gutierrez and Marasigan, such agreement cannot bind the petitioner whose consent was not obtained and who was not privy to the loan agreement. Hence, only Gutierrez is bound by the contract of loan.

True, the petitioner had issued several pre-signed checks to Gutierrez, one of which fell into the hands of Marasigan. This act, however, does not constitute sufficient authority to borrow money in his behalf and neither should it be construed as petitioner's grant of consent to the parties' loan agreement. Without any evidence to prove Gutierrez' authority, the petitioner's signature in the check cannot be taken, even remotely, as sufficient authorization, much less, consent to the contract of loan. Without the consent given by one party in a purported contract, such contract could not have been perfected; there simply was no

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contract to speak of.¹⁵

II. Liability Under the Instrument

The answer is supplied by the applicable statutory provision found in

Section 14 of the Negotiable Instruments Law (NIL) which states:

Sec. 14. *Blanks; when may be filled.* - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, **it must be filled up strictly in accordance with the authority given and within a reasonable time.** But if any such instrument, after completion, is **negotiated to a holder in due course**, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

This provision applies to an incomplete but delivered instrument. Under this rule, if the maker or drawer delivers a pre-signed blank paper to another person for the purpose of converting it into a negotiable instrument, that person is deemed to have *prima facie* authority to fill it up. It merely requires that the instrument be in the possession of a person other than the drawer or maker and from such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks.¹⁶

In order however that one who is not a holder in due course can enforce the

instrument against a party prior to the instrument's completion, two requisites must exist: (1) that the blank must be filled strictly in accordance with the authority given; and (2) it must be filled up within a reasonable time. If it was proven that the instrument had not been filled up strictly in accordance with the authority given and within a reasonable time, the maker can set this up as a personal defense and avoid liability. However, if the holder is a holder in due course, there is a conclusive presumption that authority to fill it up had been given and that the same was not in excess of authority.¹⁷

In the present case, the petitioner contends that there is no legal basis to hold him liable both under the contract and loan and under the check because: **first**, the subject check was not completely filled out strictly under the authority he has given and **second**, Marasigan was not a holder in due course.

Marasigan is Not a Holder in Due Course

The Negotiable Instruments Law (NIL) defines a holder in due course, thus:

Sec. 52 — A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;

(b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(c) **That he took it in good faith** and for value;

(d) **That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.** (*emphasis supplied*)

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Section 52(c) of the NIL states that a holder in due course is one who takes the instrument "in good faith and for value." It also provides in Section 52(d) that in order that one may be a holder in due course, it is necessary that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Acquisition in good faith means taking without knowledge or notice of equities of any sort which could be set up against a prior holder of the instrument.¹⁸ It means that he does not have any knowledge of fact which would render it dishonest for him to take a negotiable paper. The absence of the defense, when the instrument was taken, is the essential element of good faith.¹⁹

Since he knew that the underlying obligation was not actually for the petitioner, the rule that a possessor of the instrument is *prima facie* a holder in due course is inapplicable. As correctly noted by the CA, his inaction and failure to verify, despite knowledge of that the petitioner was not a party to the loan, may be construed as gross negligence amounting to bad faith.

Yet, it does not follow that simply because he is not a holder in due course, Marasigan is already totally barred from recovery. The NIL does not provide that a holder who is not a holder in due course may not in any case recover on the instrument.²² The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.²³ Among such defenses is the filling up blank not within the authority.

Check Was Not Completed Strictly Under The Authority Given by The Petitioner

Our own examination of the records tells us that Gutierrez has exceeded the authority to fill up the blanks and use the check. To repeat, petitioner gave Gutierrez pre-signed checks to be used in

their business provided that he could only use them upon his approval. His instruction could not be any clearer as Gutierrez' authority was limited to the use of the checks for the operation of their business, and on the condition that the petitioner's **prior approval** be first secured.

While under the law, Gutierrez had a *prima facie* authority **to complete the check**, such *prima facie* authority does not extend to its use (i.e., subsequent transfer or negotiation) once the check is completed. In other words, only the authority to complete the check is presumed. Further, the law used the term "*prima facie*" to underscore the fact that the authority which the law accords to a holder is a presumption *juris tantum* only; hence, subject to subject to contrary proof. Thus, evidence that there was no authority or that the authority granted has been exceeded may be presented by the maker in order to avoid liability under the instrument.

In the present case, no evidence is on record that Gutierrez ever secured prior approval from the petitioner to fill up the blank or to use the check. In his testimony, petitioner asserted that he never authorized nor approved the filling up of the blank checks,

Notably, Gutierrez was only authorized to use the check for *business expenses*; thus, he exceeded the authority when he used the check to pay the loan he supposedly contracted *for the construction of petitioner's house*. This is a clear violation of the petitioner's instruction to use the checks for the expenses of Slam Dunk. It cannot therefore be validly concluded that the check was completed strictly in accordance with the authority given by the petitioner.

Considering that Marasigan is not a holder in due course, the petitioner can validly set up the personal defense that the blanks were not filled up in accordance with the authority he gave. Consequently,

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Marasigan has no right to enforce payment against the petitioner and the latter cannot be obliged to pay the face value of the check.

- **Asian Terminals, Inc. Vs. First Lepanto-Taisho Insurance Corporation** G.R. No. 185964. June 16, 2014

- ***ATI failed to prove that it exercised***
- ***due care and diligence while the shipment***
- ***was under its custody, control and possession***
- ***as arrastre operator.***

The relationship between the consignee and the arrastre operator is akin to that existing between the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman. Hence, in the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.³⁴

In a claim for loss filed by the consignee (or the insurer), the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. Since the safekeeping of the goods is its responsibility, it must prove that the losses were not due to its negligence or to that of its employees. To avoid liability, the arrastre operator must prove that it exercised diligence and due care in handling the shipment.³⁵

ATI failed to discharge its burden of proof. Instead, it insisted on shifting the blame to COSCO on the basis of the Request for Bad Order Survey dated August 9, 1996 purportedly showing that when ATI received the shipment, one jumbo bag thereof was already in damaged condition.

In fact, what the document established is that when the loss/damage was discovered, the shipment has been in ATI's custody for at least two weeks. This circumstance, coupled with the undisputed declaration of PROVEN's witnesses that while the shipment was in ATI's custody, it was left in an open area exposed to the elements, thieves and vandals,³⁶ all generate the conclusion that ATI failed to exercise due care and diligence while the subject shipment was under its custody, control and possession as arrastre operator.

To prove the exercise of diligence in handling the subject cargoes, an arrastre operator must do more than merely show the possibility that some other party could be responsible for the loss or the damage.³⁷ It must prove that it used all reasonable means to handle and store the shipment with due care and diligence including safeguarding it from weather elements, thieves or vandals.

Non-presentation of the insurance contract is not fatal to FIRST LEPANTO's cause of action for reimbursement as subrogee.

- "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."⁴² The right of subrogation springs from Article 2207 of the Civil Code

As a general rule, the marine insurance policy needs to be presented in evidence before the insurer may recover the insured value of the lost/damaged cargo in the exercise of its subrogatory right. Nevertheless, the rule is not inflexible. In certain instances, the Court has admitted exceptions by declaring that a marine insurance policy is dispensable evidence in reimbursement claims instituted by the insurer.

- In *Delsan Transport Lines, Inc. v.*

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CA,⁴⁹ the Court ruled that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. The presentation of the insurance contract was deemed not fatal to the insurer's cause of action because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel.⁵⁰

Based on the attendant facts of the instant case, the application of the exception is warranted. As discussed above, it is already settled that the loss/damage to the GASI's shipment occurred while they were in ATI's custody, possession and control as arrastre operator. Verily, the Certificate of Insurance⁵³ and the Release of Claim⁵⁴ presented as evidence sufficiently established FIRST LEPANTO's right to collect reimbursement as the subrogee of the consignee, GASI.

With ATI's liability having been positively established, to strictly require the presentation of the insurance contract will run counter to the principle of equity upon which the doctrine of subrogation is premised. Subrogation is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay.⁵⁵

- The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose

negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.⁵⁶

ATI cannot invoke prescription

ATI argued that the consignee, thru its insurer, FIRST LEPANTO is barred from seeking payment for the lost/damaged shipment because the claim letter of GASI to ATI was served only on September 27, 1996 or more than one month from the date the shipment was delivered to the consignee's warehouse on August 9, 1996. The claim of GASI was thus filed beyond the 15-day period stated in ATI's Management Contract with PPA which in turn was reproduced in the gate passes issued to the consignee's broker, PROVEN

The contention is bereft of merit. As clarified in *Insurance Company of North America v. Asian Terminals, Inc.*,⁵⁸ substantial compliance with the 15-day time limitation is allowed provided that the consignee has made a provisional claim thru a request for bad order survey or examination report, viz:

Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability. Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint.⁵⁹ (Citations omitted)

In the present case, ATI was notified of

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the loss/damage to the subject shipment as early as August 9, 1996 thru a Request for Bad Order Survey⁶⁰ jointly prepared by the consignee's broker, PROVEN, and the representatives of ATI. For having submitted a provisional claim, GASI is thus deemed to have substantially complied with the notice requirement to the arrastre operator notwithstanding that a formal claim was sent to the latter only on September 27, 1996. ATI was not deprived the best opportunity to probe immediately the veracity of such claims. Verily then, GASI, thru its subrogee FIRST LEPANTO, is not barred by filing the herein action in court.

• **Aboitiz Equity Ventures, Inc. Vs. Victor S. Chiongbian, Benjamin D. Gothong, and Carlos A. Gothong Line, Inc. (CAGLI)** G.R. No. 197530. July 9, 2014

- Pursuant to the January 8, 1996 Agreement, the Aboitiz group (via ASC) and the Gothong group (via CAGLI) became stockholders of WLI/WG&A, along with the Chiongbian group (which initially controlled WLI). This continued until, pursuant to the SPA, the Gothong group and the Chiongbian group transferred their shares to AEV. With the SPA, AEV became a stockholder of WLI/WG&A, which was subsequently renamed ATSC. Nonetheless, AEV's status as ATSC's stockholder does not subject it to ATSC's obligations
- It is basic that a corporation has a personality separate and distinct from that of its individual stockholders. Thus, a stockholder does not automatically assume the liabilities of the corporation of which he is a stockholder. As explained in *Philippine National Bank v. Hydro Resources Contractors Corporation*:¹¹⁸
- 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.¹¹⁹

- In fact, even the ownership by a single stockholder of all or nearly all the capital stock of a corporation is not, in and of itself, a ground for disregarding a corporation's separate personality. As explained in *Secosa v. Heirs of Francisco*:¹²⁰
- It is a settled precept in this jurisdiction that a corporation is invested by law with a personality separate from that of its stockholders or members. It has a personality separate and distinct from those of the persons composing it as well as from that of any other 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 in itself sufficient ground for disregarding the separate corporate personality.* A corporation's authority to act and its liability for its actions are separate and apart from the individuals who own it.
- The so-called veil of corporation

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fiction treats as separate and distinct the affairs of a corporation and its officers and stockholders. 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.¹²¹ (*Emphasis supplied*)

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- AEV's status as ATSC's stockholder is, in and of itself, insufficient to make AEV liable for ATSC's obligations.

- **Shang Properties Realty Corporation (Formerly The Shang Grand Tower Corporation) and Shang Properties, Inc. (Formerly Edsa Properties Holdings, Inc.) Vs. St. Francis Development Corporation** G.R. No. 190706. July 21, 2014

- With the decisions in both *Inter Partes* Cases having lapsed into finality, the sole issue thus left for the Court's resolution is whether or not petitioners are guilty of unfair competition in using the marks "THE ST. FRANCIS TOWERS" and "THE ST. FRANCIS SHANGRI-LA PLACE."

Section 168 of Republic Act No. 8293,²¹ otherwise known as the "Intellectual Property Code of the Philippines" (IP Code), provides for the

rules and regulations on unfair competition.

To begin, **Section 168.1** qualifies who is entitled to protection against unfair competition. It states that "[a] person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights."

Section 168.2 proceeds to the core of the provision, describing forthwith who may be found guilty of and subject to an action of unfair competition – that is, "[a]ny person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result

Finally, **Section 168.4** dwells on a matter of procedure by stating that the "[t]he remedies provided by Sections 156,²² 157,²³ and 161²⁴ shall apply *mutatis mutandis*."

