Narratives

Corporation Law (Commercial)

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This collection contains seventy four (74) cases
summarized in this format by
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during the Second Semester, school year 2005-2006
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1 Feliciano vs. Commission on Audit [GR 147402, 14 January 2004]
En Banc, Carpio (J): 13 concur

Facts: A Special Audit Team from Commission on Audit (COA) Regional Office No. VIII audited the accounts of the Leyte Metropolitan Water District (LMWD). Subsequently, LMWD received a letter from COA dated 19 July 1999 requesting payment of auditing fees. As General Manager of LMWD, Engr. Ranulfo C. Feliciano sent a reply dated 12 October 1999 informing COA's Regional Director that the water district could not pay the auditing fees. Feliciano cited as basis for his action Sections 6 and 20 of PD 198, as well as Section 18 of RA 6758. The Regional Director referred Feliciano's reply to the COA Chairman on 18 October 1999. On 19 October 1999, Feliciano wrote COA through the Regional Director asking for refund of all auditing fees LMWD previously paid to COA. On 16 March 2000, Feliciano received COA Chairman Celso D. Gangan's Resolution dated 3 January 2000 denying Feliciano's request for COA to cease all audit services, and to stop charging auditing fees, to LMWD. The COA also denied Feliciano's request for COA to refund all auditing fees previously paid by LMWD. Feliciano filed a motion for reconsideration on 31 March 2000, which COA denied on 30 January 2001. On 13 March 2001, Felicaino filed the petition for certiorari.

Issue: Whether a Local Water District ("LWD") is a government-owned or controlled corporation.

Held: The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens. In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives. The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled. Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. <u>LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm. Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal existence and power from PD 198.</u>

2 Magsaysay-Labrador, et. al. vs. Court of Appeals [GR 58168, 19 December 1989]
Third Division, Fernan (CJ): 3 concur, 1 on leave

Facts: <u>On 9 February 1979, Adelaida Rodriguez-Magsaysay, widow and special administratix of the estate of the late Senator Genaro Magsaysay, brought before the then Court of First Instance of Olongapo an action against Artemio Panganiban, Subic Land Corporation (SUBIC), Filipinas Manufacturer's Bank (FILMANBANK) and the Register of Deeds of Zambales</u>, for the annulment of the Deed of Assignment

executed by the late Senator in favor of SUBIC (as a result of which TCT 3258 was cancelled and TCT 22431 issued in the name of SUBIC), for the annulment of the Deed of Mortgage executed by SUBIC in favor of FILMANBANK (dated 28 April 1977 in the amount of P 2,700,000.00), and cancellation of TCT 22431 by the Register of Deeds, and for the latter to issue a new title in her favor. On 7 March 1979, Concepcion Magsaysay-Labrador, Soledad Magsaysay-Cabrera, Luisa Magsaysay-Corpuz, Felicidad Magsaysay, and Mercedes Magsaysay-Diaz, sisters of the late senator, filed a motion for intervention on the ground that on 20 June 1978, their brother conveyed to them 1/2 of his shareholdings in SUBIC or a total of 416,566.6 shares and as assignees of around 41 % of the total outstanding shares of such stocks of SUBIC, they have a substantial and legal interest in the subject matter of litigation and that they have a legal interest in the success of the suit with respect to SUBIC. On 26 July 1979, the **trial court denied** the motion for intervention, and ruled that petitioners have no legal interest whatsoever in the matter in litigation and their being alleged assignees or transferees of certain shares in SUBIC cannot legally entitle them to intervene because SUBIC has a personality separate and distinct from its stockholders.

On appeal, the Court of Appeals found no factual or legal justification to disturb the findings of the lower court. The appellate court further stated that whatever claims the Magsaysay sisters have against the late Senator or against SUBIC for that matter can be ventilated in a separate proceeding. The motion for reconsideration of the Magsaysay sisters was denied. Hence, the petition for review on certiorari.

Issue: Whether the Magsaysay sister, allegedly stockholders of SUBIC, are interested parties in a case where corporate properties are in dispute.

Held: Viewed in the light of Section 2, Rule 12 of the Revised Rules of Court, the Magsaysay sisters have no legal interest in the subject matter in litigation so as to entitle them to intervene in the proceedings. To be permitted to intervene in a pending action, the party must have a legal interest in the matter in litigation, or in the success of either of the parties or an interest against both, or he must be so situated as to be adversely affected by a distribution or other disposition of the property in the custody of the court or an officer thereof . Here, the interest, if it exists at all, of the Magsaysay sisters is indirect, contingent, remote, conjectural, consequential and collateral. At the very least, their interest is purely inchoate, or in sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations. While a share of stock represents a proportionate or aliquot interest in the property of the corporation, it does not vest the owner thereof with any legal right or title to any of the property, his interest in the corporate property being equitable or beneficial in nature. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person.

3 Sulo ng Bayan vs. Araneta [GR L-31061, 17 August 1976]
Second Division, Antonio (J): 4 concur

Facts: On 26 April 1966, Sulo ng Bayan, Inc. filed an accion de revindicacion with the Court of First Instance of Bulacan, Fifth Judicial District, Valenzuela, Bulacan, against Gregorio Araneta Inc. (GAI), Paradise Farms Inc., National Waterworks & Sewerage Authority (NAWASA), Hacienda Caretas Inc., and the Register of Deeds of Bulacan to recover the ownership and possession of a large tract of land in San Jose del Monte, Bulacan, containing an area of 27,982,250 sq. ms., more or less, registered under the Torrens System in the name of GAI, et. al.'s predecessors-in-interest (who are members of the corporation). On 2 September 1966, GAI filed a motion to dismiss the amended complaint on the grounds that (1) the complaint states no cause of action; and (2) the cause of action, if any, is barred by prescription and laches. Paradise Farms, Inc. and Hacienda Caretas, Inc. filed motions to dismiss based on the same grounds. NAWASA did not file any motion to dismiss. However, it pleaded in its answer as special and affirmative defenses lack of cause of action by Sulo ng Bayan Inc. and the barring of such action by prescription and laches. On 24 January 1967, the trial court issued an Order dismissing the (amended) complaint. On 14 February 1967, Sulo ng Bayan filed a

motion to reconsider the Order of dismissal, arguing among others that the complaint states a sufficient cause of action because the subject matter of the controversy in one of common interest to the members of the corporation who are so numerous that the present complaint should be treated as a class suit. The motion was denied by the trial court in its Order dated 22 February 1967.

Sulo ng Bayan appealed to the Court of Appeals. On 3 September 1969, the Court of Appeals, upon finding that no question of fact was involved in the appeal but only questions of law and jurisdiction, certified the case to the Supreme Court for resolution of the legal issues involved in the controversy.

Issue [1]: Whether the corporation (non-stock) may institute an action in behalf of its individual members for the recovery of certain parcels of land allegedly owned by said members, among others.

Held [1]: It is a doctrine well-established and obtains both at law and in equity that a corporation is a distinct legal entity to be considered as separate and apart from the individual stockholders or members who compose it, and is not affected by the personal rights, obligations and transactions of its stockholders or members. The property of the corporation is its property and not that of the stockholders, as owners, although they have equities in it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. Conversely, a corporation ordinarily has no interest in the individual property of its stockholders unless transferred to the corporation, "even in the case of a one-man corporation." The mere fact that one is president of a corporation does not render the property which he owns or possesses the property of the corporation, since the president, as individual, and the corporation are separate similarities. Similarly, stockholders in a corporation engaged in buying and dealing in real estate whose certificates of stock entitled the holder thereof to an allotment in the distribution of the land of the corporation upon surrender of their stock certificates were considered not to have such legal or equitable title or interest in the land, as would support a suit for title, especially against parties other than the corporation. It must be noted, however, that the juridical personality of the corporation, as separate and distinct from the persons composing it, is but a legal fiction introduced for the purpose of convenience and to subserve the ends of justice. This separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced, in cases where it is used as a cloak or cover for fraud or illegality, or to work -an injustice, or where necessary to achieve equity. It has not been claimed that the members have assigned or transferred whatever rights they may have on the land in question to the corporation. Absent any showing of interest, therefore, a corporation, has no personality to bring an action for and in behalf of its stockholders or members for the purpose of recovering property which belongs to said stockholders or members in their personal capacities.

Issue [2]: Whether the complaint filed by the corporation in behalf of its members may be treated as a class suit

Held [2]: In order that a class suit may prosper, the following requisites must be present: (1) that the subject matter of the controversy is one of common or general interest to many persons; and (2) that the parties are so numerous that it is impracticable to bring them all before the court. Here, there is only one party plaintiff, and the corporation does not even have an interest in the subject matter of the controversy, and cannot, therefore, represent its members or stockholders who claim to own in their individual capacities ownership of the said property. Moreover, a class suit does not lie in actions for the recovery of property where several persons claim partnership of their respective portions of the property, as each one could alleged and prove his respective right in a different way for each portion of the land, so that they cannot all be held to have identical title through acquisition/prescription.

4 Luxuria Homes vs. Court of Appeals [GR 125986, 28 January 1999]

First Division, Martinez (J):4 concur

Facts: Aida M. Posadas and her two (2) minor children co-owned a 1.6 hectare property in Sucat,

Muntinlupa, which was occupied by squatters. Posadas entered into negotiations with Jaime T. Bravo regarding the development of the said property into a residential subdivision. On 3 May 1989, she authorized Bravo to negotiate with the squatters to leave the said property. With a written authorization, Bravo buckled down to work and started negotiations with the squatters. Meanwhile, some 7 months later, on 11 December 1989, Posadas and her children, through a Deed of Assignment, assigned the said property to Luxuria Homes, Inc., *purportedly* for organizational and tax avoidance purposes. Bravo signed as one of the witnesses to the execution of the Deed of Assignment and the Articles of Incorporation of Luxuria Homes, Inc. Then sometime in 1992, the harmonious and congenial relationship of Posadas and Bravo turned sour when the former supposedly could not accept the management contracts to develop the 1.6 hectare property into a residential subdivision, the latter was proposing. In retaliation, Bravo demanded payment for services rendered in connection with the development of the land. In his statement of account dated 21 August 1991, Bravo demanded the payment of P1,708,489.00 for various services rendered, i.e., relocation of squatters, preparation of the architectural design and site development plan, survey and fencing. Posadas refused to pay the amount demanded. Thus, in September 1992, James Builder Construction and Jaime T. Bravo instituted a complaint for specific performance before the trial court against Posadas and Luxuria Homes, Inc. On 27 September 1993, the trial court declared Posadas in default and allowed James Builder Construction and Bravo to present their evidence ex-parte. On 8 March 1994, it ordered Posadas, jointly and in solidum with Luxuria Homes, Inc., to pay Bravo, et. al. the balance of the payment for the various services performed by them in the total amount of P1,708,489.00; actual damages incurred for the construction of the warehouse/bunks, and for the material used in the total sum of P1,500.000.00; moral and exemplary damages of P500.000.00; Attorney's fee of P50,000.00; and cost of this proceedings. The court also directed Posadas as the Representative of the Corporation Luxuria Homes, Incorporated, to execute the management contract she committed to do, also in consideration of the various undertakings that Bravo rendered for her.

Luxuria Homes and Posadas appealed to the Court of Appeals. The appellate court affirmed with modification the decision of the trial court. The appellate court deleted the award of moral damages on the ground that James Builder Construction is a corporation and hence could not experience physical suffering and mental anguish. It also reduced the award of exemplary damages. Luxuria Homes' and Posadas' motion for reconsideration, prompting them to file the petition for review before the Supreme Court.

Issue: Whether Luxuria Homes, Inc., was a party to the transactions entered into by Posadas with Bravo and James Builder Construction and thus could be held jointly and severally with Posadas.

Held: It cannot be said then that the incorporation of Luxuria Homes and the eventual transfer of the subject property to it were in fraud of Bravo and James Builder Construction as such were done with the full knowledge of Bravo himself, as evidenced by the Deed of Assignment dated 11 December 1989 and the Articles of Incorporation of Luxuria Homes, Inc., issued 26 January 1990 were both signed by Bravo himself as witness. Further, Posadas is not the majority stockholder of Luxuria Homes, Inc. The Articles of Incorporation of Luxuria Homes, Inc., clearly show that Posadas owns approximately 33% only of the capital stock. Hence, Posadas cannot be considered as an alter ego of Luxuria Homes, Inc. To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. It cannot be presumed. Bravo, et. al. failed to show proof that Posadas acted in bad faith, and consequently that Luxuria Homes, Inc., was a party to any of the supposed transactions, not even to the agreement to negotiate with and relocate the squatters, it cannot be held liable, nay jointly and in solidum, to pay Bravo, et. al. Hence, since it was Posadas who contracted Bravo to render the subject services, only she is liable to pay the amounts adjudged by the Court.

5 Concept Builders Inc. vs. National Labor Relations Commission (NLRC, First Division) [GR 108734, 29 May 1996]

First Division, Hermosisima Jr. (J): 4 concur

Facts: Concept Builders, Inc., (CBI) a domestic corporation, with principal office at 355 Maysan Road, Valenzuela, Metro Manila, is engaged in the construction business while Norberto Marabe; Rodolfo Raquel, Cristobal Riego, Manuel Gillego, Palcronio Giducos, Pedro Aboigar, Norberto Comendador, Rogelio Salut, Emilio Garcia, Jr., Mariano Rio, Paulina Basea, Alfredo Albera, Paquito Salut, Domingo Guarino, Romeo Galve, Dominador Sabina, Felipe Radiana, Gavino Sualibio, Moreno Escares, Ferdinand Torres, Felipe Basilan, and Ruben Robalos were employed by said company as laborers, carpenters and riggers. On November 1981, Marabe, et. al. were served individual written notices of termination of employment by CBI, effective on 30 November 1981. It was stated in the individual notices that their contracts of employment had expired and the project in which they were hired had been completed. The National Labor Relations Commission (NLRC) found it to be, the fact, however, that at the time of the termination of Marabe, et.al.'s employment, the project in which they were hired had not yet been finished and completed. CBI had to engage the services of sub-contractors whose workers performed the functions of Marabe, et. al. Aggrieved, Marabe, et. al. filed a complaint for illegal dismissal, unfair labor practice and non-payment of their legal holiday pay, overtime pay and thirteenth-month pay against CBI. On 19 December 1984, the Labor Arbiter rendered judgment ordering CBI to reinstate Marabe et. al. and to pay them back wages equivalent to 1 year or 300 working days. On 27 November 1985, the NLRC dismissed the motion for reconsideration filed by CBI on the ground that the said decision had already become final and executory.

On 16 October 1986, the NLRC Research and Information Department made the finding that Marabe, et. al.'s back wages amounted to P199,800.00. On 29 October 1986, the Labor Arbiter issued a writ of execution directing the sheriff to execute the Decision, dated 19 December 1984. The writ was partially satisfied through garnishment of sums from CBI's debtor, the Metropolitan Waterworks and Sewerage Authority, in the amount of P81,385.34. Said amount was turned over to the cashier of the NLRC. On 1 February 1989, an Alias Writ of Execution was issued by the Labor Arbiter directing the sheriff to collect from CBI the sum of P117,414.76, representing the balance of the judgment award, and to reinstate Marabe, et. al. to their former positions. On 13 July 1989, the sheriff issued a report stating that he tried to serve the alias writ of execution on petitioner through the security guard on duty but the service was refused on the ground that CBI no longer occupied the premises. On 26 September 1986, upon motion of Marabe, et. al., the Labor Arbiter issued a second alias writ of execution. The said writ had not been enforced by the special sheriff because, as stated in his progress report dated 2 November 1989, that all the employees inside CBI's premises claimed that they were employees of Hydro Pipes Philippines, Inc. (HPPI) and not by CBI; that levy was made upon personal properties he found in the premises; and that security guards with high-powered guns prevented him from removing the properties he had levied upon. The said special sheriff recommended that a "break-open order" be issued to enable him to enter CBI's premises so that he could proceed with the public auction sale of the aforesaid personal properties on 7 November 1989. On 6 November 1989, a certain Dennis Cuyegkeng filed a third-party claim with the Labor Arbiter alleging that the properties sought to be levied upon by the sheriff were owned by HPPI, of which he is the Vice-President. On 23 November 1989, Marabe, et. al. filed a "Motion for Issuance of a Break-Open Order," alleging that HPPI and CBI were owned by the same incorporator/stockholders. They also alleged that petitioner temporarily suspended its business operations in order to evade its legal obligations to them and that Marabe, et. al. were willing to post an indemnity bond to answer for any damages which CBI and HPPI may suffer because of the issuance of the break-open order. On 2 March 1990, the Labor Arbiter issued an Order which denied Marabe, et. al.'s motion for break-open order.

Marabe, et. al. then appealed to the NLRC. On 23 April 1992, the NLRC set aside the order of the Labor Arbiter, issued a break-open order and directed Marabe, et. al. to file a bond. Thereafter, it directed the sheriff to proceed with the auction sale of the properties already levied upon. It dismissed the third-party claim for lack of merit. CBI moved for reconsideration but the motion was denied by the NLRC in a Resolution, dated 3 December 1992. Hence, the petition.

Issue: Whether the NLRC was correct in issuing the break-open order to levy the “HPPI properties” located at CBI amd/or HPPI’s premises at 355 Maysan Road, Valenzuela, Metro Manila.

Held: It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation. The conditions under which the juridical entity may be disregarded vary according to the peculiar facts and circumstances of each case. No hard and fast rule can be accurately laid down, but certainly, there are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, to wit: (1) Stock ownership by one or common ownership of both corporations; (2) Identity of directors and officers; (3) The manner of keeping corporate books and records; and (4) Methods of conducting the business. The SEC en banc explained the "instrumentality rule" which the courts have applied in disregarding the separate juridical personality of corporations as "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 instances, 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 test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as (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 rights; and (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. The absence of any one of these elements prevents "piercing the corporate veil." In applying the "instrumentality" or "alter ego" doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. Thus the question of whether a corporation is a mere alter ego, a mere sheet or paper corporation, a sham or a subterfuge is purely one of fact. Here, while CBI claimed that it ceased its business operations on 29 April 1986, it filed an Information Sheet with the Securities and Exchange Commission on 15 May 1987, stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila. On the other hand, HPPI, the third-party claimant, submitted on the same day, a similar information sheet stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila. Further, both information sheets were filed by the same Virgilio O. Casiño as the corporate secretary of both corporations. Both corporations had the same president, the same board of directors, the same corporate officers, and substantially the same subscribers. From the foregoing, it appears that, among other things, the CBI and the HPPI shared the same address and/or premises. Under these circumstances, it cannot be said that the property levied upon by the sheriff were not of CBI's. Clearly, CBI ceased its business operations in order to evade the payment to Marabe, et. al. of back wages and to bar their reinstatement to their former positions. HPPI is obviously a business conduit of CBI and its emergence was skillfully orchestrated to avoid the financial liability that already attached to CBI.

6 Villa Rey Transit vs. Ferrer [GR L-23893, 29 October 1968]
En Banc, Angeles (J): 6 concur, 2 took no part, 1 on leave

Facts: *[preceding case]* Prior to 1959, Jose M. Villarama was an operator of a bus transportation, under the business name of Villa Rey Transit, pursuant to certificates of public convenience granted him by the Public Service Commission (PSC) in Cases 44213 and 104651, which authorized him to operate a total of 32 units

on various routes or lines from Pangasinan to Manila, and vice-versa. On 8 January 1959, he sold the two certificates of public convenience to the Pangasinan Transportation Company, Inc. (Pantranco), for P350,000.00 with the condition, among others, that the seller (Villarama) "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer." Barely 3 months thereafter, or on 6 March 1959: a corporation called Villa Rey Transit, Inc. (the Corporation) was organized with a capital stock of P500,000.00 divided into 5,000 shares of the par value of P100.00 each; P200,000.00 was the subscribed stock; Natividad R. Villarama (wife of Jose M. Villarama) was one of the incorporators, and she subscribed for P1,000.00; the balance of P199,000.00 was subscribed by the brother and sister-in-law of Jose M. Villarama; of the subscribed capital stock, P105,000.00 was paid to the treasurer of the corporation, who was Natividad R. Villarama. In less than a month after its registration with the Securities and Exchange Commission (10 March 1959), the Corporation, on 7 April 1959, bought 5 certificates of public convenience, 49 buses, tools and equipment from one Valentin Fernando, for the sum of P249,000.00, of which P100,000.00 was paid upon the signing of the contract; P50,000.00 was payable upon the final approval of the sale by the PSC; P49,500.00 one year after the final approval of the sale; and the balance of P50,000.00 "shall be paid by the BUYER to the different suppliers of the SELLER." The very same day that the contract of sale was executed, the parties thereto immediately applied with the PSC for its approval, with a prayer for the issuance of a provisional authority in favor of the vendee Corporation to operate the service therein involved. On 19 May 1959, the PSC granted the provisional permit prayed for, upon the condition that "it may be modified or revoked by the Commission at any time, shall be subject to whatever action that may be taken on the basic application and shall be valid only during the pendency of said application." Before the PSC could take final action on said application for approval of sale, however, the Sheriff of Manila, on 7 July 1959, levied on 2 of the five certificates of public convenience involved therein, namely, those issued under PSC cases 59494 and 63780, pursuant to a writ of execution issued by the Court of First Instance of Pangasinan in Civil Case 13798, in favor of Eusebio E. Ferrer against Valentin Fernando. The Sheriff made and entered the levy in the records of the PSC. On 16 July 1959, a public sale was conducted by the Sheriff of the said two certificates of public convenience. Ferrer was the highest bidder, and a certificate of sale was issued in his name. Thereafter, Ferrer sold the two certificates of public convenience to Pantranco, and jointly submitted for approval their corresponding contract of sale to the PSC. Pantranco therein prayed that it be authorized provisionally to operate the service involved in the said two certificates. The applications for approval of sale, filed before the PSC, by Fernando and the Corporation, Case 124057, and that of Ferrer and Pantranco, Case 126278, were scheduled for a joint hearing. In the meantime, to wit, on 22 July 1959, the PSC issued an order disposing that during the pendency of the cases and before a final resolution on the aforesaid applications, the Pantranco shall be the one to operate provisionally the service under the two certificates embraced in the contract between Ferrer and Pantranco. The Corporation took issue with this particular ruling of the PSC and elevated the matter to the Supreme Court, which decreed, after deliberation, that until the issue on the ownership of the disputed certificates shall have been finally settled by the proper court, the Corporation should be the one to operate the lines provisionally.

[present case] On 4 November 1959, the Corporation filed in the Court of First Instance of Manila, a complaint for the annulment of the sheriff's sale of the aforesaid two certificates of public convenience (PSC Cases 59494 and 63780) in favor of Ferrer, and the subsequent sale thereof by the latter to Pantranco, against Ferrer, Pantranco and the PSC. The Corporation prayed therein that all the orders of the PSC relative to the parties' dispute over the said certificates be annulled. The CFI of Manila declared the sheriff's sale of two certificates of public convenience in favor of Ferrer and the subsequent sale thereof by the latter to Pantranco null and void; declared the Corporation to be the lawful owner of the said certificates of public convenience; and ordered Ferrer and Pantranco, jointly and severally, to pay the Corporation, the sum of P5,000.00 as and for attorney's fees. The case against the PSC was dismissed. All parties appealed.

Issue: Whether the stipulation, "SHALL NOT FOR A PERIOD OF 10 YEARS FROM THE DATE OF THIS SALE, APPLY FOR ANY TPU SERVICE IDENTICAL OR COMPETING WITH THE BUYER" in the contract between Villarama and Pantranco, binds the Corporation (the Villa Rey Transit, Inc.).

Held: Villarama supplied the organization expenses and the assets of the Corporation, such as trucks and equipment; there was no actual payment by the original subscribers of the amounts of P95,000.00 and P100,000.00 as appearing in the books; Villarama made use of the money of the Corporation and deposited them to his private accounts; and the Corporation paid his personal accounts. Villarama himself admitted that he mingled the corporate funds with his own money. These circumstances are strong persuasive evidence showing that Villarama has been too much involved in the affairs of the Corporation to altogether negative the claim that he was only a part-time general manager. They show beyond doubt that the Corporation is his alter ego. The interference of Villarama in the complex affairs of the corporation, and particularly its finances, are much too inconsistent with the ends and purposes of the Corporation law, which, precisely, seeks to separate personal responsibilities from corporate undertakings. It is the very essence of incorporation that the acts and conduct of the corporation be carried out in its own corporate name because it has its own personality. The doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law. When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals. Hence, <u>the Villa Rey Transit, Inc. is an alter ego of Jose M. Villarama, and that the restrictive clause in the contract entered into by the latter and Pantranco is also enforceable and binding against the said Corporation. For the rule is that a seller or promisor may not make use of a corporate entity as a means of evading the obligation of his covenant. Where the Corporation is substantially the alter ego of the covenantor to the restrictive agreement, it can be enjoined from competing with the covenantee.</u>

7 Francisco Motors Corporation vs. Court of Appeals [GR 100812, 25 June 1999]
Second Division, Quisumbing (J): 4 concur

Facts: On 23 January 1985, Francisco Motors Corp. filed a complaint against Spouses Gregorio and Librada Manuel to recover P3,412.06, representing the balance of the jeep body purchased by the Manuels from Francisco Motors; an additional sum of P20,454.80 representing the unpaid balance on the cost of repair of the vehicle; and P6,000.00 for cost of suit and attorney's fees. To the original balance on the price of jeep body were added the costs of repair. In their answer, the Manuel spouses interposed a counterclaim for unpaid legal services by Gregorio Manuel in the amount of P50,000 which was not paid by the incorporators, directors and officers of Francisco Motors. The trial court decided the case on 26 June 1985, in favor of Francisco Motors in regard to its claim for money, but also allowed the counter-claim of the Manuel spouses. Both parties appealed. On 15 April 1991, the Court of Appeals sustained the trial court's decision. Hence, the present petition for review on certiorari.

Issue: Whether the Francisco Motors Corporation should be liable for the legal services of Gregorio Manuel rendered in the intestate proceedings over Benita Trinidad’s estate (of the Francisco family).

Held: Basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected. However, under the doctrine of piercing the veil of corporate entity, the corporation's separate juridical personality may be disregarded, for example, when the corporate identity is used to defeat public convenience, justify wrong, protect fraud, or defend crime. Also, where the corporation 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, then its distinct personality may be ignored. In these circumstances, the courts will treat the corporation as a mere aggrupation of persons and the liability will directly attach to them. The legal fiction of a separate corporate personality in those cited instances, for reasons of public policy and in the interest of justice, will be justifiably set aside. Herein,

however, given the facts and circumstances of this case, the doctrine of piercing the corporate veil has no relevant application. The rationale behind piercing a corporation's identity in a given case is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities. In the present case, instead of holding certain individuals or persons responsible for an alleged corporate act, the situation has been reversed. It is the Francisco Motors Corporation (FMC) as a corporation which is being ordered to answer for the personal liability of certain individual directors, officers and incorporators concerned. Hence, the doctrine has been turned upside down because of its erroneous invocation. In fact, the services of Gregorio Manuel were solicited as counsel for members of the Francisco family to represent them in the intestate proceedings over Benita Trinidad's estate. These estate proceedings did not involve any business of FMC. Manuel's move to recover unpaid legal fees through a counterclaim against FMC, to offset the unpaid balance of the purchase and repair of a jeep body could only result from an obvious misapprehension that FMC's corporate assets could be used to answer for the liabilities of its individual directors, officers, and incorporators. Such result if permitted could easily prejudice the corporation, its own creditors, and even other stockholders; hence, clearly inequitous to FMC. Furthermore, considering the nature of the legal services involved, whatever obligation said incorporators, directors and officers of the corporation had incurred, it was incurred in their personal capacity. When directors and officers of a corporation are unable to compensate a party for a personal obligation, it is far-fetched to allege that the corporation is perpetuating fraud or promoting injustice, and be thereby held liable therefor by piercing its corporate veil. While there are no hard and fast rules on disregarding separate corporate identity, we must always be mindful of its function and purpose. A court should be careful in assessing the milieu where the doctrine of piercing the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. The personality of the corporation and those of its incorporators, directors and officers in their personal capacities ought to be kept separate in this case. The claim for legal fees against the concerned individual incorporators, officers and directors could not be properly directed against the corporation without violating basic principles governing corporations. Moreover, every action — including a counterclaim — must be prosecuted or defended in the name of the real party in interest. It is plainly an error to lay the claim for legal fees of private respondent Gregorio Manuel at the door of FMC rather than individual members of the Francisco family.

8 Philippine National Bank vs. Andrada Electric & Engineering Co. [GR 142936, 17 April 2002]

Third Division, Panganiban (J): 3 concur, 1 on official leave

Facts: On 26 August 1975, the Philippine national Bank (PNB) acquired the assets of the Pampanga Sugar Mills (PASUMIL) that were earlier foreclosed by the Development Bank of the Philippines (DBP) under LOI 311. The PNB organized the ational Sugar Development Corporation (NASUDECO) in September 1975, to take ownership and possession of the assets and ultimately to nationalize and consolidate its interest in other PNB controlled sugar mills. Prior to 29 October 1971, PASUMIL engaged the services of the Andrada Electric & Engineering Company (AEEC) for electrical rewinding and repair, most of which were partially paid by PASUMIL, leaving several unpaid accounts with AEEC. On 29 October 1971, AEEC and PASUMIL entered into a contract for AEEC to perform the (a) Construction of a power house building; 3 reinforced concrete foundation for 3 units 350 KW diesel engine generating sets, 3 reinforced concrete foundation for the 5,000 KW and 1,250 KW turbo generator sets, among others. Aside from the work contract, PASUMIL required AEEC to perform extra work, and provide electrical equipment and spare parts. Out of the total obligation of P777,263.80, PASUMIL had paid only P250,000.00, leaving an unpaid balance, as of 27 June 1973, amounting to P527,263.80. Out of said unpaid balance of P527,263.80, PASUMIL made a partial payment to AEEC of P14,000.00, in broken amounts, covering the period from 5 January 1974 up to 23 May 1974, leaving an unpaid balance of P513,263.80. PASUMIL and PNB, and now NASUDECO, allegedly failed and refused to pay AEEC their just, valid and demandable obligation (The President of the NASUDECO is also the Vice-President of the PNB. AEEC besought said official to pay the outstanding obligation of PASUMIL, inasmuch as PNB and NASUDECO now owned and possessed the assets of PASUMIL, and these defendants all benefited from the works, and the electrical, as well as the engineering

and repairs, performed by AEEC). Because of the failure and refusal of PNB, PASUMIL and/or NASUDECO to pay their obligations, AEEC allegedly suffered actual damages in the total amount of P513,263.80; and that in order to recover these sums, AEEC was compelled to engage the professional services of counsel, to whom AEEC agreed to pay a sum equivalent to 25% of the amount of the obligation due by way of attorney's fees. PNB and NASUDECO filed a joint motion to dismiss on the ground that the complaint failed to state sufficient allegations to establish a cause of action against PNB and NASUDECO, inasmuch as there is lack or want of privity of contract between the them and AEEC. Said motion was denied by the trial court in its 27 November order, and ordered PNB nad NASUDECO to file their answers within 15 days. After due proceedings, the Trial Court rendered judgment in favor of AEEC and against PNB, NASUDECO and PASUMIL; the latter being ordered to pay jointly and severally the former (1) the sum of P513,623.80 plus interest thereon at the rate of 14% per annum as claimed from 25 September 1980 until fully paid; (2) the sum of P102,724.76 as attorney's fees; and, (3) Costs. PNB and NASUDECO appealed. The Court of Appeals affirmed the decision of the trial court in its decision of 17 April 2000 (CA-GR CV 57610. PNB and NASUDECO filed the petition for review.

Issue: Whether PNB and NASUDECO may be held liable for PASUMIL's liability to AEEC.

Held: Basic is the rule that a corporation has a legal personality distinct and separate from the persons and entities owning it. The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice. Thus, the mere fact that the Philippine National Bank (PNB) acquired ownership or management of some assets of the Pampanga Sugar Mill (PASUMIL), which had earlier been foreclosed and purchased at the resulting public auction by the Development Bank of the Philippines (DBP), will not make PNB liable for the PASUMIL's contractual debts to Andrada Electric & Engineering Company (AEEC). Piercing the veil of corporate fiction may be allowed only if the following elements concur: (1) control — not mere stock control, but complete domination — not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of. The absence of the foregoing elements in the present case precludes the piercing of the corporate veil. First, other than the fact that PNB and NASUDECO acquired the assets of PASUMIL, there is no showing that their control over it warrants the disregard of corporate personalities. Second, there is no evidence that their juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person. Third, AEEC was not defrauded or injured when PNB and NASUDECO acquired the assets of PASUMIL. Hence, although the assets of NASUDECO can be easily traced to PASUMIL, the transfer of the latter's assets to PNB and NASUDECO was not fraudulently entered into in order to escape liability for its debt to AEEC. Neither was there any merger or consolidation with respect to PASUMIL and PNB. The procedure prescribed under Title IX of the Corporation Code 59 was not followed. In fact, PASUMIL's corporate existence had not been legally extinguished or terminated. Further, prior to PNB's acquisition of the foreclosed assets, PASUMIL had previously made partial payments to AEEC for the former's obligation in the amount of P777,263.80. As of 27 June 1973, PASUMIL had paid P250,000 to AEEC and, from 5 January 1974 to 23 May 1974, another P14,000. Neither did PNB expressly or impliedly agree to assume the debt of PASUMIL to AEEC. LOI 11 explicitly provides that PNB shall study and submit recommendations on the claims of PASUMIL's creditors. Clearly, the corporate separateness between PASUMIL and PNB remains, despite AEEC's insistence to the contrary.

9 Lipat vs. Pacific Banking Corporation [GR 142435, 30 April 2003]

?, Quisumbing (J): 3 concur

Facts: The spouses Alfredo Lipat and Estelita Burgos Lipat, owned "Bela's Export Trading" (BET), a single proprietorship with principal office at No. 814 Aurora Boulevard, Cubao, Quezon City. BET was engaged in the manufacture of garments for domestic and foreign consumption. The Lipats also owned the "Mystical Fashions" in the United States, which sells goods imported from the Philippines through BET. Mrs. Lipat designated her daughter, Teresita B. Lipat, to manage BET in the Philippines while she was managing "Mystical Fashions" in the United States. In order to facilitate the convenient operation of BET, Estelita Lipat executed on 14 December 1978, a special power of attorney appointing Teresita Lipat as her attorney-in-fact to obtain loans and other credit accommodations from Pacific Banking Corporation (Pacific Bank). She likewise authorized Teresita to execute mortgage contracts on properties owned or co-owned by her as security for the obligations to be extended by Pacific Bank including any extension or renewal thereof. Sometime in April 1979, Teresita, by virtue of the special power of attorney, was able to secure for and in behalf of her mother, Mrs. Lipat and BET, a loan from Pacific Bank amounting to P583,854.00 to buy fabrics to be manufactured by BET and exported to "Mystical Fashions" in the United States. As security therefor, the Lipat spouses, as represented by Teresita, executed a Real Estate Mortgage over their property located at No. 814 Aurora Blvd., Cubao, Quezon City. Said property was likewise made to secure other additional or new loans, etc. On 5 September 1979, BET was incorporated into a family corporation named Bela's Export Corporation (BEC) in order to facilitate the management of the business. BEC was engaged in the business of manufacturing and exportation of all kinds of garments of whatever kind and description and utilized the same machineries and equipment previously used by BET. Its incorporators and directors included the Lipat spouses who owned a combined 300 shares out of the 420 shares subscribed, Teresita Lipat who owned 20 shares, and other close relatives and friends of the Lipats. Estelita Lipat was named president of BEC, while Teresita became the vice-president and general manager. Eventually, the loan was later restructured in the name of BEC and subsequent loans were obtained by BEC with the corresponding promissory notes duly executed by Teresita on behalf of the corporation. A letter of credit was also opened by Pacific Bank in favor of A. O. Knitting Manufacturing Co., Inc., upon the request of BEC after BEC executed the corresponding trust receipt therefor. Export bills were also executed in favor of Pacific Bank for additional finances. These transactions were all secured by the real estate mortgage over the Lipats' property. The promissory notes, export bills, and trust receipt eventually became due and demandable. Unfortunately, BEC defaulted in its payments. After receipt of Pacific Bank's demand letters, Estelita Lipat went to the office of the bank's liquidator and asked for additional time to enable her to personally settle BEC's obligations. The bank acceded to her request but Estelita failed to fulfill her promise. Consequently, the real estate mortgage was foreclosed and after compliance with the requirements of the law the mortgaged property was sold at public auction. On 31 January 1989, a certificate of sale was issued to respondent Eugenio D. Trinidad as the highest bidder. On 28 November 1989, the spouses Lipat filed before the Quezon City RTC a complaint for annulment of the real estate mortgage, extrajudicial foreclosure and the certificate of sale issued over the property against Pacific Bank and Eugenio D. Trinidad. The complaint alleged, among others, that the promissory notes, trust receipt, and export bills were all ultra vires acts of Teresita as they were executed without the requisite board resolution of the Board of Directors of BEC. The Lipats also averred that assuming said acts were valid and binding on BEC, the same were the corporation's sole obligation, it having a personality distinct and separate from spouses Lipat. It was likewise pointed out that Teresita's authority to secure a loan from Pacific Bank was specifically limited to Mrs. Lipat's sole use and benefit and that the real estate mortgage was executed to secure the Lipats' and BET's P583,854.00 loan only. In their respective answers, Pacific Bank and Trinidad alleged in common that petitioners Lipat cannot evade payments of the value of the promissory notes, trust receipt, and export bills with their property because they and the BEC are one and the same, the latter being a family corporation. Trinidad further claimed that he was a buyer in good faith and for value and that the Lipat spouses are estopped from denying BEC's existence after holding themselves out as a corporation. After trial on the merits, the RTC dismissed the complaint. The Lipats timely appealed the RTC decision to the Court of Appeals in CA-G.R. CV 41536. Said appeal, however, was dismissed by the appellate court for lack of merit. The Lipats then moved for reconsideration, but this was denied by the appellate court in its Resolution of 23 February 2000. The Lipat spouses filed the petition for review on certiorari.

Issue: Whether BEC and BET are separate business entities, and thus the Lipt spouses can isolate themselves behind the corporate personality of BEC.

Held: When the corporation is the mere alter ego or business conduit of a person, the separate personality of the corporation may be disregarded. This is commonly referred to as the "instrumentality rule" or the alter ego doctrine, which the courts have applied in disregarding the separate juridical personality of corporations. As held in one case, 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. The evidence on record shows BET and BEC are not separate business entities. (1) Estelita and Alfredo Lipat are the owners and majority shareholders of BET and BEC, respectively; (2) both firms were managed by their daughter, Teresita; 19 (3) both firms were engaged in the garment business, supplying products to "Mystical Fashion," a U.S. firm established by Estelita Lipat; (4) both firms held office in the same building owned by the Lipats; (5) BEC is a family corporation with the Lipats as its majority stockholders; (6) the business operations of the BEC were so merged with those of Mrs. Lipat such that they were practically indistinguishable; (7) the corporate funds were held by Estelita Lipat and the corporation itself had no visible assets; (8) the board of directors of BEC was composed of the Burgos and Lipat family members; (9) Estelita had full control over the activities of and decided business matters of the corporation; and that (10) Estelita Lipat had benefited from the loans secured from Pacific Bank to finance her business abroad and from the export bills secured by BEC for the account of "Mystical Fashion." It could not have been coincidental that BET and BEC are so intertwined with each other in terms of ownership, business purpose, and management. Apparently, BET and BEC are one and the same and the latter is a conduit of and merely succeeded the former. The spouses' attempt to isolate themselves from and hide behind the corporate personality of BEC so as to evade their liabilities to Pacific Bank is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy. BEC is a mere continuation and successor of BET, and the Lipat spouses cannot evade their obligations in the mortgage contract secured under the name of BEC on the pretext that it was signed for the benefit and under the name of BET.

10 Hall vs. Piccio [GR L-2598, 29 June 1950]
En Banc, Bengzon (J): 5 concur

Facts: On 28 May 1947, C. Arnold Hall and Bradley P. Hall, and Fred Brown, Emma Brown, Hipolita D. Chapman and Ceferino S. Abella, signed and acknowledged in Leyte, the article of incorporation of the Far Eastern Lumber and Commercial Co., Inc., organized to engage in a general lumber business to carry on as general contractors, operators and managers, etc. Attached to the article was an affidavit of the treasurer stating that 23,428 shares of stock had been subscribed and fully paid with certain properties transferred to the corporation described in a list appended thereto. Immediately after the execution of said articles of incorporation, the corporation proceeded to do business with the adoption of by-laws and the election of its officers. On 2 December 1947, the said articles of incorporation were filed in the office of the Securities and Exchange Commissioner, for the issuance of the corresponding certificate of incorporation. On 22 March 1948, pending action on the articles of incorporation by the aforesaid governmental office, Fred Brown, Emma Brown, Hipolita D. Chapman and Ceferino S. Abella filed before the Court of First Instance of Leyte the civil case, alleging among other things that the Far Eastern Lumber and Commercial Co. was an unregistered partnership; that they wished to have it dissolved because of bitter dissension among the members, mismanagement and fraud by the managers and heavy financial losses. C. Arnold Hall and Bradley P. Hall, filed a motion to dismiss, contesting the court's jurisdiction and the sufficiently of the cause of action. After hearing the parties, the Hon. Edmund S. Piccio ordered the dissolution of the company; and at the request of Brown, et. al., appointed Pedro A. Capuciong as the receiver of the properties thereof, upon the

filing of a P20,000 bond. Hall and Hall offered to file a counter-bond for the discharge of the receiver, but Judge Piccio refused to accept the offer and to discharge the receiver. Whereupon, Hall and Hall instituted the present special civil action with the Supreme Court.

Issue: Whether Brown, et. al. may file an action to cause the dissolution of the Far Eastern Lumber and Commercial Co., without State intervention.

Held: The Securities and Exchange Commission has not issued the corresponding certificate of incorporation. The personality of a corporation begins to exist only from the moment such certificate is issued — not before. Not having obtained the certificate of incorporation, the Far Eastern Lumber and Commercial Co. — even its stockholders — may not probably claim "in good faith" to be a corporation. Under the statue it is to be noted that it is the issuance of a certificate of incorporation by the Director of the Bureau of Commerce and Industry which calls a corporation into being. The immunity if collateral attack is granted to corporations "claiming in good faith to be a corporation under this act." Such a claim is compatible with the existence of errors and irregularities; but not with a total or substantial disregard of the law. Unless there has been an evident attempt to comply with the law the claim to be a corporation "under this act" could not be made "in good faith."

This is not a suit in which the corporation is a party. This is a litigation between stockholders of the alleged corporation, for the purpose of obtaining its dissolution. Even the existence of a de jure corporation may be terminated in a private suit for its dissolution between stockholders, without the intervention of the state.

11 Lim vs. Philippine Fishing Gear Industries Inc. [GR 136448, 3 November 1999]

Third Division, Panganiban (J): 3 concur

Facts: On behalf of "Ocean Quest Fishing Corporation," Antonio Chua and Peter Yao entered into a Contract dated 7 February 1990, for the purchase of fishing nets of various sizes from the Philippine Fishing Gear Industries, Inc. (PFGI). They claimed that they were engaged in a business venture with Lim Tong Lim, who however was not a signatory to the agreement. The total price of the nets amounted to P532,045. 400 pieces of floats worth P68,000 were also sold to the Corporation. The buyers, however, failed to pay for the fishing nets and the floats; hence, PFGI filed a collection suit against Chua, Yao and Lim Tong Lim with a prayer for a writ of preliminary attachment. The suit was brought against the three in their capacities as general partners, on the allegation that "Ocean Quest Fishing Corporation" was a nonexistent corporation as shown by a Certification from the Securities and Exchange Commission. On 20 September 1990, the lower court issued a Writ of Preliminary Attachment, which the sheriff enforced by attaching the fishing nets on board F/B Lourdes which was then docked at the Fisheries Port, Navotas, Metro Manila. Instead of answering the Complaint, Chua filed a Manifestation admitting his liability and requesting a reasonable time within which to pay. He also turned over to PFGI some of the nets which were in his possession. Peter Yao filed an Answer, after which he was deemed to have waived his right to cross-examine witnesses and to present evidence on his behalf, because of his failure to appear in subsequent hearings. Lim Tong Lim, on the other hand, filed an Answer with Counterclaim and Crossclaim and moved for the lifting of the Writ of Attachment. The trial court maintained the Writ, and upon motion of PFGI, ordered the sale of the fishing nets at a public auction. PFGI won the bidding and deposited with the said court the sales proceeds of P900,000. On 18 November 1992, the trial court rendered its Decision, ruling that PFGI was entitled to the Writ of Attachment and that Chua, Yao and Lim, as general partners, were jointly liable to pay PFGI. The trial court ruled that a partnership among Lim, Chua and Yao existed based (1) on the testimonies of the witnesses presented and (2) on a Compromise Agreement executed by the three in Civil Case 1492-MN which Chua and Yao had brought against Lim in the RTC of Malabon, Branch 72, for (a) a declaration of nullity of commercial documents; (b) a reformation of contracts; (c) a declaration of ownership of fishing boats; (d) an injunction and (e) damages. Lim appealed to the Court of Appeals (CA) which, affirmed the RTC. Lim filed the Petition for Review on Certiorari. Lim argues, among others, that under the doctrine of corporation by estoppel, liability can be

imputed only to Chua and Yao, and not to him.

Issue: Whether Lim should be held jointly liable with Chua and Yao.

Held: Chua, Yao and Lim had decided to engage in a fishing business, which they started by buying boats worth P3.35 million, financed by a loan secured from Jesus Lim who was Lim Tong Lim's brother. In their Compromise Agreement, they subsequently revealed their intention to pay the loan with the proceeds of the sale of the boats, and to divide equally among them the excess or loss. These boats, the purchase and the repair of which were financed with borrowed money, fell under the term "common fund" under Article 1767. The contribution to such fund need not be cash or fixed assets; it could be an intangible like credit or industry. That the parties agreed that any loss or profit from the sale and operation of the boats would be divided equally among them also shows that they had indeed formed a partnership. The partnership extended not only to the purchase of the boat, but also to that of the nets and the floats. The fishing nets and the floats, both essential to fishing, were obviously acquired in furtherance of their business. It would have been inconceivable for Lim to involve himself so much in buying the boat but not in the acquisition of the aforesaid equipment, without which the business could not have proceeded. The sale of the boats, as well as the division among the three of the balance remaining after the payment of their loans, proves beyond cavil that F/B Lourdes, though registered in his name, was not his own property but an asset of the partnership. It is not uncommon to register the properties acquired from a loan in the name of the person the lender trusts, who in this case is Lim Tong Lim himself. After all, he is the brother of the creditor, Jesus Lim. It is unreasonable — indeed, it is absurd — for petitioner to sell his property to pay a debt he did not incur, if the relationship among the three of them was merely that of lessor-lessee, instead of partners.

As to Lim's argument that under the doctrine of corporation by estoppel, liability can be imputed only to Chua and Yao, and not to him; Section 21 of the Corporation Code of the Philippines provides that "All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: Provided however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality. One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation." Thus, even if the ostensible corporate entity is proven to be legally nonexistent, a party may be estopped from denying its corporate existence. "The reason behind this doctrine is obvious — an unincorporated association has no personality and would be incompetent to act and appropriate for itself the power and attributes of a corporation as provided by law; it cannot create agents or confer authority on another to act in its behalf; thus, those who act or purport to act as its representatives or agents do so without authority and at their own risk. And as it is an elementary principle of law that a person who acts as an agent without authority or without a principal is himself regarded as the principal, possessed of all the right and subject to all the liabilities of a principal, a person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent." The doctrine of corporation by estoppel may apply to the alleged corporation and to a third party. In the first instance, an unincorporated association, which represented itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relied in good faith on such representation. It cannot allege lack of personality to be sued to evade its responsibility for a contract it entered into and by virtue of which it received advantages and benefits. On the other hand, a third party who, knowing an association to be unincorporated, nonetheless treated it as a corporation and received benefits from it, may be barred from denying its corporate existence in a suit brought against the alleged corporation. In such case, all those who benefited from the transaction made by the ostensible corporation, despite knowledge of its legal defects, may be held liable for contracts they impliedly assented to or took advantage of. There is no dispute that PFGI is entitled to be paid for the nets it sold. The only question here is whether Lim should be held jointly liable with Chua and Yao. Lim contests such liability, insisting that only those who dealt in the name of the ostensible

corporation should be held liable. Although technically it is true that Lim did not directly act on behalf of the corporation; however, having reaped the benefits of the contract entered into by persons with whom he previously had an existing relationship, he is deemed to be part of said association and is covered by the scope of the doctrine of corporation by estoppel.

12 International Express Travel & Tour Services, Inc. vs. Court of Appelas [GR 119002, 19 October 2000]

First Division, Kapunan (J): 4 concur

Facts: On 30 June 1989, the International Express Travel and Tour Services, Inc. (IETTSI), through its managing director, wrote a letter to the Philippine Football Federation (Federation), through its president, Henri Kahn, wherein the former offered its services as a travel agency to the latter. The offer was accepted. IETTSI secured the airline tickets for the trips of the athletes and officials of the Federation to the South East Asian Games in Kuala Lumpur as well as various other trips to the People's Republic of China and Brisbane. The total cost of the tickets amounted to P449,654.83. For the tickets received, the Federation made two partial payments, both in September of 1989, in the total amount of P176,467.50. On 4 October 1989, IETTSI wrote the Federation, through Kahn a demand letter requesting for the amount of P265,894.33. On 30 October 1989, the Federation, through the Project Gintong Alay, paid the amount of P31,603.00. On 27 December 1989, Henri Kahn issued a personal check in the amount of P50,000 as partial payment for the outstanding balance of the Federation. Thereafter, no further payments were made despite repeated demands. This prompted IETTSI to file a civil case before the Regional Trial Court of Manila. IETTSI sued Henri Kahn in his personal capacity and as President of the Federation and impleaded the Federation as an alternative defendant. IETTSI sought to hold Henri Kahn liable for the unpaid balance for the tickets purchased by the Federation on the ground that Henri Kahn allegedly guaranteed the said obligation. Kahn filed his answer with counterclaim, while the Federation failed to file its answer and was declared in default by the trial court. In due course, the trial court rendered judgment and ruled in favor of IETTSI and declared Henri Kahn personally liable for the unpaid obligation of the Federation. The complaint of IETTSI against the Philippine Football Federation and the counterclaims of Henri Kahn were dismissed, with costs against Kahn. Only Henri Kahn elevated the decision to the Court of Appeals. On 21 December 1994, the appellate court rendered a decision reversing the trial court. IETTSI filed a motion for reconsideration and as an alternative prayer pleaded that the Federation be held liable for the unpaid obligation. The same was denied by the appellate court in its resolution of 8 February 1995. IETTSI filed the petition with the Supreme Court.

Issue [1]: Whether the Philippine Football Federation has a corporate existence of its own.

