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WHEREFORE, the temporary restraining order issued by this Court, dated May 12, 1986, enjoining the private respondents from declaring or staging a strike against the petitioner herein, in all its forms, including walk-out, mass leave, or any kind of activity that will lead to a work stoppage, is hereby made permanent. The public respondents are also directed to act upon and resolve, at the earliest possible time and in the light of the discussion and pronouncements made by the Court in this case, the petition dated April 25, 1986, submitted by the petitioner herein for the cancellation of Bulletin Publishing Corporation Supervisors Union Registration Certificate No. 105-47-LC.

SO ORDERED.

Fernan, Narvasa, Gutierrez, Jr., and *Paras, JJ.*, concur. *Feria (Chairman), J.*, took no part.

SECOND DIVISION

[G.R. No. 57586. October 8, 1986]

AQUILINO RIVERA, ISAMU AKASAKO and FUJIYAMA HOTEL & RESTAURANT, INC., *petitioners, vs.* **THE HON. ALFREDO C. FLORENDO, as Judge of the Court of First Instance of Manila (Branch XXXVI), LOURDES JUREIDINI and MILAGROS TSUCHIYA,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; INTRA-CORPORATE CONTROVERSY; DEFINED.**— An intra-corporate controversy has been defined as "one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever." (*Philex Mining Corporation v. Reyes*, 118 SCRA 605, November 19, 1982). This Court has also ruled that cases of private respondents

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who are not shareholders of the corporation, cannot be a "controversy arising out of intracorporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association, of which they are stockholders, members or associates, respectively." (*Sunset View Condominium v. Campos, Jr.*, 104 SCRA 303, April 27, 1981).

2. **ID.; ID.; ID.; WITHIN THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION.—** It has already been settled that an intracorporate controversy would call for the jurisdiction of the Securities and Exchange Commission. (*Philippine School of Business Administration v. Lanao,* 127 SCRA 781, February 24, 1984)

3. **ID.; ID.; PETITION BY NON-MEMBERS OF CORPORATION, WITHIN THE JURISDICTION OF REGULAR COURTS.—** As the bone of contention in this case, is the refusal of petitioner Rivera to indorse the shares of stock in question and the refusal of the Corporation to register private respondents' shares in its books, there is merit in the findings of the lower court that the present controversy is not an intracorporate controversy; private respondents are not yet stockholders; they are only seeking to be registered as stockholders because of an alleged sale of shares of stock to them. Therefore, as the petition is filed by outsiders not yet members of the corporation, jurisdiction properly belongs to the regular courts.

4. **ID.; ID.; SHARES OF STOCK; HOW TRANSFERRED.—** As confirmed by this Court, "shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. 'Title may be vested in the transferee by delivery of the certificate with a written assignment or indorsement thereof' (18 C.J.S. 928). There should be compliance with the mode of transfer prescribed by law (18 C.J.S. 930)'" (*Nava v. Peers Marketing Corp.*, 74 SCRA 65, 69, Nov. 25, 1976).

5. **ID,; ID.; ID.; CANNOT BE THE SUBJECT OF *MANDAMUS* ON THE STRENGTH OF MERE INDORSEMENT.—** It is evident that mandamus will not lie in the instant case where the shares of stock in question are not even indorsed by the registered owner Rivera who is specifically resisting the registration thereof in the books of the corporation. Under the above ruling, even the shares of stock which were purchased

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by private respondents from the other incorporators cannot also be the subject of *mandamus* on the strength of mere indorsement of the supposed owners of said shares in the absence of express instructions from them. The rights of the parties will have to be threshed out in an ordinary action.

6. **REMEDIAL LAW; PROVISIONAL REMEDIES; MANDATORY INJUNCTION; WHEN GRANTED; REGARDED AS OF A MORE SERIOUS NATURE THAN PROHIBITIVE INJUNCTION.**— A mandatory injunction is granted only on a showing (a) that the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage (*Pelejo v. Court of Appeals*, 117 SCRA 668, Oct. 18, 1982). A mandatory injunction which commands the performance of some specific act is regarded as of a more serious nature than a mere prohibitive injunction, the latter being intended generally to maintain the status quo only. While our courts, being both of law and equity, have jurisdiction to issue a mandatory writ, it has always been held that its issuance would be justified only in clear cases; that it is generally improper to issue it before final hearing because it tends to do more than maintain the status quo; that it should be issued only where there is a willful and unlawful invasion of plaintiff's right and that the latter's case is one free from doubt and dispute. (*National Marketing v. Cloribel,* 22 SCRA 1038, March 13, 1968).