The statutory attribution of the unfair competition concept is well-supplemented by jurisprudential pronouncements. In the recent case of *Republic Gas Corporation v. Petron Corporation*,²⁵ the Court has echoed the classic definition of the term which is "the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public." Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. [In other words], the

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defendant gives his goods the general appearance of the goods of his competitor with the **intention of deceiving the public** that the goods are those of his competitor.”²⁶ The “true test” of unfair competition has thus been “**whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates.**” Based on the foregoing, it is therefore essential to prove the existence of fraud, or the intent to deceive, actual or probable,²⁷ determined through a judicious scrutiny of the factual circumstances attendant to a particular case.²⁸

Here, the Court finds the element of fraud to be wanting; hence, there can be no unfair competition. The CA’s contrary conclusion was faultily premised on its impression that respondent had the right to the exclusive use of the mark “ST. FRANCIS,” for which the latter had purportedly established considerable goodwill. What the CA appears to have disregarded or been mistaken in its disquisition, however, is the geographically-descriptive nature of the mark “ST. FRANCIS” which thus bars its exclusive appropriability, unless a secondary meaning is acquired. As deftly explained in the U.S. case of *Great Southern Bank v. First Southern Bank*:²⁹ “[d]escriptive geographical terms are in the ‘public domain’ in the sense that every seller should have the right to inform customers of the geographical origin of his goods. A ‘geographically descriptive term’ is any noun or adjective that designates geographical location and would tend to be regarded by buyers as descriptive of the geographic location of origin of the goods or services. **A geographically descriptive term can indicate any geographic location on earth,** such as continents, nations, regions, states, cities, streets and addresses, areas of cities, rivers, and any other location referred to by a recognized name. In order to

determine whether or not the geographic term in question is descriptively used, the following question is relevant: (1) **Is the mark the name of the place or region from which the goods actually come? If the answer is yes, then the geographic term is probably used in a descriptive sense, and secondary meaning is required for protection.**

In *Burke-Parsons-Bowlby Corporation v. Appalachian Log Homes, Inc.*,³¹ it was held that **secondary meaning** is established when a descriptive mark no longer causes the public to associate the goods with a particular place, but to associate the goods with a particular source. In other words, it is not enough that a geographically-descriptive mark partakes of the name of a place known generally to the public to be denied registration as **it is also necessary to show that the public would make a goods/place association** – that is, to believe that the goods for which the mark is sought to be registered **originate** in that place. To hold such a belief, it is necessary, of course, that the purchasers perceive the mark as a place name, from which the question of obscurity or remoteness then comes to the fore.³² The more a geographical area is obscure and remote, it becomes less likely that the public shall have a goods/place association with such area and thus, the mark may not be deemed as geographically descriptive. However, where there is no genuine issue that the **geographical significance of a term is its primary significance** and where the **geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant’s own goods come from the geographical place named in the mark.**³³

Under **Section 123.2**³⁴ of the IP Code, specific requirements have to be met in order to conclude that a geographically-descriptive mark has acquired secondary meaning, to wit: (a) **the secondary**

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meaning must have arisen as a result of substantial commercial use of a mark in the Philippines; (b) such use must result in the distinctiveness of the mark insofar as the goods or the products are concerned; and (c) proof of substantially exclusive and continuous commercial use in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

Unless secondary meaning has been established, a geographically-descriptive mark, due to its general public domain classification, is perceptibly disqualified from trademark registration.

Cognizant of the foregoing, the Court disagrees with the CA that petitioners committed unfair competition due to the mistaken notion that petitioner had established goodwill for the mark "ST. FRANCIS" precisely because said circumstance, by and of itself, does not equate to fraud under the parameters of Section 168 of the IP Code as above-cited. In fact, the records are bereft of any showing that petitioners gave their goods/services the general appearance that it was respondent which was offering the same to the public. Neither did petitioners employ any means to induce the public towards a false belief that it was offering respondent's goods/services. Nor did petitioners make any false statement or commit acts tending to discredit the goods/services offered by respondent. Accordingly, the element of fraud which is the core of unfair competition had not been established.

Besides, respondent was not able to prove its compliance with the requirements stated in Section 123.2 of the IP Code to be able to conclude that it acquired a secondary meaning – and, thereby, an exclusive right – to the "ST. FRANCIS" mark, which is, as the IPO Director-General correctly pointed out, geographically-descriptive of the location in which its realty developments have been built, *i.e.*, St. Francis Avenue and St. Francis Street (now known as "Bank Drive"). Verily, records would reveal that

while it is true that respondent had been using the mark "ST. FRANCIS" since 1992, its use thereof has been merely confined to its realty projects within the Ortigas Center, as specifically mentioned. As its use of the mark is clearly limited to a certain locality, it cannot be said that there was substantial commercial use of the same recognized all throughout the country. Neither is there any showing of a mental recognition in buyers' and potential buyers' minds that products connected with the mark "ST. FRANCIS" are associated with the same source³⁵ – that is, the enterprise of respondent. Thus, absent any showing that there exists a clear goods/service-association between the realty projects located in the aforesaid area and herein respondent as the developer thereof, the latter cannot be said to have acquired a secondary meaning as to its use of the "ST. FRANCIS" mark.

In fact, even on the assumption that secondary meaning had been acquired, said finding only accords respondents protectional qualification under Section 168.1 of the IP Code as above quoted. Again, this does not automatically trigger the concurrence of the fraud element required under Section 168.2 of the IP Code, as exemplified by the acts mentioned in Section 168.3 of the same. Ultimately, as earlier stated, there can be no unfair competition without this element. In this respect, considering too the notoriety of the Shangri-La brand in the real estate industry which dilutes petitioners' propensity to merely ride on respondent's goodwill, the more reasonable conclusion is that the former's use of the marks "THE ST. FRANCIS TOWERS" and "THE ST. FRANCIS SHANGRI-LA PLACE" was meant only to identify, or at least associate, their real estate project/s with its geographical location.

- **Chartis Philippines Insurance, Inc. (formerly Philam Insurance Company, Inc.) Vs. Heung-A Shipping Corporation, et al./Heung-A Shipping Corporation, et al. Vs. Chartis**

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Philippines Insurance, Inc. (formerly Philam Insurance Company, Inc.) G.R. Nos. 187701/187812. July 23, 2014

The arguments proffered by the parties can be summed up into the following issues: (1) Whether the shipment sustained damage while in the possession and custody of HEUNG-A, and if so, whether HEUNG-A's liability can be limited to US\$500 per package pursuant to the COGSA; (2) Whether or not NOVARTIS/PHILAM failed to file a timely claim against HEUNG-A and/or WALLEM.

The uncontested results of the inspection survey conducted by Manila Adjusters Surveyors Company showed that sea water seeped into the panels/sidings and roofing of the container van. This was confirmed by the examination conducted by Hernandez, the chemist of PRECISION, on samples from the cartons, boxes, aluminum foil and laminated plastic packaging materials. Based on the laboratory examination results, the contents of the van were drenched by sea water, an element which is highly conspicuous in the high seas. It can thus be reasonably concluded that negligence occurred while the container van was in transit, in HEUNG-A's possession, control and custody as the carrier.

Although the container van had defects, they were not, however, so severe as to accommodate heavy saturation of sea water. The holes were tiny and the rusty portions did not cause gaps or tearing. Hence, the van was still in a suitable condition to hold the goods and protect them from natural weather elements or even the normal flutter of waves in the seas.

The scale of the damage sustained by the cargo inside the van could have been only caused by large volume of sea water since not a single package inside was spared. Aside from the defective condition of the van, some other circumstance or occurrence contributed to the damages sustained by the shipment. Since the presence of sea water is highly concentrated in the high seas and

considering HEUNG-A's failure to demonstrate how it exercised due diligence in handling and preserving the container van while in transit, it is liable for the damages sustained thereby.

As the carrier of the subject shipment, HEUNG-A was bound to exercise extraordinary diligence in conveying the same and its slot charter agreement with DONGNAMA did not divest it of such characterization nor relieve it of any accountability for the shipment.

Based on the testimony of Gonzales,³³ WALLEM's employee and witness, the charter party between HEUNG-A and DONGNAMA was a contract of affreightment and not a bare boat or demise charter.

A charter party has two types. *First*, it could be a contract of affreightment whereby the use of shipping space on vessels is leased in part or as a whole, to carry goods for others. The charter-party provides for the hire of vessel only, either for a determinate period of time (time charter) or for a single or consecutive voyage (voyage charter). The shipowner supplies the ship's stores, pay for the wages of the master and the crew, and defray the expenses for the maintenance of the ship.³⁷ The voyage remains under the responsibility of the carrier and it is answerable for the loss of goods received for transportation. The charterer is free from liability to third persons in respect of the ship.³⁸

Second, charter by demise or bareboat charter under which the whole vessel is let to the charterer with a transfer to him of its entire command and possession and consequent control over its navigation, including the master and the crew, who are his servants.³⁹ The charterer mans the vessel with his own people and becomes, in effect, the owner for the voyage or service stipulated and hence liable for damages or loss sustained by the goods transported.⁴⁰

Clearly then, despite its contract of affreightment with DONGNAMA, HEUNG-A

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remained responsible as the carrier, hence, answerable for the damages incurred by the goods received for transportation. "[C]ommon carriers, from the nature of their business and for reasons of public policy, are bound to observe *extraordinary diligence* and vigilance with respect to the safety of the goods and the passengers they transport. Thus, common carriers are required to render service with the greatest skill and foresight and 'to use all reasonable means to ascertain the nature and characteristics of the goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.'"⁴¹

"[C]ommon carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence."⁴² Further, under Article 1742 of the Civil Code, even if the loss, destruction, or deterioration of the goods should be caused by the faulty nature of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.

Here, HEUNG-A failed to rebut this *prima facie* presumption when it failed to give adequate explanation as to how the shipment inside the container van was handled, stored and preserved to forestall or prevent any damage or loss while the same was in its possession, custody and control.

PROTOP is solidarily liable with HEUNG-A for the lost/damaged shipment in view of the bill of lading the former issued to NOVARTIS. "A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order. It operates both as a receipt and as a

contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated."⁴³ PROTOP breached its contract with NOVARTIS when it failed to deliver the goods in the same quantity, quality and description as stated in Bill of Lading No. PROTAS 200387.

The CA did not err in applying the provisions of the COGSA specifically, the rule on Package Liability Limitation.

Under Article 1753 of the Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration. Since the subject shipment was being transported from South Korea to the Philippines, the Civil Code provisions shall apply. In all matters not regulated by the Civil Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,⁴⁴ such as the COGSA.

While the Civil Code contains provisions making the common carrier liable for loss/damage to the goods transported, it failed to outline the manner of determining the amount of such liability. Article 372 of the Code of Commerce fills in this gap, thus:

Article 372. The value of the goods which the carrier must pay in cases if loss or misplacement shall be determined in accordance with that declared in the bill of lading, the shipper not being allowed to present proof that among the goods declared therein there were articles of greater value and money.

In case, however, of the shipper's failure to declare the value of the goods in the bill of lading, Section 4, paragraph 5 of the COGSA provides:

Neither the carrier nor the ship shall in any event be or become liable for any loss

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or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading shall be *prima facie* evidence, but shall be conclusive on the carrier.

Hence, when there is a loss/damage to goods covered by contracts of carriage from a foreign port to a Philippine port and in the absence a shipper's declaration of the value of the goods in the bill of lading, as in the present case, the foregoing provisions of the COGSA shall apply. The CA, therefore, did not err in ruling that HEUNG-A, WALLEM and PROTOP's liability is limited to \$500 per package or pallet.⁴⁵

Consonant with the ruling in the recent *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*,⁴⁸ the prescriptive period for filing an action for lost/damaged goods governed by contracts of carriage by sea to and from Philippine ports in foreign trade is governed by paragraph 6, Section 3 of the COGSA which states:

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

It was further ruled in *Asian Terminals* that pursuant to the foregoing COGSA provision, failure to comply with the notice requirement shall not affect or prejudice the right of the shipper to bring suit within one year after delivery of the goods.

The consignee, NOVARTIS, received the subject shipment on January 5, 2001. PHILAM, as the subrogee of NOVARTIS, filed a claim against PROTOP on June 4, 2001, against WALLEM on October 12, 2001 and against HEUNG-A on December 11, 2001, or all within the one-year prescriptive period. Verily then, despite NOVARTIS' failure to comply with the three-day notice requirement, its subrogee PHILAM is not barred from seeking reimbursement from PROTOP, HEUNG-A and WALLEM because the demands for payment were timely filed.

- **Cesar V. Areza and Lolita B. Areza Vs. Express Savings Bank, Inc. and Michael Potenciano** G.R. No. 176697. September 10, 2014

The central issue is whether the Bank had the right to debit P1,800,000.00 from petitioners' accounts.

The fact that material alteration caused the eventual dishonor of the checks issued by PVAO is undisputed. In this case, before the alteration was discovered, the checks were already cleared by the drawee bank, the Philippine Veterans

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Bank. Three months had lapsed before the drawee dishonored the checks and returned them to Equitable-PCI Bank, the respondents' depository bank. And it was not until 10 months later when petitioners' accounts were debited. A question thus arises: What are the liabilities of the drawee, the intermediary banks, and the petitioners for the altered checks?

LIABILITY OF THE DRAWEE

Section 63 of Act No. 2031 or the Negotiable Instruments Law provides that the acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance. The acceptor is a drawee who accepts the bill. In *Philippine National Bank v. Court of Appeals*,¹⁴ the payment of the amount of a check implies not only acceptance but also compliance with the drawee's obligation.