Held [1]: Both RA 3135 (the Revised Charter of the Philippine Amateur Athletic Federation) and PD 604 recognized the juridical existence of national sports associations. This may be gleaned from the powers and functions granted to these associations (See Section 14 of RA 3135 and Section 8 of PD 604). The powers and functions granted to national sports associations indicate that these entities may acquire a juridical personality. The power to purchase, sell, lease and encumber property are acts which may only be done by persons, whether natural or artificial, with juridical capacity. However, while national sports associations may be accorded corporate status, such does not automatically take place by the mere passage of these laws. It is a basic postulate that before a corporation may acquire juridical personality, the State must give its consent either in the form of a special law or a general enabling act. The Philippine Football Federation did not come into existence upon the passage of these laws. Nowhere can it be found in RA 3135 or PD 604 any provision creating the Philippine Football Federation. These laws merely recognized the existence of national sports associations and provided the manner by which these entities may acquire juridical personality. Section 11 of RA 3135 and Section 8 of PD 604 require that before an entity may be considered as a national sports association, such entity must be recognized by the accrediting organization, the Philippine, Amateur Athletic Federation under RA 3135, and the Department of Youth and Sports Development under PD 604. This fact of recognition, however, Henri Kahn failed to substantiate. A copy of the constitution and by-laws of the

Philippine Football Federation does not prove that said Federation has indeed been recognized and accredited by either the Philippine Amateur Athletic Federation or the Department of Youth and Sports Development. Accordingly, the Philippine Football Federation is not a national sports association within the purview of the aforementioned laws and does not have corporate existence of its own.

Issue [2]: Whether Kahn should be made personally liable for the unpaid obligations of the Philippine Football Federation.

Held [2]: Henry Kahn should be held liable for the unpaid obligations of the unincorporated Philippine Football Federation. It is a settled principal in corporation law that any person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and becomes personally liable for contract entered into or for other acts performed as such agent. As president of the Federation, Henri Kahn is presumed to have known about the corporate existence or non-existence of the Federation.

Issue [3]: Whether the appellate court properly applied the doctrine of corporation by estoppel.

Held [3]: The Court cannot subscribe to the position taken by the appellate court that even assuming that the Federation was defectively incorporated, IETTSI cannot deny the corporate existence of the Federation because it had contracted and dealt with the Federation in such a manner as to recognize and in effect admit its existence. The doctrine of corporation by estoppel is mistakenly applied by the appellate court to IETTSI. The application of the doctrine applies to a third party only when he tries to escape liabilities on a contract from which he has benefited on the irrelevant ground of defective incorporation. Herein, IETTSI is not trying to escape liability from the contract but rather is the one claiming from the contract.

13 Jardine Davies vs. Court of Appeals [GR 128066, 19 June 2000], also Purefoods Corporation vs. Court of Appeals [GR 128069]
Second Division, Bellosillo (J): 4 concur

Facts: In 1992, at the height of the power crisis which the country was then experiencing, and to remedy and curtail further losses due to the series of power failures, Pure Foods Corporation decided to install two (2) 1500 KW generators in its food processing plant in San Roque, Marikina City. Sometime in November 1992 a bidding for the supply and installation of the generators was held. Several suppliers and dealers were invited to attend a pre-bidding conference to discuss the conditions, propose scheme and specifications that would best suit the needs of PUREFOODS. Out of the 8 prospective bidders who attended the pre-bidding conference, only 3 bidders, namely, Far East Mills Supply Corporation (FEMSCO), Monark and Advance Power submitted bid proposals and gave bid bonds equivalent to 5% of their respective bids, as required. Thereafter, in a letter dated 12 December 1992 addressed to FEMSCO President Alfonso Po, PUREFOODS confirmed the award of the contract to FEMSCO. Immediately, FEMSCO submitted the required performance bond in the amount of P1,841,187.90 and contractor's all-risk insurance policy in the amount of P6,137,293.00 which PUREFOODS through its Vice President Benedicto G. Tope acknowledged in a letter dated 18 December 1992. FEMSCO also made arrangements with its principal and started the PUREFOODS project by purchasing the necessary materials. PUREFOODS on the other hand returned FEMSCO's Bidder's Bond in the amount of P1,000,000.00, as requested. Later, however, in a letter dated 22 December 1992, PUREFOODS through its Senior Vice President Teodoro L. Dimayuga unilaterally cancelled the award as "significant factors were uncovered and brought to (their) attention which dictate (the) cancellation and warrant a total review and re-bid of (the) project." Consequently, FEMSCO protested the cancellation of the award and sought a meeting with PUREFOODS. However, on 26 March 1993, before the matter could be resolved, PUREFOODS already awarded the project and entered into a contract with JARDINE NELL, a division of Jardine Davies, Inc. (JARDINE), which incidentally was not one of the bidders. FEMSCO thus wrote PUREFOODS to honor its contract with the former, and to JARDINE to cease and desist from delivering and installing the 2 generators at PUREFOODS. Its demand letters unheeded, FEMSCO sued both

PUREFOODS and JARDINE: PUREFOODS for reneging on its contract, and JARDINE for its unwarranted interference and inducement. Trial ensued. After FEMSCO presented its evidence, JARDINE filed a Demurrer to Evidence. On 27 June 1994 the Regional Trial Court of Pasig, Branch 68, granted JARDINE's Demurrer to Evidence. On 28 July 1994 the trial court rendered a decision ordering PUREFOODS: (a) to indemnify FEMSCO the sum of P2,300,000.00 representing the value of engineering services it rendered; (b) to pay FEMSCO the sum of US$14,000.00 or its peso equivalent, and P900,000.00 representing contractor's mark-up on installation work, considering that it would be impossible to compel PUREFOODS to honor, perform and fulfill its contractual obligations in view of PUREFOOD's contract with JARDINE and noting that construction had already started thereon; (c) to pay attorney's fees in an amount equivalent to 20% of the total amount due; and, (d) to pay the costs. The trial court dismissed the counterclaim filed by PUREFOODS for lack of factual and legal basis. Both FEMSCO and PUREFOODS appealed to the Court of Appeals. FEMSCO appealed the 27 June 1994 Resolution of the trial court which granted the Demurrer to Evidence filed by JARDINE resulting in the dismissal of the complaint against it, while PUREFOODS appealed the 28 July 1994 Decision of the same court which ordered it to pay FEMSCO. On 14 August 1996 the Court of Appeals affirmed in toto the 28 July 1994 Decision of the trial court. It also reversed the 27 June 1994 Resolution of the lower court and ordered JARDINE to pay FEMSCO damages for inducing PUREFOODS to violate the latter's contract with FEMSCO. As such, JARDINE was ordered to pay FEMSCO P2,000,000.00 for moral damages. In addition, PUREFOODS was also directed to pay FEMSCO P2,000,000.00 as moral damages and P1,000,000.00 as exemplary damages as well as 20% of the total amount due as attorney's fees. On 31 January 1997 the Court of Appeals denied for lack of merit the separate motions for reconsideration filed by PUREFOODS and JARDINE. Hence, 2 petitions for review filed were by PUREFOODS and JARDINE which were subsequently consolidated.

Issue: Whether FEMSCO is entitled to an award for moral damages.

Held: By the unilateral cancellation of the contract, PURE FOODS has acted with bad faith and this was further aggravated by the subsequent inking of a contract between Purefoods and Jardine. It is very evident that Purefoods thought that by the expedient means of merely writing a letter would automatically cancel or nullify the existing contract entered into by both parties after a process of bidding. This is a flagrant violation of the express provisions of the law and is contrary to fair and just dealings to which every man is due. The Court has awarded in the past moral damages to a corporation whose reputation has been besmirched. Herein, FEMSCO has sufficiently shown that its reputation was tarnished after it immediately ordered equipment from its suppliers on account of the urgency of the project, only to be canceled later. The Court thus sustain the appellate court's award of moral damages. The Court however reduced the award from P2,000,000.00 to P1,000,000.00, as moral damages are never intended to enrich the recipient. Likewise, the award of exemplary damages by way of example for the public good is excessive and should be reduced to P100,000.00. On the other hand, the appellate court erred in ordering JARDINE to pay moral damages to FEMSCO as it supposedly induced PUREFOODS to violate the contract with FEMSCO. While it may seem that PUREFOODS and JARDINE connived to deceive FEMSCO, there is no specific evidence on record to support such perception. Likewise, there is no showing whatsoever that JARDINE induced PUREFOODS. The similarity in the design submitted to PUREFOODS by both JARDINE and FEMSCO, and the tender of a lower quotation by JARDINE are insufficient to show that JARDINE indeed induced PUREFOODS to violate its contract with FEMSCO.

14 Filipinas Broadcasting Network Inc. vs. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM) [GR 141994, 17 January 2005]
Carpio (J): 4 concur

Facts: "Exposé" is a radio documentary program hosted by Carmelo 'Mel' Rima ("Rima") and Hermogenes 'Jun' Alegre ("Alegre"). Exposé is aired every morning over DZRC-AM which is owned by Filipinas Broadcasting Network, Inc. ("FBNI"). "Exposé" is heard over Legazpi City, the Albay municipalities and

other Bicol areas. In the morning of 14 and 15 December 1989, Rima and Alegre exposed various alleged complaints from students, teachers and parents against Ago Medical and Educational Center-Bicol Christian College of Medicine ("AMEC") and its administrators. Claiming that the broadcasts were defamatory, AMEC and Angelita Ago ("Ago"), as Dean of AMEC's College of Medicine, filed a complaint for damages against FBNI, Rima and Alegre on 27 February 1990. The complaint further alleged that AMEC is a reputable learning institution. With the supposed exposés, FBNI, Rima and Alegre "transmitted malicious imputations, and as such, destroyed plaintiffs' (AMEC and Ago) reputation." AMEC and Ago included FBNI as defendant for allegedly failing to exercise due diligence in the selection and supervision of its employees, particularly Rima and Alegre. On 18 June 1990, FBNI, Rima and Alegre, through Atty. Rozil Lozares, filed an Answer alleging that the broadcasts against AMEC were fair and true. FBNI, Rima and Alegre claimed that they were plainly impelled by a sense of public duty to report the "goings-on in AMEC, [which is] an institution imbued with public interest." Thereafter, trial ensued. During the presentation of the evidence for the defense, Atty. Edmundo Cea, collaborating counsel of Atty. Lozares, filed a Motion to Dismiss on FBNI's behalf. The trial court denied the motion to dismiss. Consequently, FBNI filed a separate Answer claiming that it exercised due diligence in the selection and supervision of Rima and Alegre. FBNI claimed that before hiring a broadcaster, the broadcaster should (1) file an application; (2) be interviewed; and (3) undergo an apprenticeship and training program after passing the interview. FBNI likewise claimed that it always reminds its broadcasters to "observe truth, fairness and objectivity in their broadcasts and to refrain from using libelous and indecent language." Moreover, FBNI requires all broadcasters to pass the Kapisanan ng mga Brodkaster sa Pilipinas ("KBP") accreditation test and to secure a KBP permit. On 14 December 1992, the trial court rendered a Decision finding FBNI and Alegre liable for libel except Rima. The trial court held that the broadcasts are libelous per se. The trial court rejected the broadcasters' claim that their utterances were the result of straight reporting because it had no factual basis. The broadcasters did not even verify their reports before airing them to show good faith. In holding FBNI liable for libel, the trial court found that FBNI failed to exercise diligence in the selection and supervision of its employees. In absolving Rima from the charge, the trial court ruled that Rima's only participation was when he agreed with Alegre's exposé. The trial court found Rima's statement within the "bounds of freedom of speech, expression, and of the press." Both parties, namely, FBNI, Rima and Alegre, on one hand, and AMEC and Ago, on the other, appealed the decision to the Court of Appeals. The Court of Appeals affirmed the trial court's judgment with modification. The appellate court made Rima solidarily liable with FBNI and Alegre. The appellate court denied Ago's claim for damages and attorney's fees because the broadcasts were directed against AMEC, and not against her. FBNI, Rima and Alegre filed a motion for reconsideration which the Court of Appeals denied in its 26 January 2000 Resolution. Hence, FBNI filed the petition for review.

Issue: Whether AMEC is entitled to moral damages.

Held: A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals cites Mambulao Lumber Co. v. PNB, et al. to justify the award of moral damages. However, the Court's statement in Mambulao that "a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages" is an obiter dictum. Nevertheless, AMEC's claim for moral damages falls under item 7 of Article 2219 of the Civil Code. This provision expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. Article 2219(7) does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person such as a corporation can validly complain for libel or any other form of defamation and claim for moral damages. Moreover, where the broadcast is libelous per se, the law implies damages. In such a case, evidence of an honest mistake or the want of character or reputation of the party libeled goes only in mitigation of damages. Neither in such a case is the plaintiff required to introduce evidence of actual damages as a condition precedent to the recovery of some damages. In this case, the broadcasts are libelous per se. Thus, AMEC is entitled to moral damages. However, the Court found the award of P300,000 moral damages unreasonable. The record shows that even though the broadcasts were libelous per se, AMEC has not suffered

any substantial or material damage to its reputation. Therefore, the Court reduced the award of moral damages from P300,000 to P150,000.

15 Lyceum of the Philippines vs. Court of Appeals [GR 101897, 5 March 1993]
Third Division, Feliciano (J): 4 concur, 1 on terminal leave

Facts: Lyceum of the Philippines Inc. had sometime before commenced in the SEC a proceeding (SEC-Case No. 1241) against the Lyceum of Baguio, Inc. to require it to change its corporate name and to adopt another name not "similar [to] or identical" with that of petitioner. In an Order dated 20 April 1977, Associate Commissioner Julio Sulit held that the corporate name of petitioner and that of the Lyceum of Baguio, Inc. were substantially identical because of the presence of a "dominant" word, i.e., "Lyceum," the name of the geographical location of the campus being the only word which distinguished one from the other corporate name. The SEC also noted that Lyceum of the Philippines Inc. had registered as a corporation ahead of the Lyceum of Baguio, Inc. in point of time, and ordered the latter to change its name to another name "not similar or identical [with]" the names of previously registered entities. The Lyceum of Baguio, Inc. assailed the Order of the SEC before the Supreme Court (GR L-46595). In a Minute Resolution dated 14 September 1977, the Court denied the Petition for Review for lack of merit. Entry of judgment in that case was made on 21 October 1977.

Armed with the Resolution of the Supreme Court, the Lyceum of the Philippines then wrote all the educational institutions it could find using the word "Lyceum" as part of their corporate name, and advised them to discontinue such use of "Lyceum." When, with the passage of time, it became clear that this recourse had failed, and on 24 February 1984, Lyceum of the Philippines instituted before the SEC SEC-Case 2579 to enforce what Lyceum of the Philippines claims as its proprietary right to the word "Lyceum." The SEC hearing officer rendered a decision sustaining petitioner's claim to an exclusive right to use the word "Lyceum." The hearing officer relied upon the SEC ruling in the Lyceum of Baguio, Inc. case (SEC-Case 1241) and held that the word "Lyceum" was capable of appropriation and that petitioner had acquired an enforceable exclusive right to the use of that word. On appeal, however, by Lyceum Of Aparri, Lyceum Of Cabagan, Lyceum Of Camalaniugan, Inc., Lyceum Of Lallo, Inc., Lyceum Of Tuao, Inc., Buhi Lyceum, Central Lyceum Of Catanduanes, Lyceum Of Southern Philippines, Lyceum Of Eastern Mindanao, Inc. and Western Pangasinan Lyceum, Inc.,, which are also educational institutions, to the SEC En Banc, the decision of the hearing officer was reversed and set aside. The SEC En Banc did not consider the word "Lyceum" to have become so identified with Lyceum of the Philippines as to render use thereof by other institutions as productive of confusion about the identity of the schools concerned in the mind of the general public. Unlike its hearing officer, the SEC En Banc held that the attaching of geographical names to the word "Lyceum" served sufficiently to distinguish the schools from one another, especially in view of the fact that the campuses of Lyceum of the Philippines and those of the other Lyceums were physically quite remote from each other. Lyceum of the Philippines then went on appeal to the Court of Appeals. In its Decision dated 28 June 1991, however, the Court of Appeals affirmed the questioned Orders of the SEC En Banc. Lyceum of the Philippines filed a motion for reconsideration, without success. Lyceum of the Philippines filed the petition for review.

Issue [1]: Whether the names of the contending Lyceum schools are confusingly similar.

Held [1]: The Articles of Incorporation of a corporation must, among other things, set out the name of the corporation. Section 18 of the Corporation Code establishes a restrictive rule insofar as corporate names are concerned. It provides that "No corporate name may be allowed by the Securities an Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name." The policy underlying the prohibition in Section 18 against the

registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations. Herein, the Court does not consider that the corporate names of the academic institutions are "identical with, or deceptively or confusingly similar" to that of Lyceum of the Philippines Inc.. True enough, the corporate names of the other schools (defendant institutions) entities all carry the word "Lyceum" but confusion and deception are effectively precluded by the appending of geographic names to the word "Lyceum." Thus, the "Lyceum of Aparri" cannot be mistaken by the general public for the Lyceum of the Philippines, or that the "Lyceum of Camalaniugan" would be confused with the Lyceum of the Philippines. Further, etymologically, the word "Lyceum" is the Latin word for the Greek lykeion which in turn referred to a locality on the river Ilissius in ancient Athens "comprising an enclosure dedicated to Apollo and adorned with fountains and buildings erected by Pisistratus, Pericles and Lycurgus frequented by the youth for exercise and by the philosopher Aristotle and his followers for teaching." In time, the word "Lyceum" became associated with schools and other institutions providing public lectures and concerts and public discussions. Thus today, the word "Lyceum" generally refers to a school or an institution of learning. Since "Lyceum" or "Liceo" denotes a school or institution of learning, it is not unnatural to use this word to designate an entity which is organized and operating as an educational institution. To determine whether a given corporate name is "identical" or "confusingly or deceptively similar" with another entity's corporate name, it is not enough to ascertain the presence of "Lyceum" or "Liceo" in both names. One must evaluate corporate names in their entirety and when the name of Lyceum of the Philippines is juxtaposed with the names of private respondents, they are not reasonably regarded as "identical" or "confusingly or deceptively similar" with each other.

Issue [2]: Whether the use by the Lyceum of the Philippines of "Lyceum" in its corporate name has been for such length of time and with such exclusivity as to have become associated or identified with the petitioner institution in the mind of the general public (or at least that portion of the general public which has to do with schools).

Held [2]: The number alone of the private respondents in the present case suggests strongly that the Lyceum of the Philippines' use of the word "Lyceum" has not been attended with the exclusivity essential for applicability of the doctrine of secondary meaning. It may be noted also that at least one of the private respondents, i.e., the Western Pangasinan Lyceum, Inc., used the term "Lyceum" 17 years before Lyceum of the Philippines registered its own corporate name with the SEC and began using the word "Lyceum." It follows that if any institution had acquired an exclusive right to the word "Lyceum," that institution would have been the Western Pangasinan Lyceum, Inc. rather than Lyceum of the Philippines. Hence, Lyceum of the Philippines is not entitled to a legally enforceable exclusive right to use the word "Lyceum" in its corporate name and that other institutions may use "Lyceum" as part of their corporate names.

16 Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, HSK sa Bansang Pilipinas Inc. vs. Iglesia ng Dios kay Cristo Jesus, Haligi at Suhay ng Katotohanan [GR 137592, 12 December 2001]
First Division, Ynares-Santiago (J): 3 concur, 1 on official leave

Facts: The Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan (IDCJ-HSK; Church of God in Christ Jesus, the Pillar and Ground of Truth), is a non-stock religious society or corporation registered in 1936. Sometime in 1976, one Eliseo Soriano and several other members of said corporation disassociated themselves from the latter and succeeded in registering on 30 March 1977 a new non-stock religious society or corporation, named Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan (IDKJ-HSK). On 16 July 1979, IDCJ-HSK filed with the SEC a petition to compel IDKJ-HSK to change its corporate name (SEC Case 1774). On 4 May 1988, the SEC rendered judgment in favor of IDCJ-HSK, ordering IDKJ-HSK to change its corporate name to another name that is not similar or identical to any name already used by a corporation, partnership or association registered with the Commission. No appeal was taken from said

decision.

During the pendency of SEC Case 1774, Soriano, et al., caused the registration on 25 April 1980 of Ang Mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K, sa Bansang Pilipinas (AK[IDKH-HSK]BP). The acronym "H.S.K." stands for Haligi at Saligan ng Katotohanan. On 2 March 1994, IDCJ-HSK filed before the SEC a petition (SEC Case 03-94-4704), praying that AK[IDKH-HSK]BP be compelled to change its corporate name and be barred from using the same or similar name on the ground that the same causes confusion among their members as well as the public. KIDKH-HSK-BP filed a motion to dismiss on the ground of lack of cause of action. The motion to dismiss was denied. Thereafter, for failure to file an answer, AK[IDKH-HSK]BP was declared in default and IDCJ-HSK was allowed to present its evidence ex parte. On 20 November 1995, the SEC rendered a decision ordering AK[IDKH-HSK]BP to change its corporate name. AK[IDKH-HSK]BP appealed to the SEC En Banc (SEC-AC 539). In a decision dated 4 March 1996, the SEC En Banc affirmed the above decision, upon a finding that AK[IDKH-HSK]BP's corporate name was identical or confusingly or deceptively similar to that of IDCJ-HSK's corporate name. AK[IDKH-HSK]BP filed a petition for review with the Court of Appeals. On 7 October 1997, the Court of Appeals rendered the decision affirming the decision of the SEC En Banc. AK[IDKH-HSK]BP's motion for reconsideration was denied by the Court of Appeals on 16 February 1992. AK[IDKH-HSK]BP filed the petition for review.

Issue [1]: Whether the corporate names of AK[IDKH-HSK]BP and IDCH-HSK are confusingly similar.

Held [1]: The SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public. Section 18 of the Corporation Code provides that "No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or is contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name." Corollary thereto, the pertinent portion of the SEC Guidelines on Corporate Names states that "(d) If the proposed name contains a word similar to a word already used as part of the firm name or style of a registered company, the proposed name must contain two other words different from the name of the company already registered; Parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a nonprofit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name. Herein, the additional words "Ang Mga Kaanib " and "Sa Bansang Pilipinas, Inc." in AK[IDKH-HSK]BP's name are merely descriptive of and also referring to the members, or kaanib, of IDCH-HSK who are likewise residing in the Philippines. These words can hardly serve as an effective differentiating medium necessary to avoid confusion or difficulty in distinguishing AK[IDKH-HSK]BP from IDCH-HSK. This is especially so, since both AK[IDKH-HSK]BP and IDCH-HSK are using the same acronym — H.S.K.; not to mention the fact that both are espousing religious beliefs and operating in the same place. Parenthetically, it is well to mention that the acronym H.S.K. used by AK[IDKH-HSK]BP stands for "Haligi at Saligan ng Katotohanan." Then, too, the records reveal that in holding out their corporate name to the public, AK[IDKH-HSK]BP highlights the dominant words "IGLESIA NG DIOS KAY KRISTO HESUS, HALIGI AT SALIGAN NG KATOTOHANAN," which is strikingly similar to IDCH-HSK's corporate name, thus making it even more evident that the additional words "Ang Mga Kaanib" and "Sa Bansang Pilipinas, Inc.", are merely descriptive of and pertaining to the members of IDCH-HSK. Significantly, the only difference between the corporate names of AK[IDKH-HSK]BP and IDCH-HSK are the words SALIGAN and SUHAY. These words are synonymous — both mean ground, foundation or support. Hence, this case is on all fours with Universal Mills Corporation v. Universal Textile Mills, Inc., 22 where the Court ruled that the corporate names Universal Mills Corporation and Universal Textile Mills, Inc., are undisputably so similar that even under the

test of "reasonable care and observation" confusion may arise.

Issue [2]: Whether the generic word rule would apply to support AK[IDKH-HSK]BP's cause.

Held [2]: The wholesale appropriation by AK[IDKH-HSK]BP of IDCH-HSK's corporate name cannot find justification under the generic word rule. A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public. The fact that there are other non-stock religious societies or corporations using the names Church of the Living God, Inc., Church of God Jesus Christ the Son of God the Head, Church of God in Christ & By the Holy Spirit, and other similar names, is of no consequence. It does not authorize the use by AK[IDKH-HSK]BP of the essential and distinguishing feature of IDCH-HSK's registered and protected corporate name.

17 Industrial Refractories Corporation of the Philippines vs. Court of Appeals [GR 122174, 3 October 2002]
Second Division, Austria-Martinez (J): 3 concur, 1 on official leave

Facts: Refractories Corporation of the Philippines (RCP) is a corporation duly organized on 13 October 1976 for the purpose of engaging in the business of manufacturing, producing, selling, exporting and otherwise dealing in any and all refractory bricks, its by-products and derivatives. On 22 June 1977, it registered its corporate and business name with the Bureau of Domestic Trade. Industrial Refractories Corp. of the Philippines (IRCP) on the other hand, was incorporated on 23 August 1979 originally under the name "Synclaire Manufacturing Corporation". It amended its Articles of Incorporation on 23 August 1985 to change its corporate name to "Industrial Refractories Corp. of the Philippines". It is engaged in the business of manufacturing all kinds of ceramics and other products, except paints and zincs. Both companies are the only local suppliers of monolithic gunning mix. Discovering that IRCP was using such corporate name, RCP filed on 14 April 1988 with the Securities and Exchange Commission (SEC) a petition to compel IRCP to change its corporate name on the ground that its corporate name is confusingly similar with that of RCP's such that the public may be confused or deceived into believing that they are one and the same corporation. The SEC decided in favor of RCP in its judgment of 23 July 1993. IRCP appealed to the SEC En Banc, arguing that it does not have any jurisdiction over the case, and that RCP has no right to the exclusive use of its corporate name as it is composed of generic or common words. In its Decision dated 23 July 1993, the SEC En Banc modified the appealed decision in that IRCP was ordered to delete or drop from its corporate name only the word "Refractories". IRCP elevated the decision of the SEC En Banc through a petition for review on certiorari to the Court of Appeals which then rendered the decision, denying to give due course the petition filed by IRCP by upholding the jurisdiction of the SEC over the case, and ruling that the corporate names of IRCP and RCP are confusingly or deceptively similar, and that RCP has established its prior right to use the word "Refractories" as its corporate name. The appellate court also found that the petition was filed beyond the reglementary period. IRCP filed the petition for review on certiorari.

Issue [1]: Whether the corporate names of IRCP and RCP are confusingly similar.

Held [1]: The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of PD 902-A, as amended. It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public, and it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion. Section 18 of the Corporation Code expressly prohibits the use of a corporate name which is "identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws". The policy behind the foregoing prohibition is to avoid fraud upon the public that will have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporation. Pursuant thereto, the Revised Guidelines in the Approval of Corporate and

Partnership Names 25 specifically requires that: (1) a corporate name shall not be identical, misleading or confusingly similar to one already registered by another corporation with the Commission; and (2) if the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered. To fall within the prohibition of the law, two requisites must be proven: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical, or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law. As regards the first requisite, it has been held that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. Herein, being the prior registrant, RCP has acquired the right to use the word "Refractories" as part of its corporate name. Anent the second requisite, in determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination and the Court must look to the record as well as the names themselves. Herein, the only word that distinguishes IRCP from RCP is the word "Industrial" which merely identifies a corporation's general field of activities or operations. The two corporate names are patently similar that even with reasonable care and observation, confusion might arise. It must be noted that both cater to the same clientele, i.e., the steel industry. In fact, the SEC found that there were instances when different steel companies were actually confused between the two, especially since they also have similar product packaging.

Issue [2]: Whether the generic word rule would apply to support IRCP's cause.

Held [2]: Refractories are structural materials used at high temperatures to [sic] industrial furnaces. They are supplied mainly in the form of brick of standard sizes and of special shapes. Refractories also include refractory cements, bonding mortars, plastic firebrick, castables, ramming mixtures, and other bulk materials such as dead-buried grain magneside, chrome or ground ganister and special clay. While the word "refractories" is a generic term, its usage is not widespread and is limited merely to the industry/trade in which it is used, and its continuous use by RCP for a considerable period has made the term so closely identified with it. Moreover, IRCP's appropriation of RCP's corporate name cannot find justification under the generic word rule. A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.

18 JG Summit Holdings Inc. vs. Court of Appeals [GR 124293, 20 November 2000]

Ynares-Santiago (J): 4 concur

Facts: On 27 January 1977, the National Investment and Development Corporation (NIDC), a government corporation, entered into a Joint Venture Agreement (JVA) with Kawasaki Heavy Industries, Ltd. of Kobe, Japan (Kawasaki) for the construction, operation, and management of the Subic National Shipyard, Inc. (SNS), which subsequently became the Philippine Shipyard and Engineering Corporation (PHILSECO). Under the JVA, NIDC and Kawasaki would maintain a shareholding proportion of 60% - 40%, respectively. One of the provisions of the JVA accorded the parties the right of first refusal should either party sell, assign or transfer its interest in the joint venture. On 25 November 1986, NIDC transferred all its rights, title and interest in PHILSECO to the Philippine National Bank (PNB). More than two months later or on 3 February 1987, by virtue of Administrative Order 14, PNB's interest in PHILSECO was transferred to the National Government. Meanwhile, on 8 December 1986, President Corazon C. Aquino issued Proclamation 50 establishing the Committee on Privatization (COP) and the Asset Privatization Trust (APT) to take title to and possession of, conserve, manage and dispose of non-performing assets of the National Government. On 27 February 1987, a trust agreement was entered into between the National Government and the APT by virtue of which the latter was named the trustee of the National Government's share in PHILSECO. In 1989, as a result of a quasi-reorganization of PHILSECO to settle its huge obligations to PNB, the National Government's shareholdings in PHILSECO increased to 97.41% thereby reducing Kawasaki's shareholdings to 2.59%. Exercising their discretion, the COP and the APT deemed it in the best interest of the national

economy and the government to privatize PHILSECO by selling 87.67% of its total outstanding capital stock to private entities. After a series of negotiations between the APT and Kasawaki, they agreed that the latter's right of first refusal under the JVA be "exchanged" for the right to top by 5% the highest bid for said shares. They further agreed that Kawasaki would be entitled to name a company in which it was a stockholder, which could exercise the right to top. On 7 September 1990, Kawasaki informed APT that Philyards Holdings, Inc. (PHI) would exercise its right to top by 5%. At the pre-bidding conference held on 28 September 1993, interested bidders were given copies of the JVA between NIDC and Kawasaki, and of the Asset Specific Bidding Rules (ASBR) drafted for the 87.67% equity (sic) in PHILSECO of the National Government. The provisions of the ASBR were explained to the interested bidders who were notified that bidding would be held on 2 December 1993. At the public bidding on said date, the consortium composed of JG Summit Holdings, Inc. (JGSMI), Sembawang Shipyard Ltd. of Singapore (Sembawang), and Jurong Shipyard Limited of Malaysia (Jurong), was declared the highest bidder at P2.03 billion. The following day, the COP approved the sale of 87.67% National Government shares of stock in PHILSECO to said consortium. It notified JGSMI of said approval "subject to the right of Kawasaki Heavy Industries, Inc./Philyards Holdings, Inc. to top JGSMI's bid by 5% as specified in the bidding rules." On 29 December 1993, JGSMI informed the APT that it was protesting the offer of PHI to top its bid on the grounds that: (a) the Kawasaki/PHI consortium composed of Kawasaki, Philyards, Mitsui, Keppel, SM Group, ICTSI and Insular Life violated the ASBR because the last four (4) companies were the losing bidders (for P1.528 billion) thereby circumventing the law and prejudicing the weak winning bidder; (b) only Kawasaki could exercise the right to top; (c) giving the same option to top to PHI constituted unwarranted benefit to a third party; (d) no right of first refusal can be exercised in a public bidding or auction sale, and (e) the JG Summit Consortium was not estopped from questioning the proceedings. On 2 February 1994, JGSMI was notified that PHI had fully paid the balance of the purchase price of the subject bidding. On 7 February 1994, the APT notified JGSMI that PHI had exercised its option to top the highest bid and that the COP had approved the same on 6 January 1994. On 24 February 1994, the APT and PHI executed a Stock Purchase Agreement. Consequently, JGSMI filed with the Supreme Court a petition for mandamus under GR 114057. On 11 May 1994, said petition was referred to the Court of Appeals. On 18 July 1995, the Court of Appeals "denied" for lack of merit the petition for mandamus. JGSMI filed a motion for the reconsideration of said Decision which was denied on 15 March 1996. JGSMI filed the petition for review on certiorari.

Issue: Whether PHILSECO, as a shipyard, is a public utility and, hence, could be operated only by a corporation at least 60% of whose capital is owned by Filipino citizens, in accordance with Article XII, Section 10 of the Constitution.

Held: A shipyard such as PHILSECO being a public utility as provided by law, Section 11 of the Article XII of the Constitution applies. The provision states that "*No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association shall be citizens of the Philippines."* The progenitor of this constitutional provision, Article XIV, Section 5 of the 1973 Constitution, required the same proportion of 60% - 40% capitalization. The JVA between NIDC and Kawasaki entered into on 27 January 1977 manifests the intention of the parties to abide by the constitutional mandate on capitalization of public utilities. The joint venture created between NIDC and Kawasaki falls within the purview of an "association" pursuant to Section 5 of Article XIV of the 1973 Constitution and Section 11 of Article XII of the 1987 Constitution. Consequently, a joint venture that would engage in the business of operating a public utility, such as a shipyard, must observe

the proportion of 60%-40% Filipino-foreign capitalization. Further, paragraph 1.4 of the JVA accorded the parties the right of first refusal "under the same terms." This phrase implies that when either party exercises the right of first refusal under paragraph 1.4, they can only do so to the extent allowed them by paragraphs 1.2 and 1.3 of the JVA or under the proportion of 60%-40% of the shares of stock. Thus, should the NIDC opt to sell its shares of stock to a third party, Kawasaki could only exercise its right of first refusal to the extent that its total shares of stock would not exceed 40% of the entire shares of stock of SNS or PHILSECO. The NIDC, on the other hand, may purchase even beyond 60% of the total shares. As a government corporation and necessarily a 100% Filipino-owned corporation, there is nothing to prevent its purchase of stocks even beyond 60% of the capitalization as the Constitution clearly limits only foreign capitalization. Kawasaki was bound by its contractual obligation under the JVA that limits its right of first refusal to 40% of the total capitalization of PHILSECO. Thus, Kawasaki cannot purchase beyond 40% of the capitalization of the joint venture on account of both constitutional and contractual proscriptions. From the facts on record, it appears that at the outset, the APT and Kawasaki respected the 60%-40% capitalization proportion in PHILSECO. However, APT subsequently encouraged Kawasaki to participate in the public bidding of the National Government's shareholdings of 87.67% of the total PHILSECO shares, definitely over and above the 40% limit of its shareholdings. In so doing, the APT went beyond the ambit of its authority.

19 Young Auto Supply vs. Court of Appeals [GR 104175, 25 June 1993]
First Division, Quiason (J): 3 concur

Facts: On 28 October 1987, Young Auto Supply Co. Inc. (YASCO) represented by Nemesio Garcia, its president, Nelson Garcia and Vicente Sy, sold all of their shares of stock in Consolidated Marketing & Development Corporation (CMDC) to George C. Roxas. The purchase price was P8,000,000.00 payable as follows: a down payment of P4,000,000.00 and the balance of P4,000,000.00 in four postdated checks of P1,000,000.00 each. Immediately after the execution of the agreement, Roxas took full control of the four markets of CMDC. However, the vendors held on to the stock certificates of CMDC as security pending full payment of the balance of the purchase price. The first check of P4,000,000.00, representing the down payment, was honored by the drawee bank but the four other checks representing the balance of P4,000,000.00 were dishonored. In the meantime, Roxas sold one of the markets to a third party. Out of the proceeds of the sale, YASCO received P600,000.00, leaving a balance of P3,400,000.00. Subsequently, Nelson Garcia and Vicente Sy assigned all their rights and title to the proceeds of the sale of the CMDC shares to Nemesio Garcia. On 10 June 1988, YASCO and Garcia filed a complaint against Roxas in the Regional Trial Court, Branch 11, Cebu City, praying that Roxas be ordered to pay them the sum of P3,400,000.00 or that full control of the three markets be turned over to YASCO and Garcia. The complaint also prayed for the forfeiture of the partial payment of P4,600,000.00 and the payment of attorney's fees and costs. Failing to submit his answer, and on 19 August 1988, the trial court declared Roxas in default. The order of default was, however, lifted upon motion of Roxas. On 22 August 1988, Roxas filed a motion to dismiss. After a hearing, wherein testimonial and documentary evidence were presented by both parties, the trial court in an Order dated 8 February 1991 denied Roxas' motion to dismiss. After receiving said order, Roxas filed another motion for extension of time to submit his answer. He also filed a motion for reconsideration, which the trial court denied in its Order dated 10 April 1991 for being pro-forma. Roxas was again declared in default, on the ground that his motion for reconsideration did not toll the running of the period to file his answer. On 3 May 1991, Roxas filed an unverified Motion to Lift the Order of Default which was not accompanied with the required affidavit of merit. But without waiting for the resolution of the motion, he filed a petition for certiorari with the Court of Appeals. The Court of Appeals dismissal of the complaint on the ground of improper venue. A subsequent motion for reconsideration by YASCO was to no avail. YASCO and Garcia filed the petition.

Issue: Whether the venue for the case against YASCO and Garcia in Cebu City was improperly laid.

Held: A corporation has no residence in the same sense in which this term is applied to a natural person. But

for practical purposes, a corporation is in a metaphysical sense a resident of the place where its principal office is located as stated in the articles of incorporation. The Corporation Code precisely requires each corporation to specify in its articles of incorporation the "place where the principal office of the corporation is to be located which must be within the Philippines." The purpose of this requirement is to fix the residence of a corporation in a definite place, instead of allowing it to be ambulatory. Actions cannot be filed against a corporation in any place where the corporation maintains its branch offices. The Court ruled that to allow an action to be instituted in any place where the corporation has branch offices, would create confusion and work untold inconvenience to said entity. By the same token, a corporation cannot be allowed to file personal actions in a place other than its principal place of business unless such a place is also the residence of a co-plaintiff or a defendant. With the finding that the residence of YASCO for purposes of venue is in Cebu City, where its principal place of business is located, it becomes unnecessary to decide whether Garcia is also a resident of Cebu City and whether Roxas was in estoppel from questioning the choice of Cebu City as the venue. The decision of the Court of Appelas was set aside.

20 Republic Planters Bank vs. Agana [GR 51765, 3 March 1997]
First Division, Hermosisima Jr. (J): 3 concur, 1 concurs in result

Facts: On 18 September 1961, the Robes-Francisco Realty & Development Corporation (RFRDC) secured a loan from the Republic Planters Bank in the amount of P120,000.00. As part of the proceeds of the loan, preferred shares of stocks were issued to RFRDC through its officers then, Adalia F. Robes and one Carlos F. Robes. In other words, instead of giving the legal tender totaling to the full amount of the loan, which is P120,000.00, the Bank lent such amount partially in the form of money and partially in the form of stock certificates numbered 3204 and 3205, each for 400 shares with a par value of P10.00 per share, or for P4,000.00 each, for a total of P8,000.00. Said stock certificates were in the name of Adalia F. Robes and Carlos F. Robes, who subsequently, however, endorsed his shares in favor of Adalia F. Robes. Said certificates of stock bear the following terms and conditions: "The Preferred Stock shall have the following rights, preferences, qualifications and limitations, to wit: 1. Of the right to receive a quarterly dividend of 1%, cumulative and participating. xxx 2. That such preferred shares may be redeemed, by the system of drawing lots, at any time after 2 years from the date of issue at the option of the Corporation." On 31 January 1979, RFRDC and Robes proceeded against the Bank and filed a complaint anchored on their alleged rights to collect dividends under the preferred shares in question and to have the bank redeem the same under the terms and conditions of the stock certificates. The bank filed a Motion to Dismiss 3 private respondents' Complaint on the following grounds: (1) that the trial court had no jurisdiction over the subject-matter of the action; (2) that the action was unenforceable under substantive law; and (3) that the action was barred by the statute of limitations and/or laches. The bank's Motion to Dismiss was denied by the trial court in an order dated 16 March 1979. The bank then filed its Answer on 2 May 1979. Thereafter, the trial court gave the parties 10 days from 30 July 1979 to submit their respective memoranda after the submission of which the case would be deemed submitted for resolution. On 7 September 1979, the trial court rendered the decision in favor of RFRDC and Robes; ordering the bank to pay RFRDC and Robes the face value of the stock certificates as redemption price, plus 1% quarterly interest thereon until full payment. The bank filed the petition for certiorari with the Supreme Court, essentially on pure questions of law.

Issue [1]: Whether the bank can be compelled to redeem the preferred shares issued to RFRDC and Robes.

Held [1]: While the stock certificate does allow redemption, the option to do so was clearly vested in the bank. The redemption therefore is clearly the type known as "optional". Thus, except as otherwise provided in the stock certificate, the redemption rests entirely with the corporation and the stockholder is without right to either compel or refuse the redemption of its stock. Furthermore, the terms and conditions set forth therein use the word "may". It is a settled doctrine in statutory construction that the word "may" denotes discretion, and cannot be construed as having a mandatory effect. The redemption of said shares cannot be allowed. The Central Bank made a finding that the Bank has been suffering from chronic reserve deficiency, and that such

finding resulted in a directive, issued on 31 January 1973 by then Gov. G. S. Licaros of the Central Bank, to the President and Acting Chairman of the Board of the bank prohibiting the latter from redeeming any preferred share, on the ground that said redemption would reduce the assets of the Bank to the prejudice of its depositors and creditors. Redemption of preferred shares was prohibited for a just and valid reason. The directive issued by the Central Bank Governor was obviously meant to preserve the status quo, and to prevent the financial ruin of a banking institution that would have resulted in adverse repercussions, not only to its depositors and creditors, but also to the banking industry as a whole. The directive, in limiting the exercise of a right granted by law to a corporate entity, may thus be considered as an exercise of police power.

Issue [2]: Whether RFRDC and Robes are entitled to the payment of certain rate of interest on the stocks as a matter of right without necessity of a prior declaration of dividend.

Held [2]: Both Section 16 of the Corporation Law and Section 43 of the present Corporation Code prohibit the issuance of any stock dividend without the approval of stockholders, representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose. These provisions underscore the fact that payment of dividends to a stockholder is not a matter of right but a matter of consensus. Furthermore, "interest bearing stocks", on which the corporation agrees absolutely to pay interest before dividends are paid to common stockholders, is legal only when construed as requiring payment of interest as dividends from net earnings or surplus only. In compelling the bank to redeem the shares and to pay the corresponding dividends, the Trial committed grave abuse of discretion amounting to lack or excess of jurisdiction in ignoring both the terms and conditions specified in the stock certificate, as well as the clear mandate of the law.

21 Grace Christian High School vs. Court of Appeals [GR 108905, 23 October 1997]
Second Division, Mendoza (J): 2 concur, 1 on leave

Facts: Grace Christian High School is an educational institution offering preparatory, kindergarten and secondary courses at the Grace Village in Quezon City. Grace Village Association, Inc., on the other hand, is an organization of lot and/or building owners, lessees and residents at Grace Village, while Alejandro G. Beltran and Ernesto L. Go were its president and chairman of the committee on election, respectively, in 1990, when this suit was brought. As adopted in 1968, the by-laws of the association provided in Article IV, that "the annual meeting of the members of the Association shall be held on the first Sunday of January in each calendar year at the principal office of the Association at 2:00 P.M. where they shall elect by plurality vote and by secret balloting, the Board of Directors, composed of 11 members to serve for one year until their successors are duly elected and have qualified." It appears, that on 20 December 1975, a committee of the board of directors prepared a draft of an amendment to the by-laws, providing that "The Annual Meeting of the members of the Association shall be held on the second Thursday of January of each year. Each Charter or Associate Member of the Association is entitled to vote. He shall be entitled to as many votes as he has acquired thru his monthly membership fees only computed on a ratio of TEN (P10.00) PESOS for one vote. The Charter and Associate Members shall elect the Directors of the Association. The candidates receiving the first 14 highest number of votes shall be declared and proclaimed elected until their successors are elected and qualified. GRACE CHRISTIAN HIGH SCHOOL representative is a permanent Director of the ASSOCIATION." This draft was never presented to the general membership for approval. Nevertheless, from 1975, after it was presumably submitted to the board, up to 1990, Grace Christian High School was given a permanent seat in the board of directors of the association. On 13 February 1990, the association's committee on election in a letter informed James Tan, principal of the school, that "it was the sentiment that all directors should be elected by members of the association" because "to make a person or entity a permanent Director would deprive the right of voters to vote for 15 members of the Board," and "it is undemocratic for a person or entity to hold office in perpetuity." For this reason, Tan was told that "the proposal to make the Grace Christian High School representative as a permanent director of the association, although previously tolerated in the past elections should be reexamined." Following this advice, notices were sent to the members of the

association that the provision on election of directors of the 1968 by-laws of the association would be observed. The school requested the chairman of the election committee to change the notice of election by following the procedure in previous elections, claiming that the notice issued for the 1990 elections ran "counter to the practice in previous years" and was "in violation of the by-laws (of 1975)" and "unlawfully deprive[d] Grace Christian High School of its vested right [to] a permanent seat in the board." As the association denied its request, the school brought suit for mandamus in the Home Insurance and Guaranty Corporation to compel the board of directors of the association to recognize its right to a permanent seat in the board. The school based its claim on the following portion of the proposed amendment which, it contended, had become part of the by-laws of the association as Article VI, paragraph 2. It appears that the opinion of the Securities and Exchange Commission on the validity of this provision was sought by the association and that in reply to the query, the SEC rendered an opinion to the effect that the practice of allowing unelected members in the board was contrary to the existing by-laws of the association and to §92 of the Corporation Code. The association cited the SEC opinion, among others, in its answer. A preliminary conference was held on 29 March 1990 but nothing substantial was agreed upon. A subsequent meeting was held on 17 April 1990, but the parties failed to reach an agreement. Instead, the board adopted a resolution declaring the 1975 provision null and void for lack of approval by members of the association and the 1968 by-laws to be effective. On 20 June 1990, the hearing officer of the HIGC rendered a decision dismissing the school's action. The appeals board of the HIGC affirmed the decision of the hearing officer in its resolution dated 13 September 1990. Petitioner appealed to the Court of Appeals but the school again lost as the appellate court on 9 February 1993, affirmed the decision of the HIGC. The school filed the petition for review.

Issue: Whether the school's representative should be elected to have the right to sit in the board of directors of Grace Village Association, Inc. as a member thereof.

Held: It is actually §§28 and 29 of the Corporation Law — § 23 of the present law; not §92 of the present law or §29 of the former one — which require members of the boards of directors of corporations to be elected. The board of directors of corporations must be elected from among the stockholders or members. There may be corporations in which there are unelected members in the board but it is clear that in the examples cited by the school, the unelected members sit as ex officio members, i.e., by virtue of and for as long as they hold a particular office. But in the case of the school itself, there is no reason at all for its representative to be given a seat in the board. Nor does the school claim a right to such seat by virtue of an office held. In fact it was not given such seat in the beginning. It was only in 1975 that a proposed amendment to the by-laws sought to give it one. Since the provision in question is contrary to law, the fact that for 15 years it has not been questioned or challenged but, on the contrary, appears to have been implemented by the members of the association cannot forestall a later challenge to its validity. Neither can it attain validity through acquiescence because, if it is contrary to law, it is beyond the power of the members of the association to waive its invalidity. For that matter the members of the association may have formally adopted the provision in question, but their action would be of no avail because no provision of the by-laws can be adopted if it is contrary to law. It is probable that, in allowing the school's representative to sit on the board, the members of the association were not aware that this was contrary to law. It should be noted that they did not actually implement the provision in question except perhaps insofar as it increased the number of directors from 11 to 15, but certainly not the allowance of the school's representative as an unelected member of the board of directors. It is more accurate to say that the members merely tolerated the school's representative and tolerance cannot be considered ratification. Nor can the school claim a vested right to sit in the board on the basis of "practice." Practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law. Even less tenable is the school's claim that its right is "coterminus with the existence of the association."

22 Gokongwei vs. Securities and Exchange Commission [GR L-45911, 11 April 1979]

En Banc, Antonio (J): 4 concur, 1 concur and reserves his right to file separation opinion, 1 concurs in result and reserves his right to file separate opinion, 1 reserves right to file separate opinion, 4 file a joint separate

opinion to which 1 joined, 1 concurs and dissents in a separate opinion, 1 took no part.

Facts: *[SEC Case 1375]* On 22 October 1976, John Gokongwei Jr., as stockholder of San Miguel Corporation, filed with the Securities and Exchange Commission (SEC) a petition for "declaration of nullity of amended by-laws, cancellation of certificate of filing of amended by-laws, injunction and damages with prayer for a preliminary injunction" against the majority of the members of the Board of Directors and San Miguel Corporation as an unwilling petitioner. As a first cause of action, Gokongwei alleged that on 18 September 1976, Andres Soriano, Jr., Jose M. Soriano, Enrique Zobel, Antonio Roxas, Emeterio Buñao, Walthrode B. Conde, Miguel Ortigas, and Antonio Prieto amended by bylaws of the corporation, basing their authority to do so on a resolution of the stockholders adopted on 13 March 1961, when the outstanding capital stock of the corporation was only P70,139.740.00, divided into 5,513,974 common shares at P10.00 per share and 150,000 preferred shares at P100.00 per share. At the time of the amendment, the outstanding and paid up shares totalled 30,127,043, with a total par value of P301,270,430.00. It was contended that according to section 22 of the Corporation Law and Article VIII of the by-laws of the corporation, the power to amend, modify, repeal or adopt new by-laws may be delegated to the Board of Directors only by the affirmative vote of stockholders representing not less than 2/3 of the subscribed and paid up capital stock of the corporation, which 2/3 should have been computed on the basis of the capitalization at the time of the amendment. Since the amendment was based on the 1961 authorization, Gokongwei contended that the Board acted without authority and in usurpation of the power of the stockholders. As a second cause of action, it was alleged that the authority granted in 1961 had already been exercised in 1962 and 1963, after which the authority of the Board ceased to exist. As a third cause of action, Gokongwei averred that the membership of the Board of Directors had changed since the authority was given in 1961, there being 6 new directors. As a fourth cause of action, it was claimed that prior to the questioned amendment, Gokogwei had all the qualifications to be a director of the corporation, being a substantial stockholder thereof; that as a stockholder, Gokongwei had acquired rights inherent in stock ownership, such as the rights to vote and to be voted upon in the election of directors; and that in amending the by-laws, Soriano, et. al. purposely provided for Gokongwei's disqualification and deprived him of his vested right as afore-mentioned, hence the amended by-laws are null and void. As additional causes of action, it was alleged that corporations have no inherent power to disqualify a stockholder from being elected as a director and, therefore, the questioned act is ultra vires and void; that Andres M. Soriano, Jr. and/or Jose M. Soriano, while representing other corporations, entered into contracts (specifically a management contract) with the corporation, which was avowed because the questioned amendment gave the Board itself the prerogative of determining whether they or other persons are engaged in competitive or antagonistic business; that the portion of the amended by-laws which states that in determining whether or not a person is engaged in competitive business, the Board may consider such factors as business and family relationship, is unreasonable and oppressive and, therefore, void; and that the portion of the amended by-laws which requires that "all nominations for election of directors shall be submitted in writing to the Board of Directors at least five (5) working days before the date of the Annual Meeting" is likewise unreasonable and oppressive. It was, therefore, prayed that the amended by-laws be declared null and void and the certificate of filing thereof be cancelled, and that Soriano, et. al. be made to pay damages, in specified amounts, to Gokongwei. On 28 October 1976, in connection with the same case, Gokongwei filed with the Securities and Exchange Commission an "Urgent Motion for Production and Inspection of Documents", alleging that the Secretary of the corporation refused to allow him to inspect its records despite request made by Gokongwei for production of certain documents enumerated in the request, and that the corporation had been attempting to suppress information from its stockholders despite a negative reply by the SEC to its query regarding their authority to do so. The motion was opposed by Soriano, et. al. The Corporation, Soriano, et. al. filed their answer, and their opposition to the petition, respectively. Meanwhile, on 10 December 1976, while the petition was yet to be heard, the corporation issued a notice of special stockholders' meeting for the purpose of "ratification and confirmation of the amendment to the By-laws", setting such meeting for 10 February 1977. This prompted Gokongwei to ask the SEC for a summary judgment insofar as the first cause of action is concerned, for the alleged reason that by calling a special stockholders' meeting for the aforesaid purpose, Soriano, et. al. admitted the invalidity of the amendments of 18 September 1976. The motion for

summary judgment was opposed by Soriano, et. al. Pending action on the motion, Gokongwei filed an "Urgent Motion for the Issuance of a Temporary Restraining Order", praying that pending the determination of Gokongwei's application for the issuance of a preliminary injunction and or Gokongwei's motion for summary judgment, a temporary restraining order be issued, restraining Soriano, et. al. from holding the special stockholders' meeting as scheduled. This motion was duly opposed by Soriano, et. al. On 10 February 1977, Cremation issued an order denying the motion for issuance of temporary restraining order. After receipt of the order of denial, Soriano, et. al. conducted the special stockholders' meeting wherein the amendments to the by-laws were ratified. On 14 February 1977, Gokongwei filed a consolidated motion for contempt and for nullification of the special stockholders' meeting. A motion for reconsideration of the order denying Gokongwei's motion for summary judgment was filed by Gokongwei before the SEC on 10 March 1977.