7. **ID.; ID.; ID.; WILL NOT BE ISSUED WHEN A PARTY'S RIGHTS ARE NOT CLEAR.**— Respondent court in the instant case violated the fundamental rule of injunctions that a mandatory injunction will not issue in favor of a party whose rights are not clear and free of doubt or as yet undetermined. (*Namarco v. Cloribel,* 22 SCRA 1038-1039, March 13, 1968). It will be recalled that the disputed shares of stock were purchased not from the registered owner but from a Japanese national who allegedly was the real owner thereof. It was also alleged that the registered owner was only a dummy of Akasako. It is also true that the trial court has already made findings to that effect at the hearing for the issuance of the Order of June 5, 1981. Nonetheless, these are contentious issues that should properly be ventilated at the trial on the merits.

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8. **ID.; ID.; PRELIMINARY INJUNCTION; THE COURT SHOULD NOT, BY MEANS THEREOF, TRANSFER PROPERTY WHERE THE LEGAL TITLE IS IN DISPUTE; PRIMARY PURPOSE OF INJUNCTION.**— Another fundamental rule which appears to have been violated in the case at bar is that no advantage may be given to one to the prejudice of the other, a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto. (*Rodulfo v. Alonso*, 76 Phil. 225, February 28, 1946). Similarly, the primary purpose of an injunction is to preserve the *status quo,* that is the last actual peaceable uncontested status which preceded the controversy.

9. **ID.; CIVIL PROCEDURE; JUDGMENT; EFFECT WHEN THE ORDER OF TRIAL COURT IS A JUDGMENT ON THE MERITS.**— As correctly stated in petitioners' motion for reconsideration, the Order of the trial court is in effect a judgment on the merits, declaring expressly or impliedly that petitioners are stockholders of the Corporation at the hearing of only the incident for the issuance of a Writ Preliminary Injunction. On the other hand if the Order amounts to a judgment on the merits, the lower court should first rule on what private respondents seek; the registration of their shareholdings in the books of the corporation and the issuance of new stock certificates. It is only thereafter that the subsequent act of management may be ordered and the period of finality of such a judgment should be in accordance with the Rules of Court, giving the respondents the right to an appeal or review and not be immediately executory as the Writ of Preliminary Mandatory Injunction would infer.

10. **ID., SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; DEFINED; INDIRECT CONTEMPT; ACTS CONSTITUTING THE SAME.**— It has been held that contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation. It is defined as a disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct

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as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice (*Halili v. Court of Industrial Relations,* 136 SCRA 135, April 30, 1985). There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court, or injunction granted by a court or judge, more particularly in this case, the Supreme Court, constitutes Indirect Contempt punishable under Rule 71 of the Rules of Court. (Rule 71, Section 3 (b) and Section 6)

11. ID.; ID.; POWER TO PUNISH FOR CONTEMPT OF COURT; SHOULD BE EXERCISED ON THE PRESERVATIVE, NOT ON THE VINDICTIVE PRINCIPLE.— However, it is also well settled that "the power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail." (*Villavicencio v. Lukban,* 39 Phil. 778 [1919]; *Gamboa v. Teodoro, et al.*, 91 Phil. 274 [1952]; *Sulit v. Tiangco*, 115 SCRA 207 [1982]; *Lipata v. Tutaan*, 124 SCRA 880 [1983]. "Only in cases of clear and contumacious refusal to obey should the power be exercised. A *bona fide* misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." "Such power 'being drastic and extraordinary in its nature x x x should not be resorted to x x x unless necessary in the interest of justice.'"

APPEARANCES OF COUNSEL

Bobby P. Yuseco for petitioners.
Arthur Canlas for private respondents.