In case the negotiable instrument is altered before acceptance, is the drawee liable for the original or the altered tenor of acceptance? There are two divergent interpretations proffered by legal analysts.¹⁵ The first view is supported by the leading case of *National City Bank of Chicago v. Bank of the Republic*.¹⁶ In said case, a certain Andrew Manning stole a draft and substituted his name for that of the original payee. He offered it as payment to a jeweler in exchange for certain jewelry. The jeweler deposited the draft to the defendant bank which collected the equivalent amount from the drawee. Upon learning of the alteration, the drawee sought to recover from the defendant bank the amount of the draft, as money paid by mistake. The court denied recovery on the ground that the drawee by accepting admitted the existence of the payee and his capacity to endorse.¹⁷

The second view is that the acceptor/drawee despite the tenor of his acceptance is liable only to the extent of the bill prior to alteration.²⁰ This view appears to be in consonance with Section 124 of the Negotiable Instruments Law

which states that a material alteration avoids an instrument except as against an assenting party and subsequent indorsers, but a holder in due course may enforce payment according to its original tenor. Thus, when the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client's account only for bona fide disbursements he had made. If the drawee did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the drawer's account which it was expected to treat with utmost fidelity.²¹ The drawee, however, still has recourse to recover its loss. It may pass the liability back to the collecting bank which is what the drawee bank exactly did in this case. It debited the account of Equitable-PCI Bank for the altered amount of the checks.

LIABILITY OF DEPOSITORY BANK AND COLLECTING BANK

A depository bank is the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.²² It is also the bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.²³ A collecting bank is defined as any bank handling an item for collection except the bank on which the check is drawn.²⁴

When petitioners deposited the check with the Bank, they were designating the latter as the collecting bank. This is in consonance with the rule that a negotiable instrument, such as a check, whether a manager's check or ordinary check, is not legal tender. As such, after receiving the deposit, under its own rules, the Bank shall credit the amount in petitioners' account or infuse value thereon only after the drawee bank shall have paid the amount of the check or the check has been cleared for deposit.²⁵

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The Bank and Equitable-PCI Bank are both depositary and collecting banks.

A depositary/collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting." It has been repeatedly held that in check transactions, the depositary/collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.²⁶ If any of the warranties made by the depositary/collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check.²⁷

The law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct.²⁸

As collecting banks, the Bank and Equitable-PCI Bank are both liable for the amount of the materially altered checks. Since Equitable-PCI Bank is not a party to this case and the Bank allowed its account with Equitable-PCI Bank to be debited, it has the option to seek recourse against the latter in another forum.

24-HOUR CLEARING RULE

Petitioners faulted the drawee bank for not following the 24-hour clearing period because it was only in August 2000 that the drawee bank notified Equitable-PCI that there were material alterations in the checks.

We do not subscribe to the position taken by petitioners that the drawee bank was at fault because it did not follow the 24-hour clearing period which provides that when a drawee bank fails to return a forged or altered check to the collecting bank within the 24-hour clearing period, the collecting bank is absolved from liability.

Antonio Viray, in his book *Handbook on Bank Deposits*, elucidated:

It is clear that the so-called "24-hour" rule has been modified. In the case of *Hongkong & Shanghai vs. People's Bank* reiterated in *Metropolitan Bank and Trust Co. vs. FNCB*, the Supreme Court strictly enforced the 24-hour rule under which the drawee bank forever loses the right to claim against presenting/collecting bank if the check is not returned at the next clearing day or within 24 hours. Apparently, the commercial banks felt strict enforcement of the 24-hour rule is too harsh and therefore made representations and obtained modification of the rule, which modification is now incorporated in the Manual of Regulations. Since the same commercial banks controlled the Philippine Clearing House Corporation, incorporating the amended rule in the PCHC Rules naturally followed.

As the rule now stands, the 24-hour rule is still in force, that is, any check which should be refused by the drawee bank in accordance with long standing and accepted banking practices shall be returned through the PCHC/local clearing office, as the case may be, not later than the next regular clearing (24-hour). The modification, however, is that items which have been the subject of material

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alteration or bearing forged endorsement may be returned even beyond 24 hours so long that the same is returned within the prescriptive period fixed by law. The consensus among lawyers is that the prescriptive period is ten (10) years because a check or the endorsement thereon is a written contract. Moreover, the item need not be returned through the clearing house but by direct presentation to the presenting bank.²⁹

In short, the 24-hour clearing rule does not apply to altered checks.

LIABILITY OF PETITIONERS

the Bank cannot debit the savings account of petitioners. A depository/collecting bank may resist or defend against a claim for breach of warranty if the drawer, the payee, or either the drawee bank or depository bank was negligent and such negligence substantially contributed to the loss from alteration. In the instant case, no negligence can be attributed to petitioners. We lend credence to their claim that at the time of the sales transaction, the Bank's branch manager was present and even offered the Bank's services for the processing and eventual crediting of the checks. True to the branch manager's words, the checks were cleared three days later when deposited by petitioners and the entire amount of the checks was credited to their savings account.

ON LEGAL COMPENSATION

Petitioners insist that the Bank cannot be considered a creditor of the petitioners because it should have made a claim of the amount of P1,800,000.00 from Equitable-PCI Bank, its own depository bank and the collecting bank in this case and not from them.

The Bank cannot set-off the amount it paid to Equitable-PCI Bank with petitioners' savings account. Under Art. 1278 of the New Civil Code, compensation shall take place when two persons, in their own right, are creditors and debtors of each other. And the requisites for legal compensation

are:

Art. 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound to the principal creditor of the other;
- (2) That both debts consist in a sum of money, of the same kind, and also of the same quality;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither of them there be any persons and communicated in due time to the

It is well-settled that the relationship of the depositors and the Bank or similar institution is that of creditor-debtor. 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. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.³³

But as previously discussed, petitioners are not liable for the deposit of the altered checks. The Bank, as the depository and collecting bank ultimately bears the loss. Thus, there being no indebtedness to the Bank on the part of petitioners, legal compensation cannot take place.

- **Roberto Co Vs. Keng Huan Jerry Yeung and Emma Yeung** G.R. No. 212705. September 10, 2014

• The Issue Before the Court

- The sole issue for the Court's resolution is whether or not the CA correctly upheld Co's liability for unfair competition.

Unfair competition is defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and

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probable effect of deceiving the public. This takes place where the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.¹⁸

Here, it has been established that Co conspired with the Laus in the sale/distribution of counterfeit Greenstone products to the public, which were even packaged in bottles identical to that of the original, thereby giving rise to the presumption of fraudulent intent.¹⁹ In light of the foregoing definition, it is thus clear that Co, together with the Laus, committed unfair competition, and should, consequently, be held liable therefor. To this end, the Court finds the award of P300,000.00 as temperate damages to be appropriate in recognition of the pecuniary loss suffered by Sps. Yeung, albeit its actual amount cannot, from the nature of the case, as it involves damage to goodwill, be proved with certainty.²⁰ The awards of moral and exemplary damages, attorney's fees, and costs of suit are equally sustained for the reasons already fully-explained by the courts a quo in their decisions.

Although liable for unfair competition, the Court deems it apt to clarify that Co was properly exculpated from the charge of trademark infringement considering that the registration of the trademark "Greenstone" – essential as it is in a trademark infringement case – was not proven to have existed during the time the acts complained of were committed, *i.e.*, in May 2000. In this relation, the distinctions between suits for trademark infringement and unfair competition prove useful: (a) the former is the unauthorized use of a trademark, whereas the latter is the passing off of one's goods as those of another; (b) fraudulent intent is unnecessary in the former, while it is essential in the latter; and (c) in the former, prior registration of the trademark is a pre-requisite to the action, while it is not necessary in the latter.²¹

• **Nestor Ching and Andrew Wellington Vs. Subic Bay Gold and Country Club, et al.** G.R. No. 174353. September 10, 2014

- At the outset, it should be noted that the Complaint in question appears to have been filed only by the two petitioners, namely Nestor Ching and Andrew Wellington, who each own one stock in the respondent corporation SBGCCI. While the caption of the Complaint also names the "Subic Bay Golfers and Shareholders Inc. for and in behalf of all its members," petitioners did not attach any authorization from said alleged corporation or its members to file the Complaint. Thus, the Complaint is deemed filed only by petitioners and not by SBGSI.
-
- On the issue of whether the Complaint is indeed a derivative suit, we are mindful of the doctrine that 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.²⁰ We have also held that the body rather than the title of the complaint determines the nature of an action.²¹
-
- In *Cua, Jr. v. Tan*,²² the Court previously elaborated on the distinctions among a derivative suit, an individual suit, and a representative or class suit:XXXXXX

The reliefs sought in the Complaint, namely that of enjoining defendants from acting as officers and Board of Directors of the corporation, the appointment of a receiver, and the prayer for damages in the amount of the decrease in the value of the shares of stock, clearly show that the Complaint was filed to curb the alleged mismanagement of SBGCCI. The causes of

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action pleaded by petitioners do not accrue to a single shareholder or a class of shareholders but to the corporation itself.

However, as minority stockholders, petitioners do not have any statutory right to override the business judgments of SBGCCCI's officers and Board of Directors on the ground of the latter's alleged lack of qualification to manage a golf course. Contrary to the arguments of petitioners, Presidential Decree No. 902-A, which is entitled REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT, does not grant minority stockholders a cause of action against waste and diversion by the Board of Directors, but merely identifies the jurisdiction of the SEC over actions already authorized by law or jurisprudence. It is settled 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.²³

At this point, we should take note that while there were allegations in the Complaint of fraud in their subscription agreements, such as the misrepresentation of the Articles of Incorporation, 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.²⁴

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.

The RTC dismissed the Complaint for failure to comply with the second and fourth requisites above.

Upon a careful examination of the Complaint, this Court finds that the same should not have been dismissed on the ground that it is a nuisance or harassment suit. Although the shareholdings of petitioners are indeed only two out of the 409 alleged outstanding shares or 0.24%, the Court has held that it is enough that a member or a minority of stockholders file a derivative suit for and in behalf of a corporation.²⁵

- With regard, however, to the second requisite, we find that petitioners failed to state with particularity in the Complaint that they had exerted all reasonable

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efforts to exhaust all remedies available under the articles of incorporation, by-laws, and laws or rules governing the corporation to obtain the relief they desire. The Complaint contained no allegation whatsoever of any effort to avail of intra-corporate remedies. Indeed, 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.

We ruled in *Yu v. Yukayguan*²⁶:

- The wordings of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies are simple and do not leave room for statutory construction. The second paragraph thereof 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.

- **WPM International Trading, Inc. and Warlito P. Manlapaz Vs. Fe Corazon Labayen** G.R. No. 182770. September 17, 2014

• The Issues

- The core issues are: (1) whether WPM is a mere instrumentality,

alter-ego, and business conduit of Manlapaz; and (2) whether Manlapaz is jointly and severally liable with WPM to the respondent for reimbursement, damages and interest.

•

On the Application of the Principle of Piercing the Veil of Corporate Fiction

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.⁹ Following this principle, 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. Thus, a director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation;¹⁰ 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.**¹¹

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

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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.¹²

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*,¹³ 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.¹⁴

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 personality of 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.

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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.¹⁵ 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.

On the Award of Moral Damages

On the award of moral damages, we find the same in order in view of WPM's unjustified refusal to pay a just debt. Under Article 2220 of the New Civil Code,¹⁶ moral damages may be awarded in cases of a breach of contract where the defendant acted fraudulently or in bad faith or was guilty of gross negligence amounting to bad faith.

In the present case, when payment for the balance of the renovation cost was demanded, WPM, instead of complying with its obligation, denied having authorized the respondent to contract in its behalf and accordingly refused to pay. Such cold refusal to pay a just debt amounts to a breach of contract in bad faith, as contemplated by Article 2220. Hence, the CA's order to pay moral damages was in order.

- **Alfredo L. Villamor, Jr. Vs. John S. Umale, in substitution fo Hernando F. Balmores** G.R. No. 172843. September 24, 2014

• II

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- **Respondent Balmores' action in the trial court is not a derivative suit**
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- A derivative suit is an action filed by stockholders to enforce a corporate action.⁵⁶ It is an exception to the general rule that the corporation's power to sue⁵⁷ is exercised only by the board of directors or trustees.⁵⁸
-
- Individual stockholders may be allowed to sue on behalf of the corporation whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation.⁵⁹ It is allowed when the "directors [or officers] are guilty of breach of . . . trust, [and] not of mere error of judgment."⁶⁰ In derivative suits, the real party in interest is the corporation, and the suing stockholder is a mere nominal party.⁶¹

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) provides the five (5) requisites⁶³ for filing derivative suits:

SECTION 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 cause of action occurred and at the time the action was filed;
- (2) He exerted all reasonable efforts, and alleged to exhaust all remedies available under the charter, laws, or governing the corporation or partnership to redress the wrong;
- (3) No appraisal rights are available for the action;
- (4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

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The fifth requisite for filing derivative suits, while not included in the enumeration, is implied in the first paragraph of Rule 8, Section 1 of the Interim Rules: The action brought by the stockholder or member must be "in the name of [the] corporation or association. ..." This requirement has already been settled in jurisprudence.

- Thus, in *Western Institute of Technology, Inc., et al v. Solas, et al*,⁶⁴ this court said that "[a]mong 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 [him]."

Moreover, it is important that the corporation be made a party to the case.⁶⁹

This court explained in *Asset Privatization Trust v. Court of Appeals*⁷⁰ why it is a condition *sine qua non* that the corporation be impleaded as party in derivative suits. Thus:

Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res judicata* against it.⁷¹

In the same case, this court enumerated the reasons for disallowing a direct

individual suit.