[SEC Case 1423] Gokongwei alleged that, having discovered that the corporation has been investing corporate funds in other corporations and businesses outside of the primary purpose clause of the corporation, in violation of section 17-1/2 of the Corporation Law, he filed with SEC, on 20 January 1977, a petition seeking to have Andres M. Soriano, Jr. and Jose M. Soriano, as well as the corporation declared guilty of such violation, and ordered to account for such investments and to answer for damages. On 4 February 1977, motions to dismiss were filed by Soriano, et. al., to which a consolidated motion to strike and to declare Soriano, et. al. in default and an opposition ad abundantiorem cautelam were filed by Gokongwei. Despite the fact that said motions were filed as early as 4 February 1977, the Commission acted thereon only on 25 April 1977, when it denied Soriano, et. al.'s motions to dismiss and gave them two (2) days within which to file their answer, and set the case for hearing on April 29 and May 3, 1977. Soriano, et. al. issued notices of the annual stockholders' meeting, including in the Agenda thereof, the "reaffirmation of the authorization to the Board of Directors by the stockholders at the meeting on 20 March 1972 to invest corporate funds in other companies or businesses or for purposes other than the main purpose for which the Corporation has been organized, and ratification of the investments thereafter made pursuant thereto." By reason of the foregoing, on 28 April 1977, Gokongwei filed with the SEC an urgent motion for the issuance of a writ of preliminary injunction to restrain Soriano, et. al. from taking up Item 6 of the Agenda at the annual stockholders' meeting, requesting that the same be set for hearing on 3 May 1977, the date set for the second hearing of the case on the merits. The SEC, however, cancelled the dates of hearing originally scheduled and reset the same to May 16 and 17, 1977, or after the scheduled annual stockholders' meeting. For the purpose of urging the Commission to act, Gokongwei filed an urgent manifestation on 3 May 1977, but this notwithstanding, no action has been taken up to the date of the filing of the instant petition.

Gokongwei filed a petition for petition for certiorari, mandamus and injunction, with prayer for issuance of writ of preliminary injunction, with the Supreme Court, alleging that there appears a deliberate and concerted inability on the part of the SEC to act.

Issue [1]: Whether the corporation has the power to provide for the (additional) qualifications of its directors.

Held [1]: It is recognized by all authorities that "every corporation has the inherent power to adopt by-laws 'for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.'" In this jurisdiction under section 21 of the Corporation Law, a corporation may prescribe in its by-laws "the qualifications, duties and compensation of directors, officers and employees." This must necessarily refer to a qualification in addition to that specified by section 30 of the Corporation Law, which provides that "every director must own in his right at least one share of the capital stock of the stock corporation of which he is a director." Any person "who buys stock in a corporation does so with the knowledge that its affairs are dominated by a majority of the stockholders and that he impliedly contracts that the will of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws and not forbidden by law." To this extent, therefore, the stockholder may be considered to have "parted with his personal right or privilege to regulate the disposition of his property which he has invested in the capital stock of the corporation, and surrendered it

to the will of the majority of his fellow incorporators. It can not therefore be justly said that the contract, express or implied, between the corporation and the stockholders is infringed by any act of the former which is authorized by a majority." Pursuant to section 18 of the Corporation Law, any corporation may amend its articles of incorporation by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of the corporation. If the amendment changes, diminishes or restricts the rights of the existing shareholders, then the dissenting minority has only one right, viz.: "to object thereto in writing and demand payment for his share." Under section 22 of the same law, the owners of the majority of the subscribed capital stock may amend or repeal any by-law or adopt new by-laws. It cannot be said, therefore, that Gokongwei has a vested right to be elected director, in the face of the fact that the law at the time such right as stockholder was acquired contained the prescription that the corporate charter and the by-law shall be subject to amendment, alteration and modification.

Issue [2]: Whether the disqualification of a competitor from being elected to the Board of Directors is a reasonable exercise of corporate authority.

Held[2]: Although in the strict and technical sense, directors of a private corporation are not regarded as trustees, there cannot be any doubt that their character is that of a fiduciary insofar as the corporation and the stockholders as a body are concerned. As agents entrusted with the management of the corporation for the collective benefit of the stockholders, "they occupy a fiduciary relation, and in this sense the relation is one of trust." "The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof." A director is a fiduciary. Their powers are powers in trust. He who is in such fiduciary position cannot serve himself first and his cestuis second. He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency. He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters. He cannot utilize his inside information and strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the cestuis. The doctrine of "corporate opportunity" is precisely a recognition by the courts that the fiduciary standards could not be upheld where the fiduciary was acting for two entities with competing interests. This doctrine rests fundamentally on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection. It is not denied that a member of the Board of Directors of the San Miguel Corporation has access to sensitive and highly confidential information, such as: (a) marketing strategies and pricing structure; (b) budget for expansion and diversification; (c) research and development; and (d) sources of funding, availability of personnel, proposals of mergers or tie-ups with other firms. It is obviously to prevent the creation of an opportunity for an officer or director of San Miguel Corporation, who is also the officer or owner of a competing corporation, from taking advantage of the information which he acquires as director to promote his individual or corporate interests to the prejudice of San Miguel Corporation and its stockholders, that the questioned amendment of the by-laws was made. Certainly, where two corporations are competitive in a substantial sense, it would seem improbable, if not impossible, for the director, if he were to discharge effectively his duty, to satisfy his loyalty to both corporations and place the performance of his corporation duties above his personal concerns. The offer and assurance of Gokongwei that to avoid any possibility of his taking unfair advantage of his position as director of San Miguel Corporation, he would absent himself from meetings at which confidential matters would be discussed, would not detract from the validity and reasonableness of the by-laws involved. Apart from the impractical results

that would ensue from such arrangement, it would be inconsistent with Gokongwei's primary motive in running for board membership — which is to protect his investments in San Miguel Corporation. More important, such a proposed norm of conduct would be against all accepted principles underlying a director's duty of fidelity to the corporation, for the policy of the law is to encourage and enforce responsible corporate management.

Issue [3]: Whether the SEC gravely abused its discretion in denying Gokongwei's request for an examination of the records of San Miguel International, Inc., a fully owned subsidiary of San Miguel Corporation.

Held [3]: Pursuant to the second paragraph of section 51 of the Corporation Law, "(t)he record of all business transactions of the corporation and minutes of any meeting shall be open to the inspection of any director, member or stockholder of the corporation at reasonable hours." The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation. The "general rule that stockholders are entitled to full information as to the management of the corporation and the manner of expenditure of its funds, and to inspection to obtain such information, especially where it appears that the company is being mismanaged or that it is being managed for the personal benefit of officers or directors or certain of the stockholders to the exclusion of others." While the right of a stockholder to examine the books and records of a corporation for a lawful purpose is a matter of law, the right of such stockholder to examine the books and records of a wholly-owned subsidiary of the corporation in which he is a stockholder is a different thing. Stockholders are entitled to inspect the books and records of a corporation in order to investigate the conduct of the management, determine the financial condition of the corporation, and generally take an account of the stewardship of the officers and directors. herein, considering that the foreign subsidiary is wholly owned by San Miguel Corporation and, therefore, under Its control, it would be more in accord with equity, good faith and fair dealing to construe the statutory right of petitioner as stockholder to inspect the books and records of the corporation as extending to books and records of such wholly owned subsidiary which are in the corporation's possession and control.

Issue [4]: Whether the SEC gravely abused its discretion in allowing the stockholders of San Miguel Corporation to ratify the investment of corporate funds in a foreign corporation.

Held [4]: Section 17-1/2 of the Corporation Law allows a corporation to "invest its funds in any other corporation or business or for any purpose other than the main purpose for which it was organized" provided that its Board of Directors has been so authorized by the affirmative vote of stockholders holding shares entitling them to exercise at least two-thirds of the voting power. If the investment is made in pursuance of the corporate purpose, it does not need the approval of the stockholders. It is only when the purchase of shares is done solely for investment and not to accomplish the purpose of its incorporation that the vote of approval of the stockholders holding shares entitling them to exercise at least two-thirds of the voting power is necessary. As stated by the corporation, the purchase of beer manufacturing facilities by SMC was an investment in the same business stated as its main purpose in its Articles of Incorporation, which is to manufacture and market beer. It appears that the original investment was made in 1947-1948, when SMC, then San Miguel Brewery, Inc., purchased a beer brewery in Hongkong (Hongkong Brewery & Distillery, Ltd.) for the manufacture and marketing of San Miguel beer thereat. Restructuring of the investment was made in 1970-1971 thru the organization of SMI in Bermuda as a tax free reorganization. Assuming arguendo that the Board of Directors of SMC had no authority to make the assailed investment, there is no question that a corporation, like an

individual, may ratify and thereby render binding upon it the originally unauthorized acts of its officers or other agents. This is true because the questioned investment is neither contrary to law, morals, public order or public policy. It is a corporate transaction or contract which is within the corporate powers, but which is defective from a purported failure to observe in its execution the requirement of the law that the investment must be authorized by the affirmative vote of the stockholders holding two-thirds of the voting power. This requirement is for the benefit of the stockholders. The stockholders for whose benefit the requirement was enacted may, therefore, ratify the investment and its ratification by said stockholders obliterates any defect which it may have had at the outset. Besides, the investment was for the purchase of beer manufacturing and marketing facilities which is apparently relevant to the corporate purpose. The mere fact that the corporation submitted the assailed investment to the stockholders for ratification at the annual meeting of 10 May 1977 cannot be construed as an admission that the corporation had committed an ultra vires act, considering the common practice of corporations of periodically submitting for the ratification of their stockholders the acts of their directors, officers and managers.

23 Western Institute of Technology Inc. vs. Salas [GR 113032, 21 August 1997]
First Division, Hermosisima Jr. (J): 4 concur

Facts: Ricardo T. Salas, Salvador T. Salas, Soledad Salas-Tubilleja, Antonio S. Salas, and Richard S. Salas, belonging to the same family, are the majority and controlling members of the Board of Trustees of Western Institute of Technology, Inc. (WIT), a stock corporation engaged in the operation, among others, of an educational institution. According to Homero L. Villasis, Dimas Enriquez, peston F. Villasis, and Reginald F. Villasis, the minority stockholders of WIT, sometime on 1 June 1986 in the principal office of WIT at La Paz, Iloilo City, a Special Board Meeting was held. In attendance were other members of the Board including Reginald Villasis. Prior to said Special Board Meeting, copies of notice thereof, dated 24 May 1986, were distributed to all Board Members. The notice allegedly indicated that the meeting to be held on 1 June 1986 included Item 6 which states that "Possible implementation of Art. III, Sec. 6 of the Amended By-Laws of Western Institute of Technology, Inc. on compensation of all officers of the corporation." In said meeting, the Board of Trustees passed Resolution 48, series 1986, granting monthly compensation to Salas, et. al. as corporate officers retroactive 1 June 1985, in the following amounts: "Chairman 9,000.00/month, Vice Chairman P3,500.00/month, Corporate Treasurer P3,500.00/month and Corporate Secretary P3,500.00/month, retroactive June 1, 1985 and the ten percentum of the net profits shall be distributed equally among the ten members of the Board of Trustees. This shall amend and supercede any previous resolution." A few years later, or on 13 March 1991, Homero Villasis, Preston Villasis, Reginald Villasis and Dimas Enriquez filed an affidavit-complaint against Salas, et. al. before the Office of the City Prosecutor of Iloilo, as a result of which 2 separate criminal informations, one for falsification of a public document under Article 171 of the Revised Penal Code and the other for estafa under Article 315, par. 1(b) of the RPC, were filed before Branch 33 of the Regional Trial Court of Iloilo City. The charge for falsification of public document was anchored on Salas, et. al.'s submission of WIT's income statement for the fiscal year 1985-1986 with the Securities and Exchange Commission (SEC) reflecting therein the disbursement of corporate funds for the compensation of Salas, et. al. based on Resolution 4, series of 1986, making it appear that the same was passed by the board on 30 March 1986, when in truth, the same was actually passed on 1 June 1986, a date not covered by the corporation's fiscal year 1985-1986 (beginning May 1, 1995 and ending April 30, 1986). Thereafter, trial for the two criminal cases (Criminal Cases 37097 and 37098), was consolidated. After a full-blown hearing, Judge Porfirio Parian handed down a verdict of acquittal on both counts dated 6 September 1993 without imposing any civil liability against the accused therein. Villasis, et. al. filed a Motion for Reconsideration of the civil aspect of the RTC Decision which was, however, denied in an Order dated 23 November 1993. Villasis, et. al. filed the petition for review on certiorari. Significantly on 8 December 1994, a Motion for Intervention, dated 2 December 1994, was filed before this Court by Western Institute of Technology, Inc., disowning its inclusion in the petition and submitting that Atty. Tranquilino R. Gale, counsel for Villasis, et. al., had no authority whatsoever to represent the corporation in filing the petition. Intervenor likewise prayed for the dismissal of the petition for being utterly without merit. The Motion for Intervention was granted on

16 January 1995.

Issue: Whether the grant of compensation to Salas, et. al. is proscribed under Section 30 of the Corporation Code.

Held: Directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. This rule is founded upon a presumption that directors/trustees render service gratuitously, and that the return upon their shares adequately furnishes the motives for service, without compensation. Under Section 30 of the Corporation Code, there are only two (2) ways by which members of the board can be granted compensation apart from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them. Also, the proscription, however, against granting compensation to director/trustees of a corporation is not a sweeping rule. Worthy of note is the clear phraseology of Section 30 which state: "[T]he directors shall not receive any compensation, as such directors." The phrase as such directors is not without significance for it delimits the scope of the prohibition to compensation given to them for services performed purely in their capacity as directors or trustees. The unambiguous implication is that members of the board may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors/trustees. Herein, resolution 48, s. 1986 granted monthly compensation to Salas, et. al. not in their capacity as members of the board, but rather as officers of the corporation, more particularly as Chairman, Vice-Chairman, Treasurer and Secretary of Western Institute of Technology. Clearly, therefore, the prohibition with respect to granting compensation to corporate directors/trustees as such under Section 30 is not violated in this particular case. Consequently, the last sentence of Section 30 which provides that "In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year" does not likewise find application in this case since the compensation is being given to Salas, et. al. in their capacity as officers of WIT and not as board members.

24 Nacpil vs. International Broadcasting Corporation [GR 144767, 21 March 2002]
First Division, Kapunan (J): 2 concur, 1 on official leave

Facts: Dily Dany Nacpil states that he was Assistant General Manager for Finance/Administration and Comptroller of Intercontinental Broadcasting Corporation (IBC) from 1996 until April 1997. According to Nacpil, when Emiliano Templo was appointed to replace IBC President Tomas Gomez III sometime in March 1997, the former told the Board of Directors that as soon as he assumes the IBC presidency, he would terminate the services of Nacpil. Apparently, Templo blamed Nacpil, along with a certain Mr. Basilio and Mr. Gomez, for the prior mismanagement of IBC. Upon his assumption of the IBC presidency, Templo allegedly harassed, insulted, humiliated and pressured Nacpil into resigning until the latter was forced to retire. However, Templo refused to pay him his retirement benefits, allegedly because he had not yet secured the clearances from the Presidential Commission on Good Government (PCGG) and the Commission on Audit (COA). Furthermore, Templo allegedly refused to recognize Nacpil's employment, claiming that Nacpil was not the Assistant General Manager/Comptroller of IBC but merely usurped the powers of the Comptroller. Hence, in 1997, Nacpil filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of benefits. Instead of filing its position paper, IBC filed a motion to dismiss alleging that the Labor Arbiter had no jurisdiction over the case. IBC contended that Nacpil was a corporate officer who was duly elected by the Board of Directors of IBC; hence, the case qualities as an intra-corporate dispute falling within the jurisdiction of the Securities and Exchange Commission (SEC). However, the motion was denied by the Labor Arbiter in an Order dated 22 April 1998. On 21 August 1998, the Labor Arbiter rendered a Decision stating that Nacpil had been illegally dismissed. IBC was ordered (1) to reinstate Nacpil to his former position without diminution of salary or loss of seniority rights, and with full backwages computed from the time of his illegal dismissal on May 16, 1997 up to the time of his actual reinstatement which is tentatively

computed as of the date of this decision on August 21, 1998 in the amount of P1,231,750.00; and that should Nacpil be not reinstated within 10 days from receipt of this decision, he shall be entitled to additional backwages until actually reinstated; and (2) to pay Nacpil P2 Million as and for moral damages, P500,000.00 as and for exemplary damages, and 10% thereof as and for attorney's fees. IBC appealed to the NLRC, but the same was dismissed in a Resolution dated 2 March 1999, for its failure to file the required appeal bond in accordance with Article 223 of the Labor Code. IBC then filed a motion for reconsideration that was likewise denied in a Resolution dated 26 April 1999. IBC then filed with the Court of Appeals a petition for certiorari under Rule 65, which petition was granted by the appellate court in its Decision dated 23 November 1999. Nacpil then filed a motion for reconsideration, which was denied by the appellate court in a Resolution dated 31 August 2000. Nacpil filed the petition for review on certiorari.

Issue [1]: Whether the SEC or the NLRC has jurisdiction over the Nacpil’s alleged illegal dismissal.

Held [1]: As Nacpil's appointment as comptroller required the approval and formal action of the IBC's Board of Directors to become valid, 17 it is clear therefore holds that Nacpil is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC under Section 5(c) of PD 902-A which includes controversies involving both election and appointment of corporate directors, trustees, officers, and managers Had Nacpil been an ordinary employee, such board action would not have been required. Thus, since Nacpil is considered a corporate officer and his claim of illegal dismissal is a controversy that falls under the jurisdiction of the SEC as contemplated by Section 5 of PD 902-A. The rule is that dismissal or non-appointment of a corporate officer is clearly an intra-corporate matter and jurisdiction over the case properly belongs to the SEC, not to the NLRC. As to the argument that the nature of his functions is recommendatory thereby making him a mere managerial officer, the Court has previously held that the relationship of a person to a corporation, whether as officer or agent or employee is not determined by the nature of the services performed, but instead by the incidents of the relationship as they actually exist.

Issue [2]: Whether the inclusion of money claims in Nacpil’s complaint for illegal dismissal removes the case from the ambit of the Corporation Code.

Held [2]: It is of no consequence that Nacpil's complaint for illegal dismissal includes money claims, for such claims are actually part of the perquisites of his position in, and therefore linked with his relations with, the corporation. The inclusion of such money claims does not convert the issue into a simple labor problem. Clearly, the issues raised by Nacpil against the IBC are matters that come within the area of corporate affairs and management, and constitute a corporate controversy in contemplation of the Corporation Code.

*(**Note:** Under Section 5.2 of the Securities Regulation Code (Republic Act 8799) which was signed into law by then President Joseph Ejercito Estrada on 18 July 2000, the SEC's jurisdiction over all cases enumerated in Section 5 of PD 902-A has been transferred to the Regional Trial Courts.)*

25 People's Aircargo and Warehousing Co. Inc. vs. Court of Appeals [GR 117847, 7 October 1998]
First Division, Panganiban (J): 4 concur

Facts: People's Aircargo and Warehousing Co. Inc. (PAWCI) is a domestic corporation, which was organized in the middle of 1986 to operate a customs bonded warehouse at the old Manila International Airport in Pasay City. To obtain a license for the corporation from the Bureau of Customs, Antonio Punsalan Jr., the corporation president, solicited a proposal from Stefani Saño for the preparation of a feasibility study. Saño submitted a letter-proposal dated 17 October 1986 ("First Contract") to Punsalan, for the project feasibility study (market, technical, and financial feasibility) and preparation of pertinent documentation requirements for the application, worth P350,000. Initially, Cheng Yong, the majority stockholder of PAWCI, objected to Saño's offer, as another company priced a similar proposal at only P15,000. However, Punsalan preferred Saño's services because of the latter's membership in the task force, which was supervising the transition of

the Bureau of Customs from the Marcos government to the Aquino Administration. On 17 October 1986, PAWCI, through Punsalan, sent Saño a letter confirming their agreement. Accordingly, Saño prepared a feasibility study for PAWCI which eventually paid him the balance of the contract price, although not according to the schedule agreed upon. On 4 December 1986, upon Punsalan's request, Saño sent PAWCI another letter-proposal ("Second Contract") formalizing its proposal for consultancy services in the amount of P400,000. On 10 January 1987, Andy Villaceren, vice president of PAWCI, received the operations manual prepared by Saño. PAWCI submitted said operations manual to the Bureau of Customs in connection with the former's application to operate a bonded warehouse; thereafter, in May 1987, the Bureau issued to it a license to operate, enabling it to become one of the three public customs bonded warehouses at the international airport. Saño also conducted, in the third week of January 1987 in the warehouse of PAWCI, a three-day training seminar for the latter's employees. On 25 March 1987, Saño joined the Bureau of Customs as special assistant to then Commissioner Alex Padilla, a position he held until he became technical assistant to then Commissioner Miriam Defensor-Santiago on 7 March 1988. Meanwhile, Punsalan sold his shares in PAWCI and resigned as its president in 1987. On 9 February 1988, Saño filed a collection suit against PAWCI. He alleged that he had prepared an operations manual for PAWCI, conducted a seminar-workshop for its employees and delivered to it a computer program; but that, despite demand, PAWCI refused to pay him for his services. PAWCI, in its answer, denied that Saño had prepared an operations manual and a computer program or conducted a seminar-workshop for its employees. It further alleged that the letter-agreement was signed by Punsalan without authority, in collusion with Saño in order to unlawfully get some money from PAWCI, and despite his knowledge that a group of employees of the company had been commissioned by the board of directors to prepare an operations manual. The Regional Trial Court (RTC) of Pasay City, Branch 110, rendered a Decision dated 26 October 1990 declared the Second Contract unenforceable or simulated. However, since Saño had actually prepared the operations manual and conducted a training seminar for PAWCI and its employees, the trial court awarded P60,000 to the former, on the ground that no one should be unjustly enriched at the expense of another (Article 2142, Civil Code). The trial Court determined the amount "in light of the evidence presented by defendant on the usual charges made by a leading consultancy firm on similar services." Upon appeal, and on 28 February 1994, the appellate court modified the decision of the trial court, and declared the Second Contract valid and binding on PAWCI, which was held liable to Saño in the full amount of P400,000, representing payment of Saño services in preparing the manual of operations and in the conduct of a seminar for PAWCI. As no new ground was raised by PAWCI, reconsideration of the decision was denied in the Resolution promulgated on 28 October 1994. PAWCI filed the Petition for Review.

Issue: Whether a single instance where the corporation had previously allowed its president to enter into a contract with another without a board resolution expressly authorizing him, has clothed its president with apparent authority to execute the subject contract.

Held: Apparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation. Herein, PAWCI, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, PAWCI did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation. The grant of apparent authority to Punsalan is evident in the testimony of Yong — senior vice president, treasurer and major stockholder of PAWCI. The First Contract was consummated, implemented and paid without a hitch. Hence, Sano should not be faulted for believing that Punsalan's conformity to the contract in dispute was also binding on petitioner. It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against

anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority. Furthermore, Saño prepared an operations manual and conducted a seminar for the employees of PAWCI in accordance with their contract. PAWCI accepted the operations manual, submitted it to the Bureau of Customs and allowed the seminar for its employees. As a result of its aforementioned actions, PAWCI was given by the Bureau of Customs a license to operate a bonded warehouse. Granting arguendo then that the Second Contract was outside the usual powers of the president, PAWCI's ratification of said contract and acceptance of benefits have made it binding, nonetheless. The enforceability of contracts under Article 1403(2) is ratified "by the acceptance of benefits under them" under Article 1405.

26 Prime White Cement Corporation vs. Intermediate Appellate Court [GR 68555, 19 March 1993]
Second Division, Campos Jr. (J): 4 concur

Facts: On or about 16 July 1969, Alejandro Te and Prime White Cement Corporation (PWCC) thru its President, Mr. Zosimo Falcon and Justo C. Trazo, as Chairman of the Board, entered into a dealership agreement whereby Te was obligated to act as the exclusive dealer and/or distributor of PWCC of its cement products in the entire Mindanao area for a term of 5 years and providing among others that (a) the corporation shall, commencing September, 1970, sell to and supply Te, as dealer with 20,000 bags (94 lbs/bag) of white cement per month; (b) Te shall pay PWCC P9.70, Philippine Currency, per bag of white cement, FOB Davao and Cagayan de Oro ports; (c) Te shall every time PWCC is ready to deliver the good, open with any bank or banking institution a confirmed, unconditional, and irrevocable letter of credit in favor of PWCC and that upon certification by the boat captain on the bill of lading that the goods have been loaded on board the vessel bound for Davao the said bank or banking institution shall release the corresponding amount as payment of the goods so shipped." Right after Te entered into the dealership agreement, he placed an advertisement in a national, circulating newspaper the fact of his being the exclusive dealer of PWWC's white cement products in Mindanao area, more particularly, in the Manila Chronicle dated 16 August 1969 and was even congratulated by his business associates, so much so, he was asked by some of his businessmen friends and close associates if they can be his sub-dealer in the Mindanao area. Relying heavily on the dealership agreement, Te sometime in the months of September, October, and December, 1969, entered into a written agreement with several hardware stores dealing in buying and selling white cement in the Cities of Davao and Cagayan de Oro which would thus enable him to sell his allocation of 20,000 bags regular supply of the said commodity, by September, 1970. After Te was assured by his supposed buyer that his allocation of 20,000 bags of white cement can be disposed of, he informed the defendant corporation in his letter dated 18 August 1970 that he is making the necessary preparation for the opening of the requisite letter of credit to cover the price of the due initial delivery for the month of September 1970, looking forward to PWCC's duty to comply with the dealership agreement. In reply to the aforesaid letter of Te, PWCC thru its corporate secretary, replied that the board of directors of PWCC decided to impose the following conditions: (a) Delivery of white cement shall commence at the end of November, 1970; (b) Only 8,000 bags of white cement per month for only a period of three (3) months will be delivered; (c) The price of white cement was priced at P13.30 per bag; (d) The price of white cement is subject to readjustment unilaterally on the part of the defendant; (e) The place of delivery of white cement shall be Austurias (sic); (f) The letter of credit may be opened only with the Prudential Bank, Makati Branch; (g) Payment of white cement shall be made in advance and which payment shall be used by the defendant as guaranty in the opening of a foreign letter of credit to cover costs and expenses in the procurement of materials in the manufacture of white cement. Several demands to comply with the dealership agreement were made by Te to PWCC, however, PWCC refused to comply with the same, and Te by force of circumstances was constrained to cancel his agreement for the supply of white cement with third parties, which were concluded in anticipation of, and pursuant to the said dealership agreement. Notwithstanding that the dealership agreement between Te and PWCC was in force and subsisting, PWCC, in violation of, and with evident intention not to be bound by the terms and conditions thereof, entered into an exclusive dealership agreement with a certain Napoleon Co for the marketing of white cement in Mindanao. Te filed suit. After trial, the trial court adjudged PWCC liable to Alejandro Te in the

amount of P3,302,400.00 as actual damages, P100,000.00 as moral damages, and P10,000 00 as and for attorney's fees and costs. The appellate court affirmed the said decision. Hence, PWCC filed the petition for review on certiorari.

Issue: Whether the "dealership agreement" referred by the President and Chairman of the Board of PWCC is a valid and enforceable contract.

Held: The “dealership agreement” is not valid and unenforceable. Under the Corporation Law, which was then in force at the time the case arose, as well as under the present Corporation Code, all corporate powers shall be exercised by the Board of Directors, except as otherwise provided by law. Although it cannot completely abdicate its power and responsibility to act for the juridical entity, the Board may expressly delegate specific powers to its President or any of its officers. In the absence of such express delegation, a contract entered into by its President, on behalf of the corporation, may still bind the corporation if the board should ratify the same expressly or impliedly. Implied ratification may take various forms — like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom. Furthermore, even in the absence of express or implied authority by ratification, the President as such may, as a general rule, bind the corporation by a contract in the ordinary course of business, provided the same is reasonable under the circumstances. These rules are basic, but are all general and thus quite flexible. They apply where the President or other officer, purportedly acting for the corporations, is dealing with a third person, i.e., a person outside the corporation. The situation is quite different where a director or officer is dealing with his own corporation. Herein, Te was not an ordinary stockholder; he was a member of the Board of Directors and Auditor of the corporation as well. He was what is often referred to as a "self-dealing" director. A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation. In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit. As corporate managers, directors are committed to seek the maximum amount of profits for the corporation. A director's contract with his corporation is not in all instances void or voidable. If the contract is fair and reasonable under the circumstances, it may be ratified by the stockholders provided a full disclosure of his adverse interest is made.

Granting arguendo that the "dealership agreement" would be valid and enforceable if entered into with a person other than a director or officer of the corporation, the fact that the other party to the contract was a Director and Auditor of PWCC changes the whole situation. First of all, the contract was neither fair nor reasonable. The "dealership agreement" entered into in July 1969, was to sell and supply to Te 20,000 bags of white cement per month, for 5 years starting September 1970, at the fixed price of P9.70 per bag. Te is a businessman himself and must have known, or at least must be presumed to know, that at that time, prices of commodities in general, and white cement in particular, were not stable and were expected to rise. At the time of the contract, PWCC had not even commenced the manufacture of white cement, the reason why delivery was not to begin until 14 months later. He must have known that within that period of 6 years, there would be a considerable rise in the price of white cement. In fact, Te's own Memorandum shows that in September 1970, the price per bag was P14.50, and by the middle of 1975, it was already P37.50 per bag. Despite this, no provision was made in the "dealership agreement" to allow for an increase in price mutually acceptable to the parties. Instead, the price was pegged at P9.70 per bag for the whole 5 years of the contract. Fairness on his part as a director of the corporation from whom he was to buy the cement, would require such a provision. In fact, this unfairness in the contract is also a basis which renders a contract entered into by the President, without authority from the Board of Directors, void or voidable, although it may have been in the ordinary course of business. The fixed price of P9.70 per bag for a period of 5 years was not fair and reasonable. As director, specially since he was the other party in interest, Te's bounden duty was to act in such manner as not to unduly prejudice the corporation. In the light of the circumstances of this case, it is to Us quite clear that he was guilty of disloyalty to the corporation; he was attempting in effect, to enrich himself at the expense of the corporation. There is no showing that the stockholders ratified the "dealership agreement" or that they were fully aware of its provisions. The contract was therefore not valid and the Court cannot allow him to reap the

<u>fruits of his disloyalty.</u>

27 Santos vs. National Labor Relations Commission [GR 101699, 13 March 1996]
?, Vitug (J): 4 concur

Facts: Melvin D. Millena, on 1 October 1985, was hired to be the project accountant for Mana Mining and Development Corporation's (MMDC) mining operations in Gatbo, Bacon, Sorsogon. On 12 August 1986, Millena sent to Mr. Gil Abaño, the MMDC corporate treasurer, a memorandum calling the latter's attention to the failure of the company to comply with the withholding tax requirements of, and to make the corresponding monthly remittances to, the Bureau of Internal Revenue (BIR) on account of delayed payments of accrued salaries to the company's laborers and employees. In a letter, dated 8 September 1986, Abaño advised Millena that it was the board's decision that it stop porduction (operation) in Sorsogon due to the upcoming rainy seasons and the deterioration of the peace and order in the said area; that the corporation will undertake only necessary maintenance and repair work and will keep overhead down to the minimum manageable level; and that the corporation will not need a project accountant until the corporaton resumes full-scale operations. Millena expressed "shock" over the termination of his employment. He complained that he would not have resigned from the Sycip, Gores & Velayo accounting firm, where he was already a senior staff auditor, had it not been for the assurance of a "continuous job" by MMDC's Eng. Rodillano E. Velasquez. Millena requested that he be reimbursed the "advances" he had made for the company and be paid his "accrued salaries/claims." The claim was not heeded. On October 1986, Millena filed with the NLRC Regional Arbitration, Branch No. V, in Legazpi City, a complaint for illegal dismissal, unpaid salaries, 13th month pay, overtime pay, separation pay and incentive leave pay against MMDC and its two top officials, namely, Benjamin A Santos (the President) and Rodillano A. Velasquez (the executive vice-president). In his complaint-affidavit (position paper), submitted on 27 October 1986, Millena alleged, among other things, that his dismissal was merely an offshoot of his letter of 12 August 1986 to Abaño about the company's inability to pay its workers and to remit withholding taxes to the BIR. On 27 July 1988, Labor Arbiter Fructouso T. Aurellano, finding no valid cause for terminating complaint's employment, ruledthat a partial closure of an establishment due to losses was a retrenchment measure that rendered the employer liable for unpaid salaries and other monetary claims. The Labor Arbiter ordered Santos, et. al. to pay Millena the amount of P37,132.25 corresponding to the latter's unpaid salaries and advances: P5,400.00 for petitioner's 13th month pay; P3,340.95 as service incentive leave pay; and P5, 400.00 as separation pay. Santos, et. al. were further ordered to pay Millena 10% of the monetary awards as attorney's fees. Alleging abuse of discretion by the Labor Arbiter, the company and its co-respondents filed a "motion for reconsideration and /or appeal." 8 The motion/appeal was forthwith indorsed to the Executive Director of the NLRC in Manila. In a resolution, dated 04 September 1989, the NLRC affirmed the decision of the Labor Arbiter. A writ of execution correspondingly issued; however, it was returned unsatisfied for the failure of the sheriff to locate the offices of the corporation in the addressed indicated. Another writ of execution and an order of garnishment was thereupon served on Santos at his residence. Contending that he had been denied due process, Santos filed a motion for reconsideration of the NLRC's resolution along with a prayer for the quashal of the writ of execution and order of garnishment. He averred that he had never received any notice, summons or even a copy of the complaint; hence, he said, the Labor Arbiter at no time had acquired jurisdiction over him. On 16 August 1991, the NLRC dismissed the motion for reconsideration. Santos filed the petition for certiorari.

Issue: Whether Santos should be made solidarily liable with MMDC.

Held: A corporation is a judicial entity with legal personality separated and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Nevertheless, being a mere fiction of law, peculiar situations or valid grounds can exist to warrant, albeit done sparingly, the disregard of its independent being and the lifting of the corporate veil. As a rule, this situation might arise a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to

carry out similar other unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law. Without necessarily piercing the veil of corporate fiction, personal civil liability can also be said to lawfully attach to a corporate director, trustee or officer; to wit: When (1) He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (b) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons; (2) He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) He agrees to hold himself personally and solidarily liable with the corporation; or (4) He is made, by a specific provision of law, to personally answer for his corporate action. The case of Santos is way of these exceptional instances. It is not even shown that Santos has had a direct hand in the dismissal of Millena enough to attribute to Santos a patently unlawful act while acting for the corporation. Neither can Article 289 of the Labor Code be applied since this specifically refers only to the imposition of penalties under the Code. It is undisputed that the termination of Millena's employment has, instead, been due, collectively, to the need for a further mitigation of losses, the onset of the rainy season, the insurgency problem, in Sorsogon and the lack of funds to further support the mining operation in Gatbo. It is basic that a corporation is invested by law with a personally separate and distinct from those of the persons composing it as well as from that of any, other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personally. Similar to the case of Sunio vs. National Labor Relations Commission, Santos should not have been made personally answerable for the payment of Millena's back salaries.

28 Malayang Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) vs. Ramos [GR 113907, 20 April 2001]
Third Division, Gonzaga-Reyes (J): 2 concur, 2 reiterate their separate opinion in Serrano v NLRC, GR 117040, January 2000.

[28 February 2000 decision; Purisima] Malayang Samahan ng mga Manggagawa sa M. Greenfield, Inc., (B) (MSMG, the "local union"), is an affiliate of United Lumber and General Workers of the Philippines (ULGWP, the "federation"). On 12 September 1986, a local union election was held under the auspices of the ULGWP wherein MSMG-UWP, Beda Magdalena Villanueva, and the other union officers were proclaimed as winners. Minutes of said election were duly filed with the Bureau of Labor Relations on 29 September 1986. On 21 March 1987, a Petition for Impeachment was filed with the national federation ULGWP by the defeated candidates in the aforementioned election. On 16 June 1987, the federation conducted an audit of the local union-funds. The investigation. did not yield any unfavorable result and the local union. officers were cleared of the charges of anomaly in the custody, handling and disposition of the union funds. The 14 defeated candidates filed a Petition for Impeachment/Expulsion of the local union officers with the DOLE NCR on 5 November 1987 (NCR-OD-M-11-780-87). However, the same was dismissed on 2 March 1988, by Med-Arbiter Renato Parungo for failure to substantiate the charges and to present evidence in support of the allegations. On 17 April 1988, the local union held a general membership meeting at the Caruncho Complex in Pasig. Several union members failed to attend the meeting, prompting the Executive Board to create a committee tasked to investigate the non-attendance of several union members in the said assembly, pursuant to Sections 4 and 5, Article V of the Constitution and By-Laws of the union. On 27 June 1988, the local union wrote ULGWP a letter requesting it to deduct the union fines from the wages/salaries of those union members who failed to attend the general membership meeting. In a Memorandum dated 3 July 1988, the Secretary General of the national federation, Godofredo Paceño, Jr. disapproved the resolution of the local union imposing the P50.00 fine. The union officers protested such action by the Federation in a Reply dated 4 July 1988. On 11 July 1988, the federation wrote M. Greenfield (B) a letter advising the latter not to deduct the fifty-peso fine from the salaries of the union members. The following day, the company sent a reply to MSMG's request in a letter, stating that it cannot deduct fines from the employees' salary without going against certain laws. The company suggested that the union refer the matter to the proper government office for resolution in order to avoid placing the company in the middle of the issue. The imposition of P50.00 fine

became the subject of bitter disagreement between the Federation and the local union culminating in the latter's declaration of general autonomy from the former through Resolution 10 passed by the local executive board and ratified by the general membership on 16 July 1988. In retaliation, the national federation asked the company to stop the remittance of the local union's share in the education funds effective August 1988. This was objected to by the local union which demanded that the education fund be remitted to it in full. The company was thus constrained to file a Complaint for Interpleader with a Petition for Declaratory Relief with the Med-Arbitration Branch of the Department of Labor and Employment (Case OD-M-8-435-88). This was resolved on 28 October 1988, by Med-Arbiter Anastacio Bactin in an Order, ordering (1) That the United Lumber and General Workers of the Philippines (ULGWP) through its local union officers shall administer the collective bargaining agreement (CBA); (2) That the company shall remit the P10,000.00 monthly labor education program fund to the ULGWP subject to the condition that it shall use the said amount for its intended purpose. and (3) that the Treasurer of the MSMG shall be authorized to collect from the 356 union members the amount of P50.00 as penalty for their failure to attend the general membership assembly on 17 April 1988. However, if the MSMG Officers could present the individual written authorizations of the 356 union members, then the company is obliged to deduct from the salaries of the 356 union members the P50.00 fine." On appeal, Director Pura-Ferrer Calleja issued a Resolution dated 7 February 1989, which modified in part the earlier disposition, to the extent that the company should remit the amount of P5,000.00 of the P10,000.00 monthly labor education program fund to ULGWP and the other P5,000.00 to MSMG, both unions to use the same for its intended purpose."

Meanwhile, on 2 September 1988, several local unions (Top Form, M. Greenfield, Grosby, Triumph International, General Milling, and Vander Hons chapters) filed a Petition for Audit and Examination of the federation and education funds of ULGWP which was granted by Med-Arbiter Rasidali Abdullah on 25 December 1988 in an Order which directed the audit and examination of the books of account of ULGWP. On 30 September 1988, the officials of ULGWP called a Special National Executive Board Meeting at Nasipit, Agusan del Norte where a Resolution was passed placing the MSMG under trusteeship and appointing Cesar Clarete as administrator. On 27 October 1988, the said administrator wrote the company informing the latter of its designation of a certain Alfredo Kalingking as local union president and "disauthorizing" the incumbent union officers from representing the employees. This action by the national federation was protested by the MSMG in a letter to the company dated 11 November 1988. On 13 November 1988, MSMG union officers received identical letters from the administrator requiring them to explain within 72 hours why they should not be removed from their office and expelled from union membership. On 26 November 1988, MSMG replied, However, as early as 21 November 1988, the officers were expelled from the ULGWP. On the same day, the federation advised respondent company of the expulsion of the 30 union officers and demanded their separation from employment pursuant to the Union Security Clause in their collective bargaining agreement. This demand was reiterated twice, through letters dated February 21 and March 4, 1989, respectively, to the company. Thereafter, the Federation filed a Notice of Strike with the National Conciliation and Mediation Board to compel the company to effect the immediate termination of the expelled union officers. On 7 March 1989, under the pressure of a threatened strike, the company terminated the 30 union officers from employment, serving them identical copies of the termination letter, The expelled union officers assigned in the first shift were physically or bodily brought out of the company premises by the company's security guards. Likewise, those assigned to the second shift were not allowed to report for work. this provoked some of the members of the local union to demonstrate their protest for the dismissal of the said union officers. Some union members left their work posts and walked out of the company premises. On the other hand, the Federation, having achieved its objective, withdrew the Notice of Strike filed with the NCMB. On 8 March 1989, MSMG filed a Notice of Strike with the NCMB, DOLE, Manila (NCMB-NCR-NS03-216-89). The following day, a strike vote referendum was conducted and out of 2,103 union members who cast their votes, 2,086 members voted to declare a strike. On 10 March 1989, the 30 dismissed union officers filed an urgent petition (NCMB-NCR-NS-03-216-89), with the Office of the Secretary of the Department of Labor and Employment praying for the suspension of the effects of their termination from employment. However, the petition was dismissed by then Secretary Franklin Drilon on 11 April 1989. On March 13 and 14, 1989, a total

of 78 union shop stewards were placed under preventive suspension by the company. This prompted the union members to again stage a walk-out and resulted in the official declaration of strike at around 3:30 p.m. of 14 March 1989. The strike was attended with violence, force and intimidation on both sides resulting to physical injuries to several employees, both striking and non-striking, and damage to company properties. The employees who participated in the strike and allegedly figured in the violent incident were placed under preventive suspension by the company. The company also sent return to-work notices to the home addresses of the striking employees thrice successively, on March 27, April 8 and April 31, 1989, respectively. However, only 261 employees were eventually accepted back to work. Those who did not respond to the return-to-work notice were sent termination letters dated 17 May 1989.

On 7 August 1989, MSMG filed a verified complaint with the Arbitration Branch, National Capital Region, DOLE, Manila, (NCR -00-09-04199-89), charging the corporation, etc. of unfair labor practice which consists of union busting, illegal dismissal, illegal suspension interference in union activities, discrimination, threats, intimidation, coercion, violence, and oppression. After the filing of the complaint, the lease contracts on the company's office and factory at Merville Subdivision, Parañaque expired and were not renewed. Upon demand of the owners of the premises, the company was compelled to vacate its office and factory. Thereafter, the company transferred its administration and account/client servicing department at AFP-RSBS Industrial Park in Taguig, Metro Manila. For failure to find a suitable place in Metro Manila for relocation of its factory and manufacturing operations, the company was constrained to move the said departments to Tacloban, Leyte. Hence, on 16 April 1990, the company accordingly notified its employees of a temporary shutdown. in operations. Employees who were interested in relocating to Tacloban were advised to enlist on or before 23 April 1990. On 15 December 1992, finding the termination to be valid in compliance with the union security clause of the collective bargaining agreement, Labor Arbiter Cresencio Ramos dismissed the complaint. MSMG then appealed to the NLRC. The First Division affirmed the Labor Arbiter's disposition. With the denial of their motion for reconsideration on 28 January 1994, MSMG elevated the case to the Supreme Court.

The Supreme Court on 28 February 2000, ordered M. Greenfield to immediately reinstate the affected employees and officers to their respective positions; that should reinstatement be not feasible, said company shall pay separation pay of one month salary for every year of service; that since the affected employees and officers were terminated without the requisite written notice at least 30 days prior to their termination, the company was ordered to pay full backwages to the affected employees while the Federation was ordered to pay full backwages to the affected union officers who were dismissed upon its instigation; that since the dismissal of the affected employees and officers was without cause, backwages are to be computed from the time the affected employees and union officers were dismissed until their actual reinstatement, and that should reinstatement be not feasible, their backwages shall be computed from the time the affected employees and officers were terminated until the finality of the Court's decision; with costs against the company. In the decision, the court held that <u>the company officials cannot be held personally liable for damages on account of the employees' dismissal because the employer corporation has a personality separate and distinct from its officers who merely acted as its agents.</u> MSMG-UWG filed a motion for partial reconsideration.

Issue: Whether the company officials cannot be held personally liable for damages on account of employees' dismissal because the employer corporation has a personality separate and distinct from its officers who merely acted as its agents.

Held: A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases: (1) When directors and trustees or, in appropriate cases, the officers of a corporation — (a) Vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in

directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons. (2) When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto. (3) When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation. (4) When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. In labor cases, particularly, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. Bad faith or negligence is a question of fact and is evidentiary. It has been held that bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty thru some motive or interest or ill will; it partakes of the nature of fraud. Herein, there is nothing substantial on record to show that the corporate officers acted in patent bad faith or were guilty of gross negligence in terminating the services of the affected employees and officers so as to warrant personal liability.

29 AF Realty & Development Inc. vs. Dieselman Freight Services Co. [GR 111448, 16 January 2002]

Third Division, Sandoval-Gutierrez (J): 4 concur

Facts: On 10 May 1988, Manuel C. Cruz, Jr., a member of the board of directors of Dieselman Freight Services Co., issued a letter denominated as "Authority To Sell Real Estate" to Cristeta N. Polintan, a real estate broker of the CNP Real Estate Brokerage. Cruz, Jr. authorized Polintan "to look for a buyer/buyers and negotiate the sale" of the lot at P3,000.00 per square meter, or a total of P6,282,000.00. Cruz, Jr. has no written authority from Dieselman to sell the lot. In turn, Cristeta Polintan, through a letter dated 19 May 1988, authorized Felicisima ("Mimi") Noble to sell the same lot. Felicisima Noble then offered for sale the property to AF Realty & Development, Inc. (AF Realty) at P2,500.00 per square meter. Zenaida Ranullo, board member and vice-president of AF Realty, accepted the offer and issued a check in the amount of P300,000.00 payable to the order of Dieselman. Polintan received the check and signed an "Acknowledgment Receipt" indicating that the amount of P300,000.00 represents the partial payment of the property but refundable within two weeks should AF Realty disapprove Ranullo's action on the matter. On 29 June 1988, AF Realty confirmed its intention to buy the lot. Hence, Ranullo asked Polintan for the board resolution of Dieselman authorizing the sale of the property. However, Polintan could only give Ranullo the original copy of TCT 39849, the tax declaration and tax receipt for the lot, and a photocopy of the Articles of Incorporation of Dieselman. On 2 August 1988, Manuel F. Cruz, Sr., president of Dieselman, acknowledged receipt of the said P300,000.00 as "earnest money" but required AF Realty to finalize the sale at P4,000.00 per square meter. AF Realty replied that it has paid an initial down payment of P300,000.00 and is willing to pay the balance. However, on 13 August 1988, Mr. Cruz, Sr. terminated the offer and demanded from AF Realty the return of the title of the lot earlier delivered by Polintan. Claiming that there was a perfected contract of sale between them, AF Realty filed with the Regional Trial Court, Branch 160, Pasig City a complaint for specific performance (Civil Case 56278) against Dieselman and Cruz, Jr.. The complaint prayed that Dieselman be ordered to execute and deliver a final deed of sale in favor of AF Realty." In its amended complaint, AF Realty asked for payment of P1,500,000.00 as compensatory damages; P400,000.00 as attorney's fees; and P500,000.00 as exemplary damages. In its answer, Dieselman alleged that there was no meeting of the minds between the parties in the sale of the property and that it did not authorize any person to enter into such transaction on its behalf. Meanwhile, on 30 July 1988, Dieselman and Midas Development Corporation (Midas) executed a Deed of Absolute Sale of the same property. The agreed price was P2,800.00 per square meter. Midas delivered to Dieselman P500,000.00 as down payment and deposited the balance of P5,300,000.00 in escrow account with the PCIBank. Constrained to protect its interest in the property, Midas filed on 3 April 1989 a Motion for Leave to Intervene in Civil Case 56278. Midas alleged that it has purchased the property and took possession thereof, hence Dieselman cannot be compelled to sell and convey it to AF Realty. The trial court granted Midas' motion. After trial, the lower court rendered the Decision holding that the acts of Cruz, Jr. bound Dieselman in the sale of the lot to AF Realty. Consequently, the

perfected contract of sale between Dieselman and AF Realty bars Midas' intervention. The trial court also held that Midas acted in bad faith when it initially paid Dieselman P500,000.00 even without seeing the latter's title to the property. Moreover, the notarial report of the sale was not submitted to the Clerk of Court of the Quezon City RTC and the balance of P5,300,000.00 purportedly deposited in escrow by Midas with a bank was not established. Dieselman was ordered to execute and deliver to AF Realty the final deed of sale of the property covered by TCT 39849 of the Registry of Deed of Rizal, Metro Manila District II, including the improvements thereon, and ordering Dieselman to pay AF Realty attorney's fees in the amount of P50,000.00 and to pay the costs. Dissatisfied, all the parties appealed to the Court of Appeals. In its Decision dated 10 December 1992, the Court of Appeals reversed the judgment of the trial court holding that since Cruz, Jr. was not authorized in writing by Dieselman to sell the subject property to AF Realty, the sale was not perfected; and that the Deed of Absolute Sale between Dieselman and Midas is valid, there being no bad faith on the part of the latter. The Court of Appeals then declared Dieselman and Cruz, Jr. jointly and severally liable to AF Realty for P100,000.00 as moral damages; P100,000.00 as exemplary damages; and P100,000.00 as attorney's fees. On 5 August 1993, the Court of Appeals, upon motions for reconsideration filed by the parties, promulgated an Amending Decision, in the sense that only Cruz, should be made liable to pay AF Realty the damages and attorney's fees awarded therein, plus the amount of P300,000.00 unless, in the case of the said P300,000.00, the same is still deposited with the Court which should be restituted to AF Realty. AF Realty filed the petition for review on certiorari.