D E C I S I O N

PARAS, *J* .:

This is a petition for *certiorari* and prohibition with preliminary injunction seeking the annulment of the following Orders of the then Court of First Instance of Manila, Branch XXXVI: (a) Order dated June 5, 1981 directing the issuance of a writ of preliminary mandatory injunction requiring petitioners

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Fujiyama Hotel & Restaurant, Inc., Isamu Akasako and Aquilino Rivera to allow respondents Lourdes Jureidini and Milagros Tsuchiya to manage the corporate property upon filing of a bond in the amount of P30,000.00 (*Rollo*, pp. 43-57) and (b) Order dated July 24, 1981 denying petitioners' motion for reconsideration and motion to dismiss for lack of jurisdiction but increasing the bond to P120,000.00 (*Rollo*, p. 81).

Petitioner corporation was organized and registered under Philippine laws with a capital stock of P1,000,000.00 divided into 10,000 shares of P100.00 par value each by the herein petitioner Rivera and four (4) other incorporators. Sometime thereafter petitioner Rivera increased his subscription from the original 1,250 to a total of 4899 shares (*Rollo*, p. 4).

Subsequently, Isamu Akasako, a Japanese national and co-petitioner who is allegedly the real owner of the shares of stock in the name of petitioner Aquilino Rivera, sold 2550 shares of the same to private respondent Milagros Tsuchiya for a consideration of P440,000.00 with the assurance that Milagros Tsuchiya will be made the President and Lourdes Jureidini a director after the purchase. Aquilino Rivera who was in Japan also assured private respondents by overseas call that he will sign the stock certificates because Isamu Akasako is the real owner. However, after the sale was consummated and the consideration was paid with a receipt of payment therefor shown, Aquilino Rivera refused to make the indorsement unless he is also paid. (*Rollo*, pp. 51-52).

It also appears that the other incorporators sold their shares to both respondent Jureidini and Tsuchiya such that both respondents became the owners of a total of 3300 shares or the majority out of 5,649 outstanding subscribed shares of the corporation (*Rollo*, pp. 4-5), and that there was no dispute as to the legality of the transfer of the stock certificate Exhibits "B-1" to "B-4" to Jureidini, all of which bear the signatures of the president and the secretary as required by the Corporation Law with the proper indorsements of the respective owners appearing thereon. Exhibits "B-1" to "B-4" are specifically indorsed to her while Exhibits "B-2" and "B-3" are indorsed in blank. Aquilino Rivera admitted the genuineness of all the

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signatures of the officers of the corporation and of all the indorsee therein. (Order dated June 5, 1981, Civil Case No. 13273, *Rollo*, pp. 51-53).

Nonetheless, private respondents attempted several times to register their stock certificates with the corporation but the latter refused to register the same. (*Ibid., Rollo*, pp. 54-55). Thus, private respondents filed a special civil action for *mandamus* and damages with preliminary mandatory injunction and/or receivership naming herein petitioners as respondents, docketed as Special Civil Action No. 13273, "*Lourdes Jureidini, et al. v. Fujiyama Hotel, et al.*" of the Court of First Instance of Manila, Branch XXXVI presided by respondent Judge. Petitioners' counsel Atty. Marcelino A. Bueno, upon receipt of the summons and a copy of the aforesaid petition, filed an answer thereto with denials, special and affirmative defenses and counterclaim. Thereafter, a hearing was held on the application for preliminary mandatory injunction and/or receivership, after which respondent Judge issued an order for a writ of preliminary mandatory injunction authorizing respondent Jureidini and Tsuchiya to manage the corporation's hotel and restaurant, upon the filing of a bond in the amount of P30,000.00. Then through another counsel Atty. Eriberto D. Ignacio in collaboration with their counsel of record, Atty. Marcelino A. Bueno, petitioners (respondents therein) filed a motion to dismiss the petition on the ground that respondent Judge has no jurisdiction to entertain the case, while through Atty. Bueno, they filed a motion for reconsideration of the Order granting the issuance of a writ of mandatory preliminary injunction. Private respondents filed their opposition to both motions and on July 24, 1981, respondent Judge issued an Order denying both the motion for reconsideration and the motion to dismiss the petition but increased the amount of the bond from P30,000.00 to P120,000.00 to sufficiently protect the interests of herein petitioners. (*Rollo*, p. 81).