The reasons given for not allowing direct individual suit are:

- (1) . . . "the universally recognized doctrine of legal or equitable to the corporate property for the benefit of the stockholders." In other words, it would conflict with the separate corporate entity.
- (2) . . . that the prior rights of the creditors must be protected. In the case of *Evangelista v. Santos*, that damages for themselves for that would result among them of part of the corporate assets for the liquidation of its debts and liabilities, so that Section 16 of the Corporation Law. . .";
- (3) the filing of such suits would conflict with the protection of all concerned;
- (4) it would produce wasteful multiplicity of suits;
- (5) it would involve confusion in ascertaining the damages recoverable by the corporation.

While it is true that the basis for allowing stockholders to file derivative suits on behalf of corporations is based on equity, the above legal requisites for its filing must necessarily be complied with for its institution.⁷³

Respondent Balmores' action in the trial court failed to satisfy all the requisites of a derivative suit.

Respondent 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, respondent Balmores was not able to show that this comprised -all the remedies available under the articles of incorporation, by-laws, laws, or rules governing PPC.

- An allegation that appraisal rights were not available for the acts complained of is another requisite for filing derivative suits under Rule 8, Section 1(3) of the Interim Rules.

Section 81 of the Corporation Code provides the instances of appraisal

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right:

SEC. 81. *Instances of appraisal right.*— Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

- In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
- In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and
- In case of merger or consolidation.

Section 82 of the Corporation Code provides that the stockholder may exercise the right if he or she voted against the proposed corporate action and if he made a written demand for payment on the corporation within thirty (30) days after the date of voting.

Respondent Balmores complained about the alleged inaction of PPC's directors in his letter informing them that Villamor should be made to deliver to PPC and account for MC Home Depot's checks or their equivalent value. He alleged that these are devices or schemes amounting to fraud or misrepresentation detrimental to the corporation's and the stockholders' interests. He also alleged that the directors' inaction placed PPC's assets in imminent and/or actual dissipation, loss, wastage, and destruction.

Granting that (a) respondent Balmores' attempt to communicate with the other PPC directors already comprised all the available remedies that he could have exhausted and (b) the corporation was under full- control of petitioners that exhaustion of remedies became

impossible or futile,⁷⁴ respondent Balmores failed to allege that appraisal rights were not available for the acts complained of here.

- Neither did respondent Balmores implead PPC as party in the case nor did he allege that he was filing on behalf of the corporation.

Individual suits are filed when the cause of action belongs to the individual stockholder personally, and not to the stockholders as a group or to the corporation, e.g., denial of right to inspection and denial of dividends to a stockholder.⁷⁶ If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.⁷⁷

In this case, respondent Balmores filed an individual suit. His intent was very clear from his manner of describing the nature of his action:

- 1.1 This is an action under Section 1 (a) (1), Rule 1 of the Interim Rules of Procedure for Intra-corporate Controversies, involving devices or schemes employed by, or acts of, the defendants as board of directors, business associates and officers of Pasig Printing Corporation (PPC), amounting to fraud or misrepresentation, **which are detrimental to the interest of the plaintiff as stockholder of PPC.**⁷⁸

Respondent 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'.

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The essence of a derivative suit is that it must be filed on behalf of the corporation. This is because the cause of action belongs, primarily, to the corporation. The stockholder who sues on behalf of a corporation is merely a nominal party.

- 2 Respondent Balmores' intent to file an individual suit removes it from the coverage of derivative suits.

Respondent Balmores has no cause of action that would entitle him to the reliefs sought

Corporations have a personality that is separate and distinct from their stockholders and directors. A wrong to the corporation does not necessarily create an individual cause of action. "A cause of action is the act or omission by which a party violates the right of another."⁸⁰ A cause of action must pertain to complainant if he or she is to be entitled to the reliefs sought.

In this case, respondent Balmores did not allege any cause of action that is personal to him. His allegations are limited to the facts that PPC's directors waived their rights to rental income in favor of Villamor's law firm without consideration and that they failed to take action when Villamor refused to turn over the amounts to PPC. These are wrongs that pertain to PPC. Therefore, the cause of action belongs to PPC — not to respondent Balmores or any stockholders as individuals.

For this reason, respondent Balmores is not entitled to the reliefs sought in the complaint. Only the corporation, or arguably the stockholders as a group, is entitled to these reliefs, which should have been sought in a proper derivative suit filed on behalf of the corporation.

PPC will not be bound by a decision granting the application for the appointment of a receiver or management committee. Since it was not impleaded in the complaint, the courts did not acquire

jurisdiction over it. On this matter, it is an indispensable party, without which, no final determination can be had.

Hence, it is not only respondent Balmores' failure to implead PPC that is fatal to his action, as petitioners point out. It is the fact that he alleged no cause of action that pertains personally to him that disqualifies him from the reliefs he sought in his complaint.

Appointment of a management committee was not proper

Assuming that respondent Balmores has an individual cause of action, the Court of Appeals 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.⁸³ 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) [p]aralysation of its business operations that may be prejudicial to' the interest of the minority stockholders, parties-litigants, or the general public."⁸⁴

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 the management of the corporation and will have the management powers specified in law.⁸⁵ This may have a negative effect on the operations and affairs of the corporation with third parties,⁸⁶ as persons who are more familiar with its operations are necessarily dislodged from their positions in favor of appointees who are strangers to the corporation's operations and affairs.

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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. This court takes judicial notice that the goodwill money of PI 8,000,000.00 and the rental payments of P4,500,000.00 every month are not meager amounts only to be waived without any consideration. It is, therefore, enough to constitute loss or dissipation of assets under the Interim Rules.

Respondent 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. Respondent Balmores did not prove otherwise. He, therefore, failed to show at least one of the requisites for appointment of a receiver or management committee.

The Court of Appeals had no jurisdiction to appoint the receiver or management committee

The Court of Appeals has no power to appoint a receiver or management committee. The Regional Trial Court has original and exclusive jurisdiction⁸⁹ to hear and decide intra-corporate controversies,⁹⁰ including incidents of such controversies.⁹¹ These incidents include applications for the appointment of receivers or management committees.

"The receiver and members of the management committee . . . are considered officers of the court and shall be under its control and supervision."⁹² They are required to report to the court on the status of the corporation within sixty (60) days from their appointment and every three (3) months after.⁹³

When respondent Balmores filed his petition for *certiorari* with the Court of Appeals, there was still a pending action in the trial court. No less than the Court of Appeals stated that it allowed respondent Balmores' petition under Rule 65 because the order or resolution in question was an

interlocutory one. This means that jurisdiction over the main case was still lodged with the trial court.

The court making the appointment controls and supervises the appointed receiver or management committee. Thus, the Court of Appeals' appointment of a management committee would result in an absurd scenario wherein while the main case is still pending before the trial court, the receiver or management committee reports' to the Court of Appeals.

- **Subic Bay Legend Resorts and Casinos, Inc. Vs. Bernard C. Fernandez** G.R. No. 193426. September 29, 2014

Petitioner's underlying theory is that the subject casino chips were in fact stolen by its employee Cabrera, then handed over to respondent's brothers, Ludwin and Deoven, for encashment at the casino; that Ludwin and Deoven played at the casino only for show and to conceal their true intention, which is to encash the chips; that respondent's claim that he owned the chips, as they were given to him in payment of services he rendered to a Chinese client, is false.

Moreover, if petitioner should stick to its theory that Cabrera stole the subject casino chips, then its failure to file a criminal case against the latter – including Ludwin and Deoven for that matter – up to this point certainly does not help to convince the Court of its position, especially considering that the supposed stolen chips represent a fairly large amount of money. Indeed, for purposes of this proceeding, there appears to be no evidence on record – other than mere allegations and suppositions – that Cabrera stole the casino chips in question; such conclusion came unilaterally from petitioner, and for it to use the same as foundation to the claim that Ludwin, Deoven and respondent are dealing in stolen chips is clearly irregular and unfair.

Thus, there should be no basis to suppose that the casino chips found in Ludwin's and Deoven's possession were stolen; petitioner acted arbitrarily in confiscating

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the same without basis. Their Joint Affidavit – which was later recanted – does not even bear such fact; it merely states that the chips came from Cabrera. If it cannot be proved, in the first place, that Cabrera stole these chips, then there is no more reason to suppose that Ludwin and Deoven were dealing in or possessed stolen goods; unless the independent fact that Cabrera stole the chips can be proved, it cannot be said that they must be confiscated when found to be in Ludwin's and Deoven's possession.

It is not even necessary to resolve whether Ludwin's and Deoven's Joint Affidavit was obtained by duress or otherwise; the document is irrelevant to petitioner's cause, as it does not suggest at all that Cabrera stole the subject casino chips. At most, it only shows that Cabrera gave Ludwin and Deoven casino chips, if this fact is true at all – since such statement has since been recanted.

The fact that Ludwin and Deoven appear to be indecisive as to who gave them the casino chips does not help petitioner at all. It cannot lead to the conclusion that Cabrera stole the chips and then gave them to the two; as earlier stated, petitioner had to prove this fact apart from Ludwin's and Deoven's claims, no matter how incredible they may seem.

Though casino chips do not constitute legal tender,²⁴ there is no law which prohibits their use or trade outside of the casino which issues them. In any case, it is not unusual – nor is it unlikely – that respondent could be paid by his Chinese client at the former's car shop with the casino chips in question; said transaction, if not common, is nonetheless not unlawful. These chips are paid for anyway; petitioner would not have parted with the same if their corresponding representative equivalent – in legal tender, goodwill, or otherwise – was not received by it in return or exchange. Given this premise – that casino chips are considered to have been exchanged with their corresponding

representative value – it is with more reason that this Court should require petitioner to prove convincingly and persuasively that the chips it confiscated from Ludwin and Deoven were indeed stolen from it; if so, any Tom, Dick or Harry in possession of genuine casino chips is presumed to have paid for their representative value in exchange therefor. If petitioner cannot prove its loss, then Article 559 cannot apply; the presumption that the chips were exchanged for value remains.

- **Gerardo Lanuza, Jr. and Antonio O. Olbes Vs. BF Corporation, et al.** G.R. No. 174938. October 1, 2014

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.

The issue in this case is 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.

Thus, 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,⁶⁹ which was approved as early as 1949. It was later institutionalized by the approval of Republic Act No. 876,⁷⁰ which expressly authorized, made valid, enforceable, and irrevocable parties' decision to submit their controversies, including incidental issues, to arbitration.

Indeed, as petitioners point out, their

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personalities as directors of Shangri-La are separate and distinct from Shangri-La.

A corporation is an artificial entity created by fiction of law.⁷⁶ 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,⁷⁷ 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. Section 36 of the Corporation Code enumerates some of a corporation's powers,

Because a corporation's existence is only by fiction of law, it can only exercise its rights and powers through its directors, officers, or agents, who are all natural persons. A corporation cannot sue or enter into contracts without them.

A consequence of a corporation's separate personality is that consent by a corporation through its representatives is not consent of the representative, personally. Its obligations, incurred through official acts of its representatives, are its own. A stockholder, director, or representative does not become a party to a contract just because a corporation executed a JC contract through that stockholder, director or representative.

Hence, a corporation's representatives are generally not bound by the terms of the contract executed by the corporation. They are not personally liable for obligations and liabilities incurred on or in behalf of the corporation.

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.

Piercing the corporate veil is warranted when "[the separate personality of a corporation] 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."⁸⁵ It is also warranted in 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."⁸⁶

When 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.

Among the persons who may be treated as the corporation itself under certain circumstances are its directors and officers. Section 31 of the Corporation Code provides the instances when directors, trustees, or officers may become liable for corporate acts:

Based on the above provision, a director, trustee, or officer of a corporation may be made solidarily liable with it for all damages suffered by the corporation, its stockholders or members, and other persons in any of the following

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cases:

- a) The director or trustee willfully and knowingly acted as a separate entity, unlawful corporation, alleging malice or bad faith on the part of the directors and the corporation;
- b) The director or trustee was guilty of gross negligence in directing the affairs of the corporation, intending to cause the corporation to incur losses;
- c) The director or trustee acquired personal or proprietary interest in the corporation, 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.⁹⁰ They are alleging that contracts executed by the corporation are

Solidary liability with the corporation will also attach in the following instances:

- a) "When a director or officer has consented to the issuance of watered stocks or knowledge thereof, did not forthwith file with the court a proper affidavit of objection thereto";
- b) "When a director, trustee or officer has contractually agreed or stipulated to cause himself and solidarity liable with the corporation";⁸⁸ and
- c) "When a director, trustee or officer is made, by the specific provisions of law, personally liable for corporate action."⁸⁹

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, have voted or assented to separate the corporation, alleging malice or bad faith on the part of the directors and the corporation, intending to cause the corporation to incur losses, or 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.⁹⁰ They are alleging that contracts executed by the corporation are

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.

It is because the personalities of petitioners and the corporation may later be found to be indistinct that we rule that petitioners may be compelled to submit to arbitration.

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 solidarity 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.

- **Sun Life of Canada (Philippines), Inc. Vs. Sandra Tan Kit and The Estate of the Deceased Norberto Tan Kit** G.R. No. 183272. October 15, 2014

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The Court of Appeals' (CA) imposition of 12% interest on the P13,080.93 premium refund is the only matter in question in this case.