Issue: Whether there was a perfected contract of sale involving the Dieselman real property in favor of AF Realty.

Held: Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation. Herein, Cruz has no written authority from the board of directors of Dieselman to sell or to negotiate the sale of the lot, much less to appoint other persons for the same purpose. Cruz's lack of such authority precludes him from conferring any authority to Polintan involving the subject realty. Necessarily, neither could Polintan authorize Felicisima Noble. Clearly, the collective acts of Cruz, Polintan and Noble cannot bind Dieselman in the purported contract of sale.

30 Atrium Management Corporation vs. Court of Appeals [GR 109491, 28 February 2001], also De Leon vs. Court of Appeals [GR 121894]
First Division, Pardo (J): 4 concur

Facts: Hi-Cement Corporation through its corporate signatories, Lourdes M. de Leon, treasurer, and the late Antonio de las Alas, Chairman, issued checks in favor of E.T. Henry and Co. Inc., as payee. E.T. Henry and Co., Inc., in turn, endorsed the four checks to Atrium Management Corporation for valuable consideration. Upon presentment for payment, the drawee bank dishonored all four checks for the common reason "payment stopped". On 3 January 1983, Atrium Management Corporation filed with the Regional Trial Court, Manila an action for collection of the proceeds of four postdated checks in the total amount of P2 million, after its demand for payment of the value of the checks was denied. After due proceedings, on 20 July 1989, the trial court rendered a decision ordering Lourdes M. de Leon, her husband Rafael de Leon, E.T. Henry and Co., Inc. and Hi-Cement Corporation to pay Atrium jointly and severally, the amount of P2 million corresponding to the value of the four checks, plus interest and attorney's fees. On appeal to the Court of Appeals, on 17 March 1993, the Court of Appeals promulgated its decision modifying the decision of the trial court, absolving Hi-Cement Corporation from liability and dismissing the complaint as against it. The appellate court ruled that:

(1) Lourdes M. de Leon was not authorized to issue the subject checks in favor of E.T. Henry, Inc.; (2) The issuance of the subject checks by Lourdes M. de Leon and the late Antonio de las Alas constituted ultra vires acts; and (3) The subject checks were not issued for valuable consideration. Hence, Atrium filed the petition.

Issue [1]: Whether the issuance of the checks was an ultra vires act.

Held [1]: The record reveals that Hi-Cement Corporation issued the four (4) checks to extend financial assistance to E.T. Henry, not as payment of the balance of the P30 million pesos cost of hydro oil delivered by E.T. Henry to Hi-Cement. Why else would petitioner de Leon ask for counterpart checks from E.T. Henry if the checks were in payment for hydro oil delivered by E.T. Henry to Hi-Cement? Hi-Cement, however, maintains that the checks were not issued for consideration and that Lourdes and E.T. Henry engaged in a "kiting operation" to raise funds for E.T. Henry, who admittedly was in need of financial assistance. There was no sufficient evidence to show that such is the case. Lourdes M. de Leon is the treasurer of the corporation and is authorized to sign checks for the corporation. At the time of the issuance of the checks, there were sufficient funds in the bank to cover payment of the amount of P2 million pesos. Thus, the act of issuing the checks was well within the ambit of a valid corporate act, for it was for securing a loan to finance the activities of the corporation, hence, not an ultra vires act. An ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law" The term "ultra vires" is "distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated.

Issue [2]: Whether Lourdes M. de Leon and Antonio de las Alas were personally liable for the checks issued as corporate officers and authorized signatories of the check.

Held [2]: Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when: (1) He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons; (2) He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) He agrees to hold himself personally and solidarily liable with the corporation; or (4) He is made, by a specific provision of law, to personally answer for his corporate action." Herein, Lourdes M. de Leon and Antonio de las Alas as treasurer and Chairman of Hi-Cement were authorized to issue the checks. However, Ms. de Leon was negligent when she signed the confirmation letter requested by Mr. Yap of Atrium and Mr. Henry of E.T. Henry for the rediscounting of the crossed checks issued in favor of E.T. Henry. She was aware that the checks were strictly endorsed for deposit only to the payee's account and not to be further negotiated. What is more, the confirmation letter contained a clause that was not true, that is, "that the checks issued to E.T. Henry were in payment of Hydro oil bought by Hi-Cement from E.T. Henry". Her negligence resulted in damage to the corporation. Hence, Ms. de Leon may be held personally liable therefor.

31 BA Savings Bank vs. Sia [GR 131214, 27 July 2000]

Third Division, Panganiban (J): 4 concur

Facts: On 6 August 1997, the Court of Appeals issued a Resolution denying due course to a Petition for Certiorari filed by BA Savings Bank, on the ground that "the Certification on anti-forum shopping incorporated in the petition was signed not by the duly authorized representative of the petitioner, as required under Supreme Court Circular No. 28-91, but by its counsel, in contravention of said circular." A Motion for Reconsideration was subsequently filed by BA Savings Bank, attached to which was a BA Savings Bank Corporate Secretary's Certificate, dated 14 August 1997. The Certificate that BA Savings Bank's Board of Directors approved a Resolution on 21 May 1996, authorizing the bank's lawyers to represent it in any action

or proceeding before any court, tribunal or agency; and to sign, execute and deliver the Certificate of Non-forum Shopping, among others.
On 24 October 1997, the Motion for Reconsideration was denied by the Court of Appeals on the ground that Supreme Court Revised Circular 28-91 "requires that it is the petitioner, not the counsel, who must certify under oath to all of the facts and undertakings required therein." The bank appealed.

Issue: Whether the certificate of non-forum shopping can be signed by the corporate counsel, not necessarily by the corporate officers alone.

Held: A corporation has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and, except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons." Herein, the corporation's board of directors issued a Resolution specifically authorizing its lawyers "to act as their agents in any action or proceeding before the Supreme Court, the Court of Appeals, or any other tribunal or agency[;] and to sign, execute and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, certificate of non-forum shopping and other instruments necessary for such action and proceeding." The Resolution was sufficient to vest such persons with the authority to bind the corporation and was specific enough as to the acts they were empowered to do. In the case of natural persons, Circular 28-91 requires the parties themselves to sign the certificate of non-forum shopping. However, such requirement cannot be imposed on artificial persons, like corporations, for the simple reason that they cannot personally do the task themselves. As already stated, corporations act only through their officers and duly authorized agents. In fact, physical actions, like the signing and the delivery of documents, may be performed, on behalf of the corporate entity, only by specifically authorized individuals. It is noteworthy that the Circular does not require corporate officers to sign the certificate. More important, there is no prohibition on against authorizing agents to do so. In fact, not only was BA Savings Bank authorized to name an agent to sign the certificate; it also exercised its appointing authority reasonably well. For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein. Circular 28-91 was prescribed by the Supreme Court to prohibit and penalize the evils of forum shopping. We see no circumvention of this rationale if the certificate was signed by the corporation's specifically authorized counsel, who had personal knowledge of the matters required in the Circular.

32 Powton Conglomerate Inc. vs. Agcolicol [GR 150978, 3 April 2003]

First Division, Ynares-Santiago (J): 4 concur

Facts: Sometime in November 1990, Johnny Agcolicol, proprietor of Japerson Engineering, entered into an "Electrical Installation Contract" with Powton Conglomerate, Inc. (Powton), thru its President and Chairman of the Board, Philip C. Chien. For a contract price of P5,300,000.00, Agcolicol undertook to provide electrical works as well as the necessary labor and materials for the installation of electrical facilities at the Ciano Plaza Building owned by Powton, located along M. Reyes Street, corner G. Mascardo Street, Bangkal, Makati, Metro Manila. In August 1992, the City Engineer's Office of Makati inspected the electrical installations at the Ciano Plaza Building and certified that the same were in good condition. Hence, it issued the corresponding certificate of electrical inspection. On 16 December 1994, Agcolicol filed with the Regional Trial Court of Pasay City, Branch 115, the complaint for sum of money against Powton and Chien. He alleged

that despite the completion of the electrical works at Ciano Plaza Building, the latter only paid the amount of P5,031,860.40, which is equivalent to more than 95% of the total contract price, thereby leaving a balance of P268,139.80. Agcolicol likewise claimed the amount of P722,730.38 as additional electrical works which were necessitated by the alleged revisions in the structural design of the building. In their answer, petitioners contended that they cannot be obliged to pay the balance of the contract price because the electrical installations were defective and were completed beyond the agreed period. During the trial, Chien testified that they should not be held liable for the additional electrical works allegedly performed by Powton because they never authorized the same. At the pre-trial conference, the parties stipulated, inter alia, that the unpaid balance claimed by the respondent is P268,139.60 and the cost of additional work is P722,730.38. On 16 August 1999, a decision was rendered awarding Agcolicol the total award of P990,867.38 representing the unpaid balance and the costs of additional works. Aggrieved, Powton and Chien appealed to the Court of Appeals which, on 3 September 2001 however, affirmed the decision of the trial court. The motion for reconsideration was likewise denied on 5 December 2001. Powton and Chien filed the petition for review on certiorari.

Issue: Whether Chien, as president, can be made solidarily liable with Powton.

Held: The settled rule is that, a corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when — (1) he assents to a patently unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action. Considering that none of the foregoing exceptions was established in the present case, Chien, who entered into a contract with Agcolicol in his capacity as President and Chairman of the Board of Powton, cannot be held solidarily liable with the latter.

33 Inter-Asia Investments Industries vs. Court of Appeals [GR 125778, 10 June 2003]

Third Division, Carpio Morales (J): 4 concur

Facts: On 1 September 1978, Inter-Asia Industries, Inc. (Inter-Asia), by a Stock Purchase Agreement (the Agreement), sold to Asia Industries, Inc. (Asia Industries) for and in consideration of the sum of P19,500,000.00 all its right, title and interest in and to all the outstanding shares of stock of FARMACOR, INC. (FARMACOR). The Agreement was signed by Leonides P. Gonzales and Jesus J. Vergara, presidents of Inter-Asia and Asia Industries, respectively. Under paragraph 7 of the Agreement, Inter-Asia as seller made warranties and representations. The Agreement was later amended with respect to the "Closing Date," originally set up at 10:00 a.m. of 30 September 1978, which was moved to 31 October 1978, and to the mode of payment of the purchase price. The Agreement, as amended, provided that pending submission by SGV of FARMACOR's audited financial statements as of 31 October 1978, Asia Industries may retain the sum of P7,500,000.00 out of the stipulated purchase price of P19,500,000.00; that from this retained amount of P7,500,000.00, Asia Industries may deduct any shortfall on the Minimum Guaranteed Net Worth of P12,000,000.00; and that if the amount retained is not sufficient to make up for the deficiency in the Minimum Guaranteed Net Worth, Inter-Asia shall pay the difference within 5 days from date of receipt of the audited financial statements. Asia Industries paid Inter-Asia a total amount of P12,000,000.00: P5,000,000.00 upon the signing of the Agreement, and P7,000,000.00 on 2 November 1978. From the STATEMENT OF INCOME AND DEFICIT attached to the financial report dated 28 November 1978 submitted by SGV, it appears that FARMACOR had, for the 10 months ended 31 October 1978, a deficit of P11,244,225.00. Since

the stockholder's equity amounted to P10,000,000.00, FARMACOR had a net worth deficiency of P1,244,225.00. The guaranteed net worth shortfall thus amounted to P13,244,225.00 after adding the net worth deficiency of P1,244,225.00 to the Minimum Guaranteed Net Worth of P12,000,000.00. The adjusted contract price, therefore, amounted to P6,225,775.00 which is the difference between the contract price of P19,500,000.00 and the shortfall in the guaranteed net worth of P13,224,225.00. Asia Industries having already paid Inter-Asia P12,000,000.00, it was entitled to a refund of P5,744,225.00. Inter-Asia thereafter proposed, by letter of 24 January 1980, signed by its president, that Asia Industries's claim for refund be reduced to P4,093,993.00, it promising to pay the cost of the Northern Cotabato Industries, Inc. (NOCOSII) superstructures in the amount of P759,570.00. To the proposal respondent agreed. Inter-Asia, however, welched on its promise. Inter-Asia's total liability thus stood at P4,853,503.00 (P4,093,993.00 plus P759,570.00) exclusive of interest. On 5 April 1983, Asia Industries filed a complaint against Inter-Asia with the Regional Trial Court of Makati, one of two causes of action of which was for the recovery of above-said amount of P4,853,503.00 17 plus interest. Denying Asia Industries's claim, Inter-Asia countered that Asia Industries failed to pay the balance of the purchase price and accordingly set up a counterclaim. Finding for Asia Industries, the trial court rendered on 27 November 1991 a Decision, ordering Inter-Asia to pay Asia Industries the sum of P4,853,503.00 plus interest thereon at the legal rate from the filing of the complaint until fully paid, the sum of P30,000.00 as attorney's fees and the costs of suit; and (b) dismissing the counterclaim. On appeal to the Court of Appeals, and by Decision of 25 January 1996, the Court of Appeals affirmed the trial court's decision. Inter-Asia's motion for reconsideration of the decision having been denied by the Court of Appeals by Resolution of 11 July 1996, Inter-Asia filed the petition for review on certiorari.

Issue: Whether the 24 January 1980 letter signed by Inter-Asia’s president is valid and binding.

Held: The 24 January 1980 letter signed by Inter-Asia's president is valid and binding. As held in the case of People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, the general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. A corporation is a juridical person, separate and distinct from its stockholders and members, "having . . . powers, attributes and properties expressly authorized by law or incident to its existence." Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines. Under this provision, the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, viz: "A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.... [A]pparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar acts executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation." Hence, an officer of a corporation who is authorized to purchase the stock of another corporation has the implied power to perform all other obligations arising therefrom, such as payment of the shares of stock. By allowing its president to sign the Agreement on its

behalf, Inter-Asia clothed him with apparent capacity to perform all acts which are expressly, impliedly and inherently stated therein.

34 Lapu-Lapu Foundation vs. Court of Appeals [GR 126006, 29 January 2004]
Second Division, Callejo Sr. (J): 4 concur

Facts: Sometime in 1977, Elias Q. Tan, then President of Lapulapu Foundation, Inc., obtained four loans from Allied Banking Corporation covered by four promissory notes in the amounts of P100,000 each. As of 23 January 1979, the entire obligation amounted to P493,566.61 and despite demands made on them by the Bank, Tan and the foundation failed to pay the same. The Bank was constrained to file with the Regional Trial Court of Cebu City, Branch 15, a complaint seeking payment by Tan and the foundation, jointly and solidarily, of the sum of P493,566.61 representing their loan obligation, exclusive of interests, penalty charges, attorney's fees and costs. In its answer to the complaint, the Foundation denied incurring indebtedness from the Bank alleging that the loans were obtained by Tan in his personal capacity, for his own use and benefit and on the strength of the personal information he furnished the Bank. The Foundation maintained that it never authorized Tan to co-sign in his capacity as its President any promissory note and that the Bank fully knew that the loans contracted were made in Tan's personal capacity and for his own use and that the Foundation never benefited, directly or indirectly, therefrom. The Foundation then interposed a cross-claim against Tan alleging that he, having exceeded his authority, should be solely liable for said loans, and a counterclaim against the Bank for damages and attorney's fees. For his part, Tan admitted that he contracted the loans from the Bank in his personal capacity. The parties, however, agreed that the loans were to be paid from the proceeds of Tan's shares of common stocks in the Lapulapu Industries Corporation, a real estate firm. The loans were covered by promissory notes which were automatically renewable ("rolled-over") every year at an amount including unpaid interests, until such time as Tan was able to pay the same from the proceeds of his aforesaid shares. According to Tan, the Bank's employee required him to affix two signatures on every promissory note, assuring him that the loan documents would be filled out in accordance with their agreement. However, after he signed and delivered the loan documents to the Bank, these were filled out in a manner not in accord with their agreement, such that the Foundation was included as party thereto. Further, prior to its filing of the complaint, the Bank made no demand on him. After due trial, the court rendered judgment (1) requiring Tan and the Foundation to pay jointly and solidarily to the Bank the amount of P493,566.61 as principal obligation for the four promissory notes, including all other charges included in the same, with interest at 14% per annum, computed from 24 January 1979, until the same are fully paid, plus 2% service charges and 1% monthly penalty charges; (2) requiring Tan and the Foundation to pay jointly and solidarily, attorney's fees in the equivalent amount of 25% of the total amount due from them on the promissory notes, including all charges; and (3) requiring Tan and the Foundation to pay jointly and solidarily litigation expenses of P1,000.00 plus costs of the suit. On appeal, the CA affirmed with modification the judgment of the court a quo by deleting the award of attorney's fees in favor of the Bank for being without basis. Tan and the foundation filed the petition for review on certiorari.

Issue [1]: Whether Tan and the foundation should be held jointly and solidarily liable.

Held [1]: The appellate court did not err in holding Tan and the foundation jointly and solidarily liable as it applied the doctrine of piercing the veil of corporate entity. Tan and the foundation cannot hide behind the corporate veil under the following circumstances: "The evidence shows that Tan has been representing himself as the President of Lapulapu Foundation, Inc. He opened a savings account and a current account in the names of the corporation, and signed the application form as well as the necessary specimen signature cards twice, for himself and for the foundation. He submitted a notarized Secretary's Certificate from the corporation, attesting that he has been authorized, inter alia, to sign for and in behalf of the Lapulapu Foundation any and all checks, drafts or other orders with respect to the bank; to transact business with the Bank, negotiate loans, agreements, obligations, promissory notes and other commercial documents; and to initially obtain a loan for P100,000.00 from any bank. Under these circumstances, the foundation is liable for

the transactions entered into by Tan on its behalf.

Issue [2]: Whether the foundation gave Tan an apparent authority to deal with the Bank.

Held [2]: Per its Secretary's Certificate, the Foundation had given its President, Tan, ostensible and apparent authority to inter alia deal with the Bank. Accordingly, the Foundation is estopped from questioning Tan's authority to obtain the subject loans from the respondent Bank. It is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

35 Nielson & Co. Inc. vs. Lepanto Consolidated Mining Co. [GR L-21601, 28 December 1968]
En Banc, Zaldivar (J): 6 concur, 4 took no part

Facts: *[GR L-21601, 17 December 1966; Zaldivar (J): 6 concur, 2 took no part]* An operating agreement was executed before World War II (on 30 January 1937) between Nielson & Co. Inc. and the Lepanto Consolidated Mining Co. whereby the former operated and managed the mining properties owned by the latter for a management fee of P2,500.00 a month and a 10% participation in the net profits resulting from the operation of the mining properties, for a period of 5 years. In 1940, a dispute arose regarding the computation of the 10% share of Nielson in the profits. The Board of Directors of Lepanto, realizing that the mechanics of the contract was unfair to Nielson, authorized its President to enter into an agreement with Nielson modifying the pertinent provision of the contract effective 1 January 1940 in such a way that Nielson shall receive (1) 10% of the dividends declared and paid, when and as paid, during the period of the contract and at the end of each year, (2) 10% of any depletion reserve that may be set up, and (3) 10% of any amount expended during the year out of surplus earnings for capital account. In the latter part of 1941, the parties agreed to renew the contract for another period of 5 years, but in the meantime, the Pacific War broke out in December 1941. In January 1942 operation of the mining properties was disrupted on account of the war. In February 1942, the mill, power plant, supplies on hand, equipment, concentrates on hand and mines, were destroyed upon orders of the United States Army, to prevent their utilization by the invading Japanese Army. The Japanese forces thereafter occupied the mining properties, operated the mines during the continuance of the war, and who were ousted from the mining properties only in August 1945. After the mining properties were liberated from the Japanese forces, LEPANTO took possession thereof and embarked in rebuilding and reconstructing the mines and mill; setting up new organization; clearing the mill site; repairing the mines; erecting staff quarters and bodegas and repairing existing structures; installing new machinery and equipment; repairing roads and maintaining the same; salvaging equipment and storing the same within the bodegas; doing police work necessary to take care of the materials and equipment recovered; repairing and renewing the water system; and retimbering. The rehabilitation and reconstruction of the mine and mill was not completed until 1948. On 26 June 1948 the mines resumed operation under the exclusive management of LEPANTO. Shortly after the mines were liberated from the Japanese invaders in 1945, a disagreement arose between NIELSON and LEPANTO over the status of the operating contract which as renewed expired in 1947. Under the terms thereof, the management contract shall remain in suspense in case fortuitous event or force majeure, such as war or civil commotion, adversely affects the work of mining and milling. On 6 February 1958, NIELSON brought an action against LEPANTO before the Court of First Instance of Manila to recover certain sums of money representing damages allegedly suffered by the former in view of the refusal of the latter to comply with the terms of a management contract entered into between them on 30 January 1937, including attorney's fees and costs. LEPANTO in its answer denied the material allegations of the complaint and set up certain special defenses, among them, prescription and laches, as bars against the institution of the action. After trial, the court a quo rendered a decision dismissing the complaint with costs. The court stated that it did not find sufficient evidence to establish LEPANTO's counterclaim and so it likewise dismissed the same. NIELSON appealed. The Supreme Court reversed the decision of the trial court and enter in lieu thereof another,

ordering Lepanto to pay Nielson (1) 10% share of cash dividends of December, 1941 in the amount of P17,500.00, with legal interest thereon from the date of the filing of the complaint; (2) management fee for January, 1942 in the amount of P2,500.00, with legal interest thereon from the date of the filing of the complaint; (3) management fees for the sixty-month period of extension of the management contract, amounting to P150,000.00, with legal interest from the date of the filing of the complaint; (4) 10% share in the cash dividends during the period of extension of the management contract, amounting to P1,400,000.00, with legal interest thereon from the date of the filing of the complaint; (5) 10% of the depletion reserve set up during the period of extension, amounting to P53,928.88, with legal interest thereon from the date of the filing of the complaint; (6) 10% of the expenses for capital account during the period of extension, amounting to P694,364.76, with legal interest thereon from the date of the filing of the complaint; (7) to issue and deliver to Nielson and Co. Inc. shares of stock of Lepanto Consolidated Mining Co. at par value equivalent to the total of Nielson's 10% share in the stock dividends declared on November 28, 1949 and August 22, 1950, together with all cash and stock dividends, if any, as may have been declared and issued subsequent to November 28, 1949 and August 22, 1950, as fruits that accrued to said shares; provided that if sufficient shares of stock of Lepanto's are not available to satisfy this judgment, Lepanto shall pay Nielson an amount in cash equivalent to the market value of said shares at the time of default, that is, all shares of stock that should have been delivered to Nielson before the filing of the complaint must be paid at their market value as of the date of the filing of the complaint; and all shares, if any, that should have been delivered after the filing of the complaint at the market value of the shares at the time Lepanto disposed of all its available shares, for it is only then that Lepanto placed itself in condition of not being able to perform its obligation; (8) the sum of P50,000.00 as attorney's fees; and (9) the costs.

Lepanto seeks the reconsideration of the decision rendered on 17 December 1966.

Issue: Whether the management contract is a contract of agency or a contract of lease of services.

Held: Article 1709 of the Old Civil Code, defining contract of agency, provides that "By the contract of agency, one person binds himself to render some service or do something for the account or at the request of another." Article 1544, defining contract of lease of service, provides that "In a lease of work or services, one of the parties binds himself to make or construct something or to render a service to the other for a price certain." In both agency and lease of services one of the parties binds himself to render some service to the other party. Agency, however, is distinguished from lease of work or services in that the basis of agency is representation, while in the lease of work or services the basis is employment. The lessor of services does not represent his employer, while the agent represents his principal. Further, agency is a preparatory contract, as agency "does not stop with the agency because the purpose is to enter into other contracts." The most characteristic feature of an agency relationship is the agent's power to bring about business relations between his principal and third persons. "The agent is destined to execute juridical acts (creation, modification or extinction of relations with third parties). Lease of services contemplate only material (non-juridical) acts." Herein, the principal and paramount undertaking of Nielson under the management contract was the operation and development of the mine and the operation of the mill. All the other undertakings mentioned in the contract are necessary or incidental to the principal undertaking — these other undertakings being dependent upon the work on the development of the mine and the operation of the mill. In the performance of this principal undertaking Nielson was not in any way executing juridical acts for Lepanto, destined to create, modify or extinguish business relations between Lepanto and third persons. In other words, in performing its principal undertaking Nielson was not acting as an agent of Lepanto, in the sense that the term agent is interpreted under the law of agency, but as one who was performing material acts for an employer, for a compensation. It is true that the management contract provides that Nielson would also act as purchasing agent of supplies and enter into contracts regarding the sale of mineral, but the contract also provides that Nielson could not make any purchase, or sell the minerals, without the prior approval of Lepanto. It is clear, therefore, that even in these cases Nielson could not execute juridical acts which would bind Lepanto without first securing the approval of Lepanto. Nielson, then, was to act only as an intermediary, not as an agent.

Further, from the statements in the annual report for 1936, and from the provision of paragraph XI of the Management contract, that the employment by Lepanto of Nielson to operate and manage its mines was principally in consideration of the know-how and technical services that Nielson offered Lepanto. The contract thus entered into pursuant to the offer made by Nielson and accepted by Lepanto was a "detailed operating contract". It was not a contract of agency. Nowhere in the record is it shown that Lepanto considered Nielson as its agent and that Lepanto terminated the management contract because it had lost its trust and confidence in Nielson.

36 Islamic Directorate of the Philippines vs. Court of Appeals [GR 117897, 14 May 1997]
First Division, Hermosisima Jr. (J): 1 concurs, 1 concurs, 1 took no part, 1 on leave

Facts: Sometime in 1971, Islamic leaders of all Muslim major tribal groups in the Philippines headed by Dean Cesar Adib Majul organized and incorporated the ISLAMIC DIRECTORATE OF THE PHILIPPINES (IDP), the primary purpose of which is to establish an Islamic Center in Quezon City for, the construction of a "Mosque (prayer place, Madrasah (Arabic School), and other religious infrastructures" so as to facilitate the effective practice of Islamic faith in the area. Towards this end, that is, in the same year, the Libyan government donated money to the IDP to purchase land at Culiat, Tandang Sora, Quezon City, to be used as a Center for the Islamic populace. The land, with an area of 49,652 square meters, we covered by two titles: TCTs RT-26520 (176616) and RT-26521 (170567), both registered in the name of IDP. In 1971, the Board of Trustees of the IDP was composed of Senator Mamintal Tamano, Congressman Ali Dimaporo, Congressman Salipada Pendatun, Dean Cesar Adib Majul, Sultan Harun Al-Rashid Lucman, Delegate Ahmad Alonto, Commissioner Datu Mama Sinsuat and Mayor Aminkadra Abubakar. In 1972, after the purchase of the land by the Libyan government in the name of IDP, Martial Law was declared by the late President Ferdinand Marcos. Most of the members of the 1971 Board of Trustees like Senators Mamintal Tamano, Salipada Pendatun, Ahmad Alonto, and Congressman Al-Rashid Lucman flew to the Middle East to escape political persecution. Thereafter, two Muslim groups sprung, the Carpizo Group, headed by Engineer Farouk Carpizo, and the Abbas Group, led by Mrs. Zorayda Tamano and Atty. Firdaussi Abbas. Both groups claimed to be the legitimate IDP. Significantly, on 3 October 1986, the SEC, in a suit between these two contending groups, came out with a Decision in SEC Case 2687 declaring the election of both the Carpizo Group and the Abbas Group as IDP board members to be null and void. Neither group, however, took the necessary steps prescribed by the SEC in its 3 October 1986 Decision, and no valid election of the members of the Board of Trustees of IDP was ever called. Although the Carpizo Group attempted to submit a set of by-laws, the SEC found that, aside from that Engineer Farouk Carpizo and Atty. Musib Buat, those who prepared and adopted the by-laws were not bona fide members of the IDP, thus rendering the adoption of the by-laws likewise null and void. On 20 April 1989, without having been properly elected as new members of the Board of Trustees of IDP, the Carpizo Group caused to be signed an alleged Board Resolution of the IDP, authorizing the sale of the subject two parcels of land to the Iglesia ni Cristo (INC) for a consideration of P22,343,400.00, which sale was evidenced by a Deed of Absolute Sale 12 dated 20 April 1989. On 30 May 1991, the 1971 IDP Board of Trustees headed by former Senator Mamintal Tamano, or the Tamano Group, filed a petition before the SEC (SEC Case 4012) seeking to declare null and void the Deed of Absolute Sale signed by the Carpizo Group and the INC since the group of Engineer Carpizo was not the legitimate Board of Trustees of the IDP. Meanwhile, INC, pursuant to the Deed of Absolute Sale executed in its favor, filed an action for Specific Performance with Damages against the vendor, Carpizo Group, before Branch 81 of the Regional Trial Court of Quezon City (Civil Case Q-90-6937) to compel said group to clear the property of squatters and deliver complete and full physical possession thereof to INC. Likewise, INC filed a motion in the same case to compel one Mrs. Leticia P. Ligon to produce and surrender to the Register of Deeds of Quezon City the owner's duplicate copy of TCTs RT-26521 and RT-26520 covering the two parcels of land, so that the sale in INC's favor may be registered and new titles issued in the name of INC. Mrs. Ligon was alleged to be the mortgagee of the two parcels of land executed in her favor by certain Abdulrahman R.T. Linzag and Rowaida Busran-Sampaco claimed to be in behalf of the Carpizo Group. Judge Celia Lipana-Reyes of Branch 81, Regional Trial Court of Quezon City, denied IDP's motion to intervene on the ground of lack of juridical personality of the IDP-

Tamano Group and that the issues being raised by way of intervention are intra-corporate in nature, jurisdiction thereto properly pertaining to the SEC. Apprised of the pendency of SEC Case 4012 involving the controverted status of the IDP-Carpizo Group but without waiting for the outcome of said case, Judge Reyes, on 12 September 1991, rendered Partial Judgment in Civil Case Q-90-6937 ordering the IDP-Carpizo Group to comply with its obligation under the Deed of Sale of clearing the subject lots of squatters and of delivering the actual possession thereof to INC. Thereupon Judge Reyes in another Order, dated 2 March 1992, pertaining also to Civil Case Q-90-6937, treated INC as the rightful owner of the real properties and disposed. On 6 April 1992, the Order was amended by Judge Reyes directing Ligon "to deliver the owner's duplicate copies of TCT Nos. RT-26521 (170567) and RT-26520 (176616) to the Register of Deeds of Quezon City for the purposes stated in the Order of March 2, 1992." Mortgagee Ligon went to the Court of Appeals, thru a petition for certiorari (CA-GR SP-27973), assailing the Orders of Judge Reyes. The appellate court dismissed her petition on 28 October 1992. Undaunted, Ligon filed a petition for review before the Supreme Court (GR 107751). In the meantime, the SEC, on 5 July 1993, finally came out with a Decision in SEC Case 4012, Declaring the by-laws submitted by the IDP-Caprizo group as unauthorized, and hence, null and void; declaring the sale of the two (2) parcels of land in Quezon City covered by the Deed of Absolute Sale entered into by Iglesia ni Kristo and the Islamic Directorate of the Philippines, Inc. null and void; declaring the election of the Board of Directors 23 of the corporation from 1986 to 1991 as null and void; and Declaring the acceptance of the respondents, except Farouk Carpizo and Musnib Buat, as members of the IDP null and void. The INC filed a Motion for Intervention, dated 7 September 1993, in SEC Case 4012, but the same was denied on account of the fact that the decision of the case had become final and executory, no appeal having been taken therefrom. INC elevated SEC Case 4012 to the Court of Appeals by way of a special civil action for certiorari (CA-GR SP 33295). On 28 October 1994, the appeallate court promulgated a Decision granting INC's petition. The portion of the SEC Decision in SEC Case 4012 which declared the sale of the two (2) lots in question to INC as void was ordered set aside by the Court of Appeals. Thus, the IDP-Tamano Group brought the petition for review, dated 21 December 1994, to the Supreme Court. While the petition was pending, however, the Supreme Court rendered judgment in GR 107751 on the petition filed by Mrs. Leticia P. Ligon. The Decision, dated 1 June 1995, denied the Ligon petition and affirmed the 28 October 1992 Decision of the Court of Appeals in CA-GR SP-27973 which sustained the Order of Judge Reyes compelling mortgagee Ligon to surrender the owner's duplicate copies of TCTs RT-26521 (170567) and RT-26520 (176616) to the Register of Deeds of Quezon City so that the Deed of Absolute Sale in INC's favor may be properly registered.

Issue: Whether the Tandang Sora property was legitimately sold to the INC.

Held: As far back as 3 October 1986, the SEC, in Case 2687, in a suit between the Carpizo Group and the Abbas Group, already declared the election of the Carpizo Group (as well as the Abbas Group) to the IDP Board as null and void for being violative of the Articles of Incorporation. Nothing thus becomes more settled than that the IDP-Carpizo Group with whom INC contracted is a fake Board. Premises considered, all acts carried out by the Carpizo Board, particularly the sale of the Tandang Sora property, allegedly in the name of the IDP, have to be struck down for having been done without the consent of the IDP thru a legitimate Board of Trustees. Article 1318 of the New Civil Code lays down the essential requisites of contracts, and where all these elements must be present to constitute a valid contract. For, where even one is absent, the contract is void. Specifically, consent is essential for the existence of a contract, and where it is wanting, the contract is non-existent. Herein, the IDP, owner of the subject parcels of land, never gave its consent, thru a legitimate Board of Trustees, to the disputed Deed of Absolute Sale executed in favor of INC. This is, therefore, a case not only of vitiated consent, but one where consent on the part of one of the supposed contracting parties is totally wanting. Ineluctably, the subject sale is void and produces no effect whatsoever. The Carpizo Group-INC sale is further deemed null and void ab initio because of the Carpizo Group's failure to comply with Section 40 of the Corporation Code pertaining to the disposition of all or substantially all assets of the corporation. The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling

squarely within the contemplation of the foregoing section. For the sale to be valid, the majority vote of the legitimate Board of Trustees, concurred in by the vote of at least 2/3 of the bona fide members of the corporation should have been obtained. These twin requirements were no met as the Carpizo Group which voted to sell the Tandang Sora property was a fake Board of Trustees, and those whose names and signatures were affixed by the Carpizo Group together with the sham Board Resolution authorizing the negotiation for the sale were, from all indications, not bona fide members of the IDP as they were made to appear to be. Apparently, there are only 15 official members of the IDP including the 8 members of the Board of Trustees. All told, the disputed Deed of Absolute Sale executed by the fake Carpizo Board and INC was intrinsically void ab initio.

37 Lopez Dee vs. Security and Exchange Commission [GR 60502, 16 July 1991], also De Jesus vs. Intermediate Appellate Court [GR 63922]
En Banc, Paras (J): 14 concur

Facts: Naga Telephone Company, Inc. (Natelco) was organized in 1954, the authorized capital was P100,000.00. In 1974 Natelco decided to increase its authorized capital to P3,000,000.00. As required by the Public Service Act, Natelco filed an application for the approval of the increased authorized capital with the then Board of Communications under BOC Case 74-84. On 8 January 1975, a decision was rendered in said case, approving the said application subject to certain conditions, among which was "That the issuance of the shares of stocks will be for a period of one year from the date hereof, 'after which no further issues will be made without previous authority from this Board." Pursuant to the approval given by the then Board of Communications, Natelco filed its Amended Articles of Incorporation with the Securities and Exchange Commission (SEC). When the amended articles were filed with the SEC, the original authorized capital of P100,000.00 was already paid. Of the increased capital of P2,900,000.00 the subscribers subscribed to P580,000.00 of which P145,000 was fully paid. The capital stock of Natelco was divided into 213,000 common shares and 87,000 preferred shares, both at a par value of P10.00 per shares. On 12 April 1977, Natelco entered into a contract with Communication Services, Inc. (CSI) for the "manufacture, supply, delivery and installation" of telephone equipment. In accordance with this contract, Natelco issued 24,000 shares of common stocks to CSI on the same date as part of the downpayment. On 5 May 1979, another 12,000 shares of common stocks were issued to CSI. In both instances, no prior authorization from the Board of Communications, now the National Telecommunications Commission, was secured pursuant to the conditions imposed by the decision in BOC Case 74-84. On 19 May 1979, the stockholders of the Natelco held their annual stockholders' meeting to elect their seven directors to their Board of Directors, for the year 1979-1980. In this election Pedro Lopez Dee was unseated as Chairman of the Board and President of the Corporation, but was elected as one of the directors, together with his wife, Amelia Lopez Dee. In the election CSI was able to gain control of Natelco when the latter's legal counsel, Atty. Luciano Maggay won a seat in the Board with the help of CSI. In the reorganization Atty. Maggay became president. Dee having been unseated in the election, filed a petition in the SEC (SEC Case 1748), questioning the validity of the elections of 19 May 1979 upon the main ground that there was no valid list of stockholders through which the right to vote could be determined. As prayed for in the petition, a restraining order was issued by the SEC placing Dee and the other officers of the 1978-1979 Natelco Board in hold-over capacity. The SEC restraining order was elevated to the Supreme Court in GR 50885 where the enforcement of the SEC restraining order was restrained. Maggay, et. al. replaced the hold-over officers. During the tenure of the Maggay Board, from 22 June 1979 to 10 March 1980, it did not reform the contract of 12 April 1977, and entered into another contract with CSI for the supply and installation of additional equipment but also issued to CSI 113,800 shares of common stock. Subsequently, the Supreme Court dismissed the petition in GR 50885 upon the ground that the same was premature and the Commission should be allowed to conduct its hearing on the controversy. The dismissal of the petition resulted in the unseating of the Maggay group from the board of directors of Natelco in a "hold-over" capacity. In the course of the proceedings in SEC Case 1748, SEC Hearing officer Emmanuel Sison issued an order on 23 June 1981, declaring: (1) that CSI is a stockholder of Natelco and, therefore, entitled to vote; (2) that unexplained 16,858 shares of Natelco appear to have been issued in excess to CSI

which should not be allowed to vote; (3) that 82 shareholders with their corresponding number of shares shall be allowed to vote; and (4) consequently, ordering the holding of special stockholder' meeting to elect the new members of the Board of Directors for Natelco based on the findings made in the order as to who are entitled to vote. From the foregoing order dated 23 June 1981, Dee filed a petition for certiorari/appeal with the SEC en banc (SEC-AC 036). Thereafter, the Commission en banc rendered a decision on 5 April 1982, sustaining the order of the Hearing Officer; dismissing the petition/appeal for lack of merit; and ordering new elections as the Hearing Officer shall set after consultations with Natelco officers, among others. On 21 April 1982, Dee and Natelco filed their respective motions for reconsideration. Pending resolution of the motions for reconsideration, on 4 May 1982, the hearing officer without waiting for the decision of the commission en banc, to become final and executory rendered an order stating that the election for directors would be held on 22 May 1982. On 20 May 1982, the SEC en banc denied the motions for reconsideration.

Meanwhile on 20 May 1982 (GR 63922), Antonio Villasenor filed Civil Case 1507 with the Court of First Instance of Camarines Sur, Naga City, against Luciano Maggay, Nildo I. Ramos, Desirerio Saavedra, Augusto Federis, Ernesto Miguel, Justino de Jesus St., Vicente Tordilla, Pedro Lopez Dee and Julio Lopez Dee, which was raffled to Branch I, presided over by Judge Delfin Vir. Sunga. Villasenor claimed that he was an assignee of an option to repurchase 36,000 shares of common stocks of Natelco under a Deed of Assignment executed in his favor. The Maggay group allegedly refused to allow the repurchase of said stocks when Villasenor offered to CSI the repurchase of said stocks by tendering payment of its price. The complaint therefore, prayed for the allowance to repurchase the aforesaid stocks and that the holding of the 22 May 1982 election of directors and officers of Natelco be enjoined. A restraining order dated 21 May 1982 was issued by the lower court commanding desistance from the scheduled election until further orders. Nevertheless, on 22 May 1982, as scheduled, the controlling majority of the stockholders of the Natelco defied the restraining order, and proceeded with the elections, under the supervision of the SEC representatives. On 25 May 1982, the SEC recognized the fact that elections were duly held, and proclaimed that the following are the "duly elected directors" of the Natelco for the term 1982-1983: Felipa T. Javalera, Nilda I. Ramos, Luciano Maggay, Augusto Federis, Daniel J. Ilano, Nelin J. Ilano, Sr., and Ernesto A. Miguel. The following are the recognized officers to wit: Luciano Maggay (President), Nilda I. Ramos (Vice-President), Desiderio Saavedra (Secretary), Felipa Javalera (Treasurer), and Daniel Ilano (Auditor). Despite service of the order of 25 May 1982, the Lopez Dee group headed by Messrs. Justino De Jesus and Julio Lopez Dee kept insisting no elections were held and refused to vacate their position. On 28 May 1982, the SEC issued another order directing the hold-over directors and officers to turn over their respective posts to the newly elected directors and officers and directing the Sheriff of Naga City, with the assistance of PC and INP of Naga City, and other law enforcement agencies of the City or of the Province of Camarines Sur, to enforce the aforesaid order. On 29 May 1982, the Sheriff of Naga City, assisted by law enforcement agencies, installed the newly elected directors and officers of the Natelco, and the hold-over officers peacefully vacated their respective offices and turned-over their functions to the new officers. On 2 June 1982, a charge for contempt was filed by Villasenor alleging that Maggay, et. al. have been claiming in press conferences and over the radio airlanes that they actually held and conducted elections on 22 May 1982 in the City of Naga and that they have a new set of officers, and that such acts of Maggay, et. al. constitute contempt of court. On 7 September 1982, the lower court rendered judgment on the contempt charge, declaring CSI, Nilda Ramos, Luciano Maggay, Desiderio Saavedra, Augusto Federis and Ernesto Miguel, guilty of contempt of court, and accordingly punished with imprisonment of 6 months and to pay fine of P1,000.00 each: and ordering rNilda Ramos, Luciano Maggay, Desiderio Saavedra, Augusto Federis and Ernesto Miguel, and those now occupying the positions of directors and officers of NATELCO to vacate their respective positions therein, and ordering them to reinstate the hold-over directors and officers of NATELCO, such as Pedro Lopez Dee as President, Justino de Jesus, Sr., as Vice President, Julio Lopez Dee as Treasurer and Vicente Tordilla, Jr. as Secretary, and others referred to as hold-over directors and officers of NATELCO in the order dated 28 May 1982 of SEC Hearing Officer Emmanuel Sison, in SEC Case 1748, by way of RESTITUTION, and consequently, ordering said respondents to turn over all records, property and assets of NATELCO to said hold-over directors and officers. The trial judge issued an order dated 10 September 1982 directing the respondents in the contempt charge to "comply strictly,

under pain of being subjected to imprisonment until they do so." Maggay, et. al. filed on 17 September 1982, a petition for certiorari and prohibition with preliminary injunction or restraining order against the CFI Judge of Camarines Sur, Naga City and de Jesus, Sr., et.a al., with the then Intermediate Appellate Court which issued a resolution ordering de Jesus, Sr., et. al. to comment on the petition, which was complied with, and at the same time temporarily refrained from implementing and or enforcing the questioned judgment and order of the lower court. On 14 April 1983, the then Intermediate Appellate Court, rendered a decision, annuling the judgment dated 7 September 1982 rendered by the trial judge on the contempt charge, and his order dated 10 September 1982, implementing said judgment; ordering the 'hold-over' directors and officers of NATELCO to vacate their respective offices; directing respondents to restore or re-establish Maggay, et. al. who were ejected on 22 May 1982 to their respective offices in the NATELCO; and prohibiting whoever may be the successor of the Judge from interfering with the proceedings of the Securities and Exchange Commission in SEC-AC 036. The order of re-implementation was issued, and, finally, the Maggay group has been restored as the officers of the Natelco.

Lopez Dee, et. al. filed the petitions for certiorari with preliminary injunction and/or restraining order. In the resolution of the Court En Banc dated 23 August 1983, GR 63922 was consolidated with GR 60502.

Issue [1]: Whether the issuance of 113,800 shares of Natelco to CSI, made during the pendency of SEC Case 1748 in the Securities and Exchange Commission was valid.

Held [1]: The issuance of 113,800 shares of Natelco stock to CSI made during the pendency of SEC Case 1748 in the Securities and Exchange Commission was valid. The findings of the SEC En Banc as to the issuance of the 113,800 shares of stock was stated as follows: "But the issuance of 113,800 shares was pursuant to a Board Resolution and stockholders' approval prior to 19 May 1979 when CSI was not yet in control of the Board or of the voting shares. There is distinction between an order to issue shares on or before 19 May 1979 and actual issuance of the shares after 19 May 1979. The actual issuance, it is true, came during the period when CSI was in control of voting shares and the Board (if they were in fact in control) - but only pursuant to the original Board and stockholders' orders, not on the initiative to the new Board, elected 19 May 1979, which petitioners are questioning. The Commission en banc finds it difficult to see how the one who gave the orders can turn around and impugn the implementation of the orders he had previously given. The reformation of the contract is understandable for Natelco lacked the corporate funds to purchase the CSI equipment.... Appellant had raise the issue whether the issuance of 113,800 shares of stock during the incumbency of the Maggay Board which was allegedly CSI controlled, and while the case was sub judice, amounted to unfair and undue advantage. This does not merit consideration in the absence of additional evidence to support the proposition." In effect, therefore, the stockholders of Natelco approved the issuance of stock to CSI.

Issue [2]: Whether Natelco stockholders have a right of preemption to the 113,800 shares in question; else, whether the Maggay Board, in issuing said shares without notifying Natelco stockholders, violated their right of pre-emption to the unissued shares

Held [2]: The issuance of the 113,800 stocks is not invalid even assuming that it was made without notice to the stockholders as claimed by Dee, et. al.. The power to issue shares of stocks in a corporation is lodged in the board of directors and no stockholders meeting is required to consider it because additional issuance of shares of stocks does not need approval of the stockholders. Consequently, no pre-emptive right of Natelco stockholders was violated by the issuance of the 113,800 shares to CSI.

38 Spouses Firme vs. Bukal Enterprises and Development Corp. [GR 146608, 23 October 2003]

First Division, Carpio (J): 3 concur, 1 on leave

Facts: Spouses Constante and Azucena Firme are the registered owners of a parcel of land located on Dahlia

Avenue, Fairview Park, Quezon City. Renato de Castro, the vice president of Bukal Enterprises and Development Corporation authorized his friend, Teodoro Aviles, a broker, to negotiate with the Spouses Firme for the purchase of the Property. On 28 March 1995, Bukal Enterprises filed a complaint for specific performance and damages with the trial court, alleging that the Spouses Firme reneged on their agreement to sell the Property. The complaint asked the trial court to order the Spouses Firme to execute the deed of sale and to deliver the title to the Property to Bukal Enterprises upon payment of the agreed purchase price. On 7 August 1998, the trial court rendered judgment against Bukal Enterprises, dismissing the case and ordering Bukal Enterprises to pay the Spouses Constante and Azucena Firme (1) the sum of P335,964.90 as and by way of actual and compensatory damages; (2) the sum of P500,000.00 as and by way of moral damages; (3) the sum of P100,000.00 as and by way of attorney's fees; and (4) the costs of the suit. The trial court held there was no perfected contract of sale as Bukal Enterprises failed to establish that the Spouses Firme gave their consent to the sale of the Property; and that Aviles had no valid authority to bind Bukal Enterprises in the sale transaction. Bukal Enterprises appealed to the Court of Appeals, which reversed and set aside the decision of the trial court. The appellate court ordered the Spouses Firme to execute the Deed of Absolute Sale transferring the ownership of the subject property to Bukal Enterprises immediately upon receipt of the purchase price of P3,224,000.00 and to perform all such acts necessary and proper to effect the transfer of the property covered by TCT 264243 to Bulak Enterprises; and directed Bukal Enterprises to deliver the payment of the purchase price of the property within 60 days from the finality of the judgment. The Court of Appeals held that the lack of a board resolution authorizing Aviles to act on behalf of Bukal Enterprises in the purchase of the Property was cured by ratification; inasmuch as Bukal Enterprises ratified the purchase when it filed the complaint for the enforcement of the sale. The spouses Firme filed the petition for review on certiorari before the Supreme Court.

Issue: Whether there was a perfected contract between the Spouses Firme and Bukal Enterprises, the latter allegedly being represented by Aviles.

Held: There was no consent on the part of the Spouses Firme. Consent is an essential element for the existence of a contract, and where it is wanting, the contract is non-existent. The essence of consent is the conformity of the parties on the terms of the contract, the acceptance by one of the offer made by the other. The Spouses Firme flatly rejected the offer of Aviles to buy the Property on behalf of Bukal Enterprises. There was therefore no concurrence of the offer and the acceptance on the subject matter, consideration and terms of payment as would result in a perfected contract of sale. Further, there was no approval from the Board of Directors of Bukal Enterprises as would finalize any transaction with the Spouses Firme. Aviles did not have the proper authority to negotiate for Bukal Enterprises. Aviles testified that his friend, De Castro, had asked him to negotiate with the Spouses Firme to buy the Property. De Castro, as Bukal Enterprises' vice president, testified that he authorized Aviles to buy the Property. However, there is no Board Resolution authorizing Aviles to negotiate and purchase the Property on behalf of Bukal Enterprises. It is the board of directors or trustees which exercises almost all the corporate powers in a corporation. Under Sections 23 and 36 of the Corporation Code, the power to purchase real property is vested in the board of directors or trustees. While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction. A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws. Aviles, who negotiated the purchase of the Property, is neither an officer of Bukal Enterprises nor a member of the Board of Directors of Bukal Enterprises. There is no Board Resolution authorizing Aviles to negotiate and purchase the Property for Bukal Enterprises. There is also no evidence to prove that Bukal Enterprises approved whatever transaction Aviles made with the Spouses Firme. In fact, the president of Bukal Enterprises did not sign any of the deeds of sale presented to the Spouses Firme. Even De Castro admitted that he had never met the Spouses Firme. Considering all these circumstances, it is highly improbable for Aviles to finalize any contract of sale with the Spouses Firme. Furthermore, the Court notes that in the Complaint filed by Bukal Enterprises with the trial court, Aviles signed the verification and certification of non-forum shopping. The verification and

certification of non-forum shopping was not accompanied by proof that Bukal Enterprises authorized Aviles to file the complaint on behalf of Bukal Enterprises. The power of a corporation to sue and be sued is exercised by the board of directors. "The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors." The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and that it is filed in good faith. True, this requirement is procedural and not jurisdictional. However, the trial court should have ordered the correction of the complaint since Aviles was neither an officer of Bukal Enterprises nor authorized by its Board of Directors to act on behalf of Bukal Enterprises.