Nature of interest imposed by the CA

There are two kinds of interest – monetary and compensatory.

"Monetary interest refers to the compensation set by the parties for the use or forbearance of money."²⁵ No such interest shall be due unless it has been expressly stipulated in writing.²⁶ "On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts."²⁷ The interest mentioned in Articles 2209 and 2212²⁸ of the Civil Code applies to compensatory interest.²⁹

Clearly and contrary to respondents' assertion, the interest imposed by the CA is not monetary interest because aside from the fact that there is no use or forbearance of money involved in this case, the subject interest was not one which was agreed upon by the parties in writing. This being the case and judging from the tenor of the CA, to wit:

Accordingly, [petitioner] is ordered to reimburse [respondents] the sum of P13,080.93 representing the [premium] paid by the insured **with interest at the rate of 12% per annum from time of death of the insured until fully paid.**³⁰

there can be no other conclusion than that the interest imposed by the appellate court is in the nature of compensatory interest.

The CA incorrectly imposed compensatory interest on the premium refund reckoned from the time of death of the insured until fully paid

As a form of damages, compensatory interest is due only if the obligor is proven

to have failed to comply with his obligation.³¹

In this case, it is undisputed that simultaneous to its giving of notice to respondents that it was rescinding the policy due to concealment, petitioner tendered the refund of premium by attaching to the said notice a check representing the amount of refund. However, respondents refused to accept the same since they were seeking for the release of the proceeds of the policy. Because of this discord, petitioner filed for judicial rescission of the contract. Petitioner, after receiving an adverse judgment from the RTC, appealed to the CA. And as may be recalled, the appellate court found Norberto guilty of concealment and thus upheld the rescission of the insurance contract and consequently decreed the obligation of petitioner to return to respondents the premium paid by Norberto. Moreover, we find that petitioner did not incur delay or unjustifiably deny the claim.

Based on the foregoing, we find that petitioner properly complied with its obligation under the law and contract. Hence, it should not be made liable to pay compensatory interest.

Considering the prevailing circumstances of the case, we hereby direct petitioner to reimburse the premium paid within 15 days from date of finality of this Decision. If petitioner fails to pay within the said period, then the amount shall be deemed equivalent to a forbearance of credit.³² In such a case, the rate of interest shall be 6% *per annum*.³³

- **Philippine Bank of Communications Vs. Basic Polyprinters and Packaging Corporation** G.R. No. 187581. October 20, 2014

- I
- **Liquidity was not an issue in a petition for rehabilitation**
- The petitioner contends that the sole issue in corporate

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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.²⁰

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- We disagree with the contention of the petitioner.
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- 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.*"²¹ 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.²²
-
- In *Asiatrust Development Bank v. First Aikka Development, Inc.*,²³ we 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,

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,²⁵ who was Cacho in this case.

Moreover, Republic Act No. 10142 (*Financial Rehabilitation and Insolvency Act (FRIA) of 2010*), a law that is applicable hereto,²⁶ has defined a corporate debtor as a corporation duly organized and existing under Philippine laws that *has become insolvent*.²⁷ 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.*"²⁸ As such, the contention that rehabilitation becomes inappropriate because of the perceived insolvency of Basic Polyprinters was incorrect.

II

A material financial commitment is significant in a rehabilitation plan

The petitioner next argues that Basic Polyprinters did not present any material financial commitment in the rehabilitation plan, thereby violating Section 5, Rule 4 of the Interim Rules, the rule applicable at the time of the filing of the petition for rehabilitation. In that regard, Basic Polyprinters made no commitment in relation to the infusion of fresh capital by its stakeholders,²⁹ and presented only a "lopsided" protracted repayment schedule that included the *dacion en pago* involving an asset mortgaged to the petitioner itself in favor of another creditor.

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.³⁰ 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.³¹

The commitment to add P10,000,000.00

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working capital appeared to be doubtful considering that the insurance claim from which said working capital would be sourced had already been written-off by Basic Polyprinters's affiliate, Wonder Book Corporation.³⁴ A claim that has been written-off is considered a bad debt or a worthless asset,³⁵ and cannot be deemed a material financial commitment for purposes of rehabilitation. At any rate, the proposed additional P10,000,000.00 working capital was insufficient to cover at least half of the shareholders' deficit that amounted to P23,316,044.00 as of June 30, 2006.

Basic Polyprinters's rehabilitation plan likewise failed to offer any proposal on how it intended to address the low demands for their products and the effect of direct competition from stores like SM, Gaisano, Robinsons, and other malls. Even the P245 million insurance claim that was supposed to cover the destroyed inventories worth P264 million appears to have been written-off with no probability of being realized later on.

We observe, too, that Basic Polyprinters's proposal to enter into the *dacion en pago* to create a source of "fresh capital" was not feasible because the object thereof would not be its own property but one belonging to its affiliate, TOL Realty and Development Corporation, a corporation also undergoing rehabilitation. Moreover, the negotiations (for the return of books and magazines from Basic Polyprinters's trade creditors) did not partake of a voluntary undertaking because no actual financial commitments had been made thereon.

Worthy of note here is that Wonder Book Corporation was a sister company of Basic Polyprinters, being one of the corporations that had filed the joint petition for suspension of payments and rehabilitation in SEC Case No. 031-04 adverted to earlier. Both of them submitted identical commitments in their respective rehabilitation plans. As a result, as the Court observed in *Wonder Book*,³⁷ the commitments by Basic Polyprinters could

not be considered as firm assurances that could convince creditors, future investors and the general public of its financial and operational viability.

Due to the rehabilitation plan being an indispensable requirement in corporate rehabilitation proceedings,³⁸ Basic Polyprinters was expected to exert a conscious effort in formulating the same, for such plan would spell the future not only for itself but also for its creditors and the public in general. The contents and execution of the rehabilitation plan could not be taken lightly.

We are not oblivious to the plight of corporate debtors like Basic Polyprinters that have inevitably fallen prey to economic recession and unfortunate incidents in the course of their operations. However, we must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors. In doing so here, we cannot now find the rehabilitation plan for Basic Polyprinters to be genuine and in good faith, for it was, in fact, unilateral and detrimental to its creditors and the public.

- **Securities and Exchange Commission Vs. Court of Appeals, et al./Astra Securities Corporation Vs. Omico Corporation, et al.** G.R. Nos. 187702/189014. October 22, 2014

• ISSUE

- Whether the SEC has jurisdiction over controversies arising from the validation of proxies for the election of the directors of a corporation.

OUR RULING

About a month after the CA issued the assailed Decision, this Court promulgated *GSIS v. CA*,³¹ which squarely answered the above issue in the negative.

In that case, we observed that Section 6³²(g) of Presidential Decree No. (P.D.) 902-A dated 11 March 1976 conferred on SEC the power "[t]o pass upon the validity of the issuance and use of proxies and

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voting trust agreements for absent stockholders or members.” Section 6, however, opens thus: “In order to effectively exercise such jurisdiction x x x.” This opening clearly refers to the preceding Section 5.³³ The Court pointed out therein that the power to pass upon the validity of proxies was merely incidental or ancillary to the powers conferred on the SEC under Section 5 of the same decree. With the passage of the SRC, the powers granted to SEC under Section 5 were withdrawn, together with the incidental and ancillary powers enumerated in Section 6.

While the regular courts now had the power to hear and decide cases involving controversies in the election of directors, it was not clear whether the SRC also transferred to these courts the incidental and ancillary powers of the SEC as enumerated in Section 6 of P.D. 902-A. Thus, in *GSIS v. CA*, it was necessary for the Court to determine whether the action to invalidate the proxies was intimately tied to an election controversy. Hence, the Court pronounced:

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.**

This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate

proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. 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.**

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 aforementioned 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

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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.³⁴ x x x.

The ruling harmonizes the seeming conflict between the Amended SRC Rules promulgated by the SEC and the Interim Rules of Procedure Governing Intra-Corporate Disputes promulgated by the Court.

SRC Rule 20(11)(b)(xxi) of the Amended SRC Rules provides:

SRC RULE 20.

Disclosures to Stockholders Prior to Meeting
(formerly, SRC Rule 20 – The Proxy Rule)

x x x x

11. Other Procedural Requirements

x x x x

b. Proxy

x x x x

xxi. **In the validation of proxies**, a special committee of inspectors shall be designated or appointed by the Board of Directors which shall be empowered to pass on the validity of proxies. **Any dispute that may arise pertaining thereto, shall be resolved by the Securities and Exchange Commission upon formal complaint filed by the aggrieved party, or by the SEC officer supervising the proxy validation process.** (Emphasis supplied)

On the other hand, these are the provisions of Section 1, Rule 1; and Section 2, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Disputes:

RULE 1 General Provisions

SECTION 1. (a) Cases Covered – These Rules shall govern the procedure to be observed in civil cases involving the following:

a) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

b) 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;

c) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

d) Derivative suits; and

e) Inspection of corporate books.

x x x x

RULE 6 Election Contests

x x x x

SECTION 2. Definition. – 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

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incorporation or by-laws so provide.
(Emphases supplied)

The Court explained that the power of the SEC to regulate proxies remains in place in instances when stockholders vote on matters other than the election of directors.³⁵ The test is whether the controversy relates to such election. All matters affecting the manner and conduct of the election of directors are properly cognizable by the regular courts. Otherwise, these matters may be brought before the SEC for resolution based on the regulatory powers it exercises over corporations, partnerships and associations.

Astra endeavors to remove the instant case from the ambit of *GSIS v. CA* by arguing that 1) the validation of proxies in this case relates to the determination of the existence of a quorum; and 2) no actual voting for the members of the board of directors was conducted, as the directors were merely elected by motion.

Indeed, the validation of proxies in this case relates to the determination of the existence of a quorum. Nonetheless, it is a quorum for the election of the directors, and, as such, which requires the presence – in person or by proxy – of the owners of the majority of the outstanding capital stock of Omico.³⁶ Also, the fact that there was no actual voting did not make the election any less so, especially since Astra had never denied that an election of directors took place.

We find no merit either in the proposal of Astra regarding the “two (2) viable, non-exclusive and successive legal remedies to question the validity of proxies.”³⁷ It suggests that the power to pass upon the validity of proxies to determine the existence of a quorum prior to the conduct of the stockholders’ meeting should lie with the SEC; but, after the stockholders’ meeting, questions regarding the use of invalid proxies in the election of directors should be cognizable by the regular courts, since there was already an election

to speak of.

First, this interpretation is akin to the argument struck down by the Court in *GSIS v. CA*. If the Court adopts the suggestion, “we would be perpetually confronted with the spectacle of election controversies being heard and adjudicated by both the SEC and the regular courts, made possible through a mere allegation that the antecedent x x x process was errant, but the competing cases [were] filed with one objective in mind – to affect the outcome of the election of the board of directors.”³⁸

Second, the validation of proxies serves a number of purposes, including determining the existence of a quorum and ascertaining the authenticity of proxies to be used for the election of directors at the stockholders’ meeting. Section 2, Rule 6, of the Interim Rules of Procedure Governing Intra-Corporate Disputes provides that an election contest covers any controversy or dispute involving the validation of proxies, in general. Thus, it can only refer to all the beneficial purposes that validation of proxies can bring about when made in connection with a forthcoming election of directors. Thus, there is no point in making distinctions between who has jurisdiction before and who has jurisdiction after the election of directors, as all controversies related thereto – whether before, during or after – shall be passed upon by regular courts as provided by law.

The Court closes with an observation.

As in the instant cases, *GSIS v. CA* is a consolidation of two cases, one of which was filed by a private party and the other by the SEC itself. In both cases, the parties were aggrieved by the CA ruling, so they filed the cases seeking a pronouncement from the Court that it recognizes the jurisdiction of the SEC over the controversy.

Calling to mind established jurisprudential

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principles, the Court therein ruled that quasi-judicial agencies do not have the right to seek the review of an appellate court decision reversing any of their rulings.³⁹ This is because they are not real parties-in-interest. Thus, the Court expunged the petition filed by the SEC for the latter's lack of capacity to file the suit. So it must be in the instant cases.

Forest Hills Gold and Country Club, Inc. Vs. Gardpro, Inc. G.R. No. 164686. October 22, 2014

The articles of incorporation and the by-laws of a corporation define and regulate the relations between the corporation and the stockholders. In interpreting them, the literal meaning of their provisions shall control, and such provisions should be construed as a whole and not in isolation.

1.

Replacement nominees of Gardpro were not required to pay membership fees

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.

The membership in the Club was a privilege, it being clear that the mere purchase of a share in the Club did not immediately qualify a juridical entity for membership. Admission for membership was still upon the favorable action of the Board of Directors of the Club. Under Section 2.2.7 of its by-laws, the application form was accomplished by the chairman of the board, president or chief executive officer of the applicant juridical entity. The designated nominees also accomplished their respective

application forms, duly proposed and seconded, and the nominees were evaluated as to their qualifications. The nominees automatically became ineligible for membership once they ceased to be officers of the corporate member under its by-laws upon certification of such loss of tenure by a responsible officer of the corporate member.

Under Section 2.2.6 of the Club's by-laws, membership fees of P45,000.00 must be paid by the applicant within 30 days from the approval of the application before the share could be registered in the Stock and Transfer Books of the Club. Non-payment of the membership fees within the 30-day period would be deemed a withdrawal of the application. The amount of the fees could be waived, increased or decreased by the Board of Directors. Pursuant to the Club's articles of incorporation and by-laws, the membership fees should be paid by the corporate member. Based on the procedure set forth in Section 2.2.7 of the by-laws, the applicant was the juridical entity, not its nominee or nominees. Although the nominee or nominees also accomplished their application forms for membership in the Club, it was the corporate member that was obliged to pay the membership fees in its own capacity because the share was registered in its name in the Stock and Transfer Book.

Corporations buy shares in clubs in order to invest for earnings. Their purchases may also be to reward their corporate executives by having them enjoy the facilities and perks concomitant to the club memberships. When Gardpro purchased and registered its ownership of the class "C" common shares, it did not only invest for earnings because it also became entitled to nominate two of its officers in the Club as set forth in its seventh purpose of the articles of incorporation and Section 2.2.2 of the by-laws

Entitle is a term that means to give a right, claim or legal title to.²¹ And, as far as the courts have dealt with the term, it may be gathered that *entitle* signifies the granting of a privilege or right to be exercised at the option of the party for whose benefit the term is used upon which no limitation can be arbitrarily imposed.²² Nonetheless, the use of the recreational facilities of the Club is commonly known as *playing rights*

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of the corporate member or its nominees.

Golf clubs usually sell shares to individuals and juridical entities in order to raise capital for the construction of their recreational facilities. In that regard, golf clubs accept juridical entities to become regular members,²³ and allow such entities to designate corporate nominees because only natural persons can enjoy the sports facilities. In the context of this arrangement, Gardpro's two nominees held playing rights. But the articles of incorporation of Forest Hills and Section 2.2.2 of its by-laws recognized the right of the corporate member to replace the nominees, subject to the payment of the transfer fee in such amount as the Board of Directors determined for every change. The replacement could take place for any of the following reasons, namely: (a) if the nominee should cease to be an officer of the corporate member;²⁴ or (b) if the corporate member should request the replacement. In case of a replacement, the playing rights would also be transferred to the new nominees.

According to the second paragraph of Section 13.6 of the by-laws, the transfer of playing rights entailed the payment of P10,000.00. Yet, Section 2.2.2 of the by-laws stipulated a transfer fee for every replacement. This warranted the conclusion that Gardpro should pay to Forest Hills the transfer fee of P10,000.00 because it desired to change its nominees.

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 (P45,000.00) 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 P75,000.00 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 P50,000.00 each as membership fees.²⁵ 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 by-laws 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.²⁶ On the other hand, the by-laws 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 by-laws 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.²⁷ 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.²⁸

In construing and applying the provisions of the articles of incorporation and the by-laws of Forest Hills, the CA has leaned on the plain meaning rule embodied in Article 1370 of the *Civil Code*, to the effect 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. The CA was also guided by Article 1374 of the *Civil Code*, which declares that "[t]he various stipulations of a contract shall be interpreted together, attributing to the

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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.

2.

The CA did not encroach upon the prerogative of Forest Hills to determine its own rules and procedures and to decide all questions on the construction of its articles of incorporation and by-laws

Anent the second issue, the Court disagrees with the contention of Forest Hills that the CA encroached upon its prerogative to determine its own rules and procedures and to decide all issues on the construction of its articles of incorporation and by-laws. On the contrary, the CA acted entirely within its legal competence to decide the issues between the parties.

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.³⁰ 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 enrichment³¹ 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.³² 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 by-laws 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.

3.

Intervention of the Federation of Golf Clubs of the Philippines, Inc. as *amicus curiae* was not necessary

The CA properly disallowed the intervention of the Federation of Golf Clubs of the Philippines, Inc. as *amicus curiae*.

The courts may invite experienced and impartial attorneys to appear as *amici curiae* to help in the disposition of issues submitted to them.³³ As such, the appearance of *amicus curiae*, whether by invitation or by leave, has always been a matter of favor or grace, not of right or privilege. There is no right to compel the courts to permit *amici curiae* to appear. This simply means that the intervention of *amicus curiae* lies in the discretion of the courts, which may grant or refuse leave, according as they deem the proffered information timely and useful, or otherwise. Where matters of public concern are involved, the courts exercise great liberality in granting leave to appear; but where the parties are assisted by competent counsel, leave to appear as *amici curiae* has been usually withheld. In general, the courts desist from allowing the intervention as *amicus curiae* of anyone whose attitude appears to be partisan (such as a person in the service of those having private interests in the outcome of the litigation).³⁴

The membership of Federation of Golf Clubs of the Philippines Inc. included Forest Hills and other similarly situated golf clubs. Hence, its partisanship or partiality on the pending issues was beyond question. Its participation in the action would not advance the objective appreciation by the CA of such issues. In any event, the action herein involved the contract between parties, and was a private matter fully within the competence of the SEC and the CA to consider and resolve. It is notable that Forest Hills was adequately represented by capable counsel.

• **Lopez Realty, Inc. and Asuncion Lopez-Gonzalez Vs. Sps. Reynaldo Tanjangco and Maria Luisa Aguelles-Tanjangco**
G.R. No. 154291. November 12, 2014

• **Ratification of the August 17,**

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1981

• **Board Resolution**

- The Court agrees with the petitioners that the August 17, 1981 Board Resolution did not give Arturo the authority to act as LRI's representative in the subject sale, as the meeting of the board of directors where such was passed was conducted without giving any notice to Asuncion. 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. (Emphasis ours)
- The Court took this matter up in *Fontecha*, involving herein parties, where it was held that a meeting of the board of directors is legally infirm if there is failure to comply

with the requirements or formalities of the law or the corporation's by laws and any action taken on such meeting may be challenged as a consequence:

- 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.³⁸
- 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."³⁹
- The Court's decision in *Fontecha* concerns the implied ratification of one of the resolutions passed on August 17, 1981 by the board of directors of LRI despite of the lack of notice of meeting to Asuncion.

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This was owing to the subsequent actions taken therein by the stockholders, including Asuncion herself, as cited by the CA in its decision. On the other hand, the sale of the property to the spouses Tanjangco was ratified, not because of implied ratification as was the case in *Fontecha* but through the passage of the July 30, 1982 Board Resolution.

-
- 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.
-
- Asuncion assails the authority of Juanito to vote because he was not a director and he did not own any share of stock which would qualify him to be one. On the contrary, Juanito defends his right to vote as the representative of Teresita's estate. Upon examination of the July 30, 1982 minutes of the meeting, it can be deduced that the meeting is a joint stockholders and directors' meeting. The Court takes into account that majority of the board of directors except for Asuncion, had already approved of the sale to the spouses Tanjangco prior to this meeting. As a consequence, the power to ratify the previous resolutions and actions of the board of directors in this case lies in the stockholders, not in the board of directors. It would be absurd to require the board of directors to ratify their own acts—acts which the same directors already approved of beforehand. Hence, Juanito, as the administrator of Teresita's estate

even though not a director, is entitled to vote on behalf of Teresita's estate as the administrator thereof. The Court reiterates its ruling in *Tan v. Sycip*,⁴⁰ viz:

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- 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.⁴¹ (Citation omitted and emphasis ours)

On the issue that Leo voted against the ratification of sale, the Court notes that only Juanito, Benjamin and Rosendo signed the minutes of the meeting. It was also not stated who prepared the minutes, given that Asuncion as the corporate secretary refused to record the same. Also, it was not explained why Leo was not able to affix his signature on the said minutes if he really voted in favor of the ratification of the sale. What's more, Leo was not presented to testify on the witness stand. Hence, contrary to the position adopted by the CA, only those whose signatures appear on the minutes of the meeting can be said to have voted in favor of the ratification. This case must be differentiated from the Court's ruling in *People v. Dumlao, et al.*⁴²

In *Dumlao*, the Court ruled that the signing of the minutes by all the directors is not a requisite and that the lack of signatures on the minutes does not mean that the resolution was not passed by the board. However, there is a notable disparity between the facts in *Dumlao* and the instant case. In *Dumlao*, the corporate secretary therein recorded, prepared and certified the correctness of the minutes of the meeting despite the fact that not all

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directors signed the minutes. In this case, it could not even be established who recorded the minutes in view of Asuncion's refusal to do so, as demonstrated during the cross examination of Benjamin by the petitioners' counsel:

It is the signature of the corporate secretary, as the one who is tasked to prepare and record the minutes, that gives the minutes of the meeting probative value and credibility, as the Court explained in *Dumlao*, to wit:

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 Corporation Code of the Philippines-that requires that the minutes of the meeting should be signed by all the members of the board.

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 23 April 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 respondent La'o.⁴⁴ (Citations omitted and emphasis ours)

Thus, without the certification of the corporate secretary, it is incumbent upon

the other directors or stockholders as the case may be, to submit proof that the minutes of the meeting is accurate and reflective of what transpired during the meeting. Conformably to the foregoing, in the absence of Asuncion's certification, only Juanito, Benjamin and Rosendo, whose signatures appeared on the minutes, could be considered as to have ratified the sale to the spouses Tanjangco.

In sum, whatever defect there was on the sale to the spouses Tanjangco pursuant to the August 17, 1981 Board Resolution, the same was cured through its ratification in the July 30, 1982 Board Resolution. It is of no moment whether Arturo was authorized to merely negotiate or to enter into a contract of sale on behalf of LRI as all his actions in connection to the sale were expressly ratified by the stockholders holding 67% of the outstanding capital stock.

In *Cua, Jr. et al. v. Tan, et al.*,⁴⁶ the Court held that by virtue of ratification, the acts of the board of directors become the acts of the stockholders themselves, even if those acts were, at the outset, unauthorized:

- **Loadstar Shipping Company Inc., et al. Vs. Malayan Insurance Company, Inc.**
G.R. No. 185565. November 26, 2014

- The following provisions of the Code of Commerce state how damages on goods delivered by the carrier should be appraised:
- Article 361. The merchandise shall be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated. As a consequence, all the losses and deteriorations which the goods may suffer during the transportation by reason of fortuitous event, force majeure, or the inherent nature and defect of the goods, shall be for the account and risk of the shipper. Proof of these accidents is incumbent upon the carrier.
- Article 362. Nevertheless, the

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carrier shall be liable for the losses and damages resulting from the causes mentioned in the preceding article if it is proved, as against him, that they arose through his negligence or by reason of his having failed to take the precautions which usage has established among careful persons, unless the shipper has committed fraud in the bill of lading, representing the goods to be of a kind or quality different from what they really were.

-
- If, notwithstanding the precautions referred to in this article, the goods transported run the risk of being lost, on account of their nature or by reason of unavoidable accident, there being no time for their owners to dispose of them, the carrier may proceed to sell them, placing them for this purpose at the disposal of the judicial authority or of the officials designated by special provisions.
-
- x x x x
-
- Article 364. If the effect of the damage referred to in Article 361 is merely a diminution in the value of the goods, the obligation of the carrier shall be reduced to the payment of the amount which, in the judgment of experts, constitutes such difference in value.
-
- Article 365. If, in consequence of the damage, the goods are rendered useless for sale and consumption for the purposes for which they are properly destined, the consignee shall not be bound to receive them, and he may have them in the hands of the carrier, demanding of the latter their value at the current price on that day.
-
- If among the damaged goods there

should be some pieces in good condition and without any defect, the foregoing provision shall be applicable with respect to those damaged and the consignee shall receive those which are sound, this segregation to be made by distinct and separate pieces and without dividing a single object, unless the consignee proves the impossibility of conveniently making use of them in this form.

-
- The same rule shall be applied to merchandise in bales or packages, separating those parcels which appear sound.
- From the above-cited provisions, if the goods are delivered but arrived at the destination in damaged condition, the remedies to be pursued by the consignee depend on the extent of damage on the goods.
-
- If the goods are rendered useless for sale, consumption or for the intended purpose, the consignee may reject the goods and demand the payment of such goods at their market price on that day pursuant to Article 365. In case the damaged portion of the goods can be segregated from those delivered in good condition, the consignee may reject those in damaged condition and accept merely those which are in good condition. But if the consignee is able to prove that it is impossible to use those goods which were delivered in good condition without the others, then the entire shipment may be rejected. To reiterate, under Article 365, the nature of damage must be such that the goods are rendered useless for sale, consumption or intended purpose for the consignee to be able to validly reject them.
-
- If the effect of damage on the goods consisted merely of

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diminution in value, the carrier is bound to pay only the difference between its price on that day and its depreciated value as provided under Article 364.