39 Loyola Grand Villas Homeowners (South) Association Inc. vs. Court of Appeals [GR 117188, 7 August 1997]
Second Division, Romero (J): 3 concur, 1 on leave

Facts: Loyola Grand Villas Homeowners Association (LGVHAI) was organized on 8 February 1983 as the association of homeowners and residents of the Loyola Grand Villas. It was registered with the Home Financing Corporation, the predecessor of Home Insurance and Guaranty Corporation (HIGC), as the sole homeowners' organization in the said subdivision under Certificate of Registration 04-197. It was organized by the developer of the subdivision and its first president was Victorio V. Soliven, himself the owner of the developer. For unknown reasons, however, LGVHAI did not file its corporate by-laws. Sometime in 1988, the officers of the LGVHAI tried to register its by-laws. They failed to do so. To the officers' consternation, they discovered that there were two other organizations within the subdivision — the Loyola Grand Villas Homeowners (North) Association Incorporated (North Association) and the Loyola Grand Villas Homeowners (South) Association Incorporated (South Association). According to Emden Encarnaction and Horatio Aycardo, a non-resident and Soliven himself, respectively headed these associations. They also discovered that these associations had 5 registered homeowners each who were also the incorporators, directors and officers thereof. None of the members of the LGVHAI was listed as member of the North Association while 3 members of LGVHAI were listed as members of the South Association. The North Association was registered with the HIGC on 13 February 1989 under Certificate of Registration 04-1160 covering Phases West II, East III, West III and East IV. It submitted its by-laws on 20 December 1988. In July 1989, when Soliven inquired about the status of LGVHAI, Atty. Joaquin A. Bautista, the head of the legal department of the HIGC, informed him that LGVHAI had been automatically dissolved for two reasons. First, it did not submit its by-laws within the period required by the Corporation Code and, second, there was non-user of corporate charter because HIGC had not received any report on the association's activities. Apparently, this information resulted in the registration of the South Association with the HIGC on 27 July 1989 covering Phases West I, East I and East II. It filed its by-laws on 26 July 1989. These developments prompted the officers of the LGVHAI to lodge a complaint with the HIGC. They questioned the revocation of LGVHAI's certificate of registration without due notice and hearing and concomitantly prayed for the cancellation of the certificates of registration of the North and South Associations by reason of the earlier issuance of a certificate of registration in favor of LGVHAI. On 26 January 1993, after due notice and hearing, Encarnacion and Aycaydo obtained a favorable ruling from HIGC Hearing Officer Danilo C. Javier (HIGC Case RRM-5-89) recognizing the LGVHAI under Certificate of Registration 04-197 as the duly registered and existing homeowners association for Loyola Grand Villas homeowners, and declaring the Certificates of Registration of North and South Associations as revoked or cancelled, among others. The South Association appealed to the Appeals Board of the HIGC. In its Resolution of 8 September 1993, the Board dismissed the appeal for lack of merit. Rebuffed, the South Association in turn appealed to the Court of Appeals. However, in the Decision of 23 August 1994, the Court of Appeals affirmed the Resolution of the HIGC Appeals Board. The South Association filed the petition for review on certiorari.

Issue: Whether the LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation.

Held: Automatic corporate dissolution for failure to file the by-laws on time was never the intention of the legislature. Moreover, even without resorting to the records of deliberations of the Batasang Pambansa, the law itself provides the answer to the issue. Taken as a whole and under the principle that the best interpreter of a statute is the statute itself (optima statuli interpretatix est ipsum statutum), Section 46 reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence thereof. The second paragraph of the law which allows the filing of the by-laws even prior to incorporation. This provision in the same section of the Code rules out mandatory compliance with the requirement of filing the by-laws "within 1 month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes. There are in fact cases where by-laws are unnecessary to corporate existence or to the valid exercise of corporate powers, thus: "In the absence of charter or statutory provisions to the contrary, by-laws are not necessary either to the existence of a corporation or to the valid exercise of the powers conferred upon it, certainly in all cases where the charter sufficiently provides for the government of the body; and even where the governing statute in express terms confers upon the corporation the power to adopt by-laws, the failure to exercise the power will be ascribed to mere nonaction which will not render void any acts of the corporation which would otherwise be valid." Although the Corporation Code requires the filing of by-laws, it does not expressly provide for the consequences of the non-filing of the same within the period provided for in Section 46. And even if such omission has been rectified by Presidential Decree 902-A, and under the express grant of power and authority to the SEC, there can be no automatic corporate dissolution simply because the incorporators failed to abide by the required filing of by-laws embodied in Section 46 of the Corporation Code. There is no outright "demise" of corporate existence. Proper notice and hearing are cardinal components of due process in any democratic institution, agency or society. In other words, the incorporators must be given the chance to explain their neglect or omission and remedy the same. That the failure to file by-laws is not provided for by the Corporation Code but in another law is of no moment. PD 902-A, which took effect immediately after its promulgation on 11 March 1976, is very much apposite to the Code. The Corporation Code and PD 902-A are statutes in pari materia. Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. As the "rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it," by-laws are indispensable to corporations in this jurisdiction. These may not be essential to corporate birth but certainly, these are required by law for an orderly governance and management of corporations. Nonetheless, failure to file them within the period required by law by no means tolls the automatic dissolution of a corporation.

40 China Banking Corporation vs. Court of Appeals [GR 117604, 26 March 1997]
First Division, Kapunan (J): 4 concur

Facts: On 21 August 1974, Galicano Calapatia, Jr., a stockholder of Valley Golf & Country Club, Inc. (VGCCI), pledged his Stock Certificate 1219 to China Banking Corporation (CBC). On 16 September 1974, CBC wrote VGCCI requesting that the pledge agreement be recorded in its books. In a letter dated 27 September 1974, VGCCI replied that the deed of pledge executed by Calapatia in CBC's favor was duly noted in its corporate books. On 3 August 1983, Calapatia obtained a loan of P20,000.00 from CBC, payment of which was secured by the pledge agreement still existing between Calapatia and CBC. Due to Calapatia's failure to pay his obligation, CBC, on 12 April 1985, filed a petition for extrajudicial foreclosure before Notary Public Antonio T. de Vera of Manila, requesting the latter to conduct a public auction sale of the pledged stock. On 14 May 1985, CBC informed VGCCI of the foreclosure proceedings and requested that the pledged stock be transferred to its name and the same be recorded in the corporate books. However, on 15 July 1985, VGCCI wrote CBC expressing its inability to accede to CBC's request in view of Calapatia's

unsettled accounts with the club. Despite the foregoing, Notary Public de Vera held a public auction on 17 September 1985 and CBC emerged as the highest bidder at P20,000.00 for the pledged stock. Consequently, CBC was issued the corresponding certificate of sale. On 21 November 1985, VGCCI sent Calapatia a notice demanding full payment of his overdue account in the amount of P18,783.24. Said notice was followed by a demand letter dated 12 December 1985 for the same amount and another notice dated 22 November 1986 for P23,483.24. On 4 December 1986, VGCCI caused to be published in the newspaper Daily Express a notice of auction sale of a number of its stock certificates, to be held on 10 December 1986 at 10:00 a.m. Included therein was Calapatia's own share of stock (Stock Certificate 1219). Through a letter dated 15 December 1986, VGCCI informed Calapatia of the termination of his membership due to the sale of his share of stock in the 10 December 1986 auction. On 5 May 1989, CBC advised VGCCI that it is the new owner of Calapatia's Stock Certificate 1219 by virtue of being the highest bidder in the 17 September 1985 auction and requested that a new certificate of stock be issued in its name. On 2 March 1990, VGCCI replied that "for reason of delinquency" Calapatia's stock was sold at the public auction held on 10 December 1986 for P25,000.00. On 9 March 1990, CBC protested the sale by VGCCI of the subject share of stock and thereafter filed a case with the Regional Trial Court of Makati for the nullification of the 10 December 1986 auction and for the issuance of a new stock certificate in its name. On 18 June 1990, the Regional Trial Court of Makati dismissed the complaint for lack of jurisdiction over the subject matter on the theory that it involves an intra-corporate dispute and on 27 August 1990 denied CBC's motion for reconsideration. On 20 September 1990, CBC filed a complaint with the Securities and Exchange Commission (SEC) for the nullification of the sale of Calapatia's stock by VGCCI; the cancellation of any new stock certificate issued pursuant thereto; for the issuance of a new certificate in petitioner's name; and for damages, attorney's fees and costs of litigation. On 3 January 1992, SEC Hearing Officer Manuel P. Perea rendered a decision in favor of VGCCI, stating in the main that considering that the said share is delinquent, VGCCI had valid reason not to transfer the share in the name of CBC in the books of VGCCI until liquidation of delinquency. Consequently, the case was dismissed. On 14 April 1992, Hearing Officer Perea denied CBC's motion for reconsideration. CBC appealed to the SEC en banc and on 4 June 1993, the Commission issued an order reversing the decision of its hearing officer; holding that CBC has a prior right over the pledged share and because of pledgor's failure to pay the principal debt upon maturity, CBC can proceed with the foreclosure of the pledged share; declaring that the auction sale conducted by VGCCI on 10 December 1986 is declared NULL and VOID; and ordering VGCCI to issue another membership certificate in the name of CBC. VGCCI sought reconsideration of the order. However, the SEC denied the same in its resolution dated 7 December 1993. The sudden turn of events sent VGCCI to seek redress from the Court of Appeals. On 15 August 1994, the Court of Appeals rendered its decision nullifying and setting aside the orders of the SEC and its hearing officer on ground of lack of jurisdiction over the subject matter and, consequently, dismissed CBC's original complaint. The Court of Appeals declared that the controversy between CBC and VGCCI is not intra-corporate; nullifying the SEC orders and dismissing CBC’s complaint. CBC moved for reconsideration but the same was denied by the Court of Appeals in its resolution dated 5 October 1994. CBC filed the petition for review on certiorari.

Issue: Whether CBC is bound by VGCCI's by-laws.

Held: In order to be bound, the third party must have acquired knowledge of the pertinent by-laws at the time the transaction or agreement between said third party and the shareholder was entered into. Herein, at the time the pledge agreement was executed. VGCCI could have easily informed CBC of its by-laws when it sent notice formally recognizing CBC as pledgee of one of its shares registered in Calapatia's name. CBC's belated notice of said by-laws at the time of foreclosure will not suffice. By-laws signifies the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it. In other words, by-laws are the relatively permanent and continuing rules of action adopted by the corporation for its own government and that of the individuals composing it and having the direction, management and control of its affairs, in whole or in part, in the management and control of its affairs and activities. The purpose of a by-law is to regulate the conduct and define the duties of the members towards the

corporation and among themselves. They are self-imposed and, although adopted pursuant to statutory authority, have no status as public law. Therefore, it is the generally accepted rule that third persons are not bound by by-laws, except when they have knowledge of the provisions either actually or constructively. For the exception to the general accepted rule that third persons are not bound by by-laws to be applicable and binding upon the pledgee, knowledge of the provisions of the VGCCI By-laws must be acquired at the time the pledge agreement was contracted. Knowledge of said provisions, either actual or constructive, at the time of foreclosure will not affect pledgee's right over the pledged share. Article 2087 of the Civil Code provides that it is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists maybe alienated for the payment to the creditor. Further, VGCCI's contention that CBC is duty-bound to know its by-laws because of Article 2099 of the Civil Code which stipulates that the creditor must take care of the thing pledged with the diligence of a good father of a family, fails to convince. CBC was never informed of Calapatia's unpaid accounts and the restrictive provisions in VGCCI's by-laws. Furthermore, Section 63 of the Corporation Code which provides that "no shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation" cannot be utilized by VGCCI. The term "unpaid claim" refers to "any unpaid claim arising from unpaid subscription, and not to any indebtedness which a subscriber or stockholder may owe the corporation arising from any other transaction." Herein, the subscription for the share in question has been fully paid as evidenced by the issuance of Membership Certificate 1219. What Calapatia owed the corporation were merely the monthly dues. Hence, Section 63 does not apply.

41 Lee vs. Court of Appeals [GR 93695, 4 February 1992]

Third Division, Gutierrez Jr. (J): 4 concur

Facts: On 15 November 1985, a complainant for sum of money was filed by the International Corporate Bank, Inc. against Sacoba Manufacturing Corp., Pablo Gonzales Jr., and Tomas Gonzales who, in turn, filed a third party complaint against Alfa Integrated Textile Mills (ALFA), Ramon C. Lee (ALFA's president) and Antonio DM. Lacdao (ALFA's vice president) on 17 March 1986. On 17 September 1987, Lee and Lacdao filed a motion to dismiss the third party complaint which the Regional Trial Court of Makati, Branch 58 denied in an Order dated 27 June 1988. On 18 July 1988, Lee and Lacdao filed their answer to the third party complaint. Meanwhile, on 12 July 1988, the trial issued an order requiring the issuance of an alias summons upon ALFA through the DBP as a consequence of Lee and Lacdao's letter informing the court that the summons for ALFA was erroneously served upon them considering that the management of ALFA had been transferred to the DBP. In a manifestation dated 22 July 1988, the DBP claimed that it was not authorized to receive summons on behalf of ALFA since the DBP had not taken over the company which has a separate and distinct corporate personality and existence. On 4 August 1988, the trial court issued an order advising Sacoba Manufacturing, et. al. to take the appropriate steps to serve the summons to ALFA. On 16 August 1988, Sacoba Manufacturing, et. al. filed a Manifestation and Motion for the Declaration of Proper Service of Summons which the trial court granted on 17 August 1988. On 12 September 1988, Lee and Lacdao filed a motion for reconsideration submitting that the Rule 14, section 13 of the Revised Rules of Court is not applicable since they were no longer officers of ALFA and Sacoba Manufacturing, et. al. should have availed of another mode of service under Rule 14, Section 16 of the said Rules, i.e., through publication to effect proper service upon ALFA. On 2 January 1989, the trial court upheld the validity of the service of summons on ALFA through Lee and Lacdao, thus, denying the latter's motion for reconsideration and requiring ALFA to file its answer through Lee and Lacdao as its corporate officers. On 19 January 1989, a second motion for reconsideration was filed by Lee and Lacdao reiterating their stand that by virtue of the voting trust agreement they ceased to be officers and directors of ALFA, hence, they could no longer receive summons or any court processes for or on behalf of ALFA. In support of their second motion for reconsideration, Lee and Lacdao attached thereto a copy of the voting trust agreement between all the stockholders of ALFA (Lee and Lacdao included), on the one hand, and the DBP, on the other hand, whereby the management and control of ALFA became vested upon the DBP. On 25 April 1989, the trial court reversed itself by setting aside its previous Order dated 2 January 1989 and declared that service upon Lee and Lacdao who were no longer corporate

officers of ALFA cannot be considered as proper service of summons on ALFA. On 15 May 1989, Sacoba Manufacturing, et. al. moved for a reconsideration of the Order which was affirmed by the court in is Order dated 14 August 1989 denying Sacoba Manufacturing, et. al.'s motion for reconsideration. On 18 September 1989, a petition for certiorari was belatedly submitted by Sacoba Manufacturing, et. al. before the Court of Appeals which, nonetheless, resolved to give due course thereto on 21 September 1989. On 17 October 1989, the trial court, not having been notified of the pending petition for certiorari with the appellate court issued an Order declaring as final the Order dated 25 April 1989. Sacoba Manufacturing, et. al. in the said Order were required to take positive steps in prosecuting the third party complaint in order that the court would not be constrained to dismiss the same for failure to prosecute. Subsequently, on 25 October 1989 Sacoba Manufacturing, et. al. filed a motion for reconsideration on which the trial court took no further action. On 19 March 1990, after Lee and Lacdao filed their answer to Sacoba Manufacturing, et. al.'s petition for certiorari, the appellate court rendered its decision, setting aside the orders of trial court judge dated 25 April 1989 and 14 August 1989. On 11 April 1990, Lee and Lacdao moved for a reconsideration of the decision of the appellate court which resolved to deny the same on 10 May 1990. Lee and Lacdao filed the petition for certiorari. In the meantime, the appellate court inadvertently made an entry of judgment on 16 July 1990 erroneously applying the rule that the period during which a motion for reconsideration has been pending must be deducted from the 15-day period to appeal. However, in its Resolution dated 3 January 1991, the appellate court set aside the aforestated entry of judgment after further considering that the rule it relied on applies to appeals from decisions of the Regional Trial Courts to the Court of Appeals, not to appeals from its decision to the Supreme Court pursuant to the Supreme Court's ruling in the case of Refractories Corporation of the Philippines v. Intermediate Appellate Court, 176 SCRA 539 [1989].

Issue [1]: Whether the execution of the voting trust agreement by Lee and Lacdao whereby all their shares to the corporation have been transferred to the trustee deprives the stockholder of their positions as directors of the corporation.

Held [1]: Lee and Lacdao, by virtue of the voting trust agreement executed in 1981 disposed of all their shares through assignment and delivery in favor of the DBP, as trustee. Consequently, Lee and Lacdao ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the new Corporation Code. They also ceased to have anything to do with the management of the enterprise. Lee and Lacdao ceased to be directors. Hence, the transfer of their shares to the DBP created vacancies in their respective positions as directors of ALFA. The transfer of shares from the stockholders of ALFA to the DBP is the essence of the subject voting trust agreement. Considering that the voting trust agreement between ALFA and the DBP transferred legal ownership of the stocks covered by the agreement to the DBP as trustee, the latter because the stockholder of record with respect to the said shares of stocks. In the absence of a showing that the DBP had caused to be transferred in their names one share of stock for the purpose of qualifying as directors of ALFA, Lee and Lacdao can no longer be deemed to have retained their status as officers of ALFA which was the case before the execution of the subject voting trust agreement. There is no dispute from the records that DBP has taken over full control and management of the firm.

Issue [2]: Whether the five-year period of the voting trust agreement in question had lapsed in 1986 so that the legal title to the stocks covered by the said voting trust agreement ipso facto reverted to Lee and Lacdao as beneficial owners pursuant to the 6th paragraph of section 59 of the new Corporation Code.

Held [2]: The 6th paragraph of section 59 of the new Corporation Code reads that "Unless expressly renewed, all rights granted in a voting trust agreement shall automatically expire at the end of the agreed period, and the voting trust certificates as well as the certificates of stock in the name of the trustee or trustees shall thereby be deemed cancelled and new certificates of stock shall be reissued in the name of the transferors." However, it is manifestly clear from the terms of the voting trust agreement between ALFA and the DBP that the duration of the agreement is contingent upon the fulfillment of certain obligations of ALFA with the DBP. Had the five-year period of the voting trust agreement expired in 1986, the DBP would not have transferred

an its rights, titles and interests in ALFA "effective June 30, 1986" to the national government through the Asset Privatization Trust (APT) as attested to in a Certification dated 24 January 1989 of the Vice President of the DBP's Special Accounts Department II. In the same certification, it is stated that the DBP, from 1987 until 1989, had handled s account which included ALFA's assets pursuant to a management agreement by and between the DBP and APT. Hence, there is evidence on record that at the time of the service of summons on ALFA through Lee and Lacdao on 21 August 1987, the voting trust agreement in question was not yet terminated so that the legal title to the stocks of ALFA, then, still belonged to the DBP.

Issue [3]: Whether there was proper service of summons on ALFA through Lee and Lacdao, to bind ALFA.

Held [3]: It is a basic principle in Corporation Law that a corporation has a personality separate and distinct from the officers or members who compose it. Thus, the role on service of processes on a corporation enumerates the representatives of a corporation who can validly receive court processes on its behalf. Not every stockholder or officer can bind the corporation considering the existence of a corporate entity separate from those who compose it. The rationale of the rule is that service must be made on a representative so integrated with the corporation sued as to make it a priori supposable that he will realize his responsibilities and know what he should do with any legal papers served on him. Herein, Lee and Lacdao do not fall under any of the enumerated officers. The service of summons upon ALFA, through Lee and Lacdao, therefore, is not valid. To rule otherwise will contravene the general principle that a corporation can only be bound by such acts which are within the scope of the officer's or agent's authority.

42 Republic of the Philippines (Presidential Commission on Good Government) vs. Sandiganbayan [GR 107789, 30 April 2003]; also Africa vs. Sandiganbayan [GR 147214]
Resolution En Banc, Carpio-Morales (J): 9 concur, 1 concurs in result, 2 took no part, 1 abroad on official business

Facts: On 7 August 1991, the Presidential Commission on Good Government (PCGG) conducted an Eastern Telecommunications, Philippines, Inc. (ETPI) stockholders meeting during which a PCGG controlled board of directors was elected. A special stockholders meeting was later convened by the registered ETPI stockholders wherein another set of board of directors was elected, as a result of which two sets of such board and officers were elected. Victor Africa, a stockholder of ETPI, alleging that the PCGG had since 29 January 1988 been "illegally 'exercising' the rights of stockholders of ETPI," especially in the election of the members of the board of directors, filed a motion before the Sandiganbayan, prayed that said court order the "calling and holding of the Eastern Telecommunications, Philippines, Inc. (ETPI) annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines." The PCGG did not object to Africa's motion provided that "(1) An Order be issued upholding the right of PCGG to vote all the Class "A" shares of ETPI; (2) In the alternative, in the remote event that PCGG's right to vote the sequestered shares be not upheld, an Order be issued (a) disregarding the Stock and Transfer Book and Booklet of Stock Certificates of ETPI in determining who can vote the shares in an Annual Stockholders Meeting of ETPI, (b) allowing PCGG to vote 23.9% of the total subscription in ETPI, and (c) directing the amendment of the Articles of Incorporation and By-laws of ETPI providing for the minimum safeguards for the conservation of assets prior to the calling of a stockholders meeting. By the assailed Resolution of 13 November 1992, the Sandiganbayan resolved Africa's motion, ordering the conduct of an annual stockholders meeting of ETPI, for 1992. Assailing the foregoing resolution, the PCGG filed before the Supreme Court a petition (GR 107789) for Certiorari, Mandamus and Prohibition.

By Resolution of 26 November 1992, the Supreme Court enjoined the Sandiganbayan from (a) implementing its Resolution of 13 November 1992, and (b) holding the stockholders' meeting of ETPI scheduled on 27 November 1992. On 7 December 1992, Aerocom Investors and Managers, Inc. (AEROCOM), Benito Nieto, Carlos Nieto, Manuel Nieto III, Ramon Nieto, Rosario Arellano, Victoria Legarda, Angela Lobregat, Ma. Rita de los Reyes, Carmen Tuazon and Rafael Valdez, all stockholders of record of ETPI, filed a motion to

intervene in GR 107789. Their motion was granted by the Supreme Court by Resolution of 14 January 1993. After the parties submitted their respective memoranda, the PCGG, in early 1995, filed a "VERY URGENT PETITION FOR AUTHORITY TO HOLD SPECIAL STOCKHOLDERS' MEETING FOR [THE] SOLE PURPOSE OF INCREASING [ETPI's] AUTHORIZED CAPITAL STOCK," it claiming that the increase in authorized capital stock was necessary in light of the requirements laid down by Executive Order 109 and Republic Act 7975. By Resolution of 7 May 1996, the Supreme Court resolved to refer the PCGG's very urgent petition to hold the special stockholders' meeting to the Sandiganbayan for reception of evidence and resolution. In compliance therewith, the Sandiganbayan issued a Resolution of 13 December 1996, granting the PCGG "authority to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock and to vote therein the sequestered Class 'A' shares of stock." The PCGG-controlled ETPI board of directors thus authorized the ETPI Chair and Corporate Secretary to call the special stockholders meeting. Notices were sent to those entitled to vote for a meeting on 17 March 1997. The meeting was held as scheduled and the increase in ETPI's authorized capital stock from P250 Million to P2.6 Billion was "unanimously approved." On 1 April 1997, Africa filed before the Supreme Court a motion to cite the PCGG "and its accomplices" in contempt and "to nullify the 'stockholders meeting' called/conducted by PCGG and its accomplices," he contending that only this Court, and not the Sandiganbayan, has the power to authorize the PCGG to call a stockholders meeting and vote the sequestered shares. Africa went on to contend that, assuming that the Sandiganbayan had such power, its Resolution of 13 December 1996 authorizing the PCGG to hold the stockholders meeting had not yet become final because the motions for reconsideration of said resolution were still pending. Further, Africa alleged that he was not given notice of the meeting, and the PCGG had no right to vote the sequestered Class "A" shares. A motion for leave to intervene relative to Africa's "Motion to Cite the PCGG and its Accomplices in Contempt" was filed by ETPI. The Supreme Court granted the motion for leave but ETPI never filed any pleading relative to Africa's motion to cite the PCGG in contempt. By Resolution of 16 February 2001, the Sandiganbayan finally resolved to deny the motions for reconsideration of its Resolution of 13 December 1996, prompting Africa to file on 6 April 2001 before the Supreme Court a petition for Review on Certiorari (GR 147214), challenging the Sandiganbayan Resolutions of 13 December 1996 (authorizing the holding of a stockholders meeting to increase ETPI's authorized capital stock and to vote therein the sequestered Class "A" shares of stock) and 16 February 2001 (denying reconsideration of the December 13, 1996 Resolution). The petitions were consolidated.

Issue [1]: Whether the PCGG can vote the sequestered ETPI Class "A" shares in the stockholders meeting for the election of the board of directors.

Held [1]: When sequestered shares registered in the names of private individuals or entities are alleged to have been acquired with ill-gotten wealth, then the two-tiered test is applied. However, when the sequestered shares in the name of private individuals or entities are shown, prima facie, to have been (1) originally government shares, or (2) purchased with public funds or those affected with public interest, then the two-tiered test does not apply. Rather, the public character exception in Baseco v. PCGG and Cojuangco Jr. v. Roxas prevail; that is, the government shall vote the shares.

Issue [2]: Whether the Sandiganbayan can order the Division Clerk of Court to call the stockholders meeting and in appointing then Sandiganbayan Associate Justice Sabino de Leon, Jr. to control and supervise the same.

Held [2]: The Clerk of Court, who is already saddled with judicial responsibilities, need not be burdened with the additional duties of a corporate secretary. Moreover, the Clerk of Court may not have the requisite knowledge and expertise to discharge the functions of a corporate secretary. The case of Board of Directors and Election Committee of SMB Workers Savings and Loan Asso., Inc. v. Tan, etc., et al. (105 Phil. 426 (1959). Vide also 5 Fletcher Cyc Corp (Perm Ed) §2074; 18A Am Jur 2d) provides a solution to the Sandiganbayan's dilemma of calling a meeting when ETPI had two sets of officers. There, the Supreme Court upheld the creation of a committee empowered to call, conduct and supervise the election of the board of

directors. Such a committee composed of impartial persons knowledgeable in corporate proceedings would provide the needed expertise and objectivity in the calling and the holding of the meeting without compromising the Sandiganbayan or its officers. The appointment of the committee members and the delineation of the scope of the duties of the committee may be made pursuant to an agreement by the parties or in accordance with the provisions of Rule 9 (Management Committee) of the Interim Rules of Procedure for Intra-Corporate Controversies insofar as they are applicable.

[In fine, the Court ruled that (1) The PCGG cannot vote sequestered shares to elect the ETPI Board of Directors or to amend the Articles of Incorporation for the purpose of increasing the authorized capital stock unless there is a prima facie evidence showing that said shares are ill-gotten and there is an imminent danger of dissipation. (2)The ETPI Stock and Transfer Book should be the basis for determining which persons have the right to vote in the stockholders meeting for the election of the ETPI Board of Directors. (3) The PCGG is entitled to vote the shares ceded to it by Roberto S. Benedicto and his controlled corporations under the Compromise Agreement, provided that the shares are first registered in the name of the PCGG. The PCGG may not register the transfer of the Malacañang and the Nieto shares in the ETPI Stock and Transfer Book; however, it may vote the same as conservator provided that the PCGG satisfies the two-tiered test devised by the Court in Cojuangco v. Calpo. (4) The safeguards laid down in the case of Cojuangco v. Roxas shall be incorporated in the ETPI Articles of Incorporation substantially contemporaneous to, but not before, the election of the ETPI Board of Directors. (5) Members of the Sandiganbayan shall not participate in the stockholders meeting for the election of the ETPI Board of Directors. Neither shall a Clerk of Court be appointed to call such meeting and issue notices thereof. The Sandiganbayan shall appoint, or the parties may agree to constitute, a committee of competent and impartial persons to call, send notices and preside at the meeting for the election of the ETPI Board of Directors; and (6) This Court has no jurisdiction over the motion to cite the PCGG and "its accomplices" in contempt and to nullify the stockholders meeting of March 17, 1997.]

43 Republic of the Philippines vs. Cocofed [GRs 147062-64, 14 December 2001]

En Banc, Panganiban (J): 7 concur, 1 filed a dissenting opinion to which 4 joined, 1 filed a separate opinion to which 1 joined.

Facts: Immediately after the 1986 EDSA Revolution, then President Corazon C. Aquino issued Executive Orders 1, 5 2 6 and 14. On the explicit premise that vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad, the Presidential Commission on Good Government (PCGG) was created by Executive Order 1 to assist the President in the recovery of the ill-gotten wealth thus accumulated whether located in the Philippines or abroad. Executive Order 2 stated that the ill-gotten assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world. Executive Order 14, on the other hand, empowered the PCGG, with the assistance of the Office of the Solicitor General and other government agencies, inter alia, to file and prosecute all cases investigated by it under EOs 1 and 2. Pursuant to these laws, the PCGG issued and implemented numerous sequestrations, freeze orders and provisional takeovers of allegedly ill-gotten companies, assets and properties, real or personal. Among the properties sequestered by the Commission were shares of stock in the United Coconut Planters Bank (UCPB) registered in the names of the alleged “one million coconut farmers,” the so-called Coconut Industry Investment Fund companies (CIIF companies) and Eduardo Cojuangco Jr. In connection with the sequestration of the said UCPB shares, the PCGG, on 31 July 1987, instituted an action for reconveyance, reversion, accounting, restitution and damages (Case 0033) in the Sandiganbayan. On 15 November 1990, upon Motion of COCOFED, the Sandiganbayan issued a Resolution lifting the sequestration of the subject UCPB shares on the ground that COCOFED and the so-called CIIF companies had not been impleaded by the PCGG as parties-defendants in its 31 July 1987 Complaint for reconveyance, reversion, accounting, restitution and damages. The Sandiganbayan ruled that the Writ of Sequestration issued by the

Commission was automatically lifted for PCGG's failure to commence the corresponding judicial action within the six-month period ending on 2 August 1987 provided under Section 26, Article XVIII of the 1987 Constitution. The anti-graft court noted that though these entities were listed in an annex appended to the Complaint, they had not been named as parties-respondents. The Sandiganbayan Resolution was challenged by the PCGG in a Petition for Certiorari (GR 96073) in the Supreme Court. Meanwhile, upon motion of Cojuangco, the anti-graft court ordered the holding of elections for the Board of Directors of UCPB. However, the PCGG applied for and was granted by this Court a Restraining Order enjoining the holding of the election. Subsequently, the Court lifted the Restraining Order and ordered the UCPB to proceed with the election of its board of directors. Furthermore, it allowed the sequestered shares to be voted by their registered owners. The victory of the registered shareholders was fleeting because the Court, acting on the solicitor general's Motion for Clarification/Manifestation, issued a Resolution on 16 February 1993, declaring that "the right of COCOFED, et. al. to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them." On 23 January 1995, the Court rendered its final Decision in GR 96073, nullifying and setting aside the 15 November 1990 Resolution of the Sandiganbayan which lifted the sequestration of the subject UCPB shares.

A month thereafter, the PCGG — pursuant to an Order of the Sandiganbayan — subdivided Case 0033 into eight Complaints (Cases 0033-A to 0033-H). Six years later, on 13 February 2001, the Board of Directors of UCPB received from the ACCRA Law Office a letter written on behalf of the COCOFED and the alleged nameless one million coconut farmers, demanding the holding of a stockholders' meeting for the purpose of, among others, electing the board of directors. In response, the board approved a Resolution calling for a stockholders' meeting on 6 March 2001 at 3 p.m. On 23 February 2001, "COCOFED, et al. and Ballares, et al." filed the "Class Action Omnibus Motion" in Sandiganbayan Civil Cases 0033-A, 0033-B and 0033-F, asking the Sandiganbayan to enjoin the PCGG from voting the UCPB shares of stock registered in the respective names of the more than one million coconut farmers; and to enjoin the PCGG from voting the SMC shares registered in the names of the 14 CIIF holding companies including those registered in the name of the PCGG. On 28 February 2001, the Sandiganbayan, after hearing the parties on oral argument, issued the Order, authorizing COCOFED, et. al. and Ballares, et. al. as well as Cojuangco, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from the Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on 6 March 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders. The Republic of the Philippines represented by the PCGG filed the petition for certiorari.

Issue: Whether the PCGG can vote the sequestered UCPB shares.

Held: The registered owner of the shares of a corporation exercises the right and the privilege of voting. This principle applies even to shares that are sequestered by the government, over which the PCGG as a mere conservator cannot, as a general rule, exercise acts of dominion. On the other hand, it is authorized to vote these sequestered shares registered in the names of private persons and acquired with allegedly ill-gotten wealth, if it is able to satisfy the two-tiered test devised by the Court in Cojuangco v. Calpo and PCGG v. Cojuangco Jr. Two clear "public character" exceptions under which the government is granted the authority to vote the shares exist (1) Where government shares are taken over by private persons or entities who/which registered them in their own names, and (2) Where the capitalization or shares that were acquired with public funds somehow landed in private hands. The exceptions are based on the common-sense principle that legal fiction must yield to truth; that public property registered in the names of non-owners is affected with trust relations; and that the prima facie beneficial owner should be given the privilege of enjoying the rights flowing from the prima facie fact of ownership. In short, when sequestered shares registered in the names of private individuals or entities are alleged to have been acquired with ill-gotten wealth, then the two-tiered test is applied. However, when the sequestered shares in the name of private individuals or entities are shown,

prima facie, to have been (1) originally government shares, or (2) purchased with public funds or those affected with public interest, then the two-tiered test does not apply. Rather, the public character exceptions in Baseco v. PCGG and Cojuangco Jr. v. Roxas prevail; that is, the government shall vote the shares. Herein, the money used to purchase the sequestered UCPB shares came from the Coconut Consumer Stabilization Fund (CCSF), otherwise known as the coconut levy funds. The sequestered UCPB shares are confirmed to have been acquired with coco levies, not with alleged ill-gotten wealth. As the coconut levy funds are not only affected with public interest, but are in fact prima facie public funds, the Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the prima facie beneficial and true owner. The Sandiganbayan committed grave abuse of discretion in grossly contradicting and effectively reversing existing jurisprudence, and in depriving the government of its right to vote the sequestered UCPB shares which are prima facie public in character.

44 Evangelista vs. Santos [GR L-1721, 19 May 1950]
En Banc, Reyes (J): 6 concur

Facts: Juan D. Evangelista, et. al. are minority stockholders of the Vitali Lumber Company, Inc., a Philippine corporation organized for the exploitation of a lumber concession in Zamboanga, Philippines, while Rafael Santos holds more than 50% of the stocks of said corporation and also is and always has been the president, manager, and treasurer thereof. Santos, in such triple capacity, through fault, neglect, and abandonment allowed its lumber concession to lapse and its properties and assets, among them machineries, buildings, warehouses, trucks, etc., to disappear, thus causing the complete ruin of the corporation and total depreciation of its stocks. Evangelista, et. al. therefore prays for judgment requiring Santos: (1) to render an account of his administration of the corporate affairs and assets: (2) to pay plaintiffs the value of t heir respective participation in said assets on the basis of the value of the stocks held by each of them; and (3) to pay the costs of suit. Evangelista, et. al. also ask for such other remedy as may be and equitable. The complaint does not give Evangelista, et. al.'s residence, but, but purposes of venue, alleges that Santos resides at 2112 Dewey Boulevard, corner Libertad Street, Pasay, province of Rizal. Having been served with summons at that place, Santos filed a motion for the dismissal of the complaint on the ground of improper venue and also on the ground that the complaint did not state a cause of action in favor of Evangelista, et. al. After hearing, the lower court rendered its order, granting the motion for dismissal. Reconsideration of the order was denied. Evangelista, et. al. appealed to the Supreme Court.

Issue: Whether Evangelista, et. al. had the right to bring the action for damages resulting from mismanagement of the affairs and assets of the corporation by its principal officer, it being alleged that Santos' maladministration has brought about the ruin of the corporation and the consequent loss of value of its stocks.

Held: The injury complained of is primarily to the corporation, so that the suit for the damages claimed should be by the corporation rather than by the stockholders. The stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of section 16 of the Corporation Law, which provides that "No shall corporation shall make or declare any stock or bond dividend or any dividend whatsoever from the profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution." But while it is to the corporation that the action should pertain in cases of this nature, however, if the officers of the corporation, who are the ones called upon to protect their rights, refuse to sue, or where a demand upon them to file the necessary suit would be futile because they are the very ones to be sued or because they hold the controlling interest in the corporation, then in that case any one of the stockholders is allowed to bring suit. But in that case it is the corporation itself and not the plaintiff stockholder that is the real property in interest, so that such damages as may be recovered shall pertain to the

corporation. In other words, it is a derivative suit brought by a stockholder as the nominal party plaintiff for the benefit of the corporation, which is the real property in interest. Herein, Evangelista, et. al. have brought the action not for the benefit of the corporation but for their own benefit, since they ask that Santos make good the losses occasioned by his mismanagement and pay to them the value of their respective participation in the corporate assets on the basis of their respective holdings. Clearly, this cannot be done until all corporate debts, if there be any, are paid and the existence of the corporation terminated by the limitation of its charter or by lawful dissolution in view of the provisions of section 16 of the Corporation Law. It results that Evangelista, et. al.'s complaint shows no cause of action in their favor.

45 Lim vs. Lim-Yu [GR 138343, 19 February 2001]
Third Division, Panganiban (J): 4 concur

Facts: At a special meeting on 7 October 1994, the Board of Directors of Limpan Investment Corporation (LIMPAN) approved a resolution of the following tenor: "RESOLVED that the corporation make a partial payment [for] the legal services of Gilda C. Lim in the handling of various cases on behalf of, or involving the corporation in the amount of P1,551,500.00 to be paid in equivalent value in shares of stock of the corporation totaling 15,515 shares, the same being found to be reasonable, and there being no available funds to pay the same. RESOLVED FURTHER, that the Corporate Secretary be authorized, as he is hereby authorized, to secure and comply with necessary requirements of the law for the issuance of said shares." On 18 October 1994, the Corporate Secretary Jaime G. Manzano filed a request before the Corporate and Legal Affairs Department of the SEC asking for the exemption of the 15,515 shares from the registration requirements of the Revised Securities Act; the request was granted in a Resolution dated 14 November 1994. Due to the issuance of the unsubscribed shares to Gilda C. Lim, all of Limpan's authorized capital stock became fully subscribed, with LIM ending up controlling 62.5% of the shares. In July 1996, Patricia Lim Yu (Yu), a sister of Lim, filed a complaint against the members of the Board of Directors of Limpan who approved the aforesaid resolution (Gilda C. Lim, Wilhelmina V. Joven, Ditas A. Lerios, Augusto R. Bundang, Teresita C. Velez and Jaime Manzano; SEC Case 07-95-5114). Bundang, Velez, and Manzano filed an Answer, asserting as affirmative defenses that the complaint failed to state a cause of action against them; that Yu had no legal capacity to sue; and that the issuance of the shares in Lim's favor was bona fide and valid pursuant to law and Limpan's By-Laws. In turn, Lim, Joven and Lerios filed a Motion to Dismiss on the following grounds: that YU had no legal capacity to sue; that the complaint failed to state a cause of action against Joven and Lerios, and that no earnest efforts were exerted towards a compromise, Yu and Lim being siblings. Acting on Lim, et. al.'s Motion to Dismiss, the Hearing Officer, Atty. Manuel Perea, issued an Order dated 5 January 1996, holding in abeyance the resolution of the motion to dismiss. Yu filed a Motion for Reconsideration dated 8 April 1996, which was denied in an Order dated 25 April 1996, on the ground that it was filed beyond the 10-day period allowed for seeking reconsideration. Yu filed a Motion for Leave to Admit Second Motion for Reconsideration dated 2 July 1996 which the Hearing Officer also denied. From the denial of her second motion for reconsideration, Yu filed a petition for certiorari before the SEC En Banc seeking to set aside the Order of 5 January 1994. On 4 February 1994, the SEC En Banc issued an order granting the petition for certiorari, and ordering the Securities Investigation & Clearing Department (SICD) to hear the other grounds of the Motion to Dismiss and to continue the case until its final determination. A motion for reconsideration filed by Lim having been denied, the petition for review was instituted before the Court of Appeals. On 31 July 1998, the Court of Appeals (CA) in CA-GR SP 46292 dismissed the petition for lack of merit and lifted the preliminary injunction previously issued. Yu's capacity to file the suit was sustained. Lim, et. al. moved for reconsideration but was denied by the appellate court in a resolution dated 25 March 1999. Lim, et. al. filed the petition under Rule 45 of the Rules of Court.

Issue: Whether Yu's suit to enforce her preemptive rights in a corporation is in the nature of a derivative suit.

Held: A derivative suit has been defined as "an action brought by minority shareholders in the name of the corporation to redress wrongs committed against it, for which the directors refuse to sue. It is a remedy

designed by equity and has been the principal defense of the minority shareholders against abuses by the majority." In a derivative action, the real party in interest is the corporation itself, not the shareholder(s) who actually instituted it. If the suit filed by Yu was indeed derivative in character, then Yu may not have the capacity to sue. The reason is that she would be acting in representation of the corporation, an act which the TRO enjoins her from doing. Hence, Yu's suit cannot be characterized as derivative, because she was complaining only of the violation of her preemptive right under Section 39 of the Corporation Code. She was merely praying that she be allowed to subscribe to the additional issuances of stocks in proportion to her shareholdings to enable her to preserve her percentage of ownership in the corporation. She was therefore not acting for the benefit of the corporation. Quite the contrary, she was suing on her own behalf, out of a desire to protect and preserve her preemptive rights. Unquestionably, the TRO did not prevent her from pursuing that action.

46 Gochan vs. Young [GR 131889, 12 March 2001]
Third Division, Panganiban (J): 4 concur

Facts: Felix Gochan and Sons Realty Corporation (Gochan Realty) was registered with the SEC on June 1951, with Felix Gochan, Sr., Maria Pan Nuy Go Tiong, Pedro Gochan, Tomasa Gochan, Esteban Gochan and Crispo Gochan as its incorporators. Felix Gochan Sr.'s daughter, Alice inherited 50 shares of stock in Gochan Realty from the former. Alice died in 1955, leaving the 50 shares to her husband, John Young, Sr. In 1962, the Regional Trial Court of Cebu adjudicated 6/14 of these shares to her children, Richard Young, David Young, Jane Young Llaban, John Young Jr., Mary Young Hsu and Alexander Thomas Young (the Youngs). Having earned dividends, these stocks numbered 179 by 20 September 1979. 5 days later (25 September), at which time all the children had reached the age of majority, their father John Sr., requested Gochan Realty to partition the shares of his late wife by cancelling the stock certificates in his name and issuing in lieu thereof, new stock certificates in the names of the Youngs. On 17 October 1979, Gochan Realty refused, citing as reason, the right of first refusal granted to the remaining stockholders by the Articles of Incorporation. In 1990, John, Sr. died, leaving the shares to the Youngs. On 8 February 1994, Cecilia Gochan Uy and Miguel Uy filed a complaint with the SEC for issuance of shares of stock to the rightful owners, nullification of shares of stock, reconveyance of property impressed with trust, accounting, removal of officers and directors and damages against Virginia Gochan, et. al. (Gochans) A Notice of Lis Pendens was annotated to the real properties of the corporation. On 16 March 1994, the Gochans moved to dismiss the complaint alleging that: (1) the SEC had no jurisdiction over the nature of the action; (2) the the Youngs were not the real parties-in-interest and had no capacity to sue; and (3) the Youngs' causes of action were barred by the Statute of Limitations. The motion was opposed by the Youngs. On 29 March 1994, the Gochans filed a Motion for cancellation of Notice of Lis Pendens. The Youngs opposed the said motion. On 9 December 1994, the SEC, through its Hearing Officer, granted the motion to dismiss and ordered the cancellation of the notice of lis pendens annotated upon the titles of the corporate lands; holding that the Youngs never been stockholders of record of FGSRC to confer them with the legal capacity to bring and maintain their action, and thus, the case cannot be considered as an intra-corporate controversy within the jurisdiction of the SEC; and that on the allegation that the Youngs brought the action as a derivative suit on their own behalf and on behalf of Gochan Realty, rhe failure to comply with the jurisdictional requirement on derivative action necessarily result in the dismissal of the complaint. The Youngs filed a Petition for Review with the Court of Appeals. On 28 February 1996, the Court of Appeals ruled that the SEC had no jurisdiction over the case as far as the heirs of Alice Gochan were concerned, because they were not yet stockholders of the corporation. On the other hand, it upheld the capacity of Cecilia Gochan Uy and her spouse Miguel Uy. It also held that the Intestate Estate of John Young Sr. was an indispensable party. The appellate court further ruled that the cancellation of the notice of lis pendens on the titles of the corporate real estate was not justified. Moreover, it declared that the Youngs' Motion for Reconsideration before the SEC was not pro forma; thus, its filing tolled the appeal period. The Gochans moved for reconsideration but were denied in a Resolution dated 18 December 1997. The Gochans filed the Petition for Review on Certiorari.

Issue: Whether the action filed by the Spouses Uy was not a derivative suit, because the spouses and not the corporation were the injured parties.

Held: The following portions of the Complaint shows allegations of injury to the corporation itself, to wit: "That on information and belief, in further pursuance of the said conspiracy and for the fraudulent purpose of depressing the value of the stock of the Corporation and to induce the minority stockholders to sell their shares of stock for an inadequate consideration as aforesaid, respondent Esteban T. Gochan . . ., in violation of their duties as directors and officers of the Corporation . . ., unlawfully and fraudulently appropriated [for] themselves the funds of the Corporation by drawing excessive amounts in the form of salaries and cash advances . . . and by otherwise charging their purely personal expenses to the Corporation"; and "That the payment of P1,200,000.00 by the Corporation to complainant Cecilia Gochan Uy for her shares of stock constituted an unlawful, premature and partial liquidation and distribution of assets to a stockholder, resulting in the impairment of the capital of the Corporation and prevented it from otherwise utilizing said amount for its regular and lawful business, to the damage and prejudice of the Corporation, its creditors, and of complainants as minority stockholders." As early as 1911, the Court has recognized the right of a single stockholder to file derivative suits. "Where corporate directors have committed a breach of trust either by their frauds, ultra vires acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a single stockholder may institute that suit, suing on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders." Herein, the Complaint alleges all the components of a derivative suit. The allegations of injury to the Spouses Uy can coexist with those pertaining to the corporation. The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit on behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors. This cause of action is also included in the Complaint filed before the SEC. The Spouses Uy have the capacity to file a derivative suit in behalf of and for the benefit of the corporation. The reason is that the allegations of the Complaint make them out as stockholders at the time the questioned transaction occurred, as well as at the time the action was filed and during the pendency of the action.

47 Chua vs. Court of Appeals [GR 150793, 19 November 2004
First Division, Quisumbing (J): 4 concur

Facts: On 28 February 1996, Lydia Hao, treasurer of Siena Realty Corporation, filed a complaint-affidavit with the City Prosecutor of Manila charging Francis Chua and his wife, Elsa Chua, of four counts of falsification of public documents pursuant to Article 172[3] in relation to Article 171[4] of the Revised Penal Code. The charge reads: "That on or about May 13, 1994, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously commit acts of falsification upon a public document, to wit: the said accused prepared, certified, and falsified the Minutes of the Annual Stockholders meeting of the Board of Directors of the Siena Realty Corporation, duly notarized before a Notary Public, Atty. Juanito G. Garcia and entered in his Notarial Registry as Doc No. 109, Page 22, Book No. IV and Series of 1994, and therefore, a public document, by making or causing it to appear in said Minutes of the Annual Stockholders Meeting that one LYDIA HAO CHUA was present and has participated in said proceedings, when in truth and in fact, as the said accused fully well knew that said Lydia C. Hao was never present during the Annual Stockholders Meeting held on April 30, 1994 and neither has participated in the proceedings thereof to the prejudice of public interest and in violation of public faith and destruction of truth as therein proclaimed. Contrary to Law." Thereafter, the City Prosecutor filed the Information (Criminal Case 285721) for falsification of public document, before the Metropolitan Trial Court (MeTC) of Manila, Branch 22, against Francis Chua but dismissed the accusation against Elsa Chua. Francis Chua, was arraigned and trial ensued thereafter. During the trial in the MeTC, Atty. Evelyn Sua-Kho and Atty. Ariel Bruno Rivera appeared as private prosecutors and presented Hao as their first witness. After Hao's testimony, Chua moved to exclude Hao's counsels as private prosecutors in the case on the ground that Hao failed to allege and prove any civil liability in the case. In an Order, dated 26 April 1999, the MeTC granted Chua's motion and ordered

the complainant's counsels to be excluded from actively prosecuting Criminal Case 285721. Hao moved for reconsideration but it was denied. Hao filed a petition for certiorari (SCA 99-94846), before the Regional Trial Court (RTC) of Manila, Branch 19. The RTC gave due course to the petition and on 5 October 1999, the RTC in an order reversed the MeTC Order. Chua moved for reconsideration which was denied. Dissatisfied, Chua filed before the Court of Appeals a petition for certiorari. On 14 June 2001, the appellate court promulgated its Decision denying the petition. The Court of Appeals held that the action was indeed a derivative suit, for it alleged that petitioner falsified documents pertaining to projects of the corporation and made it appear that Chua was a stockholder and a director of the corporation. According to the appellate court, the corporation was a necessary party to the petition filed with the RTC and even if Hao filed the criminal case, her act should not divest the Corporation of its right to be a party and present its own claim for damages. Chua moved for reconsideration but it was denied in a Resolution dated 20 November 2001. Hence, the petition by Chua.

Issue: Whether the criminal complaint was in the nature of a derivative suit.

Held: Under Section 36 of the Corporation Code, read in relation to Section 23, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation. Under the Revised Penal Code, every person criminally liable for a felony is also civilly liable. When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. Not every suit filed in behalf of the corporation is a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. It is a condition sine qua non that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. 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 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 adjudicata against it. Herein, the complaint was instituted by Hao against Chua for falsifying corporate documents whose subject concerns corporate projects of Siena Realty Corporation. Clearly, Siena Realty Corporation is an offended party. Hence, Siena Realty Corporation has a cause of action. And the civil case for the corporate cause of action is deemed instituted in the criminal action. However, the board of directors of the corporation in this case did not institute the action against Chua. Hao was the one who instituted the action. Nowhere is it stated that she is filing the same in behalf and for the benefit of the corporation. Thus, the criminal complaint including the civil aspect thereof could not be deemed in the nature of a derivative suit.

48 Nava vs. Peers Marketing Corp. [GR L-28120, 25 November 1976]
Second Division, Aquino (J): 4 concur

Facts: Teofilo Po as an incorporator subscribed to 80 shares of Peers Marketing Corporation at P100 a share or a total par value of P8,000. Po paid P2,000 or 25% of the amount of his subscription. No certificate of stock was issued to him or, for that matter, to any incorporator, subscriber or stockholder. On 2 April 1966 Po

sold to Ricardo A. Nava for P2,000 20 of his 80 shares. In the deed of sale Po represented that he was "the absolute and registered owner of twenty shares" of Peers Marketing Corp. Nava requested the officers of the corporation to register the sale in the books of the corporation. The request was denied because Po has not paid fully the amount of his subscription. Nava was informed that Po was delinquent in the payment of the balance due on his subscription and that the corporation had a claim on his entire subscription of 80 shares which included the 20 shares that had been sold to Nava. On 21 December 1966 Nava filed a mandamus action in the Court of First Instance of Negros Occidental, Bacolod City Branch to compel the corporation and Renato R. Cusi and Amparo Cusi, its executive vice-president and secretary respectively, to register the said 20 shares in Nava's name in the corporation's transfer book. The corporation and the Cusis pleaded the defense that no shares of stock against which the corporation holds an unpaid claim are transferable in the books of the corporation. After hearing, the trial court dismissed the petition. Nava appealed.

Issue: Whether the officers of Peers Marketing Corporation can be compelled by mandamus to enter in its stock and transfer book the sale made by Po to Nava of the 20 shares forming part of Po's subscription of 80 shares, with a total par value of P8,000 and for which Po had paid only P2,000, it being admitted that the corporation has an unpaid claim of P6,000 as the balance due on Po's subscription and that the 20 shares are not covered by any stock certificate.

Held: The transfer made by Po to Nava is not the "alienation, sale, or transfer of stock" that is supposed to be recorded in the stock and transfer book, as contemplated in section 52 of the Corporation Law. As a rule, the shares which may be alienated are those which are covered by certificates of stock. The twenty shares in question, however, are not covered by any certificate of stock in Po's name. Moreover, the corporation has a claim on the said shares for the unpaid balance of Po's subscription. A stock subscription is a subsisting liability from the time the subscription is made. The subscriber is as much bound to pay his subscription as he would be to pay any other debt. The right of the corporation to demand payment is no less incontestable. A corporation cannot release an original subscriber from paying for his shares without a valuable consideration or without the unanimous consent of the stockholders. Thus, herein, there is no clear legal duty on the part of the officers of the corporation to register the 20 shares in Nava's name. As no stock certificate was issued to Po; and without the stock certificate, which is the evidence of ownership of corporate stock, the assignment of corporate shares is effective only between the parties to the transaction. The delivery of the stock certificate, which represents the shares to be alienated, is essential for the protection of both the corporation and its stockholders.

49 Lim Tay vs. Court of Appeals [GR 126891, 5 August 1998]
First Division, Panganiban (J): 4 concur

Facts: On 8 January 1980, Sy Guiok secured a loan from Lim Tay in the amount of P40,000 payable within 6 months. To secure the payment of the aforesaid loan and interest thereon, Guiok executed a Contract of Pledge in favor of Lim Tay whereby he pledged his 300 shares of stock in the Go Fay & Company Inc. Guiok obliged himself to pay interest on said loan at the rate of 10% per annum from the date of said contract of pledge. On the same date, Alfonso Sy Lim secured a loan, from Lim Tay in the amount of P40,000 payable in 6 months. To secure the payment of his loan, Sy Lim executed a "Contract of Pledge" covering his 300 shares of stock in Go Fay & Co. Under said contract, Sy Lim obliged himself to pay interest on his loan at the rate of 10% per annum from the date of the execution of said contract. The contractual stipulation in the pledge showed that Lim Tay was merely authorized to foreclose the pledge upon maturity of the loans, not to own them. Such foreclosure is not automatic, for it must be done in a public or private sale. Guiok and Sy Lim endorsed their respective shares of stock in blank and delivered the same to Lim Tay. However, Guiok and Sy Lim failed to pay their respective loans and the accrued interests thereon to Lim Tay. In October 1990, Lim Tay filed a "Petition for Mandamus" against Go Fay & Co., with the SEC (SEC Case 03894), praying that an order be issued directing the corporate secretary of Go Fay & Co. to register the stock transfers and issue new certificates in favor of Lim Tay; and ordering Go Fay & Co. to pay all dividends due and unclaimed on the

said certificates to Lim Tay. In the interim, Sy Lim died. Guiok and the Intestate Estate of Alfonso Sy Lim, represented by Conchita Lim, filed their Answer-In-Intervention with the SEC. After due proceedings, the SEC hearing officer promulgated a Decision dismissing Lim Tay's Complaint on the ground that although the SEC had jurisdiction over the action, pursuant to the Decision of the Supreme Court in the case of "Rural Bank of Salinas et. al. versus Court of Appeals, et al., 210 SCRA 510," he failed to prove the legal basis for the secretary of the Corporation to be compelled to register stock transfers in favor of Lim Tay and to issue new certificates of stock under his name. Lim Tay appealed the Decision of the hearing officer to the SEC, but, on 7 March 1996, the SEC promulgated a Decision, dismissing Lim Tay's appeal. On appeal to the Court of Appeals, the appellate court debunked Lim Tay's claim that he had acquired ownership over the shares by virtue of novation, holding that Guiok's and Sy Lim's indorsement and delivery of the shares were pursuant to Articles 2093 and 2095 of the Civil Code and that Lim Tay's receipt of dividends was in compliance with Article 2102 of the same Code. Lim Tay's claim that he had acquired ownership of the shares by virtue of prescription was likewise dismissed by the appellate court. Lim Tay brought before the Supreme Court a Petition for Review on Certiorari in accordance with Rule 45 of the Rules of Court.

Issue: Whether Lim Tay is the owner of the shares previously subjected to pledge, for him to cause the registration of said shares in his own name.

Held: Lim Tay's ownership over the shares was not yet perfected when the Complaint was filed. The contract of pledge certainly does not make him the owner of the shares pledged. Further, whether prescription effectively transferred ownership of the shares, whether there was a novation of the contracts of pledge, and whether laches had set in were difficult legal issues, which were unpleaded and unresolved when Lim Tay asked the corporate secretary of Go Fay to effect the transfer, in his favor, of the shares pledged to him. Lim Tay has failed to establish a clear legal right. Lim Tay's contention that he is the owner of the said shares is completely without merit. Lim Tay does not have any ownership rights at all. At the time Lim Tay instituted his suit at the SEC, his ownership claim had no prima facie leg to stand on. At best, his contention was disputable and uncertain. Lim Tay cannot claim to have acquired ownership over the certificates of stock through extraordinary prescription, as provided for in Article 1132 of the Civil Code. What is required by Article 1132 is possession in the concept of an owner. Herein, Lim Tay's possession of the stock certificates came about because they were delivered to him pursuant to the contracts of pledge. His possession as a pledgee cannot ripen into ownership by prescription. Lim Tay expressly repudiated the pledge, only when he filed his Complaint and claimed that he was not a mere pledgee, but that he was already the owner of the shares. Based on the foregoing, Lim Tay has not acquired the certificates of stock through extraordinary prescription. Neither did Lim Tay acquire the shares by virtue of a novation of the contract of pledge. Novation cannot be presumed by Guiok's and Sy Lim's indorsement and delivery of the certificates of stock covering the 600 shares, nor Lim Tay's receipt of dividends from 1980 to 1983, nor the fact that Guiok and Sy Lim have not instituted any action to recover the shares since 1980. Novation is never presumed inferred.

50 The Rural Bank of Lipa City Inc., etc. vs. Court of Appeals [GR 124535, 28 September 2001]
First Division, Ynares-Santiago (J): 4 concur

Facts: Reynaldo Villanueva, Sr., a stockholder of the Rural Bank of Lipa City, executed a Deed of Assignment, wherein he assigned his shares, as well as those of 8 other shareholders under his control with a total of 10,467 shares, in favor of the stockholders of the Bank represented by its directors Bernardo Bautista, Jaime Custodio and Octavio Katigbak. Sometime thereafter, Reynaldo Villanueva, Sr. and his wife, Avelina, executed an Agreement wherein they acknowledged their indebtedness to the Bank in the amount of P4,000,000.00, and stipulated that said debt will be paid out of the proceeds of the sale of their real property described in the Agreement. At a meeting of the Board of Directors of the Bank on 15 November 1993, the Villanueva spouses assured the Board that their debt would be paid on or before December 31 of that same year; otherwise, the Bank would be entitled to liquidate their shareholdings, including those under their control. In such an event, should the proceeds of the sale of said shares fail to satisfy in full the obligation, the

unpaid balance shall be secured by other collateral sufficient therefor. When the Villanueva spouses failed to settle their obligation to the Bank on the due date, the Board sent them a letter demanding: (1) the surrender of all the stock certificates issued to them; and (2) the delivery of sufficient collateral to secure the balance of their debt amounting to P3,346,898.54. The Villanuevas ignored the bank's demands, whereupon their shares of stock were converted into Treasury Stocks. Later, the Villanuevas, through their counsel, questioned the legality of the conversion of their shares. On 15 January 1994, the stockholders of the Bank met to elect the new directors and set of officers for the year 1994. The Villanuevas were not notified of said meeting. In a letter dated 19 January 1994, Atty. Amado Ignacio, counsel for the Villanueva spouses, questioned the legality of the said stockholders' meeting and the validity of all the proceedings therein. In reply, the new set of officers of the Bank informed Atty. Ignacio that the Villanuevas were no longer entitled to notice of the said meeting since they had relinquished their rights as stockholders in favor of the Bank. Consequently, the Villanueva spouses filed with the Securities and Exchange Commission (SEC), a petition for annulment of the stockholders' meeting and election of directors and officers on 15 January 1994, with damages and prayer for preliminary injunction (SEC Case 02-94-4683_. Joining them as co-petitioners were Catalino Villanueva, Andres Gonzales, Aurora Lacerna, Celso Laygo, Edgardo Reyes, Alejandro Tonogan, and Elena Usi. Named respondents were the newly-elected officers and directors of the Rural Bank, namely: Bernardo Bautista, Jaime Custodio, Octavio Katigbak, Francisco Custodio and Juanita Bautista. On 6 April 1994, the Villanuevas' application for the issuance of a writ of preliminary injunction was denied by the SEC Hearing Officer on the ground of lack of sufficient basis for the issuance thereof. However, a motion for reconsideration was granted on 16 December 1994, upon finding that since the Villanuevas' have not disposed of their shares, whether voluntarily or involuntarily, they were still stockholders entitled to notice of the annual stockholders' meeting was sustained by the SEC. Accordingly, a writ of preliminary injunction was issued enjoining Bautista, et. al. from acting as directors and officers of the bank. Thereafter, Bautista, et al. filed an urgent motion to quash the writ of preliminary injunction, challenging the propriety of the said writ considering that they had not yet received a copy of the order granting the application for the writ of preliminary injunction. With the impending 1995 annual stockholders' meeting only 9 days away, the Villanuevas filed an Omnibus Motion praying that the said meeting and election of officers scheduled on 14 January 1995 be suspended or held in abeyance, and that the 1993 Board of Directors be allowed, in the meantime, to act as such. 1 day before the scheduled stockholders meeting, the SEC Hearing Officer granted the Omnibus Motion by issuing a temporary restraining order preventing Bautista, et al. from holding the stockholders meeting and electing the board of directors and officers of the Bank. A petition for Certiorari and Annulment with Damages was filed by the Rural Bank, its directors and officers before the SEC en banc. On 7 June 1995, the SEC en banc denied the petition for certiorari. A subsequent motion for reconsideration was likewise denied by the SEC en banc in a Resolution dated 29 September 1995. A petition for review was filed before the Court of Appeals (CA-GR SP 38861), assailing the Order dated 7 June 1995 and the Resolution dated 29 September 1995 of the SEC en banc in SEC EB 440. The appellate court upheld the ruling of the SEC. Bautista, et al.'s motion for reconsideration was likewise denied by the Court of Appeals in an Order dated 29 March 1996. The bank, Bautista, et al. filed the instant petition for review.

Issue: Whether there was valid transfer of the shares to the Bank.

Held: For a valid transfer of stocks, there must be strict compliance with the mode of transfer prescribed by law. The requirements are: (a) There must be delivery of the stock certificate: (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) To be valid against third parties, the transfer must be recorded in the books of the corporation. As it is, compliance with any of these requisites has not been clearly and sufficiently shown. Still, while the assignment may be valid and binding on the bank, et al. and the Villanuevas, it does not necessarily make the transfer effective. Consequently, the bank et al., as mere assignees, cannot enjoy the status of a stockholder, cannot vote nor be voted for, and will not be entitled to dividends, insofar as the assigned shares are concerned. Parenthetically, the Villanuevas cannot, as yet, be deprived of their rights as stockholders, until and unless the issue of ownership and transfer of the shares in question is resolved with finality.

51 Ponce vs. Alsons Cement Corporation [GR 139802, 10 December 2002]
Second Division, Quisumbing (J): 4 concur

Facts: On 25 January 1996, Vicente C. Ponce, filed a complaint with the SEC for mandamus and damages against Alsons Cement Corporation and its corporate secretary Francisco M. Giron, Jr. In his complaint, Ponce alleged, among others, that "the late Fausto G. Gaid was an incorporator of Victory Cement Corporation (VCC), having subscribed to and fully paid 239,500 shares of said corporation; that on 8 February 1968, Ponce and Fausto Gaid executed a "Deed of Undertaking" and "Indorsement" whereby the latter acknowledges that the former is the owner of said shares and he was therefore assigning/endorsing the same to Ponce; that on 10 April 1968, VCC was renamed Floro Cement Corporation (FCC); that on 22 October 1990, FCC was renamed Alsons Cement Corporation (ACC); that from the time of incorporation of VCC up to the present, no certificates of stock corresponding to the 239,500 subscribed and fully paid shares of Gaid were issued in the name of Fausto G. Gaid and/or Ponce; and that despite repeated demands, ACC and Giron refused and continue to refuse without any justifiable reason to issue to Ponce the certificates of stocks corresponding to the 239,500 shares of Gaid, in violation of Ponce's right to secure the corresponding certificate of stock in his name. ACC and Giron moved to dismiss. SEC Hearing Officer Enrique L. Flores, Jr. granted the motion to dismiss in an Order dated 29 February 1996. Ponce appealed the Order of dismissal. On 6 January 1997, the Commission En Banc reversed the appealed Order and directed the Hearing Officer to proceed with the case. In ruling that a transfer or assignment of stocks need not be registered first before it can take cognizance of the case to enforce Ponce's rights as a stockholder, the Commission En Banc cited the Supreme Court's ruling in Abejo vs. De la Cruz, 149 SCRA 654 (1987). Their motion for reconsideration having been denied, ACC and Giron appealed the decision of the SEC En Banc and the resolution denying their motion for reconsideration to the Court of Appeals. In its decision, the Court of Appeals held that in the absence of any allegation that the transfer of the shares between Gaid and Ponce was registered in the stock and transfer book of ACC, Ponce failed to state a cause of action. Thus, said the appellate court, "the complaint for mandamus should be dismissed for failure to state a cause of action." Ponce's motion for reconsideration was denied in a resolution dated 10 August 1999. Ponce filed the petition for review on certiorari.

Issue: Whether Ponce can require the corporate secretary, Giron, to register Gaid’s shares in his name.

Held: Fausto Gaid was an original subscriber of ACC's 239,500 shares. From the Amended Articles of Incorporation approved on 9 April 1995, each share had a par value of P1.00 per share. Ponce had not made a previous request upon the corporate secretary of ACC, Francisco M. Giron Jr., to record the alleged transfer of stocks. Pursuant to Section 63 of the Corporation Code, a transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises. Hence, without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. The stock and transfer book is the basis for ascertaining the persons entitled to the rights and subject to the liabilities of a stockholder. Where a transferee is not yet recognized as a stockholder, the corporation is under no specific legal duty to issue stock certificates in the transferee's name. A petition for mandamus fails to state a cause of action where it appears that the petitioner is not the registered stockholder and there is no allegation that he holds any power of attorney from the registered stockholder, from whom he obtained the stocks, to make the transfer. The deed of undertaking with indorsement presented by Ponce does not establish, on its face, his right to demand for the registration of the

transfer and the issuance of certificates of stocks. Under the provisions of our statute touching the transfer of stock, the mere indorsement of stock certificates does not in itself give to the indorsee such a right to have a transfer of the shares of stock on the books of the company as will entitle him to the writ of mandamus to compel the company and its officers to make such transfer at his demand, because, under such circumstances the duty, the legal obligation, is not so clear and indisputable as to justify the issuance of the writ. As a general rule, as between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are, so that a mere indorsee of a stock certificate, claiming to be the owner, will not necessarily be recognized as such by the corporation and its officers, in the absence of express instructions of the registered owner to make such transfer to the indorsee, or a power of attorney authorizing such transfer. Thus, absent an allegation that the transfer of shares is recorded in the stock and transfer book of ACC, there appears no basis for a clear and indisputable duty or clear legal obligation that can be imposed upon the corporate secretary, so as to justify the issuance of the writ of mandamus to compel him to perform the transfer of the shares to Ponce.

52 Ong Yong, et al. vs. Tiu, et al. [GR 144476, 8 April 2003]; also Tiu, et al. vs. Ong Yong, et al. [GR 144629]
Resolution of Special Second Division, Corona (J): 3 concur

Facts: In 1994, the construction of the Masagana Citimall in Pasay City was threatened with stoppage and incompletion when its owner, the First Landlink Asia Development Corporation (FLADC), which was owned by David S. Tiu, Cely Y. Tiu, Moly Yu Gow, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (the Tius), encountered dire financial difficulties. It was heavily indebted to the Philippine National Bank (PNB) for P190 million. To stave off foreclosure of the mortgage on the two lots where the mall was being built, the Tius invited Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julia Ong Alonzo (the Ongs), to invest in FLADC. Under the Pre-Subscription Agreement they entered into, the Ongs and the Tius agreed to maintain equal shareholdings in FLADC: the Ongs were to subscribe to 1,000,000 shares at a par value of P100.00 each while the Tius were to subscribe to an additional 549,800 shares at P100.00 each in addition to their already existing subscription of 450,200 shares. Furthermore, they agreed that the Tius were entitled to nominate the Vice-President and the Treasurer plus 5 directors while the Ongs were entitled to nominate the President, the Secretary and 6 directors (including the chairman) to the board of directors of FLADC. Moreover, the Ongs were given the right to manage and operate the mall. Accordingly, the Ongs paid P100 million in cash for their subscription to 1,000,000 shares of stock while the Tius committed to contribute to FLADC a four-storey building and two parcels of land respectively valued at P20 million (for 200,000 shares), P30 million (for 300,000 shares) and P49.8 million (for 49,800 shares) to cover their additional 549,800 stock subscription therein. The Ongs paid in another P70 million 3 to FLADC and P20 million to the Tius over and above their P100 million investment, the total sum of which (P190 million) was used to settle the P190 million mortgage indebtedness of FLADC to PNB. The business harmony between the Ongs and the Tius in FLADC, however, was shortlived because the Tius, on 23 February 1996, rescinded the Pre-Subscription Agreement. The Tius accused the Ongs of (1) refusing to credit to them the FLADC shares covering their real property contributions; (2) preventing David S. Tiu and Cely Y. Tiu from assuming the positions of and performing their duties as Vice-President and Treasurer, respectively, and (3) refusing to give them the office spaces agreed upon. The controversy finally came to a head when the case was commenced by the Tius on 27 February 1996 at the Securities and Exchange Commission (SEC), seeking confirmation of their rescission of the Pre-Subscription Agreement. After hearing, the SEC, through then Hearing Officer Rolando G. Andaya, Jr., issued a decision on 19 May 1997 confirming the rescission sought by the Tius. On motion of both parties, the above decision was partially reconsidered but only insofar as the Ongs' P70 million was declared not as a premium on capital stock but an advance (loan) by the Ongs to FLADC and that the imposition of interest on it was correct. Both parties appealed to the SEC en banc which rendered a decision on 11 September 1998, affirming the 19 May 1997 decision of the Hearing Officer. The SEC en banc confirmed the rescission of the Pre-Subscription Agreement but reverted to classifying the P70 million paid by the Ongs as premium on capital and not as a loan or advance to FLADC, hence, not entitled to

earn interest. On appeal, the Court of Appeals (CA) rendered a decision on 5 October 1999, modifying the SEC order of 11 September 1998. Their motions for reconsideration having been denied, both parties filed separate petitions for review before the Supreme Court. On 1 February 2002, the Supreme Court promulgated its Decision, affirming the assailed decision of the Court of Appeals but with the modifications that the P20 million loan extended by the Ongs to the Tius shall earn interest at 12% per annum to be computed from the time of judicial demand which is from 23 April 1996; that the P70 million advanced by the Ongs to the FLADC shall earn interest at 10% per annum to be computed from the date of the FLADC Board Resolution which is 19 June 1996; and that the Tius shall be credited with 49,800 shares in FLADC for their property contribution, specifically, the 151 sq. m. parcel of land. The Court affirmed the fact that both the Ongs and the Tius violated their respective obligations under the Pre-Subscription Agreement.

On 15 March 2002, the Tius filed before the Court a Motion for Issuance of a Writ of Execution. Aside from their opposition to the Tius' Motion for Issuance of Writ of Execution, the Ongs filed their own "Motion for Reconsideration; Alternatively, Motion for Modification (of the February 1, 2002 Decision)" on 15 March 2002. Willie Ong filed a separate "Motion for Partial Reconsideration" dated 8 March 2002, pointing out that there was no violation of the Pre-Subscription Agreement on the part of the Ongs, among others. On 29 January 2003, the Special Second Division of this Court held oral arguments on the respective positions of the parties. On 27 February 2003, Dr. Willie Ong and the rest of the movants Ong filed their respective memoranda. On 28 February 2003, the Tius submitted their memorandum.

Issue [1]: Whether the pre-Subscription Agreement executed by the Ongs is actually a subscription contract.

Held [1]: FLADC was originally incorporated with an authorized capital stock of 500,000 shares with the Tius owning 450,200 shares representing the paid-up capital. When the Tius invited the Ongs to invest in FLADC as stockholders, an increase of the authorized capital stock became necessary to give each group equal (50-50) shareholdings as agreed upon in the Pre-Subscription Agreement. The authorized capital stock was thus increased from 500,000 shares to 2,000,000 shares with a par value of P100 each, with the Ongs subscribing to 1,000,000 shares and the Tius to 549,800 more shares in addition to their 450,200 shares to complete 1,000,000 shares. Thus, the subject matter of the contract was the 1,000,000 unissued shares of FLADC stock allocated to the Ongs. Since these were unissued shares, the parties' Pre-Subscription Agreement was in fact a subscription contract as defined under Section 60, Title VII of the Corporation Code. A subscription contract necessarily involves the corporation as one of the contracting parties since the subject matter of the transaction is property owned by the corporation — its shares of stock. Thus, the subscription contract (denominated by the parties as a Pre-Subscription Agreement) whereby the Ongs invested P100 million for 1,000,000 shares of stock was, from the viewpoint of the law, one between the Ongs and FLADC, not between the Ongs and the Tius. Otherwise stated, the Tius did not contract in their personal capacities with the Ongs since they were not selling any of their own shares to them. It was FLADC that did. Considering therefore that the real contracting parties to the subscription agreement were FLADC and the Ongs alone, a civil case for rescission on the ground of breach of contract filed by the Tius in their personal capacities will not prosper. Assuming it had valid reasons to do so, only FLADC (and certainly not the Tius) had the legal personality to file suit rescinding the subscription agreement with the Ongs inasmuch as it was the real party in interest therein. Article 1311 of the Civil Code provides that "contracts take effect only between the parties, their assigns and heirs. . ." Therefore, a party who has not taken part in the transaction cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.

Issue [2]: Whether the rescission of Pre-Subscription Agreement would result in unauthorized liquidation.

Held [2]: The rescission of the Pre-Subscription Agreement will effectively result in the unauthorized distribution of the capital assets and property of the corporation, thereby violating the Trust Fund Doctrine and the Corporation Code, since rescission of a subscription agreement is not one of the instances when

distribution of capital assets and property of the corporation is allowed. Rescission will, in the final analysis, result in the premature liquidation of the corporation without the benefit of prior dissolution in accordance with Sections 117, 118, 119 and 120 of the Corporation Code.

53 Gonzales vs. Philippine National Bank [GR L-33320, 30 May 1983]
First Division, Vasquez (J): 3 concur, 1 concurs in the result, 1 on leave

Facts: Ramon A. Gonzales initially instituted several cases in the Supreme Court questioning different transactions entered into by the Bank with other parties. First among them is Civil Case 69345 filed on 27 April 1967, by Gonzales as a taxpayer versus Sec. Antonio Raquiza of Public Works and Communications, the Commissioner of Public Highways, the Bank, Continental Ore Phil., Inc., Continental Ore, Huber Corporation, Allis Chalmers and General Motors Corporation. In the course of the hearing of said case on 3 August 1967, the personality of Gonzales to sue the bank and question the letters of credit it has extended for the importation by the Republic of the Philippines of public works equipment intended for the massive development program of the President was raised. In view thereof, he expressed and made known his intention to acquire one share of stock from Congressman Justiniano Montano which, on the following day, 30 August 1967, was transferred in his name in the books of the Bank. Subsequent to his aforementioned acquisition of one share of stock of the Bank, Gonzales, in his dual capacity as a taxpayer and stockholder, filed the following cases involving the bank or the members of its Board of Directors to wit: (1) On 18 October 1967, Civil Case 71044 versus the Board of Directors of the Bank; the National Investment and Development Corp., Marubeni Iida Co., Ltd., and Agro-Inc. Dev. Co. or Saravia; (2) On 11 May 1968, Civil Case 72936 versus Roberto Benedicto and other Directors of the Bank, Passi (Iloilo) Sugar Central, Inc., Calinog-Lambunao Sugar Mill Integrated Farming, Inc., Talog sugar Milling Co., Inc., Safary Central, Inc., and Batangas Sugar Central Inc.; and (3) On 8 May 1969, Civil Case 76427 versus Alfredo Montelibano and the Directors of both the PNB and DBP. On 11 January 1969, however, Gonzales addressed a letter to the President of the Bank, requesting submission to look into the records of its transactions covering the purchase of a sugar central by the Southern Negros Development Corp. to be financed by Japanese suppliers and financiers; its financing of the Cebu-Mactan Bridge to be constructed by V.C. Ponce, Inc. and the construction of the Passi Sugar Mills in Iloilo. On January 23, 1969, the Asst. Vice President and Legal Counsel of the Bank answered petitioner's letter denying his request for being not germane to his interest as a one share stockholder and for the cloud of doubt as to his real intention and purpose in acquiring said share. In view of the Bank's refusal, Gonzales instituted the petition for mandamus. The Court of First Instance of Manila denied the prayer of Gonzales that he be allowed to examine and inspect the books and records of PNB regarding the transactions mentioned on the grounds that the right of a stockholder to inspect the record of the business transactions of a corporation granted under Section 51 of the former Corporation Law (Act No. 1459, as amended) is not absolute, but is limited to purposes reasonably related to the interest of the stockholder, must be asked for in good faith for a specific and honest purpose and not gratify curiosity or for speculative or vicious purposes; that such examination would violate the confidentiality of the records of the bank as provided in Section 16 of its charter, RA 1300, as amended; and that Gonzales has not exhausted his administrative remedies. Gonzales filed the petition for review.

Issue [1]: Whether Gonzales' can ask for an examination of the books and records of PNB, in light of his ownership of one share in the bank.

Held [1]: The unqualified provision on the right of inspection previously contained in Section 51, Act No. 1459, as amended, no longer holds true under the provisions of the present law. The argument of Gonzales that the right granted to him under Section 51 of the former Corporation Law should not be dependent on the propriety of his motive or purpose in asking for the inspection of the books of PNB loses whatever validity it might have had before the amendment of the law. If there is any doubt in the correctness of the ruling of the trial court that the right of inspection granted under Section 51 of the old Corporation Law must be dependent on a showing of proper motive on the part of the stockholder demanding the same, it is now dissipated by the

clear language of the pertinent provision contained in Section 74 of Batas Pambansa Bilang 68. Although Gonzales has claimed that he has justifiable motives in seeking the inspection of the books of the PNB, he has not set forth the reasons and the purposes for which he desires such inspection, except to satisfy himself as to the truth of published reports regarding certain transactions entered into by the respondent bank and to inquire into their validity. The circumstances under which he acquired one share of stock in the PNB purposely to exercise the right of inspection do not argue in favor of his good faith and proper motivation. Admittedly he sought to be a stockholder in order to pry into transactions entered into by the PNB even before he became a stockholder. His obvious purpose was to arm himself with materials which he can use against the PNB for acts done by the latter when Gonzales was a total stranger to the same. He could have been impelled by a laudable sense of civic consciousness, but it could not be said that his purpose is germane to his interest as a stockholder.

Issue [2]: Whether the inspection sought to be exercised by Gonzales would be violative of the provisions of PNB's charter.

Held [2]: Section 15 of the PNB's Charter (RA 1300, as amended) provides that "Inspection by Department of Supervision and Examination of the Central Bank. — The National Bank shall be subject to inspection by the Department of Supervision and Examination of the Central Bank." Section 16 thereof providest that "Confidential information. — The Superintendent of Banks and the Auditor General, or other officers designated by law to inspect or investigate the condition of the National Bank, shall not reveal to any person other than the President of the Philippines, the Secretary of Finance, and the Board of Directors the details of the inspection or investigation, nor shall they give any information relative to the funds in its custody, its current accounts or deposits belonging to private individuals, corporations, or any other entity, except by order of a Court of competent jurisdiction." On the other hand, Section 30 of the same provides that "Penalties for violation of the provisions of this Act. — Any director, officer, employee, or agent of the Bank, who violates or permits the violation of any of the provisions of this Act, or any person aiding or abetting the violations of any of the provisions of this Act, shall be punished by a fine not to exceed ten thousand pesos or by imprisonment of not more than five years, or both such fine and imprisonment." The Philippine National Bank is not an ordinary corporation. Having a charter of its own, it is not governed, as a rule, by the Corporation Code of the Philippines. The provision of Section 74 of Batas Pambansa Blg. 68 of the new Corporation Code with respect to the right of a stockholder to demand an inspection or examination of the books of the corporation may not be reconciled with the above quoted provisions of the charter of the PNB. It is not correct to claim, therefore, that the right of inspection under Section 74 of the new Corporation Code may apply in a supplementary capacity to the charter of the PNB.

54 Associated Bank vs. Court of Appeals [GR 123793, 29 June 1998]

First Division, Panganiban (J): 4 concur

Facts: On or about 16 September 1975 Associated Banking Corporation and Citizens Bank and Trust Company merged to form just one banking corporation known as Associated Citizens Bank, the surviving bank. The 16 September 1975 Agreement of Merger, which Associated Banking Corporation (ABC) and Citizens Bank and Trust Company (CBTC) entered into, provided that its effectivity "shall, for all intents and purposes, be the date when the necessary papers to carry out this [m]erger shall have been approved by the Securities and Exchange Commission." As to the transfer of the properties of CBTC to ABC, the agreement provides that "Upon effective date of the Merger, all rights, privileges, powers, immunities, franchises, assets and property of [CBTC], whether real, personal or mixed, and including [CBTC's] goodwill and tradename, and all debts due to [CBTC] on whatever act, and all other things in action belonging to [CBTC] as of the effective date of the [m]erger shall be vested in [ABC], the SURVIVING BANK, without need of further act or deed, unless by express requirements of law or of a government agency, any separate or specific deed of conveyance to legally effect the transfer or assignment of any kind of property [or] asset is required, in which case such document or deed shall be executed accordingly; and all property, rights, privileges, powers,

immunities, franchises and all appointments, designations and nominations, and all other rights and interests of [CBTC] as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, and all and every other interest of [CBTC] shall thereafter be effectually the property of [ABC] as they were of [CBTC], and title to any real estate, whether by deed or otherwise, vested in [CBTC] shall not revert or be in any way impaired by reason thereof; provided, however, that all rights of creditors and all liens upon any property of [CBTC] shall be preserved and unimpaired and all debts, liabilities, obligations, duties and undertakings of [CBTC], whether contractual or otherwise, expressed or implied, actual or contingent, shall henceforth attach to [ABC] which shall be responsible therefor and may be enforced against [ABC] to the same extent as if the same debts liabilities, obligations, duties and undertakings have been originally incurred or contracted by [ABC], subject, however, to all rights, privileges, defenses, set-offs and counterclaims which [CBTC] has or might have and which shall pertain to [ABC]. On or about 10 March 1981, the Associated Citizens Bank changed its corporate name to Associated Bank by virtue of the Amended Articles of Incorporation. On 7 September 1977, Lorenzo Sarmiento Jr. executed in favor of Associated Bank a promissory note whereby the former undertook to pay the latter the sum of P2,500,000.00 payable on or before 6 March 1978. As per said promissory note, Sarmiento agreed to pay interest at 14% per annum, 3% per annum in the form of liquidated damages, compounded interests, and attorney's fees, in case of litigation equivalent to 10% of the amount due. Sarmiento, to date, still owed Associated Bank the amount of P2,250,000.00 exclusive of interest and other charges. Despite repeated demands the defendant failed to pay the amount due. Sarmiento denied the charges. On 22 May 1986, Sarmiento was declared as if in default for failure to appear at the Pre-Trial Conference despite due notice. A Motion to Lift Order of Default and/or Reconsideration of Order dated 22 May 1986 was filed by Sarmiento's counsel which was denied by the Court in an order dated 16 September 1986 and Associated Bank was allowed to present its evidence before the Court ex-parte on 16 October 1986. Based on the evidence presented by the bank, the trial court ordered Sarmiento to pay the bank his remaining balance plus interests and attorney's fees. Sarmiento appealed. The Court of Appeals (in CA-GR CV 26465) promulgated on 30 January 1996 a decision which reversed and set aside the 17 October 1986 Decision in Civil Case 85-32243, promulgated by the Regional Trial Court of Manila, Branch 48; and thus dismissing the complaint. The bank filed the petition for review.

Issue: Whether In a merger, the surviving corporation have a right to enforce a contract entered into by the absorbed company subsequent to the date of the merger agreement, but prior to the issuance of a certificate of merger by the Securities and Exchange Commission.

Held: Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities. The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation. The agreement, as a clause, provided that "Upon the effective date of the [m]erger, all references to [CBTC] in any deed, documents, or other papers of whatever kind or nature and wherever found shall be deemed for all intents and purposes, references to [ABC], the SURVIVING BANK, as if such references were direct references to [ABC]." The fact that the promissory note was executed after the effectivity date of the merger does not militate against the bank. The agreement itself clearly provides that all contracts — irrespective of the date of execution — entered into in the name of CBTC shall be understood as

pertaining to the surviving bank, Associated Bank. Since, in contrast to the earlier aforequoted provision, the latter clause no longer specifically refers only to contracts existing at the time of the merger, no distinction should be made. The clause must have been deliberately included in the agreement in order to protect the interests of the combining banks; specifically, to avoid giving the merger agreement a farcical interpretation aimed at evading fulfillment of a due obligation. Thus, although the subject promissory note names CBTC as the payee, the reference to CBTC in the note shall be construed, under the very provisions of the merger agreement, as a reference to Associated Bank, "as if such reference [was a] direct reference to" the latter "for all intents and purposes."

55 Babst vs. Court of Appeals [GR 99398, 26 January 2001]; also Elizalde Steel Consolidated Inc. vs. Court of Appeals [GR 104625]
First Division, Ynares Santiago (J): 4 concur

Facts: On 8 June 1973, ELISCON obtained from Commercial Bank and Trust Company (CBTC) a loan in the amount of P8,015,900.84, with interest at the rate of 14% per annum, evidenced by a promissory note. Elizalde Steel Consolidated, Inc. (ELISCON) defaulted in its payments, leaving an outstanding indebtedness in the amount of P2,795,240.67 as of 31 October 1982. The letters of credit, on the other hand, were opened for ELISCON by CBTC using the credit facilities of Pacific Multi-Commercial Corporation (MULTI) with the said bank, pursuant to the Resolution of the Board of Directors of MULTI adopted on 31 August 1977. Subsequently, on 26 September 1978, Antonio Roxas Chua and Chester G. Babst executed a Continuing Suretyship, whereby they bound themselves jointly and severally liable to pay any existing indebtedness of MULTI to CBTC to the extent of P8,000,000.00 each. Sometime in October 1978, CBTC opened for ELISCON in favor of National Steel Corporation (NSC) 3 domestic letters of credit in the amounts of P1,946,805.73, P1,702,869.32 and P200,307.72, respectively, which ELISCON used to purchase tin black plates from NSC. ELISCON defaulted in its obligation to pay the amounts of the letters of credit, leaving an outstanding account, as of 31 October 1982, in the total amount of P3,963,372.08. On 22 December 1980, the Bank of the Philippine Islands (BPI) and CBTC entered into a merger, wherein BPI, as the surviving corporation, acquired all the assets and assumed all the liabilities of CBTC. Meanwhile, ELISCON encountered financial difficulties and became heavily indebted to the Development Bank of the Philippines (DBP). In order to settle its obligations, ELISCON proposed to convey to DBP by way of dacion en pago all its fixed assets mortgaged with DBP, as payment for its total indebtedness in the amount of P201,181,833.16. On 28 December 1978, ELISCON and DBP executed a Deed of Cession of Property in Payment of Debt. In June 1981, ELISCON called its creditors to a meeting to announce the take-over by DBP of its assets. In October 1981, DBP formally took over the assets of ELISCON, including its indebtedness to BPI. Thereafter, DBP proposed formulas for the settlement of all of ELISCON's obligations to its creditors, but BPI expressly rejected the formula submitted to it for not being acceptable. Consequently, on 17 January 1983, BPI, as successor-in-interest of CBTC, instituted with the Regional Trial Court of Makati, Branch 147, a complaint for sum of money against ELISCON, MULTI and Babst (Civil Case 49226). On 20 February 1987, the trial court rendered its Decision in favor of BPI. In due time, ELISCON, MULTI and Babst filed their respective notices of appeal. On 29 April 1991, the Court of Appeals rendered a Decision modifying the judgment of the trial court. ELISCON filed a Motion for Reconsideration of the Decision of the Court of Appeals which was, however, denied in a Resolution dated 9 March 1992. Subsequently, ELISCON filed a petition for review on certiorari (GR. 104625). Meanwhile, Babst also filed a petition for review with the Court (GR 99398).

Issue [1]: Whether the BPI can institute the present case.

Held [1]: There was a valid merger between BPI and CBTC. It is settled that in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation. Hence, BPI has a right to institute the present case.

Issue [2]: Whether BPI, the surviving corporation in a merger with CBTC, consented to the assumption by DBP of the obligations of ELISCON.

Held [2]: Due to the failure of BPI to register its objection to the take-over by DBP of ELISCON's assets, at the creditors' meeting held in June 1981 and thereafter, it is deemed to have consented to the substitution of DBP for ELISCON as debtor. The authority granted by BPI to its account officer to attend the creditors' meeting was an authority to represent the bank, such that when he failed to object to the substitution of debtors, he did so on behalf of and for the bank. Even granting arguendo that the said account officer was not so empowered, BPI could have subsequently registered its objection to the substitution, especially after it had already learned that DBP had taken over the assets and assumed the liabilities of ELISCON. Its failure to do so can only mean an acquiescence in the assumption by DBP of ELISCON's obligations. As repeatedly pointed out by ELISCON and MULTI, BPI's objection was to the proposed payment formula, not to the substitution itself. BPI gives no cogent reason in withholding its consent to the substitution, other than its desire to preserve its causes of action and legal recourse against the sureties of ELISCON. It must be remembered, however, that while a surety is solidarily liable with the principal debtor, his obligation to pay only arises upon the principal debtor's failure or refusal to pay. There was no indication that the principal debtor will default in payment. In fact, DBP, which had stepped into the shoes of ELISCON, was capable of payment. Its authorized capital stock was increased by the government. More importantly, the National Development Company took over the business of ELISCON and undertook to pay ELISCON's creditors, and earmarked for that purpose the amount of P4,015,534.54 for payment to BPI. Notwithstanding the fact that a reliable institution backed by government funds was offering to pay ELISCON's debts, not as mere surety but as substitute principal debtor, BPI, for reasons known only to itself, insisted in going after the sureties. BPI's conduct evinced a clear and unmistakable consent to the substitution of DBP for ELISCON as debtor. Hence, there was a valid novation which resulted in the release of ELISCON from its obligation to BPI, whose cause of action should be directed against DBP as the new debtor.

56 Long vs. Basa [GRs 134963-64, 27 September 2001]; also Lim Che Boon vs. Basa [GRs 135152-53], Lim Che Boon vs. Basa [GR 137135]
Third Division, Sandoval-Gutierrez (J): 2 concur, 1 dissents in separate opinion

Facts: In 1973, a religious group known as "The Church In Quezon City (Church Assembly Hall), Incorporated" (CHURCH), located at 140 Talayan St., Talayan Village, Quezon City, was organized as "an entity of the brotherhood in Christ." It was registered in the same year with the Securities and Exchange Commission (SEC) as a non-stock, non-profit religious corporation for the administration of its temporalities or the management of its properties. The Articles of Incorporation and By-laws of the CHURCH decree that its affairs and operation shall be managed by a Board of Directors consisting of 6 members, 3 who shall be members of the CHURCH. Zealous in upholding and guarding their Christian faith, and to ensure unity and uninterrupted exercise of their religious belief, the members of the CHURCH vested upon the Board of Directors the absolute power "(to preserve and protect the(ir) faith" and to admit and expel a member of the CHURCH. Admission for membership in the CHURCH is so exacting. Only "persons zealous of the Gospel, faithful in Church work and of sound knowledge of the Truth, as the Board of Directors shall admit to membership, shall be members of the (CHURCH)." The procedure for the expulsion of an erring or dissident member is prescribed in Article VII (paragraph 4) of the CHURCH By-laws, which provides that "If it is brought to the notice of the Board of Directors that any member has failed to observe any regulations and By-laws of the Institution (CHURCH) or the conduct of any member has been dishonorable or improper or otherwise injurious to the character and interest of the Institution, the Board of Directors may by resolution without assigning any reason therefor expel such member from such Institution and he shall then forfeit his interest, rights and privileges in the Institution." As early as 1988, the Board of Directors observed that certain members of the CHURCH, including Alfredo Long, Joseph Lim, Liu Yek See, and Felix Almeria, exhibited "conduct which was dishonorable, improper and injurious to the character and interest of the (CHURCH)" by "introducing (to the members) doctrines and teachings which were not based on the Holy Bible" and the

Principles of Faith embraced by the CHURCH. Confronted with this situation, Lydia Basa, Anthony Sayheeliam and Yao Chek, as members of the Board of Directors, and some responsible members of the CHURCH, advised Long, et al. "to correct their ways" and warned them that if they persist in their highly improper conduct, they will be dropped from the membership of the CHURCH; during Sunday worship gatherings, "in small group meetings and even one-on-one personal talk with them." Long et al. ignored these repeated admonitions. Alarmed that Long, et al.'s conduct will continue to undermine the integrity of the Principles of Faith of the CHURCH, the Board of Directors, during its 30 August 1993 regular meeting held for the purpose of reviewing and updating the membership list of the CHURCH, removed from the said list certain names of members, including the names of Joseph Lim, Liu Yek See, Alfredo Long and Felix Almeria. They were removed for espousing doctrines inimical or injurious to the Principles of Faith of the CHURCH. The Board also updated the list by removing the names of those who have migrated to other countries, those deceased and those whom the CHURCH had lost contact with. All the then 6 members of the Board, namely, Directors Lim Che Boon, Tan Hon Koc, Anthony Sayheeliam, Leandro Basa, Yao Chec and Lydia L. Basa "were duly informed" of that meeting. However, Directors Lim Che Boon and Tan Hon Koc did not appear. Thus, the resolution was signed only by Directors Anthony Sayheeliam, Leandro Basa, Yao Chec and Lydia L. Basa who composed the majority of the Board. The updated membership list approved by the Board on 30 August 1993, together with the minutes of the meeting, were duly filed with the SEC on 13 September 1993. On 29 September 1993, Lim Che Boon, Tan Hon Koc, Joseph Lim, Liu Yek See and others questioned their expulsion by filing with the SEC Securities Investigation and Clearing Department a petition (SEC Case 09 93-4581, and later a supplemental petition) against Directors Yao Chek, Leandro Basa, Lydia Basa and Anthony Sayheeliam. It sought mainly the annulment of the 30 August 1993 membership list and the reinstatement of the original list on the ground that the expulsion was made without prior notice and hearing; and prayed for the issuance of a temporally restraining order (TRO) and a writ of preliminary injunction principally to enjoin the Board of Directors from holding any election of a new set of directors among the members named in the 30 August 1993 list of corporate membership. After conducting a hearing on the application for a writ of preliminary injunction, SEC Hearing Officer Manuel Perea denied the same in an order dated 22 February 1994. Lim Che Boon, et al. elevated Perea's order to the SEC en banc via a petition for certiorari (SEC EB Case 389). The SEC, in an en banc decision dated 11 July 1994, affirmed the Perea ruling and "dismissed for lack of merit" the petition. Lim Che Boon et al. did not appeal from the decision of the SEC en banc.

subsequently, the SEC, through a hearing panel, conducted further proceedings to hear and decide the permissive counterclaim and third-party complaint incorporated in Basa, et al.'s supplemental answer, including their prayer for injunctive relief to prevent Long, Lim Che Boon, et al. from interfering and usurping the functions of the Board of Directors. Long, et al. subsequently filed motions to dismiss/strike out the counterclaim and third-party complaint. The hearing panel in its omnibus order dated 2 October 1995 denied the motions, and declined to act on Basa, et al.'s third-party complaint's prayer for injunctive relief since there is a case pending before another Hearing Officer in SEC Case 4994 for the declaration of nullity of the general membership meeting held on 12 February 1995. Upon denial of the separate motions for reconsideration of both parties, Basa, et al. filed with the SEC en banc a petition for review on certiorari (SEC EB Case 484), which interposed the issue as to the validity of the questioned expulsion already resolved by the SEC en banc in its decision dated 11 July 1994 in SEC EB Case 389 which had attained finality. On 31 July 1996, the SEC en banc, issued an order in SEC EB Case 484, setting aside the expulsion of certain members of the CHURCH approved by its Board of Directors on 30 August 1993 for being void and ordering the reinstatement of Long, et al. as members of the CHURCH. Promptly, Sayheeliam and Basa filed a petition for review with the Court of Appeals (CA-GR SP 41551). Yao Check, for his part, filed a motion for reconsideration of the same order. Upon denial of his motion he also filed with the Court of Appeals a petition for review (CA-GR SP 43389), which was consolidated with CA-GR SP 41551). On 29 May 1998, the Court of Appeals promulgated its decision granting Basa, et al.'s consolidated petitions and reversing the 31 July 1996 order of the SEC en banc in SEC EB Case 484. Long, et al. filed a motion for reconsideration but was denied by the appellate court in a resolution dated 18 August 1998. Long, Lim Che Boon, et al. filed the

petitions for review, which were subsequently consolidated.

Issue: Whether the expulsion of Joseph Lim, Liu Yek See, Alfredo Long and Felix Almeria from the membership of the CHURCH by its Board of Directors through a resolution issued on August 30, 1993 is in accordance with law.

Held: The By-laws of the CHURCH, which the members have expressly adhered to, does not require the Board of Directors to give prior notice to the erring or dissident members in cases of expulsion. In the By-law provision, the only requirements before a member can be expelled or removed from the membership of the CHURCH are: (a) the Board of Directors has been notified that a member has failed to observe any regulations and By-laws of the CHURCH, or the conduct of any member has been dishonorable or improper or otherwise injurious to the character and interest of the CHURCH, and (b) a resolution is passed by the Board expelling the member concerned, without assigning any reason therefor. Thus, a member who commits any of the causes for expulsion enumerated in paragraph 4 of Article VII may be expelled by the Board of Directors, through a resolution, without giving that erring member any notice prior to his expulsion. The resolution need not even state the reason for such action. The CHURCH By-law provision on expulsion, as phrased, may sound unusual and objectionable as there is no requirement of prior notice to be given to an erring member before he can be expelled; but that is how peculiar the nature of a religious corporation is vis-a-vis an ordinary corporation organized for profit. It must be stressed that the basis of the relationship between a religious corporation and its members is the latter's absolute adherence to a common religious or spiritual belief . Once this basis ceases, membership in the religious corporation must also cease. Thus, generally, there is no room for dissension in a religious corporation. And where any member of a religious corporation is expelled from the membership for espousing doctrines and teachings contrary to that of his church, the established doctrine in this jurisdiction is that such action from the church authorities is conclusive upon the civil courts. Obviously recognizing the peculiarity of a religious corporation, the Corporation Code leaves the matter of ecclesiastical discipline to the religious group concerned. Section 91 of the Corporation Code, which has been made explicitly applicable to religious corporations by the second paragraph of Section 109 of the same Code, provides for the termination of membership. It provides that "Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws." In fact, Long, et al. really have no reason to bewail the lack of prior notice in the By-laws. They have waived such notice by adhering to those By-laws. They became members of the CHURCH voluntarily. They entered into its covenant and subscribed to its rules. By doing so, they are bound by their consent. Even assuming that Long, et al.'s expulsion falls within the Constitutional provisions on "prior notice" or "due process," still the Court can not conclude that Basa, et al. committed a constitutional infraction. Long, et al. were given more than sufficient notice of their impending expulsion, as shown by the records.

57 Sta. Clara Homeowners' Association vs. Spouses Gaston [GR 141961, 23 January 2002]
Third Division, Panganiban (J): 3 concur, 1 concurs although he might call attention to Article 2174 of the Civil Code as and when pertinent.

Facts: Spouses Victor Ma. Gaston and Lydia M. Gaston were residents of San Jose Avenue, Sta. Clara Subdivision, Mandalagan, Bacolod City. They purchased their lots in the said subdivision sometime in 1974, and at the time of purchase, there was no mention or requirement of membership in any homeowners' association. From that time on, they have remained non-members of SCHA. They also stated that an arrangement was made wherein homeowners who were non-members of the association were issued "non-member" gatepass stickers for their vehicles for identification by the security guards manning the subdivision's entrances and exits. This arrangement remained undisturbed until sometime in the middle of March 1998, when SCHA disseminated a board resolution which decreed that only its members in good standing were to be issued stickers for use in their vehicles. Thereafter, on three separate incidents, Victor M.

Gaston, the son of the spouses Gaston who lives with them, was required by the guards on duty employed by SCHA to show his driver's license as a prerequisite to his entrance to the subdivision and to his residence therein despite their knowing him personally and the exact location of his residence. On 29 March 1998, Victor Ma. Gaston was himself prevented from entering the subdivision and proceeding to his residential abode when security guards Roger Capillo and a "John Doe" lowered the steel bar of the KAMETAL gate of the subdivision and demanded from him his driver's license for identification. On 1 April 1998, Spouses Victor Ma. Gaston and Lydia M. Gaston filed a complaint for damages with preliminary injunction/preliminary mandatory injunction and temporary restraining order before the Regional Trial Court in Negros Occidental at Bacolod City against Santa Clara Homeowners Association (SCHA) thru its Board of Directors, namely: Arneil Chua, Luis Sarrosa, Jocelyn Garcia, Ma. Milagros Vargas, Lorenzo Lacson, Ernesto Piccio, Dindo Ilagan, Danilo Gamboa, Jr., Rizza de la Rama and Security Guard Capillo and 'John Doe', and Santa Clara Estate, Incorporated (Civil Case 98-10217, RTC-Branch 49, Bacolod City); alleging that the acts of SCHA, et al., done in the presence of other subdivision owners had caused the spouses Gaston to suffer moral damage. On 8 April 1998, SCHA, et al. filed a motion to dismiss arguing that the trial court had no jurisdiction over the case as it involved an intra-corporate dispute between SCHA and its members pursuant to Republic Act 580, as amended by Executive Orders 535 and 90, much less, to declare as null and void the subject resolution of the board of directors of SCHA, the proper forum being the Home insurance and Guaranty Corporation (HIGC). To support their claim of intra-corporate controversy, SCHA, et al. stated that the Articles of Incorporation of SCHA, which was duly approved by the Securities and Exchange Commission (SEC) on 4 October 1973, provides "that the association shall be a non-stock corporation with all homeowners of Sta. Clara constituting its membership"; and that its by-laws contains a provision that "all real estate owners in Sta. Clara Subdivision automatically become members of the association"; among others. On 6 July 1998, the lower court resolved to deny SCHA et al.'s motion to dismiss, finding that there existed no intra-corporate controversy since the Spouses Gaston alleged that they had never joined the association. On 18 July 1998, SCHA, et al. submitted a Motion for Reconsideration, adding lack of cause of action as ground for the dismissal of the case. On 17 August 1998, the trial court denied the said motion without however ruling on the additional ground of lack of cause of action. On 18 August 1998, SCHA, et al. filed a motion to resolve its motion to dismiss on ground of lack of cause of action. On 8 September 1998, the trial court issued an order denying the motion. On 24 September 1998, SCHA. et al. elevated the matter to the Court of Appeals via a Petition for Certiorari. On 31 August 1999, the Court of Appeals dismissed the Petition and ruled that the RTC had jurisdiction over the dispute. The appellate court likewise denied SCHA, et al.'s motion for reconsideration in a resolution dated 11 February 2000. SCHA, et al. filed the petition for review.