-
- Malayan, as the insurer of PASAR, neither stated nor proved that the goods are rendered useless or unfit for the purpose intended by PASAR due to contamination with seawater. Hence, there is no basis for the goods' rejection under Article 365 of the Code of Commerce. Clearly, it is erroneous for Malayan to reimburse PASAR as though the latter suffered from total loss of goods in the absence of proof that PASAR sustained such kind of loss. Otherwise, there will be no difference in the indemnification of goods which were not delivered at all; or delivered but rendered useless, compared against those which were delivered albeit, there is diminution in value.
-
- Malayan also failed to establish the legal basis of its decision to sell back the rejected copper concentrates to PASAR. It cannot be ascertained how and when Malayan deemed itself as the owner of the rejected copper concentrates to have these validly disposed of. If the goods were rejected, it only means there was no acceptance on the part of PASAR from the carrier. Furthermore, PASAR and Malayan simply agreed on the purchase price of US\$90,000.00 without any allegation or proof that the said price was the depreciated value based on the appraisal of experts as provided under Article 364 of the Code of Commerce.
-

II. Subrogation of Malayan to the rights of PASAR

Malayan's claim against the petitioners is

based on subrogation to the rights possessed by PASAR as consignee of the allegedly damaged goods. The right of subrogation stems from Article 2207 of the New Civil Code which states:

Art. 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. "The right of 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."²⁰ The right of subrogation is however, not absolute. "There are a few recognized exceptions to this rule. For instance, if the assured by his own act releases the wrongdoer or third party liable for the loss or damage, from liability, the insurer's right of subrogation is defeated. x x x Similarly, where the insurer pays the assured the value of the lost goods without notifying the carrier who has in good faith settled the assured's claim for loss, the settlement is binding on both the assured and the insurer, and the latter cannot bring an action against the carrier on his right of subrogation. x x x And where the insurer pays the assured for a loss which is not a risk covered by the policy, thereby effecting 'voluntary payment,' the former has no right of subrogation against the third party liable for the loss x x x."²¹

The rights of a subrogee cannot be superior to the rights possessed by a subrogor. "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

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securities. The rights to which the subrogee succeeds are the same as, but not greater than, those of the person for whom he is substituted, that is, 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 the insured likewise could have recovered.”²²

Consequently, an insurer indemnifies the insured based on the loss or injury the latter actually suffered from. If there is no loss or injury, then there is no obligation on the part of the insurer to indemnify the insured. Should the insurer pay the insured and it turns out that indemnification is not due, or if due, the amount paid is excessive, the insurer takes the risk of not being able to seek recompense from the alleged wrongdoer. This is because the supposed subrogor did not possess the right to be indemnified and therefore, no right to collect is passed on to the subrogee.

- **Metropolitan Bank and Trust Company Vs. Wilfred N. Chiok/Bank of the Philippine Islands Vs. Wilfred N. Chiok/Global Business Bank, Inc. Vs. Wilfred N. Chiok** G.R. Nos. 172652/175302/175394. November 26, 2014

- **Whether or not payment of manager's**
- **and cashier's checks are subject to the**
- **condition that the payee thereof should**
- **comply with his obligations to the**
- **purchaser of the checks**
-
- The legal effects of a manager's check and a cashier's check are the same. A manager's check, like a cashier's check, is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance. By its peculiar

character and general use in commerce, a manager's check or a cashier's check is regarded substantially to be as good as the money it represents.³² Thus, the succeeding discussions and jurisprudence on manager's checks, unless stated otherwise, are applicable to cashier's checks, and vice versa.

-
- The RTC effectively ruled that payment of manager's and cashier's checks are subject to the condition that the payee thereof complies with his obligations to the purchaser of the checks:
- The RTC made an error at this point. While indeed, it cannot be said that manager's and cashier's checks are *pre-cleared*, **clearing** should not be confused with **acceptance**. Manager's and cashier's checks are still the subject of clearing to ensure that the same have not been materially altered or otherwise completely counterfeited. However, manager's and cashier's checks are *pre-accepted* by the mere issuance thereof by the bank, which is both its drawer and drawee. Thus, while manager's and cashier's checks are still subject to clearing, they cannot be countermanded for being drawn against a closed account, for being drawn against insufficient funds, or for similar reasons such as a condition not appearing on the face of the check. *Long standing and accepted banking practices* do not countenance the countermanding of manager's and cashier's checks on the basis of a mere allegation of failure of the payee to comply with its obligations towards the purchaser. On the contrary, the accepted banking practice is that such checks are as good as cash.

Even more telling is the Court's pronouncement in *Tan v. Court of Appeals*,³⁶ which unequivocally settled the

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unconditional nature of the credit created by the issuance of manager's or cashier's checks:

A cashier's check is a primary obligation of the issuing bank and *accepted in advance* by its mere issuance. By its very nature, a cashier's check is the bank's order to pay drawn upon itself, committing in effect its total resources, integrity and honor behind the check. A cashier's check by its peculiar character and general use in the commercial world is *regarded substantially to be as good as the money which it represents*. In this case, therefore, PCIB by issuing the check created an unconditional credit in favor of any collecting bank. (Emphases supplied, citations omitted.)

- Furthermore, under the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference.³⁷ Thus, any *long standing and accepted banking practice* which can be considered as a valid cause to return manager's or cashier's checks should be of a similar nature to the enumerated cause applicable to manager's or cashier's checks: material alteration. As stated above, an example of a similar cause is the presentation of a counterfeit check.

Whether or not the purchaser of manager's and cashier's checks has the right to have the checks cancelled by filing an action for rescission of its contract with the payee

The right to rescind invoked by the Court of Appeals is provided by Article 1191 of the Civil Code, which reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in

case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

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

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

The cause of action supplied by the above article, however, is clearly predicated upon the reciprocity of the obligations of the injured party and the guilty party. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other.⁴² When Nuguid failed to deliver the agreed amount to Chiok, the latter had a cause of action against Nuguid to ask for the rescission of their contract. On the other hand, Chiok did not have a cause of action against Metrobank and Global Bank that would allow him to rescind the contracts of sale of the manager's or cashier's checks, which would have resulted in the crediting of the amounts thereof back to his accounts.

Otherwise stated, the right of rescission⁴³ under Article 1191 of the Civil Code can only be exercised in accordance with the principle of relativity of contracts under Article 1131 of the same code, which provides:

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Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. x x x.

In several cases, this Court has ruled that under the civil law principle of relativity of contracts under Article 1131, contracts can only bind the parties who entered into it, and *it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.*⁴⁴ Metrobank and Global Bank are not parties to the contract to buy foreign currency between Chiok and Nuguid. Therefore, they are not bound by such contract and cannot be prejudiced by the failure of Nuguid to comply with the terms thereof.

Neither could Chiok be validly granted a writ of injunction against Metrobank and Global Bank to enjoin said banks from honoring the subject manager's and cashier's checks. It is elementary that "(a)n injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the fact that the damages caused are irreparable and that damages would not adequately compensate."⁴⁵ Chiok could have and should have proceeded directly against Nuguid to claim damages for breach of contract and to have the very account where he deposited the subject checks garnished under Section 7(d)⁴⁶ and Section 8,⁴⁷ Rule 57 of the Rules of Court. Instead, Chiok filed an action to enjoin Metrobank and Global Bank from complying with their primary obligation under checks in which they are liable as both drawer and drawee.

It is undisputed that Chiok personally deposited the subject manager's and cashier's checks to Nuguid's account. If the intention of Chiok was for Nuguid to be allowed to withdraw the proceeds of the checks after clearing, he could have

easily deposited personal checks, instead of going through the trouble of purchasing manager's and cashier's checks. Chiok therefore knew, and actually intended, that Nuguid will be allowed to immediately withdraw the proceeds of the subject checks. The deposit of the checks which were practically as good as cash was willingly and voluntarily made by Chiok, without any assurance that Nuguid will comply with his end of the bargain on the same day. The explanation for such apparently reckless action was admitted by Chiok in the Amended Complaint itself:

That plaintiff [Chiok] due to the number of years (five to seven years) of business transactions with defendant [Nuguid] **has reposed utmost trust and confidence on the latter** that their transactions as of June 1995 reaches millions of pesos. x x x.⁴⁸ (Emphases supplied.)

As between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss.⁴⁹ Evidently, it was the utmost trust and confidence reposed by Chiok to Nuguid that caused this entire debacle, dragging three banks into the controversy, and having their resources threatened because of an alleged default in a contract they were not privy to.

- **Eastern Shipping Line, Inc. Vs. BPI/MS Insurance Corp., & Mitsu Sumitomo Insurance Co., Ltd.** G.R. No. 182864. January 12, 2015

- Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734⁵¹ of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in

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the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.⁵²

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- In maritime transportation, a bill of lading is issued by a common carrier as a contract, receipt and symbol of the goods covered by it. If it has no notation of any defect or damage in the goods, it is considered as a "clean bill of lading." A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.⁵³
-
- Based on the bills of lading issued, it is undisputed that ESLI received the two shipments of coils from shipper Sumitomo Corporation in good condition at the ports of Yokohama and Kashima, Japan. However, upon arrival at the port of Manila, some coils from the two shipments were partly dented and crumpled as evidenced by the Turn Over Survey of Bad Order Cargoes No. 67982 dated 13 February 2004⁵⁴ and Turn Over Survey of Bad Order Cargoes Nos. 68363⁵⁵ and 68365⁵⁶ both dated 24 May 2004 signed by ESLI's representatives, a certain Tabanao and Rodrigo together with ATI's representative Garcia. According to Turn Over Survey of Bad Order Cargoes No. 67982, four coils and one skid were partly dented and crumpled prior to turnover by ESLI to ATI's possession while a total of eleven coils were partly dented and crumpled prior to turnover based on Turn Over Survey Bad Order Cargoes Nos. 68363 and 68365.
-
- Calamba Steel requested for a re-examination of the damages

sustained by the two shipments. Based on the Requests for Bad Order Survey Nos. 58267⁵⁷ and 58254⁵⁸ covering the first shipment dated 13 and 17 February 2004, four coils were damaged prior to turnover. The second Request for Bad Order Survey No. 58658⁵⁹ dated 25 May 2004 also affirmed the earlier findings that eleven coils on the second shipment were damaged prior to turnover.

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- In *Asian Terminals, Inc., v. Philam Insurance Co., Inc.*,⁶⁰ the Court based its ruling on liability on the Bad Order Cargo and Turn Over of Bad Order. The Receipt bore a notation "B.O. not yet t/over to ATI," while the Survey stated that the said steel case was not opened at the time of survey and was accepted by the arrastre in good order. Based on these documents, packages in the *Asian Terminals, Inc. case* were found damaged while in the custody of the carrier Westwind Shipping Corporation.
-
- Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a *prima facie* case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible.⁶¹ From the foregoing, the fault is attributable to ESLI. While no longer an issue, it may be nonetheless state that ATI was correctly absolved of liability for the damage.

Second Issue: Limitation of Liability

ESLI assigns as error the appellate court's finding and reasoning that the package limitation under the COGSA⁶² is inapplicable even if the bills of lading covering the shipments only made reference to the corresponding invoices.

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Noticeably, the invoices specified among others the weight, quantity, description and value of the cargoes, and bore the notation "Freight Prepaid" and "As Arranged."⁶³ ESLI argues that the value of the cargoes was not incorporated in the bills of lading⁶⁴ and that there was no evidence that the shipper had presented to the carrier in writing prior to the loading of the actual value of the cargo, and, that there was a no payment of corresponding freight.⁶⁵ Finally, despite the fact that ESLI admits the existence of the invoices, it denies any knowledge either of the value declared or of any information contained therein.⁶⁶

According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration.⁶⁷ The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.⁶⁸

The New Civil Code provides that a stipulation limiting a common carrier's liability to the value of the goods appearing in the bill of lading is binding, unless the shipper or owner declares a greater value.⁶⁹ In addition, a contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.⁷⁰

COGSA, on the other hand, provides under Section 4, Subsection 5 that an amount recoverable in case of loss or damage shall not exceed US\$500.00 per package or per customary freight unless **the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.**

Accordingly, the issue whether or not ESLI has limited liability as a carrier is determined by either absence or presence of proof that the nature and value of the goods have been declared by Sumitomo Corporation and inserted in the bills of lading.

There is no question about the declaration of the nature, weight and description of the goods on the first bill of lading.

The bills of lading represent the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties which is to be deciphered from the language used in the contract, not from the unilateral *post facto* assertions of one of the parties, or of third parties who are strangers to the contract.⁷² Thus, when the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.⁷³

As to the non-declaration of the value of the goods on the second bill of lading, we see no error on the part of the appellate court when it ruled that there was a compliance of the requirement provided by COGSA. The declaration requirement does not require that all the details must be written down on the very bill of lading itself. It must be emphasized that all the needed details are in the invoice, which "contains the itemized list of goods shipped to a buyer, stating quantities, prices, shipping charges," and other details which may contain numerous sheets.⁷⁴ Compliance can be attained by incorporating the invoice, by way of reference, to the bill of lading provided that the former containing the description of the nature, value and/or payment of freight charges is as in this case duly admitted as evidence.

In *Unsworth Transport International (Phils.), Inc. v. Court of Appeals*,⁷⁵ the

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Court held that the insertion of an invoice number does not in itself sufficiently and convincingly show that petitioner had knowledge of the value of the cargo. However, the same interpretation does not squarely apply if the carrier had been advised of the value of the goods as evidenced by the invoice and payment of corresponding freight charges. It would be unfair for ESLI to invoke the limitation under COGSA when the shipper in fact paid the freight charges based on the value of the goods. In *Adams Express Company v. Croninger*,⁷⁶ it was said: *"Neither is it conformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the rate, and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy."* Conversely, but for the same reason, it is unjust for ESLI to invoke the limitation when it is informed that the shipper paid the freight charges corresponding to the value of the goods.