Issue: Whether the Spouses Gaston are members of the SCHA.

Held: The constitutionally guaranteed freedom of association includes the freedom not to associate. The right to choose with whom one will associate oneself is the very foundation and essence of that partnership. Further, the Spouses Gaston cannot be compelled to become members of the SCHA by the simple expedient of including them in its Articles of Incorporation and By-laws without their express or implied consent. True, it may be to the mutual advantage of lot owners in a subdivision to band themselves together to promote their common welfare, but that is possible only if the owners voluntarily agree, directly or indirectly, to become members of the association. True also, memberships in homeowners' associations may be acquired in various ways — often through deeds of sale, Torrens certificates or other forms of evidence of property ownership. Herein, however, other than the said Articles of Incorporation and By-laws, there is no showing that the Spouses Gaston have agreed to be SCHA members. The approval by the SEC of the said documents is not an operative act which bestows membership on the Spouses Gaston because the right to associate partakes of the nature of freedom of contract which can be exercised by and between the homeowners amongst themselves, the homeowners' association and a homeowner, and the subdivision owner and a homeowner/lot buyer. Clearly, there is no privity of contract exists between SCHA and Spouses Gaston. When the Spouses Gaston purchased their property in 1974 and obtained Transfer Certificates of Titles T-126542 and T-127462 for Lots 11 and 12 of Block 37 along San Jose Avenue in Sta. Clara Subdivision, there was no annotation showing

their automatic membership in the SCHA. Furthermore, the records are bereft of any evidence that would indicate that the Spouses Gaston intended to become members of the SCHA. Prior to the implementation of the aforesaid Resolution, they and the other homeowners who were not members of the association were issued non-member gate pass stickers for their vehicles; a fact not disputed by SCHA. Thus, the SCHA recognized that there were subdivision landowners who were not members thereof, notwithstanding the provisions of its Articles of Incorporation and By-laws.

58 Padcom Condominium Corporation vs. Ortigas Center Association [GR 146807, 9 May 2002]
First Division, Davide Jr. (CJ): 4 concur

Facts: Padcom Condominium Corporation (PADCOM) owns and manages the Padilla Office Condominium Building (PADCOM Building) located at Emerald Avenue, Ortigas Center, Pasig City. The land on which the building stands was originally acquired from the Ortigas & Company, Limited Partnership (OCLP), by Tierra Development Corporation (TDC) under a Deed of Sale dated 4 September 1974. Among the terms and conditions in the deed of sale was the requirement that the transferee and its successor-in-interest must become members of an association for realty owners and long-term lessees in the area later known as the Ortigas Center. Subsequently, the said lot, together with improvements thereon, was conveyed by TDC in favor of PADCOM in a Deed of Transfer dated 25 February 1975. In 1982, Ortigas Center Association, Inc. was organized to advance the interests and promote the general welfare of the real estate owners and long-term lessees of lots in the Ortigas Center. It sought the collection of membership dues in the amount of P2,724.40 per month from PADCOM. The corporate books showed that PADCOM owed the Association P639,961.47, representing membership dues, interests and penalty charges from April 1983 to June 1993. The letters exchanged between the parties through the years showed repeated demands for payment, requests for extensions of payment, and even a settlement scheme proposed by PADCOM in September 1990. In view of PADCOM's failure and refusal to pay its arrears in monthly dues, including interests and penalties thereon, the Association filed a complaint for collection of sum of money before the Regional Trial Court of Pasig City, Branch 264 (Civil Case No. 63801). The Association averred that purchasers of lands within the Ortigas Center complex from OCLP are obligated under their contracts of sale to become members of the Association, and that this obligation was allegedly passed on to PADCOM when it bought the lot from TDC, its predecessor-in-interest. In its answer, PADCOM contended that it is a non-stock, non-profit association, and for it to become a special member of the Association, it should first apply for and be accepted for membership by the latter's Board of Directors; that no automatic membership was apparently contemplated in the Association's By-laws. PADCOM added that it could not be compelled to become a member without violating its right to freedom of association; and that since it was not a member of the Association, it was not liable for membership dues, interests and penalties. On 1 September 1997, the trial court rendered a decision dismissing the complaint. The Association appealed the case to the Court of Appeals (CA-GR CV 60099). In its decision of 30 June 2000, the Court of Appeals reversed and set aside the trial court's decision, and entered a new one ordering PADCOM to pay the Association (1) P639,961.47 as and for membership dues in arrears inclusive of earned interests and penalties; and (2) P25,000.00 as and for attorney's fees; with costs against PADCOM; on the ground that PADCOM automatically became a member of the Association when the land was sold to TDC; and that the intent to pass the obligation to prospective transferees was evident from the annotation of the same clause at the back of the Transfer Certificate of Title covering the lot. The appellate court held that despite disavowal of membership, PADCOM's membership in the Association was evident from these facts: (1) PADCOM was included in the Association's list of bona fide members as of 30 March 1995; (2) Narciso Padilla, PADCOM's President, was one of the Association's incorporators; and (3) having received the demands for payment, PADCOM not only acknowledged them, but asked for and was granted repeated extensions, and even proposed a scheme for the settlement of its obligation. PADCOM filed the petition for review.

Issue: Whether PADCOM can be compelled to join the association pursuant to the provision on automatic membership appearing as a condition in the Deed of Sale of 4 September 1974 and the annotation thereof on

Transfer Certificate of Title 457308.

Held: When the land in question was bought by PADCOM's predecessor-in-interest, TDC, from OCLP, the sale bound TDC to comply with paragraph (G) of the covenants, conditions and restrictions of the Deed of Sale. It was agreed by the parties that dues shall be collected from an automatic member and such fees or assessments shall be a lien on the property. The stipulation was likewise annotated at the back of Transfer Certificate of Title 457308 issued to TDC. When the latter sold the lot to PADCOM on 25 February 1975, the Deed of Transfer expressly stated that "for and in consideration of the foregoing premises, the DEVELOPER, by these presents, cedes, transfers and conveys unto the CORPORATION the above-described parcel of land evidenced by Transfer Certificate of Title 457308, as well as the Common and Limited Common Areas of the Condominium project mentioned and described in the Master Deed with Declaration of Restrictions, free from all liens and encumbrances, except those already annotated at the back of said Transfer Certificate of Title 457308." As the provision on automatic membership was annotated in the Certificate of Title and made a condition in the Deed of Transfer in favor of PADCOM; consequently, PADCOM is bound by and must comply with the covenant. Moreover, Article 1311 of the Civil Code provides that contracts take effect between the parties, their assigns and heirs. Since PADCOM is the successor-in-interest of TDC, it follows that the stipulation on automatic membership with the Association is also binding on the former. Further, as lot owner, PADCOM is a regular member of the Association. No application for membership is necessary. If at all, acceptance by the Board of Directors is a ministerial function considering that PADCOM is deemed to be a regular member upon the acquisition of the lot pursuant to the automatic membership clause annotated in the Certificate of Title of the property and the Deed of Transfer. Furthermore, the automatic membership clause is not a violation of its freedom of association. PADCOM was never forced to join the association. It could have avoided such membership by not buying the land from TDC. Nobody forced it to buy the land when it bought the building with the annotation of the condition or lien on the Certificate of Title thereof and accepted the Deed. PADCOM voluntarily agreed to be bound by and respect the condition, and thus to join the Association. Lastly, under the principle of estoppel, from the facts or circumstances it enumerated in the appellate court's decision, PADCOM is barred from disclaiming membership in the Association.

59 Manuel R. Dulay Enterprises vs. Court of Appeals [GR 91889, 27 August 1993]

Second Division, Nocon (J): 3 concur, 1 took no part

Facts: Manuel R. Dulay Enterprises, Inc., a domestic corporation with the following as members of its Board of Directors: Manuel R. Dulay with 19,960 shares and designated as president, treasurer and general manager; Atty. Virgilio E. Dulay with 10 shares and designated as vice-president; Linda E. Dulay with 10 shares; Celia Dulay-Mendoza with 10 shares; and Atty. Plaridel C. Jose with 10 shares and designated as secretary, owned a property covered by TCT 17880 4 and known as Dulay Apartment consisting of 16 apartment units on a 689 square meter lot, more or less, located at Seventh Street (now Buendia Extension) and F.B. Harrison Street, Pasay City. The corporation through its president, Manuel Dulay, obtained various loans for the construction of its hotel project, Dulay Continental Hotel (now Frederick Hotel). It even had to borrow money from Virgilio Dulay to be able to continue the hotel project. As a result of said loan, Virgilio Dulay occupied one of the unit apartments of the subject property since 1973 while at the same time managing the Dulay Apartment as his shareholdings in the corporation was subsequently increased by his father. On 23 December 1976, Manuel Dulay by virtue of Board Resolution 18 of the corporation sold the subject property to spouses Maria Theresa and Castrense Veloso in the amount of P300,000.00 as evidenced by the Deed of Absolute Sale. Thereafter, TCT 17880 was cancelled and TCT 23225 was issued to Maria Theresa Veloso. Subsequently, Manuel Dulay and the spouses Veloso executed a Memorandum to the Deed of Absolute Sale of 23 December 1976 dated 9 December 1977 giving Manuel Dulay within 2 years or until 9 December 1979 to repurchase the subject property for P200,000.00 which was, however, not annotated either in TCT 17880 or TCT 23225. On 24 December 1976, Maria Veloso, without the knowledge of Manuel Dulay, mortgaged the subject property to Manuel A. Torres for a loan of P250,000.00 which was duly annotated as Entry 68139 in TCT 23225. Upon the failure of Maria Veloso to pay Torres, the subject property was sold on 5 April 1978 to Torres as the

highest bidder in an extrajudicial foreclosure sale as evidenced by the Certificate of Sheriff's Sale issued on 20 April 1978. On 20 July 1978, Maria Veloso executed a Deed of Absolute Assignment of the Right to Redeem in favor of Manuel Dulay assigning her right to repurchase the subject property from Torres as a result of the extrajudicial sale. As neither Maria Veloso nor her assignee Manuel Dulay was able to redeem the subject property within the one year statutory period for redemption, Torres filed an Affidavit of Consolidation of Ownership 13 with the Registry of Deeds of Pasay City and TCT 24799 was subsequently issued to Torres on 23 April 1979. On 1 October 1979, Torres filed a petition for the issuance of a writ of possession against spouses Veloso and Manuel Dulay in LRC Case 1742-P. However, when Virgilio Dulay appeared in court to intervene in said case alleging that Manuel Dulay was never authorized by the corporation to sell or mortgage the subject property, the trial court ordered Torres to implead the corporation as an indispensable party but the latter moved for the dismissal of his petition which was granted in an Order dated 8 April 1980. On 20 June 1980, Torres and Edgardo Pabalan, real estate administrator of Torres, filed an action against the corporation, Virgilio Dulay and Nepomuceno Redovan, a tenant of Dulay Apartment Unit No. 8-A for the recovery of possession, sum of money and damages with preliminary injunction in Civil Case 8198-P with the then Court of First Instance of Rizal. On 21 July 1980, the corporation filed an action against spouses Veloso and Torres for the cancellation of the Certificate of Sheriff's Sale and TCT 24799 in Civil Case 8278-P with the then Court of First Instance of Rizal. On 29 January 1981, Pabalan and Torres filed an action against spouses Florentino and Elvira Manalastas, a tenant of Dulay Apartment Unit No. 7-B, with the corporation as intervenor for ejectment in Civil Case 38-81 with the Metropolitan Trial Court of Pasay City which rendered a decision on 25 April 1985, in favor of Pabalan, et al., ordering the spouses Manalastas and all persons claiming possession under them to vacate the premises; and to pay the rents in the sum of P500.00 a month from May 1979 until they shall have vacated the premises with interest at the legal rate; and to pay attorney's fees in the sum of P2,000.00 and P1,000.00 as other expenses of litigation and for them to pay the costs of the suit. Thereafter or on 17 May 1985, the corporation and Virgilio Dulay filed an action against the presiding judge of the Metropolitan Trial Court of Pasay City, Pabalan and Torres for the annulment of said decision with the Regional Trial Court of Pasay in Civil Case 2880-P. Thereafter, the 3 cases were jointly tried and the trial court rendered a decision in favor of Pabalan and Torres. Not satisfied with said decision, the corporation, et al. appealed to the Court of Appeals which rendered a decision on 23 October 1989, affirming the trial court decision. On 8 November 1989, the corporation, et al. filed a Motion for Reconsideration which was denied on 26 January 1990. The corporation, et al. filed the petition for review on certiorari. During the pendency of the petition, Torres died on 3 April 1991 as shown in his death certificate and named Torres-Pabalan Realty & Development Corporation as his heir in his holographic will dated 31 October 1986.

Issue: Whether the sale of the subject property between spouses Veloso and Manuel Dulay has no binding effect on the corporation as Board Resolution 18 which authorized the sale of the subject property was resolved without the approval of all the members of the board of directors and said Board Resolution was prepared by a person not designated by the corporation to be its secretary.

Held: Section 101 of the Corporation Code of the Philippines provides that "When board meeting is unnecessary or improperly held. Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if: (1) Before or after such action is taken, written consent thereto is signed by all the directors; or (2) All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or (3) The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or (4) All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing. If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof." Herein, the corporation is classified as a close corporation and consequently a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president. At any rate, a corporate action taken at a board meeting without proper call or notice in a close corporation is deemed ratified by the

absent director unless the latter promptly files his written objection with the secretary of the corporation after having knowledge of the meeting which, in this case, Virgilio Dulay failed to do. The corporation's claim that the sale of the subject property by its president, Manuel Dulay, to spouses Veloso is null and void as the alleged Board Resolution 18 was passed without the knowledge and consent of the other members of the board of directors cannot be sustained. Virgilio E. Dulay's protestations of complete innocence to the effect that he never participated nor was even aware of any meeting or resolution authorizing the mortgage or sale of the subject premises is difficult to believe. On the contrary, he is very much privy to the transactions involved. To begin with, he is an incorporator and one of the board of directors designated at the time of the organization of Manuel R. Dulay Enterprises, Inc. In ordinary parlance, the said entity is loosely referred to as a "family corporation." The nomenclature, if imprecise, however, fairly reflects the cohesiveness of a group and the parochial instincts of the individual members of such an aggrupation of which Manuel R. Dulay Enterprises, Inc. is typical: four-fifths of its incorporators being close relatives namely, 3 children and their father whose name identifies their corporation. Besides, the fact that Virgilio Dulay on 24 June 1975 executed an affidavit that he was a signatory witness to the execution of the post-dated Deed of Absolute Sale of the subject property in favor of Torres indicates that he was aware of the transaction executed between his father and Torres and had, therefore, adequate knowledge about the sale of the subject property to Torres. Consequently, the corporation is liable for the act of Manuel Dulay and the sale of the subject property to Torres by Manuel Dulay is valid and binding.

60 San Juan Structural and Steel Fabricators [GR 129459, 29 September 1998]
First Division, Panganiban (J): 4 concur

Facts: On 14 February 1989, San Juan Structural and Steel Fabricators, Inc. (SJSSFI) entered into an agreement with Motorich Sales Corporation (MSC) for the transfer to it of a parcel of land identified as Lot 30, Block 1 of the Acropolis Greens Subdivision located in the District of Murphy, Quezon City, Metro Manila, containing an area of 414 square meters, covered by TCT (362909) 2876 *(the lot was still registered in the name of ACL Development Corporation [ADC] at that time)*. As stipulated in the Agreement of 14 February 1989, SJSSFI paid the downpayment in the sum of P100,000.00, the balance to be paid on or before 2 March 1989. On 1 March 1989, Mr. Andres T. Co, SJSSFI president, wrote a letter to MSC requesting for a computation of the balance to be paid. Said letter was coursed through MSC's broker, Linda Aduca, who wrote the computation of the balance. On 2 March 1989, SJSSFI was ready with the amount corresponding to the balance, covered by Metrobank Cashier's Check 004223, payable to MSC. SJSSFI and MSC were supposed to meet in the office of SJSSFI but MSC's treasurer, Nenita Lee Gruenberg, did not appear. MSC, despite repeated demands and in utter disregard of its commitments had refused to execute the Transfer of Rights/Deed of Assignment which is necessary to transfer the certificate of title. On 6 April 1989, ADC and MSC entered into a Deed of Absolute Sale whereby the former transferred to the latter the subject property. By reason of said transfer, the Registry of Deeds of Quezon City issued a new title in the name of MSC, represented by Nenita Lee Gruenberg and Reynaldo L Gruenberg, under Transfer Certificate of Title 3571. SJSSFI filed the complaint for damages against MSC, and Nenita Lee Gruenberg, as a result of the latter’s alleged bad faith in refusing to execute a formal Transfer of Rights/Deed of Assignment. It impleaded ADC and JNM Realty & Development Corp. (JRDC) as necessary parties, since Transfer Certificate of Title (362909) 2876 was in the name of ADC, and that JRDC is the transferor of right in favor of MDC. In its answer, MSC and Nenita Lee Gruenberg interposed as affirmative defense that the President and Chairman of Motorich did not sign the agreement adverted to; that Mrs. Gruenberg's signature on the agreement is inadequate to bind MSC as the other signature, that of Mr. Reynaldo Gruenberg, President and Chairman of MSC, is required; that SJSSFI knew this from the very beginning as it was presented a copy of the Transfer of Rights at the time the Agreement was signed; that SJSSFI itself drafted the Agreement and insisted that Mrs. Gruenberg accept the P100,000.00 as earnest money; that granting, without admitting, the enforceability of the agreement, SJSSFI nonetheless failed to pay in legal tender within the stipulated period (up to 2 March 1989); that it was the understanding between Mrs. Gruenberg and SJSSFI that the Transfer of Rights/Deed of Assignment will be signed only upon receipt of cash payment; thus they agreed that if the payment be in

check, they will meet at a bank designated by SJSSFI where they will encash the check and sign the Transfer of Rights/Deed, but that SJSSFI informed Mrs. Gruenberg of the alleged availability of the check, by phone, only after banking hours. On the basis of the evidence, and on 18 June 1994, the Regional Trial Court of Makati, Metro Manila, Branch 63 (Civil Case 89-3511) rendered judgment, dismissing SJSSFI's complaint, finding that Nenita Lee Gutenberg was not authorized by the corporation to dispose of the property as such disposition is governed by the requirements of Section 40, Corporation Code; and that Nenita Lee Gutenberg did not in anyway misrepresent herself to be authorized by the corporation to sell the property to SJSSFI. The trial court also dismissed the counterclaim. SJSSFI appealed. On 18 March 1997, the Court of Appeals (CA GR CV 46801) modified the decision of the trial court by ordering Nenita Lee Gutenberg to refund or return to SJSSFI the downpayment of P100,000.00 which she received from the latter. SJSSFI moved for reconsideration, which was denied by the appellate court on 10 June 1997. SJSSFI filed the Petition for Review on Certiorari. SJSSFI argues, among others, that the veil of corporate fiction of MSC should be pierced, because the latter is a close corporation. Since "Spouses Reynaldo L. Gruenberg and Nenita R. Gruenberg owned all or almost all or 99.866% to be accurate, of the subscribed capital stock" 25 of Motorich, petitioner argues that Gruenberg needed no authorization from the board to enter into the subject contract. It adds that, being solely owned by the Spouses Gruenberg the company can be treated as a close corporation which can be bound by the acts of its principal stockholder who needs no specific authority.

Issue: Whether MSC is a close corporation, based on the fact that almost all of the shares of stock of the corporation are owned by said treasurer and her husband.

Held: Section 96 of the Corporation Code defines a close corporation provides that "A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) All of the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall be deemed not a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code." The articles of incorporation of MSC does not contain any provision stating that (1) the number of stockholders shall not exceed 20, or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation, or (3) listing its stocks in any stock exchange or making a public offering of such stocks is prohibited. From its articles, it is clear that MSC is not a close corporation. MSC does not become one either, just because Spouses Reynaldo and Nenita Gruenberg owned 99.866% of its subscribed capital stock. The 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 personalities. So, too, a narrow distribution of ownership does not, by itself, make a close corporation.

61 Gelano vs. Court of Appeals [GR L-39050, 24 February 1981]

First Division, De Castro (J): 3 concur, 1 concurs in result, 1 took no part

Facts: Insular Sawmill, Inc. (ISI) is a corporation organized on 17 September 1945 with a corporate life of 50 years, or up to 17 September 1995, with the primary purpose of carrying on a general lumber and sawmill business. To carry on this business, ISI leased the paraphernal property of Carlos Gelano's wife Guillermina Mendoza-Gelano at the corner of Canonigo and Otis, Paco, Manila for P1,200.00 a month. It was while ISI was leasing the aforesaid property that its officers and directors had come to know Carlos Gelano who received from the corporation cash advances on account of rentals to be paid by the corporation on the land. Between 19 November 1947 to 26 December 1950 Carlos Gelano obtained from ISI cash advances of P25,950.00. The said sum was taken and received by Carlos Gelano on the agreement that ISI could deduct the same from the monthly rentals of the leased premises until said cash advances are fully paid. Out of the

aforementioned cash advances in the total sum of P25,950.00, Carlos Gelano was able to pay only P5,950.00 thereby leaving an unpaid balance of P20,000.00 which he refused to pay despite repeated demands by ISI. Guillermina M. Gelano refused to pay on the ground that said amount was for the personal account of her husband asked for by, and given to him, without her knowledge and consent and did not benefit the family. On various occasions from 4 May 1948 to 11 September 1949 the Spouses Gelano also made credit purchases of lumber materials from ISI with a total price of P1,120.46 in connection with the repair and improvement of the spouses' residence. On 9 November 1949 partial payment was made by the spouses in the amount of P91.00 and in view of the cash discount in favor of the spousesin the amount of P83.00, the amount due ISI on account of credit purchases of lumber materials is P946.46 which the spouses failed to pay. On 14 July 1952, in order to accommodate and help the spouses renew previous loans obtained by them from the China Banking Corporation, ISI, through Joseph Tan Yoc Su, executed a joint and several promissory note with Carlos Gelano in favor of said bank in the amount of P8,000.00 payable in 60 days. For failure of Carlos Gelano to pay the promissory note upon maturity, the bank collected from the ISI the amount of P9,106.00 including interests, by debiting it from the corporation's current account with the bank. Carlos Gelano was able to pay ISI the amount of P5,000.00 but the balance of P4,106.00 remained unsettled. Guillermina M. Gelano refused to pay on the ground that she had no knowledge about the accommodation made by ISI in favor of her husband. On 29 May 1959, ISI, thru Atty. German Lee, filed a complaint for collection against the spouses before the Court of First Instance of Manila. Trial was held and when the case was at the stage of submitting memorandum, Atty. Lee retired from active law practice and Atty. Eduardo F. Elizalde took over and prepared memorandum. In the meantime, ISI amended its Articles of Incorporation to shorten its term of existence up to 31 December 1960 only. The amended Articles of Incorporation was filed with, and approved by the Securities and Exchange Commission, but the trial court was not notified of the amendment shortening the corporate existence and no substitution of party was ever made. On 20 November 1964 and almost 4 years after the dissolution of the corporation, the trial court rendered a decision in favor of ISI ordering Carlos Gelano to pay ISI the sum of P19,650.00 with interest thereon at the legal rate from the date of the filing of the complaint on 29 May 1959 until said sum is fully paid; and P4,106.00, with interest thereon at the legal rate from the date of the filing of the complaint until said sum is fully paid; and the sum of P2,000.00 attorney's fees. The Court also ordered the spouses to solidarily pay ISI the sum of P946.46, with interest thereon at the agreed rate of 12% per annum from 6 October 1946, until said sum is fully paid; P550.00, with interest thereon at the legal rate from the date of the filing of the complaint until the said sum is fully paid; and costs of the suit. The court dismissed the counterclaims of the spouses. Both parties appealed to the Court of Appeals, with ISI ppealing because it insisted that both Carlos Gelano and Guillermina Gelano should be held liable for the substantial portion of the claim. On 23 August 1973, the Court of Appeals rendered a decision modifying the judgment of the trial court by holding the spouses jointly and severally liable on ISI's claim and increasing the award of P4,106.00 to P8,160.00. After the spouses received a copy of the decision on 24 August 1973, they came to know that the ISI was dissolved way back on 31 December 1960. Hence, the spouses filed a motion to dismiss the case and or reconsideration of the decision of the Court of Appeals on grounds that the case was prosecuted even after dissolution of ISI as a corporation and that a defunct corporation cannot maintain any suit for or against it without first complying with the requirements of the winding up of the affairs of the corporation and the assignment of its property rights within the required period. Incidentally, after the receipt of the spouses' motion to dismiss and/or reconsideration or on 28 October 1973, ISI thru its former directors filed a Petition for Receivership before the Court of First Instance of Manil (Special Proceedings 92303), which petition is still pending before said court. On 5 November 1973, ISI filed a comment on the motion to dismiss and/or reconsideration and after the parties have filed reply and rejoinder, the Court of Appeals on 5 July 1974 issued a resolution denying the aforesaid motion. The spouses filed the petition for review.

Issue: Whether a corporation, whose corporate life had ceased by the expiration of its terms of existence, could still continue prosecuting and defending suits after its dissolution and beyond the period of 3 years provided for under Act 1459, otherwise known as the Corporation Law, to wind up its affairs, without having undertaken any step to transfer its assets to a trustee or assignee.

Held: When ISI was dissolved on 31 December 1960, under Section 77 of the Corporation Law, it still has the right until 31 December 1963 to prosecute in its name the present case. After the expiration of said period, the corporation ceased to exist for all purposes and it can no longer sue or be sued. However, a corporation that has a pending action and which cannot be terminated within the 3-year period after its dissolution is authorized under Section 78 to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the 3-year period. Although ISI did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the present case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only. Said counsel had been handling the case when the same was pending before the trial court until it was appealed before the Court of Appeals and finally to the Supreme Court. Therefore, there was a substantial compliance with Section 78 of the Corporation Law and as such, ISI could still continue prosecuting the present case even beyond the period of 3 years from the time of its dissolution. Further, the case was instituted on 29 May 1959, during the time when the corporation was still very much alive. Any litigation filed by or against it instituted within the period, but which could not be terminated, must necessarily prolong that period until the final termination of said litigation as otherwise corporations in liquidation would lose what should justly belong to them or would be exempt from the payment of just obligations through a mere technicality, something that courts should prevent.

62 Vesagas vs. Court of Appeals [GR 142924, 5 December 2001]
First Division, Puno (J): 4 concur

Facts: Spouses Delfino and Helenda Raniel are members in good standing of the Luz Village Tennis Club, Inc. Teodoro B. Vesagas, who claims to be the club's duly elected president, with Wilfred D. Asis, who, in turn, claims to be its duly elected vice-president and legal counsel, allegedly summarily stripped them of their lawful membership, without due process of law. Thereafter, the spouses filed a Complaint with the Securities and Exchange Commission (SEC) on 26 March 1997 against the Vesagas and Asis (SEC Case 03-97-5598). The spouses Raniel asked the Commission to declare as illegal their expulsion from the club as it was allegedly done in utter disregard of the provisions of its by-laws as well as the requirements of due process. They likewise sought the annulment of the amendments to the by-laws made on 8 December 1996, changing the annual meeting of the club from the last Sunday of January to November and increasing the number of trustees from nine to fifteen. Finally, they prayed for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction. The application for TRO was denied by SEC Hearing Officer Soller in an Order dated 29 April 1997. Before the hearing officer could start proceeding with the case, however, Vesagas and Asis filed a motion to dismiss on the ground that the SEC lacks jurisdiction over the subject matter of the case. The motion was denied on 5 August 1997. Their subsequent move to have the ruling reconsidered was likewise denied. Unperturbed, they filed a petition for certiorari with the SEC En Banc seeking a review of the hearing officer's orders. The petition was again denied for lack of merit, and so was the motion for its reconsideration in separate orders, dated 14 July 1998 and 17 November 1998, respectively. Dissatisfied with the verdict, Vesagas and Asis promptly sought relief with the Court of Appeals contesting the ruling of the Commission en banc. The appellate court, however, dismissed the petition for lack of merit in a Decision promulgated on 30 July 1999. Then, in a resolution rendered on 16 March 2000, it similarly denied their motion for reconsideration. Vesagas and Asis filed the petition for review on certiorari.

Issue: Whether the club has already ceased to be a corporate body.

Held: The club, according to the SEC's explicit finding, was duly registered and a certificate of incorporation was issued in its favor. The question of whether the club was indeed registered and issued a certification or not is one which necessitates a factual inquiry. The finding of the Commission, as the administrative agency tasked with among others the function of registering and administering corporations, is given great weight and accorded high respect. Moreover, by their own admission contained in the various pleadings which they have

filed in the different stages of this case, Vesagas and Asis themselves have considered the club as a corporation. Otherwise, there is no cogency in spearheading the move for its dissolution. Vesagas and Asis were therefore well aware of the incorporation of the club and even agreed to get elected and serve as its responsible officers before they reconsidered dissolving its corporate form. On the other hand, at the time of the institution of the case with the SEC, the club was not dissolved by virtue of an alleged Board resolution. The Corporation Code establishes the procedure and other formal requirements a corporation needs to follow in case it elects to dissolve and terminate its structure voluntarily and where no rights of creditors may possibly be prejudiced. Section 118 (Voluntary dissolution where no creditors are affected) of the Corporation Code provides that "If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by majority vote of the board of directors or trustees and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or at least two-thirds (2/3) of the members at a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, after sending such notice to each stockholder or member either by registered mail or by personal delivery at least 30 days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities and Exchange Commission shall thereupon issue the certificate of dissolution." To substantiate their claim of dissolution, Vesagas and Asis submitted only two relevant documents: the Minutes of the First Board Meeting held on 5 January 1997, and the board resolution issued on 14 April 1997 which declared "to continue to consider the club as a non-registered or a non-corporate entity and just a social association of respectable and respecting individual members who have associated themselves, since the 1970's, for the purpose of playing the sports of tennis." These two documents will not suffice. The requirements mandated by the Corporation Code should have been strictly complied with by the members of the club. The records reveal that no proof was offered by Vesagas and Asis with regard to the notice and publication requirements. Similarly wanting is the proof of the board members' certification. Lastly, and most important of all, the SEC Order of Dissolution was never submitted as evidence.

63 Philippine Veterans Bank Employees Union-NUBE vs. Vega [GR 105364, 28 June 2001]
First Division, Kapunan (J): 4 concur

Facts: Sometime in 1985, the Central Bank of the Philippines filed with Branch 39 of the Regional Trial Court of Manila a Petition for Assistance in the Liquidation of the Philippine Veterans Bank (Case SP-32311). Thereafter, the Philippine Veterans Bank Employees Union-N.U.B.E. (PVBEU-NUBE), represented by Perfecto V. Fernandez, filed claims for accrued and unpaid employee wages and benefits with said court in SP-3231. After lengthy proceedings, partial payment of the sums due to the employees were made. However, due to the piecemeal hearings on the benefits, many remain unpaid. On 8 March 1991, PVBEU-NUBE Fernandez moved to disqualify the Judge Benjamin Vega, Presiding Judge of Branch 39 of the Regional Trial Court of Manila, from hearing the above case on grounds of bias and hostility towards petitioners. On 2 January 1992, the Congress enacted Republic Act 7169 providing for the rehabilitation of the Philippine Veterans Bank. Thereafter, PVBEU-NUBE and Fernandez filed with the labor tribunals their residual claims for benefits and for reinstatement upon reopening of the bank. Republic Act 7169 entitled "An Act To Rehabilitate The Philippine Veterans Bank Created Under Republic Act 3518, Providing The Mechanisms Therefor, And For Other Purposes", which was signed into law by President Corazon C. Aquino on 2 January 1992 and which was published in the Official Gazette on 24 February 1992, provides in part for the reopening of the Philippine Veterans Bank together with all its branches within the period of 3 years from the date of the reopening of the head office. The law likewise provides for the creation of a rehabilitation committee in order to facilitate the implementation of the provisions of the same. Pursuant to said RA 7169, the Rehabilitation Committee submitted the proposed Rehabilitation Plan of the PVB to the Monetary Board for its approval. Meanwhile, PVB filed a Motion to Terminate Liquidation of Philippine Veterans Bank dated 13 March 1992

with Judge Vega praying that the liquidation proceedings be immediately terminated in view of the passage of RA 7169. On 10 April 1992, the Monetary Board issued Monetary Board Resolution 348 which approved the Rehabilitation Plan submitted by the Rehabilitation Committee. Thereafter, the Monetary Board issued a Certificate of Authority allowing PVB to reopen. Sometime in May 1992, the Central Bank issued a certificate of authority allowing the PVB to reopen. Despite the legislative mandate for rehabilitation and reopening of PVB, Judge Vega continued with the liquidation proceedings of the bank. Moreover, PVBEU-NUBE and Fernandez learned that the Central Bank was set to order the payment and release of employee benefits upon motion of another lawyer, while PVBEU-NUBE's and Fernandez's claims have been frozen to their prejudice. On 3 June 1992, the liquidator filed A Motion for the Termination of the Liquidation Proceedings of the Philippine Veterans Bank with Judge Vega. PVBEU-NUBE and Fernandez, on the other hand, filed the petition for Prohibition with Petition for Preliminary Injunction and application for Ex Parte Temporary Restraining Order. In a Resolution, dated 8 June 1992, the Supreme Court resolved to issue a Temporary Restraining Order enjoining the trial court from further proceeding with the case. On 22 June 1992, MOP Security & Detective Agency (VOPSDA) and its 162 security guards filed a Motion for Intervention with prayer that they be excluded from the operation of the Temporary Restraining Order issued by the Court. On 3 August 1992, the Philippine Veterans Bank opened its doors to the public and started regular banking operations.

Issue: Whether a liquidation court can continue with liquidation proceedings of the Philippine Veterans Bank (PVB) when Congress had mandated its rehabilitation and reopening.

Held: The enactment of Republic Act 7169, as well as the subsequent developments has rendered the liquidation court functus officio. Consequently, Judge Vega has been stripped of the authority to issue orders involving acts of liquidation. Liquidation, in corporation law, connotes a winding up or settling with creditors and debtors. It is the winding up of a corporation so that assets are distributed to those entitled to receive them. It is the process of reducing assets to cash, discharging liabilities and dividing surplus or loss. On the opposite end of the spectrum is rehabilitation which connotes a reopening or reorganization. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. It is crystal clear that the concept of liquidation is diametrically opposed or contrary to the concept of rehabilitation, such that both cannot be undertaken at the same time. To allow the liquidation proceedings to continue would seriously hinder the rehabilitation of the subject bank.

64 Tan Tiong Bio vs. Bureau of Internal Revenue [GR L-8800, 23 October 1956]
En Banc, Reyes JBL (J): 8 concur

Facts: On or about 21 October 1946, the Central Syndicate, a corporation organized for the limited period of two years, addressed a letter to the Collector of Internal Revenue advising the latter of a sale of said corporation by one Dee Hong Lue of surplus properties purchased by the vendor from the Foreign Liquidation Commission, with the condition that the vendee corporation would pay the 3 1/2% sales tax on such surplus properties in the name and in behalf of the vendor Dee Hong Lue. In the same letter, the Syndicate deposited with the Collector the amount of P43,750.00 to answer for the sales tax collectible on the purchase, but representing that Dee Hong Lue expected a refund from the U.S. Government on the original purchase price because of non-delivery of various items included in the contract, and that therefore, the original sales tax due on the sales price was subject to readjustment and reduction. Subsequently, on 31 January 1948, Dee Hong Lue, through counsel, wrote the Collector advising him that the Foreign Liquidation Commission had given him a refund of P31,522.18 on the purchase price of the aforesaid surplus properties, and requesting for the refund of an alleged overpayment of sales tax in the amount of P1,103.28. The Collector ordered the case investigated. Four years later, or on 4 January 1952, the Collector informed Dee Hong Lue of the denial of his request for tax refund. On the same day, the Collector wrote the Central Syndicate, informing it that the investigation made by the Bureau revealed that it was the Syndicate and not Dee Hong Lue that had actually

purchased the surplus goods in question (commonly known us the "Mystery Pile") from the Foreign Liquidation Commission; that the properties were invoiced in the name of Dee Hong Lue in trust for the Syndicate because it was then only in the process of incorporation; and that the Syndicate, after it had been organized, made it appear that the goods were sold to it by Dee Hong Lue, to evade payment of sales tax on its selling prices to the public; and assessed the Syndicate a deficiency sales tax of P27,038.30 and 25% surcharge of P6,759.58 or a total sum of P33,797.88, plus the amount of P300.00 as penalty. Because of the refusal of the Syndicate to pay the deficiency assessment, and the findings of the Bureau that the corporation had no existing properties to satisfy the assessment, the Collector wrote David Sycip and Yu Khe Thai, manager and president, respectively, of the Syndicate, to pay the corporation's tax liability or else be held criminally liable under the Internal Revenue Code. Ultimately, on 5 August 1954, the Collector issued a final definitive ruling reaffirming the deficiency assessment against the Syndicate; from which ruling the latter appealed to the Court of Tax Appeals. In the Court of Tax Appeals, the Solicitor-General moved for the dismissal of the appeal on the ground that the Central Syndicate no longer had the capacity to sue because its term of existence had expired on 15 August 1948, as shown by its Articles of Incorporation attached to the motion to dismiss. The Syndicate opposed the motion, alleging that although the corporation had gone defunct, its officers and directors not only stood liable for the assessment but had also been threatened to be held criminally liable therefor; and offered to be substituted as appellants. After hearing the arguments of both parties, the Court of Tax Appeals issued a resolution dismissing the appeal, on the ground that whatever judgment it would render in favor of the Government would be unenforceable against the syndicate because it is a non-existing entity. From this resolution, the Syndicate appealed to the Supreme Court on petition for review.

Issue: Whether the government can insist on making a tax assessment against a corporation that no longer exists and at the same time oppose the appeal questioning the legality of the assessment precisely on the ground that the corporation is non-existent, and has no longer capacity to sue.

Held: It is true that sections 77 and 78 of our Corporation Law contemplate that corporate existence can be prolonged only for three years from and after the termination of the corporate term, for the purpose of winding up its affairs; and in the case of the Central Syndicate, the three years expired in 1951. On this basis, if it be true that the Syndicate thereafter had no personality to dispute the assessment, it would be equally true that no valid assessment could be imposed on a corporation that no longer had juridical personality. In any event, the government can not insist on making a tax assessment against a corporation that no longer exists and then turn around and oppose the appeal questioning the legality of the assessment precisely on the ground that the corporation is non- existent, and has no longer capacity to sue. The government can not adopt inconsistent stands and thereby deprive the officers and directors of the defunct corporation of the remedy to question the validity and correctness of the assessment for which, if sustained, they would be held personally liable as successors-in-interest to the corporate property. The appeal should not have been dismissed but that the Court of Tax Appeals should have allowed the substitution of its former officers and directors as parties-appellants, since they are proper parties in interest in so far as they may be (and in fact are) held personally liable for the unpaid deficiency assessments made by the Collector of Internal Revenue against the defunct Syndicate.

65 Rebollido vs. Court of Appeals [GR 91123, 28 February 1989]

Third Division, Gutierrez Jr. (J): 4 concur

Facts: In June 1983, the Board of Directors and the stockholders of Pepsi Cola adopted its amended articles of incorporation to shorten its corporate term in accordance with Section 120 of the Corporation Code following the procedure laid down by Section 37 (power to extend or shorten the corporate term) and Section 16 (amendment of the articles of incorporation) of the same Code. Immediately after such amendment or on June 16, 23 and 30, 1983, Pepsi Cola caused the publication of a notice of dissolution and the assumption of liabilities by PEPSICO in a newspaper of general circulation. Meanwhile, a vehicular accident occured on 1

March 1984, involving a Mazda Minibus used as a schoolbus with Plate Number NWK-353 owned and driven by Crisostomo Rebollido and Fernando Valencia, respectively and a truck trailer with Plate Number NRH-522 owned at that time by Pepsi Cola Bottling Company of the Philippines, Inc. and driven by Alberto Alva. The dissolution of Pepsi Cola as approved by the Securities and Exchange Commission (SEC) materialized on 2 March 1984, one day after the accident occurred. On 7 August 1984, Crisostomo Rebollido, Valencia and Edwin Rebollido filed Civil Case 8113 for damages against Pepsi Cola and Alva before the Regional Trial Court of Makati. On 21 September 1984, the sheriff of the lower court served the summons addressed to Pepsi Cola and Alva. It was received by one Nenette Sison who represented herself to be the authorized person receiving court processes as she was the secretary of the legal department of Pepsi Cola. Pepsi Cola failed to file an answer and was later declared in default. The lower court heard the case ex-parte and adjudged Pepsi Cola and Alva jointly and severally liable for damages in a decision rendered on 24 June 1985. They were ordered to pay (1) P12,126.10, for the hospitalization and medical expenses of Valencia; (2) P326.35 as expenses for the medical treatment of Edwin Rebollido; (3) P9,922.00, for the repair of and cost of replacement parts of the Mazda Minibus belonging to Crisostomo Rebollido; (4) P16,200.00, for the expenses incurred by Crisostomo Rebollido in hiring another vehicle to transport school pupils; (5) P102,261.90, as unrealized monthly net income due Rebollido, et al. from June 1984 to 30 March 1985; (6) P10,800.00, representing the unpaid salaries of Valencia for the period from March to December 1984; (7) P20,000.00, as moral damages due Valencia; (8) P20,000.00, as moral damages due Crisostomo Rebollido; (9) A sum equivalent to 10% of the total amount due, as and for attorney's fees; and (10) The costs of suit.

On 5 August 1985, when the default judgment became final and executory, Rebollido, et al. filed a motion for execution, a copy of which was received no longer by Pepsi Cola but by PEPSICO, Inc., on 6 August 1985. At that time, PEPSICO was already occupying the place of business of Pepsi Cola at Ricogen Building, Aguirre Street, Legaspi Village, Makati, Metro Manila. PEPSICO, a foreign corporation organized under the laws of the State of Delaware, USA, held offices here for the purpose, among others, of settling Pepsi Cola's debts, liabilities and obligations which it assumed in a written undertaking executed on 11 June 1983, preparatory to the expected dissolution of Pepsi Cola. Realizing that the judgment of the lower court would eventually be executed against it, PEPSICO opposed the motion for execution and moved to vacate the judgment on the ground of lack of jurisdiction. PEPSICO questioned the validity of the service of summons to a mere clerk. It invoked Section 13, Rule 14 of the Rules of Court on the manner of service upon a private domestic corporation and Section 14 of the same rule on service upon a private foreign corporation. On 14 August 1985, the lower court denied the motion of PEPSICO holding that despite the dissolution and the assumption of liabilities by PEPSICO, there was proper service of summons upon Pepsi Cola. On 27 August 1985, PEPSICO filed a special civil action for certiorari and prohibition with the appellate court to annul and set aside the judgment of the lower court and its order denying the motion to vacate the judgment, for having been issued without jurisdiction. On 29 December 1986, the Court of Appeals granted the petition on the ground of lack of jurisdiction ruling that there was no valid service of summons. The appellate court stated that any judgment rendered against Pepsi Cola after its dissolution is a "liability" of PEPSICO within the contemplation of the undertaking, but service of summons should be made upon PEPSICO itself in accordance with Section 14, Rule 14 of the Rules of Court. It remanded the case to the lower court and ordered that PEPSICO be summoned and be given its day in court. On 27 November 1987, a motion for reconsideration filed by Rebollido, et al. was denied. Hence, the petition.

Issue [1]: Whether Pepsi Cola, the dissolved corporation, is the real party in interest to whom summons should be served in the civil case for damages.

Held [1]: Rebollido, et al. had a valid cause of action for damages against Pepsi Cola. The law provides that a corporation whose corporate term has ceased can still he made a party to suit. Under paragraph 1, Section 122 of the Corporation Code, a dissolved corporation "shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its

property and to distribute its assets, but not for the purpose of continuing the business for which it was established." The rationale for extending the period of existence of a dissolved corporation is that "this continuance of its legal existence for the purpose of enabling it to close up its business is necessary to enable the corporation to collect the demands due it as well as to allow its creditors to assert the demands against it. If this were not so, then a corporation that became involved in liabilities might escape the payment of its just obligations by merely surrendering its charter, and thus defeat its creditors or greatly hinder and delay them in the collection of their demands. This course of conduct on the part of corporations the law in justice to persons dealing with them does not permit. The person who has a valid claim against a corporation, whether it arises in contract or tort should not be deprived of the right to prosecute an action for the enforcement of his demands by the action of the stockholders of the corporation in agreeing to its dissolution. The dissolution of a corporation does not extinguish obligations or liabilities due by or to it." Herein, the right of action of Rebollido, et al. against Pepsi Cola and its driver arose not at the time when the complaint was filed but when the acts or omission constituting the cause of action accrued, i.e. on March 1, 1984 which is the date of the accident and when Pepsi Cola allegedly committed the wrong.

Issue [2]: Whether the service of summons through Ms. Nenette C. Sison, upon Pepsi Cola operates to vest jurisdiction upon PEPSICO.

Held [2]: At the time of the issuance and receipt of the summons, Pepsi Cola was already dissolved. The Court is of the opinion that service is allowed in such a situation. In the American case of Crawford v. Refiners Co-operative Association, Incorporation (71 NM 1, 375 p 2d 212 [1962]), it was held that a "defendant corporation is subject to suit and service of process even though dissolved." Nowhere in the Corporation Code is there any special provision on how process shall be served upon a dissolved defendant corporation. The absence of any such provision, however, should not leave Rebollido, et al. without any remedy, unable to pursue recovery for wrongs committed by the corporation before its dissolution. Since Philippine law recognizes the liability of a dissolved corporation to an aggrieved creditor, it is but logical for the law to allow service of process upon a dissolved corporation. Otherwise, substantive rights would be lost by the mere lack of explicit technical rules. The Rules of Court on service of summons upon a private domestic corporation is also applicable to a corporation which is no longer a going concern. Section 13, Rule 14 mandates that "If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors." The case of Castle's Administrator v. Acrogen Coal Co., is illustrative of the manner by which service can nevertheless be made despite the death of the entity; i.e. "when an action that might have been instituted against a foreign or domestic corporation while it was a going concern is instituted after its dissolution, process in the action may be served upon the same person upon whom the process could be served before the dissolution." Still, a liberal interpretation of Section 13, Rule 14 has been adopted in the case of G & G Trading Corporation v. Court of Appeals (158 SCRA 466 [1988]) that "although it maybe true that the service of summons was made on a person not authorized to receive the same, nevertheless since it appears that the summons and complaint were in fact received by the corporation through its said clerk, the Court finds that there was substantial compliance, with the rule on service of summons. Indeed the purpose of said rule as above stated to assure service of summons on the corporation had thereby been attained. The need for speedy justice must prevail over a technicality." The rationale for the rule on service of summons upon a defendant corporation "to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. In other words, 'to bring home to the corporation notice of the filing of the action." Herein, the fact that the summons was received through Miss Sison is not disputed by the parties. Whether summons was served through the secretary of the legal department who acted as agent of Pepsi Cola, as claimed by Rebollido et al., or whether Miss Sison works for PEPSICO's legal department, as PEPSICO claims, and not of Pepsi Cola, PEPSICO had the obligation to act upon the summons received and to defend Pepsi Cola pursuant to the undertaking it executed on 11 June 1983. Whomsoever Miss Sison was acting for in receiving the summons there is no

question that the notice of the action was promptly delivered either to Pepsi Cola or PEPSICO with whom she is admittedly connected. There was substantial compliance with Section 13, Rule 14 because the purpose of notice was satisfied. As there was proper service of summons to bind Pepsi Cola, the decision of the lower court against Pepsi Cola rendered on 24 June 1985 is valid and enforceable against PEPSICO. Even assuming that jurisdiction over PEPSICO can be acquired only by way of service of summons in literal compliance with Section 14, Rule 14, Rebollido, et al. cannot be faulted for having brought the case naming Pepsi Cola as one of the defendants so that the summons was addressed only to the defendants named therein and not to PEPSICO. At the time of the commencement of the suit below, Rebollido, et al. had no knowledge of the legal dissolution and the undertaking assumed by PEPSICO. The publication of the notice of dissolution and the assumption of liabilities, done in June 1983 or 8 months before the vehicular accident, cannot serve as a notice to Rebollido, et al. who were not yet creditors having a claim upon a quasi-delict.

66 Facilities Management Corporation vs. de la Osa [GR L-38649, 26 March 1979]
First Division, Makasiar (J): 5 concur

Facts: Facilities Management Corporation and J. S. Dreyer are domiciled in Wake Island while J. V. Catuira is an employee of FMC stationed in Manila. Leonardo dela Osa was employed by FMC in Manila, but rendered work in Wake Island, with the approval of the Department of Labor of the Philippines. De la Osa was employed as (1) painter with an hourly rate of $1.25 from March 1964 to November 1964, inclusive; (2) houseboy with an hourly rate of $1.26 from December 1964 to November 1965, inclusive; (3) houseboy with an hourly rate of $1.33 from December 1965 to August 1966, inclusive; and (4) cashier with an hourly rate of $1.40 from August 1966 to March 27 1967, inclusive. He further averred that from December, 1965 to August, 1966, inclusive, he rendered overtime services daily, and that this entire period was divided into swing and graveyard shifts to which he was assigned, but he was not paid both overtime and night shift premiums despite his repeated demands from FMC, et al. In a petition filed on 1 July 1967, dela Osa sought his reinstatement with full backwages, as well as the recovery of his overtime compensation, swing shift and graveyard shift differentials. Subsequently on 3 May 1968, FMC, et al. filed a motion to dismiss the subject petition on the ground that the Court has no jurisdiction over the case, and on 24 May 1968, de la Osa interposed an opposition thereto. Said motion was denied by the Court in its Order issued on 12 July 1968. Subsequently, after trial, the Court of Industrial Relations, in a decision dated 14 February 1972, ordered FMC, et al. to pay de la Osa his overtime compensation, as well as his swing shift and graveyard shift premiums at the rate of 50% per cent of his basic salary. FMC, et al. filed the petition for review on certiorari.

Issue [1]: Whether the mere act by a non-resident foreign corporation of recruiting Filipino workers for its own use abroad, in law doing business in the Philippines.

Held [1]: In its motion to dismiss, FMC admits that Mr. Catuira represented it in the Philippines "for the purpose of making arrangements for the approval by the Department of Labor of the employment of Filipinos who are recruited by the Company as its own employees for assignment abroad." In effect, Mr. Catuira was alleged to be a liaison officer representing FMC in the Philippines. Under the rules and regulations promulgated by the Board of Investments which took effect 3 February 1969, implementing RA 5455, which took effect 30 September 1968, the phrase "doing business" has been exemplified with illustrations, among them being as follows: ""(1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm, not acting independently of the foreign firm, amounting to negotiation or fixing of the terms and conditions of sales or service contracts, regardless of whether the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines; (2) appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, i.e., it transacts business in its name and for its own account, and not in the name or for the account of the principal; xxx (4) Opening offices, whether called 'liaison' offices, agencies or branches, unless proved otherwise. xxx (10) Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of

acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commercial gain or of the purpose and objective of the business organization."

Issue [2]: Whether FMC has been "doing business in the Philippines" so that the service of summons upon its agent in the Philippines vested the Court of First Instance of Manila with jurisdiction.

Held [2]: FMC may be considered as "doing business in the Philippines" within the scope of Section 14 (Service upon private foreign corporations), Rule 14 of the Rules of Court which provides that "If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines." Indeed, FMC, in compliance with Act 2486 as implemented by Department of Labor Order IV dated 20 May 1968 had to appoint Jaime V. Catuira, 1322 A. Mabini, Ermita, Manila "as agent for FMC with authority to execute Employment Contracts and receive, in behalf of that corporation, legal services from and be bound by processes of the Philippine Courts of Justice, for as long as he remains an employee of FMC." It is a fact that when the summons for FMC was served on Catuira he was still in the employ of the FMC. Hence, if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from courts in the Philippines (such as in earlier cases of Aetna Casualty & Surety Company, vs. Pacific Star Line, etc. [GR L-26809], In Mentholatum vs. Mangaliman, and Eastboard Navigation vs. Juan Ysmael & Co.), a fortiori, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines.

67 Home Insurance Company vs. Eastern Shipping Lines [GR L-34382, 20 July 1983]; also Home Insurance vs. Nedlloyd Lijnen [GR L-34383]
First Division, Gutierrez Jr. (J): 4 concur, 2 on leave

Facts: *[GR L-34382]* On or about 13 January 1967, S. Kajita & Co., on behalf of Atlas Consolidated Mining & Development Corporation, shipped on board the SS Eastern Jupiter from Osaka, Japan, 2,361 coils of Black Hot Rolled Copper Wire Rods. The said VESSEL is owned and operated by Eastern Shipping Lines. The shipment was covered by Bill of Lading O-MA-9, with arrival notice to Phelps Dodge Copper Products Corporation of the Philippines at Manila. The shipment was insured with the Home Insurance Company against all risks in the amount of P1,580,105.06 under its Insurance Policy AS-73633. The coils discharged from the VESSEL numbered 2,361, of which 53 were in bad order. What the Phelps Dodge ultimately received at its warehouse was the same number of 2,361 coils, with 73 coils loose and partly cut, and 28 coils entangled, partly cut, and which had to be considered as scrap. Upon weighing at Phelps Dodge's warehouse, the 2,361 coils were found to weight 263,940.85 kilos as against its invoiced weight of 264,534.00 kilos or a net loss/shortage of 593.15 kilos, or 1,209,56 lbs., according to the claims presented by the Phelps Dodge against Home Insurance, the Eastern Shipping, and Angel Jose Transportation Inc. For the loss/damage suffered by the cargo, Home Insurance paid the Phelps Dodge under its insurance policy the amount of P3,260.44, by virtue of which Home Insurance became subrogated to the rights and actions of the Phelps Dodge. Home Insurance made demands for payment against the Eastern Shipping and the Angel Jose Transportation for reimbursement of the aforesaid amount but each refused to pay the same."

[GR L-34383] On or about 22 December 1966, the Hansa Transport Kontor shipped from Bremen, Germany, 30 packages of Service Parts of Farm Equipment and Implements on board the VESSEL, SS 'NEDER RIJN' owned by N. V. Nedlloyd Lijnen, and represented in the Philippines by its local agent, the Columbian Philippines, Inc.. The shipment was covered by Bill of Lading No. 22 for transportation to, and delivery at, Manila, in favor of International Harvester Macleod, Inc. The shipment was insured with Home Insurance company under its Cargo Policy AS-73735 'with average terms' for P98,567.79. The packages discharged from the VESSEL numbered 29, of which seven packages were found to be in bad order. What International Harvester ultimately received at its warehouse was the same number of 29 packages with 9 packages in bad

order. Out of these 9 packages, 1 package was accepted by International Harvester in good order due to the negligible damages sustained. Upon inspection at International Harvester's warehouse, the contents of 3 out of the 8 cases were also found to be complete and intact, leaving 5 cases in bad order. The contents of these 5 packages showed several items missing in the total amount of $131.14; while the contents of the undelivered 1 package were valued at $394.66, or a total of $525.80 or P2,426.98. For the short-delivery of 1 package and the missing items in 5 other packages, Home Insurance paid International Harvester under its Insurance Cargo Policy the amount of P2,426.98, by virtue of which Home Insurance became subrogated to the rights and actions of International Harvester. Demands were made on N.V. Nedlloyd Lijnen and International Harvester for reimbursement thereof but they failed and refused to pay the same."

When the insurance contracts which formed the basis of these cases were executed, Home Insurance had not yet secured the necessary licenses and authority; but when the complaints in these two cases were filed, Home Insurance had already secured the necessary license to conduct its insurance business in the Philippines. In both cases, Home Insurance made the averment regarding its capacity to sue, as that it "is a foreign insurance company duly authorized to do business in the Philippines through its agent, Mr. Victor H. Bello, of legal age and with office address at Oledan Building, Ayala Avenue, Makati, Rizal." The Court of First Instance of Manila, Branch XVII, however, dismissed the complaints in both cases, on the ground that Home Insurance had failed to prove its capacity to sue. Home Insurance filed the petitions for review on certiorari, which were consolidated.

Issue: Whether Home Insurance, a foreign corporation licensed to do business at he time of the filing of the case, has the capacity to sue for claims on contracts made when it has no license yet to do business in the Philippines.

Held: As early as 1924, the Supreme Court ruled in the leading case of Marshall Wells Co. v. Henry W. Elser & Co. (46 Phil. 70) that the object of Sections 68 and 69 of the Corporation Law was to subject the foreign corporation doing business in the Philippines to the jurisdiction of Philippine courts. The Corporation Law must be given a reasonable, not an unduly harsh, interpretation which does not hamper the development of trade relations and which fosters friendly commercial intercourse among countries. The objectives enunciated in the 1924 decision are even more relevant today when we commercial relations are viewed in terms of a world economy, when the tendency is to re-examine the political boundaries separating one nation from another insofar as they define business requirements or restrict marketing conditions. The court distinguished between the denial of a right to take remedial action and the penal sanction for non-registration. Insofar as transacting business without a license is concerned, Section 69 of the Corporation Law imposed a penal sanction — imprisonment for not less than 6 months nor more than 2 years or payment of a fine not less than P200.00 nor more than P1,000.00 or both in the discretion of the court. There is a penalty for transacting business without registration. And insofar as litigation is concerned, the foreign corporation or its assignee may not maintain any suit for the recovery of any debt, claim, or demand whatever. The Corporation Law is silent on whether or not the contract executed by a foreign corporation with no capacity to sue is null and void ab initio. Still, there is no question that the contracts are enforceable. The requirement of registration affects only the remedy. Significantly, Batas Pambansa 68, the Corporation Code of the Philippines has corrected the ambiguity caused by the wording of Section 69 of the old Corporation Law. Section 133 of the present Corporation Code provides that "No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency in the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws." The old Section 69 has been reworded in terms of non-access to courts and administrative agencies in order to maintain or intervene in any action or proceeding. The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code. It is, therefore, not necessary to declare the contract null and void even as against the erring foreign corporation. The penal

sanction for the violation and the denial of access to Philippine courts and administrative bodies are sufficient from the viewpoint of legislative policy. Herein, the lack of capacity at the time of the execution of the contracts was cured by the subsequent registration is also strengthened by the procedural aspects of these cases. Home Insurance averred in its complaints that it is a foreign insurance company, that it is authorized to do business in the Philippines, that its agent is Mr. Victor H. Bello, and that its office address is the Oledan Building at Ayala Avenue, Makati. These are all the averments required by Section 4, Rule 8 of the Rules of Court. Home Insurance sufficiently alleged its capacity to sue.

68 The Mentholatum Co. Inc. vs. Mangaliman [GR 47701, 27 June 1941]
First Division, Laurel (J): 3 concur, 1 dissents

Facts: The Mentholatum Co., Inc., is a Kansas corporation which manufactures "Mentholatum," a medicament and salve adapted for the treatment of colds, nasal irritations, chapped skin, insect bites, rectal irritation and other external ailments of the body. The Philippine-American Drug Co., Inc., is its exclusive distributing agent in the Philippines authorized by it to look after and protect its interests. On 26 June 1919 and on 21 January 1921, the Mentholatum Co., Inc., registered with the Bureau of Commerce and Industry the word, "Mentholatum", as trade mark for its products. The Mangaliman brothers prepared a medicament and salve named "Mentholiman" which they sold to the public packed in a container of the same size, color and shape as "Mentholatum." As a consequence of these acts of the Mangalimans, Mentholatum, etc. suffered damages from the diminution of their sales and the loss of goodwill and reputation of their product in the market. On 1 October 1935, the Mentholatum Co., Inc., and the Philippine-American Drug, Co., Inc. instituted an action in the Court of First Instance (CFI) of Manila against Anacleto Mangaliman, Florencio Mangaliman and the Director of the Bureau of Commerce for infringement of trade mark and unfair competition (Civil case 48855). Mentholatum, etc. prayed for the issuance of an order restraining Anacleto and Florencio Mangaliman from selling their product "Mentholiman," and directing them to render an accounting of their sales and profits and to pay damages. After a protracted trial, featured by the dismissal of the case on 9 March 1936 for failure of plaintiff's counsel to attend, and its subsequent reinstatement on April 4, 1936, the Court of First Instance of Manila, on 29 October 1937, rendered judgment in favor of Mentholatum, etc. In the Court of Appeals (CA-GR 46067), the decision of the trial court was, on 29 June 1940, reversed, said tribunal holding that the activities of the Mentholatum Co., Inc., were business transactions in the Philippines, and that by section 69 of the Corporation Law, it may not maintain the suit. Mentholatum, etc. filed the petition for certiorari.

Issue: Whether Mentholatum, etc. could prosecute the instant action without having secured the license required in section 69 of the Corporation Law.

Held: No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. Herein, Mentholatum Co., through its agent, the Philippine-American Drug Co., Inc., has been doing business in the Philippines by selling its products here since the year 1929, at least. Whatever transactions the Philippine-American Drug Co., Inc., had executed in view of the law, the Mentholatum Co., Inc., being a foreign corporation doing business in the Philippines without the license required by section 68 of the Corporation Law, it may not prosecute this action for violation of trade mark and unfair competition. Neither may the Philippine-American Drug Co., Inc., maintain the action here for the reason that the distinguishing features of the agent being his representative character and derivative authority, it cannot now, to the advantage of its principal, claim an independent standing in court. Further, the recognition of the legal status of a foreign

corporation is a matter affecting the policy of the forum, and the distinction drawn in Philippine Corporation Law is an expression of the policy. The general statement made in Western Equipment and Supply Co. vs. Reyes regarding the character of the right involved should not be construed in the derogation of the policy-determining authority of the State. The right of Mentholatum conditioned upon compliance with the requirement of section 69 of the Corporation Law to protect its rights, is reserved.

69 Eriks Pte. Ltd. vs. Court of Appeals [GR 118843, 6 February 1997]
Third Division, Panganiban (J): 4 concur

Facts: Eriks Pte. Ltd. is a non-resident foreign corporation engaged in the manufacture and sale of elements used in sealing pumps, valves and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial uses. On various dates covering the period January 17 — August 16, 1989, Delfin Enriquez, Jr., doing business under the name and style of Delrene EB Controls Center and/or EB Karmine Commercial, ordered and received from Eriks Pte. Ltd. various elements used in sealing pumps, valves, pipes and control equipment, PVC pipes and fittings. The transfers of goods were perfected in Singapore, for Enriquez's account, F.O.B. Singapore, with a 90-day credit term. Subsequently, demands were made by Eriks upon Enriquez to settle his account, but the latter failed/refused to do so. On 28 August 1991, Eriks filed with the Regional Trial Court of Makati, Branch 138, Civil Case 91-2373 for the recovery of S$41,939.63 or its equivalent in Philippine currency, plus interest thereon and damages. Enriquez responded with a Motion to Dismiss, contending that Eriks had no legal capacity to sue. In an Order dated 8 March 1993, the trial court dismissed the action on the ground that Eriks is a foreign corporation doing business in the Philippines without a license. On appeal and on 25 January 1995, the appellate court (CA GR CV 41275) affirmed said order as it deemed the series of transactions between Eriks and Enriquez not to be an "isolated or casual transaction." Thus, the appellate court likewise found Eriks to be without legal capacity to sue. Eriks filed the petition for review.

Issue: Whether a foreign corporation which sold its products 16 times over a five-month period to the same Filipino buyer without first obtaining a license to do business in the Philippines, is prohibited from maintaining an action to collect payment therefor in Philippine courts.

Held: Section 133 of the Corporation Code provides that "No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws." The provision prohibits, not merely absence of the prescribed license, but it also bars a foreign corporation "doing business" in the Philippines without such license access to Philippine courts. A foreign corporation without such license is not ipso facto incapacitated from bringing an action. A license is necessary only if it is "transacting or doing business" in the country. However, there is no definitive rule on what constitutes "doing," "engaging in," or "transacting" business. The Corporation Code itself does not define such terms. To fill the gap, the evolution of its statutory definition has produced a rather all-encompassing concept in Republic Act 7042 in this wise: "The phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eight(y) (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation;

nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account." The accepted rule in jurisprudence is that each case must be judged in the light of its own environmental circumstances. It should be kept in mind that the purpose of the law is to subject the foreign corporation doing business in the Philippines to the jurisdiction of Philippine courts. It is not to prevent the foreign corporation from performing single or isolated acts, but to bar it from acquiring a domicile for the purpose of business without first taking the steps necessary to render it amenable to suits in the local courts. Herein, more than the sheer number of transactions entered into, a clear and unmistakable intention on the part of Eriks to continue the body of its business in the Philippines is more than apparent. As alleged in its complaint, it is engaged in the manufacture and sale of elements used in sealing pumps, valves, and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial use. Thus, the sale by Eriks of the items covered by the receipts, which are part and parcel of its main product line, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business, pure and simple. Further, its grant and extension of 90-day credit terms to Enriquez for every purchase made, unarguably shows an intention to continue transacting with Enriquez, since in the usual course of commercial transactions, credit is extended only to customers in good standing or to those on whom there is an intention to maintain long-term relationship. The series of transactions in question could not have been isolated or casual transactions. What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions. Given the facts of the case, the Court cannot see how Eriks' business dealings will fit the category of "isolated transactions" considering that its intention to continue and pursue the corpus of its business in the country had been clearly established. It has not presented any convincing argument with equally convincing evidence for the Court to rule otherwise. Accordingly and ineluctably, Eriks must be held to be incapacitated to maintain the action a quo against Enriquez.

70 MR Holdings Ltd. vs. Sheriff Bajar [GR 138104, 11 April 2002]

Third Division, Sandoval Gutierrez (J): 4 concur

Facts: Under a "Principal Loan Agreement" and "Complementary Loan Agreement," both dated 4 November 1992, Asian Development Bank (ADB), a multilateral development finance institution, agreed to extend to Marcopper Mining Corporation (Marcopper) a loan in the aggregate amount of US$40,000,000.00 to finance the latter's mining project at Sta. Cruz, Marinduque. The principal loan of US$15,000,000.00 was sourced from ADB's ordinary capital resources, while the complementary loan of US$25,000,000.00 was funded by the Bank of Nova Scotia, a participating finance institution. On even date, ADB and Placer Dome, Inc., (Placer Dome), a foreign corporation which owns 40% of Marcopper, executed a "Support and Standby Credit Agreement" whereby the latter. agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB. To secure the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage" dated 11 November 1992, covering substantially all of its (Marcopper's) properties and assets in Marinduque. It was registered with the Register of Deeds on 12 November 1992. When Marcopper defaulted in the payment of its loan obligation, Placer Dome, in fulfillment of its undertaking under the "Support and Standby Credit Agreement," and presumably to preserve its international credit standing, agreed to have its subsidiary corporation, MR Holding, Ltd., assumed Marcopper's obligation to ADB in the amount of US$18,453,450.02. Consequently, in an "Assignment Agreement" dated 20 March 1997 ADB assigned to MR Holdings all its rights, interests and obligations under the principal and complementary loan agreements, ("Deed of Real Estate and Chattel Mortgage," and "Support and Standby Credit Agreement"). On 8 December 1997, Marcopper likewise executed a "Deed of Assignment" in favor of MR Holdings. Under its provisions,

Marcopper assigns, transfers, cedes and conveys to MR Holdings, its assigns and/or successors-in-interest all of its (Marcopper's) properties, mining equipment and facilities. Meanwhile, it appeared that on 7 May 1997, Solidbank Corporation (Solidbank) obtained a Partial Judgment against Marcopper from the RTC, Branch 26, Manila, in Civil Case 96-80083, ordering Marcopper to pay Solidbank he amount if PHP 52,970,756.89, plus interest and charges until fully paid; to pay an amount equivalent to 10% of above-stated amount as attorney's fees; and to pay the costs of suit. Upon Solidbank's motion, the RTC of Manila issued a writ of execution pending appeal directing Carlos P. Bajar, sheriff, to require Marcopper "to pay the sums of money to satisfy the Partial Judgment." Thereafter, Bajar issued two notices of levy on Marcopper's personal and real properties, and over all its stocks of scrap iron and unserviceable mining equipment. Together with sheriff Ferdinand M. Jandusay of the RTC, Branch 94, Boac, Marinduque, Bajar issued two notices setting the public auction sale of the levied properties on 27 August 1998 at the Marcopper mine site. Having learned of the scheduled auction sale, MR Holdings served an "Affidavit of Third-Party Claim" upon the sheriffs on 26 August 1998, asserting its ownership over all Marcopper's mining properties, equipment and facilities by virtue of the "Deed of Assignment." Upon the denial of its "Affidavit of Third-Party Claim" by the RTC of Manila, MR Holdings commenced with the RTC of Boac, Marinduque, presided by Judge Leonardo P. Ansaldo, a complaint for reivindication of properties, etc., with prayer for preliminary injunction and temporary restraining order against Solidbank, Marcopper, and sheriffs Bajar and Jandusay (Civil Case 98-13). In an Order dated 6 October 1998, Judge Ansaldo denied MR Holdings' application for a writ of preliminary injunction on the ground that (a) MR Holdings has no legal capacity to sue, it being a foreign corporation doing business in the Philippines without license; (b) an injunction will amount "to staying the execution of a final judgment by a court of co-equal and concurrent jurisdiction;" and (c) the validity of the "Assignment Agreement" and the "Deed of Assignment" has been "put into serious question by the timing of their execution and registration." Unsatisfied, MR Holdings elevated the matter to the Court of Appeals on a Petition for Certiorari, Prohibition and Mandamus (CA-GR SP 49226). On 8 January 1999, the Court of Appeals rendered a Decision affirming the trial court's decision. MR Holdings filed the Petition for Review on Certiorari.

Issue [1]: Whether MR Holdings' participation under the "Assignment Agreement" and the "Deed of Assignment" constitutes “doing business.”

Held [1]: Batas Pambansa 68, otherwise known as "The Corporation Code of the Philippines," is silent as to what constitutes doing" or "transacting" business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object for which the corporation was organized." The traditional case law definition has metamorphosed into a statutory definition, having been adopted with some qualifications in various pieces of legislation in Philippine jurisdiction, such as Republic Act 7042 (Foreign Investment Act of 1991), and Republic Act 5455. There are other statutes defining the term "doing business," and as may be observed, one common denominator among them all is the concept of "continuity." The expression "doing business" should not be given such a strict and literal construction as to make it apply to any corporate dealing whatever. At this early stage and with MR Holdings' acts or transactions limited to the assignment contracts, it cannot be said that it had performed acts intended to continue the business for which it was organized. Herein, at this early stage and with MR Holdings' acts or transactions limited to the assignment contracts, it cannot be said that it had performed acts intended to continue the business for which it was organized. It may not be amiss to point out that the purpose or business for which MR Holdings was organized is not discernible in the records. No effort was exerted by the Court of Appeals to establish the nexus between MR Holdings' business and the acts supposed to constitute "doing business." Thus, whether the assignment contracts were incidental to MR Holdings' business or were continuation thereof is beyond determination. The Court of Appeals' holding that MR Holdings was determined to be "doing business" in the Philippines is based mainly on conjectures and speculation. In concluding that the "unmistakable intention" of MR Holdings is to continue Marcopper's business, the Court

of Appeals hangs on the wobbly premise that "there is no other way for petitioner to recover its huge financial investments which it poured into Marcopper's rehabilitation without it (petitioner) continuing Marcopper's business in the country." Absent overt acts of MR Holdings from which we may directly infer its intention to continue Marcopper's business, the Supreme Court cannot give its concurrence. Significantly, a view subscribed upon by many authorities is that the mere ownership by a foreign corporation of a property in a certain state, unaccompanied by its active use in furtherance of the business for which it was formed, is insufficient in itself to constitute doing business. Further, long before MR Holdings assumed Marcopper's debt to ADB and became their assignee under the two assignment contracts, there already existed a "Support and Standby Credit Agreement" between ADB and Placer Dome whereby the latter bound itself to provide cash flow support for Marcopper's payment of its obligations to ADB. Plainly, MR Holdings' payment of US$18,453,450.12 to ADB was more of a fulfillment of an obligation under the "Support and Standby Credit Agreement" rather than an investment. That MR Holdings had to step into the shoes of ADB as Marcopper's creditor was just a necessary legal consequence of the transactions that transpired. Also, the "Support and Standby Credit Agreement" was executed 4 years prior to Marcopper's insolvency, hence, the alleged "intention of MR Holdings to continue Marcopper's business" could have no basis for at that time, Marcopper's fate cannot yet be determined. In the final analysis, MR Holdings was engaged only in isolated acts or transactions. Single or isolated acts, contracts, or transactions of foreign corporations are not regarded as a doing or carrying on of business. Typical examples of these are the making of a single contract, sale, sale with the taking of a note and mortgage in the state to secure payment therefor, purchase, or note, or the mere commission of a tort. In these instances, there is no purpose to do any other business within the country.

71 Hutchison Ports Philippines Limited vs. Subic Bay Metropolitan Authority (SBMA) [GR 131367, 31 August 2000]
First Division, Ynares-Santiago (J): 3 concur, 1 concurs in result

Facts: On 12 February 1996, the Subic Bay Metropolitan Authority (SBMA) advertised in leading national daily newspapers and in one international publication, an invitation offering to the private sector the opportunity to develop and operate a modern marine container terminal within the Subic Bay Freeport Zone. Out of 7 bidders who responded to the published invitation, 3 were declared by the SBMA as qualified bidders after passing the pre-qualification evaluation conducted by the SBMA's Technical Evaluation Committee (SBMA-TEC) These are: (1) International Container Terminal Services, Inc. (ICTSI); (2) a consortium consisting of Royal Port Services, Inc. and HPC Hamburg Port Consulting GMBH (RPSI); and (3) Hutchison Ports Philippines Limited (HPPL), representing a consortium composed of HPPL, Guoco Holdings (Phils.), Inc. and Unicol Management Services, Inc. All 3 qualified bidders were required to submit their respective formal bid package on or before 1 July 1996 by the SBMA's Pre-qualification, Bids and Awards Committee (SBMA-PBAC). Thereafter, the services of 3 international consultants recommended by the World Bank for their expertise were hired by SBMA to evaluate the business plans submitted by each of the bidders, and to ensure that there would be a transparent and comprehensive review of the submitted bids. The SBMA also hired the firm of Davis, Langdon and Seah Philippines, Inc. to assist in the evaluation of the bids and in the negotiation process after the winning bidder is chosen. All the consultants, after such review and evaluation unanimously concluded that HPPL's Business Plan was "far superior to that of the two other bidders." However, even before the sealed envelopes containing the bidders' proposed royalty fees could be opened at the appointed time and place, RPSI formally protested that ICTSI is legally barred from operating a second port in the Philippines based on Executive Order 212 and Department of Transportation and Communication (DOTC) Order 95-863. RPSI thus requested that the financial bid of ICTSI should be set aside. Nevertheless, the opening of the sealed financial bids proceeded "under advisement" relative to the protest signified by RPSI. The financial bids, more particularly the proposed royalty fee of each bidder, was as follows: (1) ICTSI, US$57.80 TEU; (2) HPPL, US$20.50 TEU; and (3) RPSI, US$15.08 TEU. The SBMA-PBAC decided to suspend the announcement of the winning bid, however, and instead gave ICTSI 7 days within which to respond to the letter-protest lodged by RPSI. The HPPL joined in RPSI's protest, stating that ICTSI should be disqualified because it was already operating the Manila International Container Port

(MICP), which would give rise to inevitable conflict of interest between the MICP and the Subic Bay Container Terminal facility. On 15 August 1996, the SBMA-PBAC issued a resolution rejecting the bid of ICTSI because "said bid does not comply with the requirements of the tender documents and the laws of the Philippines." The following day, ICTSI filed a letter-appeal with SBMA's Board of Directors requesting the nullification and reversal of the resolution rejecting ICTSI's bid while awarding the same to HPPL. But even before the SBMA Board could act on the appeal, ICTSI filed a similar appeal before the Office of the President. On 30 August 1996, then Chief Presidential Legal Counsel (CPLC) Renato L. Cayetano submitted a memorandum to then President Fidel V. Ramos, recommending that the President direct SBMA Chairman Gordon to consider re-evaluating the financial bids submitted by the parties, taking into consideration all the following factors: (1) Reinstate ICTSI's bid; (2) Disregard all arguments relating to "monopoly"; (3) The re-evaluation must be limited to the parties' financial bids. Considering that the parties' business have been accepted (passed), strictly follow the criteria for bid evaluation provided for in pars. (c) and (d), Part B (1) of the Tender Document; (4) In the re-evaluation, the COA should actively participate to determine which of the financial bids is more advantageous; (5) In addition, all the parties should be given ample opportunity to elucidate or clarify the components/justification for their respective financial bids in order to ensure fair play and transparency in the proceedings; and (6) The President's authority to review the final award shall remain." The recommendation of CPLC Cayetano was approved by President Ramos. A copy of President Ramos' handwritten approval was sent to the SBMA Board of Directors. Accordingly, the SBMA Board, with the concurrence of representatives of the Commission on Audit, agreed to focus the reevaluation of the bids in accordance with the evaluation criteria and the detailed components contained in the Tender Document, including all relevant information gleaned from the bidding documents, as well as the reports of the three international experts and the consultancy firm hired by the SBMA. On 19 September 1996, the SBMA Board issued a Resolution, declaring that the best possible offer and the most advantageous to the government is that of HPPL, which was awarded the concession for the operation and development of the Subic Bay Container Terminal. In a letter dated 24 September 1996, the SBMA Board of Directors submitted to the Office of the President the results of the re-evaluation of the bid proposals. Notwithstanding the SBMA Board's recommendations and action awarding the project to HPPL, then Executive Secretary Ruben Torres submitted a memorandum to the Office of the President recommending that another rebidding be conducted. Consequently, the Office of the President issued a Memorandum directing the SBMA Board of Directors to refrain from signing the Concession Contract with HPPL and to conduct a rebidding of the project. In the meantime, the Resident Ombudsman for the DOTC filed a complaint against members of the SBMA-PBAC before the Office of the Ombudsman for alleged violation of Section 3(e) of Republic Act 3019 for awarding the contract to HPPL. On 16 April 1997, the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman issued a Resolution absolving the members of the SBMA-PBAC of any liability and dismissing the complaint against them.

On 7 July 1997, the HPPL, feeling aggrieved by the SBMA's failure and refusal to commence negotiations and to execute the Concession Agreement despite its earlier pronouncements that HPPL was the winning bidder, filed a complaint against SBMA before the Regional Trial Court (RTC) of Olongapo City, Branch 75, for specific performance, mandatory injunction and damages. In due time, ICTSI, RPSI and the Office of the President filed separate Answers-in-Intervention to the complaint opposing the reliefs sought by complainant HPPL. While the case before the trial court was pending litigation, on 4 August 1997, the SBMA sent notices to HPPL, ICTSI and RPSI requesting them to declare their interest in participating in a rebidding of the proposed project. On 20 October 1997, HPPL received a copy of the minutes of the pre-bid conference which stated that the winning bidder would be announced on 5 December 1997. Then on 4 November 1997, HPPL learned that the SBMA had accepted the bids of ICTSI and RPSI who were the only bidders who qualified. In order to enjoin the rebidding while the case was still pending, HPPL filed a motion for maintenance of the status quo on 28 October 1997. The said motion was denied by the court a quo in an Order dated 3 November 1997. HPPL filed the petition against SBMA, ICTSI, RPSI and the Executive Secretary seeking to obtain a prohibitory injunction.

Issue: Whether HPPL has the legal capacity to even seek redress from the Court.

Held: HPPL is a foreign corporation, organized and existing under the laws of the British Virgin Islands. While the actual bidder was a consortium composed of HPPL, and two other corporations, namely, Guoco Holdings (Phils.) Inc. and Unicol Management Services, Inc., it is only HPPL that has brought the controversy before the Court, arguing that it is suing only on an isolated transaction to evade the legal requirement that foreign corporations must be licensed to do business in the Philippines to be able to file and prosecute an action before Philippines courts. There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, it has often been held that a single act or transaction may be considered as "doing business" when a corporation performs acts for which it was created or exercises some of the functions for which it was organized. The amount or volume of the business is of no moment, for even a singular act cannot be merely incidental or casual if it indicates the foreign corporation's intention to do business. Participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation's reason for creation or existence. Thus, it has been held that "a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required." In this regard, it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether a foreign corporation needs a license or not. The primary purpose of the license requirement is to compel a foreign corporation desiring to do business within the Philippines to submit itself to the jurisdiction of the courts of the state and to enable the government to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates a business in the Philippines without a license, and thus does not submit itself to Philippine laws, it is only just that said foreign corporation be not allowed to invoke them in our courts when the need arises. "While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases." The requirement of a license is not intended to put foreign corporations at a disadvantage, for the doctrine of lack of capacity to sue is based on considerations of sound public policy. Accordingly, HPPL must be held to be incapacitated to bring the petition for injunction before the Supreme Court for it is a foreign corporation doing business in the Philippines without the requisite license.

72 Antam Consolidated vs. Court of Appeals [GR L-61523, 31 July 1986]
Second Division, Gutierrez Jr. (J): 4 concur, 1 took no part

Facts: On 9 April 1981, Stokely Van Camp. Inc. filed a complaint against Banahaw Milling Corporation, Antam Consolidated, Inc., Tambunting Trading Corporation, Aurora Consolidated Securities and Investment Corporation, and United Coconut Oil Mills, Inc. (Unicom) for collection of sum of money. In its complaint, Stokely alleged: (1) that it is a corporation organized and existing under the laws of the state of Indiana, U.S.A. and has its principal office at 941 North Meridian Street, Indianapolis, Indiana, U.S.A., and one of its subdivisions "Capital City Product Company" (Capital City) has its office in Columbus, Ohio, U.S.A.; (2) that Stokely and Capital City were not engaged in business in the Philippines prior to the commencement of the suit so that Stokely is not licensed to do business in this country and is not required to secure such license; (3) that on 21 August 1978, Capital City and Coconut Oil Manufacturing (Phil.) Inc. (Comphil) with the latter acting through its broker Rothschild Brokerage Company, entered into a contract (RBS 3655) wherein Comphil undertook to sell and deliver and Capital City agreed to buy 500 long tons of crude coconut oil to be delivered in October/November 1978 at the c.i.f price of US$0.30/lb. but Comphil failed to deliver the coconut oil so that Capital City covered its coconut oil needs in the open market at a price substantially in excess of the contract and sustained a loss of US$103,600; that to settle Capital City's loss under the contract, the parties entered into a second contract (RBS 3738) on 3 November 1978 wherein Comphil undertook to buy and Capital City agreed to sell 500 long tons of coconut crude oil under the same terms and conditions but at an increased c.i.f. price of US$0.3925/lb.; (4) that the second contract states that "it is a wash out

against RBS 3655" so that Comphil was supposed to repurchase the undelivered coconut oil at US $0.3925 from Capital City by paying the latter the sum of US$103,600.00 which is the same amount of loss that Capital City sustained under the first contract; that Comphil again failed to pay said amount, so to settle Capital City's loss, it entered into a third contract with Comphil on 24 January 1979 wherein the latter undertook to sell and deliver and Capital City agreed to buy the same quantity of crude coconut oil to be delivered in April/May 1979 at the c.i.f. price of US$0.3425/lb.; (5) that the latter price was 9.25 cents/lb. or US$103,600 for 500 long tons below the then current market price of 43.2 cents/lb. and by delivering said quantity of coconut oil to Capital City at the discounted price, Comphil was to have settled its US$103,600 liability to Capital City; (6) that Comphil failed to deliver the coconut oil so Capital City notified the former that it was in default; (7) that Capital City sustained damages in the amount of US$175,000; and (8) that after repeated demands from Comphil to pay the said amount, the latter still refuses to pay the same. Stokely further prayed that a writ of attachment be issued against any and all the properties of Antam, et al. in an amount sufficient to satisfy any lien of judgment that Stokely may obtain in its action. In support of this provisional remedy and of its cause of action against Antam, et al., other than Comphil, Stokely alleged that: 1) After demands were made by respondent on Comphil, the Tambuntings ceased to be directors and officers of Comphil and were replaced by their five employees, who were managers of Tambunting's pawnshops and said employees caused the name of Comphil to be changed to "Banahaw Milling Corporation" and authorized one of the Tambuntings, Antonio P. Tambunting, Jr., who was at that time neither a director nor officer of Banahaw to sell its oil mill; 2) Unicom has taken over the entire operations and assets of Banahaw because the entire and outstanding capital stock of the latter was sold to the former; 3) All of the issued and outstanding capital stock of Comphil are owned by the Tambuntings who were the directors and officers of Comphil and who were the ones who benefited from the sale of Banahaw's assets or shares to Unicom; 4) All of the petitioners evaded their obligation to respondent by the devious scheme of using Tambunting employees to replace the Tambuntings in the management of Banahaw and disposing of the oil mill of Banahaw or their entire interests to Unicom; and 5) Respondent has reasonable cause to believe and does believe that the coconut oil mill, which is the only substantial asset of Banahaw is about to be sold or removed so that unless prevented by the Court there will probably be no assets of Banahaw to satisfy its claim. On 10 April 1981, the trial court ordered the issuance of a writ of attachment in favor of Stokely upon the latter's deposit of a bond in the amount of P1,285,000.00. On 3 June 1981, Stokely filed a motion for reconsideration to reduce the attachment bond. On 11 June 1981, Antam, et al. filed a motion to dismiss the complaint on the ground that Stokely, being a foreign corporation not licensed to do business in the Philippines, has no personality to maintain the suit. Thereafter, the trial court issued an order, dated 10 August 1981, reducing the attachment bond to P500,000.00 and denying the motion to dismiss by Antam, et al. on the ground that the reason cited therein does not appear to be indubitable. Antam, et al. filed a petition for certiorari before the Intermediate Appellate Court. On 14 June 1982, the appellate court dismissed the petition. Antam, et al. filed a motion for reconsideration but the same was denied. Hence, they filed the petition for certiorari and prohibition with prayer for temporary restraining order.

Issue: Whether Stokely Van Camp, Inc. has the capacity to sue, in light of three transactions it entered into with Comphil, Antam, etc. without license.

Held: The transactions entered into by Stokely with Comphil, Antam, et al. are not a series of commercial dealings which signify an intent on the part of Stokely to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The only reason why Stokely entered into the second and third transactions with Comphil, Antam, et al. was because it wanted to recover the loss it sustained from the failure of Comphil, Antam, et al. to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation. Instead of making an outright demand on Comphil, Antam, et al., Stokely opted to try to push through with the transaction to recover the amount of US$103,600.00 it lost. This explains why in the second transaction, Comphil, Antam, et al. were supposed to buy back the crude coconut oil they should have delivered to the respondent in an amount which will earn the latter a profit of US$103,600.00. When this failed the third transaction was entered into by the

parties whereby Comphil, Antam, et al. were supposed to sell crude coconut oil to the respondent at a discounted rate, the total amount of such discount being US$103,600.00. Unfortunately, Comphil, Antam, et al. failed to deliver again, prompting Stokely to file the suit below. From these facts alone, it can be deduced that in reality, there was only one agreement between Comphil, Antam, et al. and Stokely and that was the delivery by the former of 500 long tons of crude coconut oil to the latter, who in turn, must pay the corresponding price for the same. The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of Stokely to engage in a continuity of transactions with Comphil, Antam, et al. which will categorize it as a foreign corporation doing business in the Philippines. Stokely, being a foreign corporation not doing business in the Philippines, does not need to obtain a license to do business in order to have the capacity to sue.

73 Mentholatum Inc. vs. Mangaliman, 73 Phil 524 (see case entry 68)

74 Merrill Lynch Futures vs. Court of Appeals [GR 97816, 24 July 1992]
First Division, Narvasa (CJ): 3 concur, 1 took no part

Facts: On 23 November 1987, Merrill Lynch futures, Inc. (ML FUTURES) filed a complaint with the Regional Trial Court at Quezon City against the Spouses Pedro M. Lara and Elisa G. Lara for the recovery of a debt and interest thereon, damages, and attorney's fees. In its complaint ML FUTURES described itself as (a) "a non-resident foreign corporation, not doing business in the Philippines, duly organized and existing under and by virtue of the laws of the state of Delaware, U.S.A.;" as well as (b) a 'futures commission merchant' duly licensed to act as such in the futures markets and exchanges in the United States, . . . essentially functioning as a broker (executing) orders to buy and sell futures contracts received from its customers on U.S. futures exchanges." In its complaint ML FUTURES alleged (1) that on 28 September 1983 it entered into a Futures Customer Agreement with the spouses (Account 138-12161), in virtue of which it agreed to act as the latter's broker for the purchase and sale of futures contracts in the U.S.; (2) that pursuant to the contract, orders to buy and sell futures contracts were transmitted to ML FUTURES by the Lara Spouses "through the facilities of Merrill Lynch Philippines, Inc., a Philippine corporation and a company servicing ML Futures' customers;" (3) that from the outset, the Lara Spouses "knew and were duly advised that Merrill Lynch Philippines, Inc. was not a broker in futures contracts," and that it "did not have a license from the Securities and Exchange Commission to operate as a commodity trading advisor (i.e., "and entity which, not being a broker, furnishes advice on commodity futures to persons who trade in futures contracts"); (4) that in line with the above mentioned agreement and through said Merill Lynch Philippines, Inc., the Lara Spouses actively traded in futures contracts, including "stock index futures" for four years or so, i.e., from 1983 to October, 1987, there being more or less regular accounting and corresponding remittances of money (or crediting or debiting) made between the spouses and ML FUTURES; (5) that because of a loss amounting to US $160,749.69 incurred in respect of 3 transactions involving "index futures," and after setting this off against an amount of US $75,913.42 then owing by ML FUTURES to the Lara Spouses, said spouses became indebted to ML FUTURES for the ensuing balance of US $84,836.27, which the latter asked them to pay; (6) that the Lara Spouses however refused to pay this balance, "alleging that the transactions were null and void because Merrill Lynch Philippines, Inc., the Philippine company servicing accounts of ML Futures, had no license to operate as a "commodity and/or financial futures broker." On the foregoing essential facts, ML FUTURES prayed (1) for a preliminary attachment against the spouses' properties "up to the value of at least P2,267,139.50," and (2) for judgment, after trial, sentencing the spouses to pay ML FUTURES: (a) the Philippine peso equivalent of $84,836.27 at the applicable exchange rate on date of payment, with legal interest from the date of demand until full payment; (b) exemplary damages in the sum of at least P500,000,00; and (c) attorney's fees and expenses of litigation as may be proven at the trial. Preliminary attachment issued ex parte on 2 December 1987, and the spouses were duly served with summons. <u>The spouses filed a motion to dismiss dated 18 December 1987 on the grounds that (1) ML FUTURES had "no legal capacity to sue" and (2) its "complaint states no cause of action since it is not the real party in interest."</u> On 12 January 1988, the Trial Court promulgated an Order sustaining the motion to dismiss, directing the

dismissal of the case and discharging the writ of preliminary attachment. It later denied ML FUTURES's motion for reconsideration, by Order dated 29 February 1988. ML FUTURES appealed to the Court of Appeals. In its own decision promulgated on 27 November 1990, the Court of Appeals affirmed the Trial Court's judgment. Its motion for reconsideration having been denied, ML FUTURES appealed to the Supreme Court on certiorari.

Issue [1]: Whether ML FUTURES was doing business in the Philippines without license.

Held [1]: The facts on record adequately establish that ML FUTURES, operating in the United States, had indeed done business with the Lara Spouses in the Philippines over several years, had done so at all times through Merrill Lynch Philippines, Inc. (MLPI), a corporation organized in this country, and had executed all these transactions without ML FUTURES being licensed to so transact business here, and without MLPI being authorized to operate as a commodity futures trading advisor. These are the factual findings to both the Trial Court and the Court of Appeals. These, too, are the conclusions of the Securities & Exchange Commission which denied MLPI's application to operate as a commodity futures trading advisor, a denial subsequently affirmed by the Court of Appeals. Prescinding from the proposition that factual findings of the Court of Appeals are generally conclusive, the Supreme Court has been cited to no circumstance of substance to warrant reversal of said Appellate Court's findings or conclusions in this case. Further, the Laras did transact business with ML FUTURES through its agent corporation organized in the Philippines, it being unnecessary to determine whether this domestic firm was MLPI (Merrill Lynch Philippines, Inc.) or Merrill Lynch Pierce Fenner & Smith (MLPI's alleged predecessor). The fact is that ML FUTURES did deal with futures contracts in exchanges in the United States in behalf and for the account of the Lara Spouses, and that on several occasions the latter received account documents and money in connection with those transactions. Given these facts, if indeed the last transaction executed by ML FUTURES in the Laras's behalf had resulted in a loss amounting to US $160,749.69; that in relation to this loss, ML FUTURES had credited the Laras with the amount of US $ 75,913.42 — which it (ML FUTURES) then admittedly owed the spouses — and thereafter sought to collect the balance, US $84,836.27, but the Laras had refused to pay (for the reasons already above stated).

Issue [2]: Whether – in light of the fact that the Laras were fully aware of its lack of license to do business in the Philippines, and in relation to those transactions had made payments to, and received money from it for several years –the Lara Spouses are estopped to impugn ML FUTURES capacity to sue them in the courts of the forum.

Held [2]: The Laras received benefits generated by their business relations with ML FUTURES. Those business relations, according to the Laras themselves, spanned a period of 7 years; and they evidently found those relations to be of such profitability as warranted their maintaining them for that not insignificant period of time; otherwise, it is reasonably certain that they would have terminated their dealings with ML FUTURES much, much earlier. In fact, even as regards their last transaction, in which the Laras allegedly suffered a loss in the sum of US$160,749.69, the Laras nonetheless still received some monetary advantage, for ML FUTURES credited them with the amount of US $75,913.42 then due to them, thus reducing their debt to US $84,836.27. Given these facts, and assuming that the Lara Spouses were aware from the outset that ML FUTURES had no license to do business in this country and MLPI, no authority to act as broker for it, it would appear quite inequitable for the Laras to evade payment of an otherwise legitimate indebtedness due and owing to ML FUTURES upon the plea that it should not have done business in this country in the first place, or that its agent in this country, MLPI, had no license either to operate as a "commodity and/or financial futures broker." Considerations of equity dictate that, at the very least, the issue of whether the Laras are in truth liable to ML FUTURES and if so in what amount, and whether they were so far aware of the absence of the requisite licenses on the part of ML FUTURES and its Philippine correspondent, MLPI, as to be estopped from alleging that fact as a defense to such liability, should be ventilated and adjudicated on the merits by the proper trial court.

75 Agilent Technologies Singapore vs. Integrated Silicon Technology Philippines Corp. [GR 154618, 14 April 2004]
First Division, Ynares-Santiago (J): 4 concur

Facts: Agilent Technologies Singapore (Pte.), Ltd. is a foreign corporation, which, by its own admission, is not licensed to do business in the Philippines. Integrated Silicon Technology Philippines Corporation is a private domestic corporation, 100% foreign owned, which is engaged in the business of manufacturing and assembling electronics components. Teoh Kiang Hong, Teoh Kiang Seng and Anthony Choo, Malaysian nationals, are current members of Integrated Silicon's board of directors, while Joanne Kate M. dela Cruz, Jean Kay M. dela Cruz, and Rolando T. Nacilla are its former members. The juridical relation among the various parties in the case can be traced to a 5-year Value Added Assembly Services Agreement (VAASA), entered into on 2 April 1996 between Integrated Silicon and the Hewlett-Packard Singapore (Pte.) Ltd., Singapore Components Operation (HP-Singapore). Under the terms of the VAASA, Integrated Silicon was to locally manufacture and assemble fiber optics for export to HP-Singapore. HP-Singapore, for its part, was to consign raw materials to Integrated Silicon; transport machinery to the plant of Integrated Silicon; and pay Integrated Silicon the purchase price of the finished products. The VAASA had a five-year term, beginning on 2 April 1996, with a provision for annual renewal by mutual written consent. On 19 September 1999, with the consent of Integrated Silicon, HP-Singapore assigned all its rights and obligations in the VAASA to Agilent. On 25 May 2001, Integrated Silicon filed a complaint for "Specific Performance and Damages" against Agilent and its officers Tan Bian Ee, Lim Chin Hong, Tey Boon Teck and Francis Khor (Civil Case 3110-01-C), alleging that Agilent breached the parties' oral agreement to extend the VAASA. Integrated Silicon thus prayed that Agilent be ordered to execute a written extension of the VAASA for a period of five years as earlier assured and promised; to comply with the extended VAASA; and to pay actual, moral, exemplary damages and attorney's fees. On 1 June 2001, summons and a copy of the complaint were served on Atty. Ramon Quisumbing, who returned these processes on the claim that he was not the registered agent of Agilent. Later, he entered a special appearance to assail the court's jurisdiction over the person of Agilent. On 2 July 2001, Agilent filed a separate complaint against Integrated Silicon, Teoh Kang Seng, Teoh Kiang Gong, Anthony Choo, Joanne Kate M. dela Cruz, Jean Kay M. dela Cruz and Rolando T. Nacilla, for "Specific Performance, Recovery of Possession, and Sum of Money with Replevin, Preliminary Mandatory Injunction, and Damages", before the Regional Trial Court, Calamba, Laguna, Branch 92 (Civil Case 3123-2001-C). Agilent prayed that a writ of replevin or, in the alternative, a writ of preliminary mandatory injunction, be issued ordering Integrated Silicon, et. al. to immediately return and deliver to Agilent its equipment, machineries and the materials to be used for fiber-optic components which were left in the plant of Integrated Silicon; and that the latter be ordered to pay actual and exemplary damages and attorney's fees. Integrated Silicon, et. al. filed a Motion to Dismiss in Civil Case No. 3123-2001-C, on the grounds of lack of Agilent's legal capacity to sue; litis pendentia; forum shopping; and failure to state a cause of action. On 4 September 2001, the trial court denied the Motion to Dismiss and granted Agilent's application for a writ of replevin. Without filing a motion for reconsideration, Integrated Silicon, et. al. filed a petition for certiorari with the Court of Appeals. In the meantime, upon motion filed by Integrated Silicon, et. al., Judge Antonio S. Pozas of Branch 92 voluntarily inhibited himself in Civil Case 3123-2001-C. The case was re-raffled and assigned to Branch 35, the same branch where Civil Case 3110-2001-C is pending. On 12 August 2002, the Court of Appeals granted Integrated Silicon, et. al.'s petition for certiorari, set aside the assailed Order of the trial court dated 4 September 2001, and ordered the dismissal of Civil Case 3123-2001-C. Agilent filed the petition for review.

Issue [1]: Whether a foreign corporation without a license is incapacitated from bringing an action in Philippine courts.

Held [1]: A foreign corporation without a license is not ipso facto incapacitated from bringing an action in Philippine courts. A license is necessary only if a foreign corporation is "transacting" or "doing business" in

the country. Section 133 of the Corporation Code provides that "No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws." The aforementioned provision prevents an unlicensed foreign corporation "doing business" in the Philippines from accessing our courts. In a number of cases, however, the Court held that an unlicensed foreign corporation doing business in the Philippines may bring suit in Philippine courts against a Philippine citizen or entity who had contracted with and benefited from said corporation. Such a suit is premised on the doctrine of estoppel. A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it. This doctrine of estoppel to deny corporate existence and capacity applies to foreign as well as domestic corporations. The application of this principle prevents a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract. The principles regarding the right of a foreign corporation to bring suit in Philippine courts may thus be condensed in four statements: (1) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; (2) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; (3) if a foreign corporation does business in the Philippines without a license, a Philippine citizen or entity which has contracted with said corporation may be estopped from challenging the foreign corporation's corporate personality in a suit brought before Philippine courts; and (4) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction.

Issue [2]: Whether Agilent was doing business in the Philippines.

Held [2]: The challenge to Agilent's legal capacity to file suit hinges on whether or not it is doing business in the Philippines. However, there is no definitive rule on what constitutes "doing", "engaging in", or "transacting" business in the Philippines, the Corporation Code itself is silent as to what acts constitute doing or transacting business in the Philippines. An analysis of the relevant case law, in conjunction with Section 1 of the Implementing Rules and Regulations of the Foreign Investments Act of 1991 (FIA, as amended by RA 8179), would demonstrate that the acts enumerated in the VAASA do not constitute "doing business" in the Philippines. Section 1 of the Implementing Rules and Regulations of the FIA (as amended by RA 8179) provides that the following shall not be deemed "doing business": (1) Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; (2) Having a nominee director or officer to represent its interest in such corporation; (3) Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account; (4) The publication of a general advertisement through any print or broadcast media; (5) Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines; (6) Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export; (7) Collecting information in the Philippines; and (8) Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services. By and large, to constitute "doing business", the activity to be undertaken in the Philippines is one that is for profit-making. Herein, by the clear terms of the VAASA, Agilent's activities in the Philippines were confined to (1) maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by Integrated Silicon; and (2) consignment of equipment with Integrated Silicon to be used in the processing of products for export. As such, Agilent cannot be deemed to be "doing business" in the Philippines. Integrated Silicon, et. al.'s contention that Agilent lacks the legal capacity to file suit is therefore devoid of merit. As a foreign corporation not doing business in the Philippines, it needed no license before it can sue before our courts.