Also, ESLI admitted the existence and due execution of the Bills of Lading and the Invoice containing the nature and value of the goods on the second shipment. As written in the Pre-Trial Order,⁷⁷ the parties, including ESLI, admitted the **existence and due execution of the two Bills of Lading**⁷⁸ together with the **Invoice on the second shipment with Nos. KJGE-04-1327-NT/KE2**⁷⁹ dated 12 May 2004. On the first shipment, **ESLI admitted the existence of the Invoice with Nos. KJGE-031228-NT/KE3**⁸⁰ dated 2 February 2004.

The effect of admission of the genuineness and due execution of a document means that the party whose signature it bears admits that he voluntarily signed the document or it was signed by another for him and with his authority.⁸¹

A review of the bill of lading and invoice on the second shipment indicates that the

shipper declared the nature and value of the goods with the corresponding payment of the freight on the bills of lading. Further, under the caption "description of packages and goods," it states that the description of the goods to be transported as "various steel sheet in coil" with a gross weight of 383,532 kilograms (89.510 M3). On the other hand, the amount of the goods is referred in the invoice, the due execution and genuineness of which has already been admitted by ESLI, is US\$186,906.35 as freight on board with payment of ocean freight of US\$32,736.06 and insurance premium of US\$1,813.17. From the foregoing, we rule that the non-limitation of liability applies in the present case.

- **Rodrigo Rivera Vs. Spouses Salvador C. Chua and Violeta S. Chua/Spouses Salvador C. Chua and Violeta S. Chua Vs. Rodrigo Rivera** G.R. Nos. 184458/184472. January 14, 2015

- Rivera next argues that even assuming the validity of the Promissory Note, demand was still necessary in order to charge him liable thereunder. Rivera argues that it was grave error on the part of the appellate court to apply Section 70 of the Negotiable Instruments Law (NIL).²²

- We agree that the subject promissory note is not a negotiable instrument and the provisions of the NIL do not apply to this case. Section 1 of the NIL requires the concurrence of the following elements to be a negotiable instrument:

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- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to

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- bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.
-
- On the other hand, Section 184 of the NIL defines what negotiable promissory note is:
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- SECTION 184. *Promissory Note, Defined.* – A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.
-
- The Promissory Note in this case is made out to specific persons, herein respondents, the Spouses Chua, and not to order or to bearer, or to the order of the Spouses Chua as payees.
-
- However, even if Rivera's Promissory Note is not a negotiable instrument and therefore outside the coverage of Section 70 of the NIL which provides that presentment for payment is not necessary to charge the person liable on the instrument, Rivera is still liable under the terms of the Promissory Note that he issued.
-
- The Promissory Note is unequivocal about the date when the obligation falls due and becomes demandable—31 December 1995. As of 1 January 1996, Rivera had already incurred in delay when he failed to pay the amount of P120,000.00 due to the Spouses Chua on 31 December 1995 under the Promissory Note.

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- Article 1169 of the Civil Code explicitly provides:
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- Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
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- **However, the demand by the creditor shall not be necessary in order that delay may exist:**
- **(1) When the obligation or the law expressly so declare; or**
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
- In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied)
-
- There are four instances when demand is not necessary to constitute the debtor in default: (1) when there is an express stipulation to that effect; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless. In the first two paragraphs, it is not sufficient that the law or obligation fixes a date for performance; it must further state

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expressly that after the period lapses, default will commence. We refer to the clause in the Promissory Note containing the stipulation of interest:

It is agreed and understood that failure on my part to pay the amount of (P120,000.00) One Hundred Twenty Thousand Pesos on December 31, 1995. (sic) I agree to pay the sum equivalent to FIVE PERCENT (5%) interest monthly from the date of default until the entire obligation is fully paid for.²³

which expressly requires the debtor (Rivera) to pay a 5% monthly interest from the "date of default" until the entire obligation is fully paid for. The parties evidently agreed that the maturity of the obligation at a date certain, 31 December 1995, will give rise to the obligation to pay interest. The Promissory Note expressly provided that after 31 December 1995, default commences and the stipulation on payment of interest starts.

The date of default under the Promissory Note is 1 January 1996, the day following 31 December 1995, the due date of the obligation. On that date, Rivera became liable for the stipulated interest which the Promissory Note says is equivalent to 5% a month. In sum, until 31 December 1995, demand was not necessary before Rivera could be held liable for the principal amount of P120,000.00. Thereafter, on 1 January 1996, upon default, Rivera became liable to pay the Spouses Chua damages, in the form of stipulated interest.

The liability for damages of those who default, including those who are guilty of delay, in the performance of their obligations is laid down on Article 1170²⁴ of the Civil Code.

Corollary thereto, Article 2209 solidifies the consequence of payment of interest as an indemnity for damages when the obligor incurs in delay:

Art. 2209. **If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages**, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (Emphasis supplied)

Article 2209 is specifically applicable in this instance where: (1) the obligation is for a sum of money; (2) the debtor, Rivera, incurred in delay when he failed to pay on or before 31 December 1995; and (3) the Promissory Note provides for an indemnity for damages upon default of Rivera which is the payment of a 5% monthly interest from the date of default.

We do not consider the stipulation on payment of interest in this case as a penal clause although Rivera, as obligor, assumed to pay additional 5% monthly interest on the principal amount of P120,000.00 upon default.

Article 1226 of the Civil Code provides:

Art. 1226. In obligations with a penal clause, **the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary.** Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

The penal clause is generally undertaken to insure performance and works as either, or both, punishment and reparation. It is an exception to the general rules on recovery of losses and damages. As an exception to the general rule, a penal clause must be specifically

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set forth in the obligation.²⁵

In high relief, the stipulation in the Promissory Note is designated as payment of interest, not as a penal clause, and is simply an indemnity for damages incurred by the Spouses Chua because Rivera defaulted in the payment of the amount of P120,000.00. The measure of damages for the Rivera's delay is limited to the interest stipulated in the Promissory Note. In apt instances, in default of stipulation, the interest is that provided by law.²⁶

- **Narra Nickel Mining and Development Corp., Tesoro Mining and Development, Inc. and McArthur Mining, Inc. Vs. Redmont Consolidated Mines Corp.** G.R. No. 195580. January 28, 2015 Dissenting Opinion

- **J. Leonen**

- Very simply, the challenged Decision sustained the appellate court's ruling that petitioners, being foreign corporations, are not entitled to Mineral Production Sharing Agreements (MPSAs). In reaching its conclusion, this Court upheld with approval the appellate court's finding that there was doubt as to petitioners' nationality since a 100% Canadian-owned firm, MBMI Resources, Inc. (MBMI), effectively owns 60% of the common stocks of the petitioners by owning equity interest of petitioners' other majority corporate shareholders.

II.

The application of the Grandfather Rule is justified by the circumstances of the case to determine the nationality of petitioners.

The application of the Grandfather Rule in the present case does not eschew the Control Test.

Clearly, petitioners have misread, and

failed to appreciate the clear import of, the Court's April 21, 2014 Decision. Nowhere in that disposition did the Court foreclose the application of the Control Test in determining which corporations may be considered as Philippine nationals. Instead, to borrow Justice Leonen's term, the Court used the Grandfather Rule as a "supplement" to the Control Test so that the intent underlying the averted Sec. 2, Art. XII of the Constitution be given effect.

The following excerpts of the April 21, 2014 Decision cannot be clearer:

In ending, the "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation, within the ambit of Sec. 2, Art. XII of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. When in the mind of the Court, there is doubt, based on the attendant facts and circumstances of the case, in the 60-40 Filipino equity ownership in the corporation, then it may apply the "grandfather rule." (emphasis supplied)

With that, the use of the Grandfather Rule as a "supplement" to the Control Test is not proscribed by the Constitution or the Philippine Mining Act of 1995.

The Grandfather Rule implements the intent of the Filipinization provisions of the Constitution.

To reiterate, Sec. 2, Art. XII of the Constitution reserves the exploration, development, and utilization of natural resources to Filipino citizens and "corporations or associations at least sixty per centum of whose capital is owned by such citizens." Similarly, Section 3(aq) of the Philippine Mining Act of 1995 considers a "corporation x x x registered in accordance with law at least sixty per cent of the capital of which is owned by citizens of the Philippines" as a person qualified to undertake a mining operation. Consistent with this objective, the

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Grandfather Rule was originally conceived to look into the citizenship of the individuals who ultimately own and control the shares of stock of a corporation for purposes of determining compliance with the constitutional requirement of Filipino ownership. It cannot, therefore, be denied that the framers of the Constitution have not foreclosed the Grandfather Rule as a tool in verifying the nationality of corporations for purposes of ascertaining their right to participate in nationalized or partly nationalized activities.

As further defined by Dean Cesar Villanueva, the Grandfather Rule is **“the method by which the percentage of Filipino equity in a corporation engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, is computed, in cases where corporate shareholders are present, by attributing the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder.”** Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.

The method employed in the Grandfather Rule of attributing the shareholdings of a given corporate shareholder to the second or even the subsequent tier of ownership hews with the rule that the **“beneficial ownership”** of corporations engaged in nationalized activities must reside in the hands of Filipino citizens. Thus, even if the 60-40 Filipino equity requirement appears to have been satisfied, the Department of Justice (DOJ), in its Opinion No. 144, S. of 1977, stated that an **agreement that may distort the actual economic or beneficial ownership of a mining corporation may be struck down as violative of the constitutional requirement,**

The “beneficial ownership” requirement

was subsequently used in tandem with the “situs of control” to determine the nationality of a corporation in DOJ Opinion No. 84, S. of 1988, through the Grandfather Rule, despite the fact that both the investee and investor corporations purportedly satisfy the 60-40 Filipino equity requirement

Application of the Grandfather Rule with the Control Test.

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 as in Gamboa or Bayantel.

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

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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.

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.**

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.

- **Unknown Owner of the Vessel M/V China Joy, Samsun Shipping Ltd., and Inter-Asia Marine Transport, Inc. Vs. Asian Terminals, Inc.** G.R. No. 195661. March 11, 2015

- Issues
- The instant petition raises the questions of whether or not the CA erred in (a) applying the doctrine of res ipsa loquitur, and (b) rejecting the argument that "the petitioners had no participation in the loading and discharge of the bulk cargo except to provide use of the vessel's gear."

The petitioners present two issues for the Court's resolution, to wit: (a) the applicability of the doctrine of res ipsa loquitur in the case at bar; and (b) who participated and should thus assume liability for the loading of the soybean meal cargo.

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There is no contract of carriage between the petitioners and ATI.

There is no contract of carriage between ATI, on one hand, and the shipowner, Samsun, ContiQuincyBunge L.L.C., and Inter-Asia, on the other. It likewise bears stressing that the subject of the complaint, from which the instant petition arose, is not the damage caused to the cargo, but to the equipment of an arrastre operator. Further, ATI's contractual relation is not with the petitioners, but with the consignee and with the Philippine Ports Authority (PPA).

The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession."

The legal relationship between an arrastre operator and a consignee is akin to that between a warehouseman and a depositor. As to both the nature of the functions and the place of their performance, an arrastre operator's services are clearly not maritime in character."

the Court explained that the liabilities of the arrastre operator for losses and damages are set forth in the contract for cargo handling services it had executed with the PPA. Corollarily then, the rights of an arrastre operator to be paid for damages it sustains from handling cargoes do not likewise spring from contracts of carriage.

However, in the instant petition, the contending parties make no references at all to any provisions in the contract for cargo handling services ATI had executed with the PPA.

Article 2176 of the New Civil Code and

the doctrine of res ipsa loquitur apply.

Notwithstanding the above, the petitioners cannot evade liability for the damage caused to ATI's unloader in view of Article 2176 of the New Civil Code, which pertinently provides as follows:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

In *Taylor v. Manila Electric Railroad and Light Co.*, the Court explained that to establish a plaintiff's right to recovery for quasi-delicts, three elements must exist, to wit: (a) damages to the plaintiff; (b) negligence by act or omission of which defendant personally, or some person for whose acts it must respond, was guilty; and (c) the connection of cause and effect between the negligence and the damage.

In the case under consideration, the parties do not dispute the facts of damage upon ATI's unloader, and of such damage being the consequence of someone's negligence. However, the petitioners deny liability claiming that it was not established with reasonable certainty whose negligence had caused the comingling of the metal bars with the soybean meal cargo. The Court, on this matter, agrees with the CA's disquisition that the petitioners should be held jointly and severally liable to ATI. ATI cannot be faulted for its lack of direct access to evidence determinative as to who among the shipowner, Samsun, ContiQuincyBunge and Inter-Asia should assume liability. The CA had exhaustively discussed why the doctrine of *res ipsa loquitur* applies. The metal bars which caused damage to ATI's unloader was found co-mingled with the cargo inside Hold No. 2 of the ship, which was then within the exclusive control of the

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petitioners. Thus, the presumption that it was the petitioners' collective negligence, which caused the damage, stands. This is, however, without prejudice to the petitioners' rights to seek reimbursements among themselves from the party whose negligence primarily caused the damage.

RESCI RIZADA