Hence, this petition.

After filing the petition, Atty. Eriberto D. Ignacio withdrew as counsel for petitioners on August 6, 1981. Such withdrawal

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was confirmed by petitioner Isamu Akasako (*Rollo*, p. 83). On August 10, 1981 the appearance of Isaca & Espiritu Law Offices as counsel in substitution of former counsel Attys. Marcelino A. Bueno and Eriberto D. Ignacio was received by this Court. (*Rollo*, p. 84); all of which were noted in the resolution of the First Division of this Court dated August 17, 1981. (*Rollo*, p. 160).

The new counsel filed a Manifestation and Motion praying that the therein attached Supplement and certified copies of the questioned orders and writs be admitted and considered as part of petitioners' original petition for *Certiorari* and Prohibition with Preliminary injunction. (*Rollo*, pp. 85-131). On August 14, 1981 petitioners filed an Urgent Motion for Restraining Order and Other Provisional Injunctive Reliefs (*Rollo*, pp. 154-159). In the same resolution of August 17, 1981, after deliberating on the petition and supplemental to the petition, the Court Resolved: (a) to require the respondents to comment thereon (not to file a motion to dismiss within ten (10) days from notice and (b) upon petitioners' filing of an injunction bond in the amount of P30,000.00 to issue a Writ of Preliminary Injunction enjoining respondents from enforcing the writ of preliminary mandatory injunction dated June 23, 1981 issued in Civil Case No. 132673. (*Rollo*, p. 160). Said bond was filed on August 20, 1981 (*Rollo*, p. 161) and accordingly, a writ of preliminary injunction was issued by this Court on August 21, 1981 (*Rollo*, pp. 172-173).

Subsequently, petitioners filed a manifestation and urgent motion on August 28, 1981 praying that private respondent Lourdes Jureidini and her counsel Atty. Arthur Canlas be declared in contempt of court for the former's alleged defiant refusal: (a) to acknowledge receipt of the Writ of Preliminary Injunction of August 21, 1981 and (b) to comply with the said writ issued by this Court. (*Rollo*, pp. 174-180).

Comment thereon was filed by private respondents through counsel (*Rollo*, pp. 185-199) in compliance with the resolution of the First Division dated August 17, 1981 (*Rollo*, p. 160), praying for the immediate lifting of the preliminary injunction.

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Said comment of private respondents was noted in the resolution of October 5, 1981 (*Rollo*, p. 200) which also required respondents to comment on the supplement to the petition.

On October 2, 1981, comment on the manifestation and urgent motion to declare Jureidini and her counsel in contempt of court was filed by counsel for private respondent (*Rollo*, pp. 201-214) in compliance with the resolution of September 14, 1981 (*Rollo*, p. 181).

In the resolution of Oetober 26, 1981 (*Rollo*, p. 215) the Court Resolved to require petitioners to file a reply to aforesaid comment. (*Rollo*, p. 215).

Meanwhile, supplemental comment on the supplement to the petition was filed by private respondents on October 14, 1981 (*Rollo*, pp. 216-222) reiterating their stand that it is the ordinary court and not the Securities and Exchange Commission (SEC) that has jurisdiction to entertain the case as the controversies did not arise from the intra-corporate relationship among the parties.

On October 21, 1981, petitioner filed: (a) motion for leave to file reply to comment of respondents on the petition and supplemental petition required in the resolution of August 17, 1981 (*Rollo*, pp. 223-224) and (b) the attached Reply (*Rollo*, pp. 225-241). On November 25, 1981, petitioners filed their Reply to respondents' Comment on petitioners' manifestation and urgent motion to declare them in contempt. (*Rollo*, pp. 246-257).

On December 7, 1981 Atty. Bobby P. Yuseco entered his appearance as collaborating counsel for petitioners (*Rollo*, p. 258) and filed an urgent petition for early resolution of petitioners' motion to hold private respondents in contempt and for issuance of Order clarifying Writ of Injunction dated August 21, 1981. (*Rollo*, pp. 259-261).

In the resolution of January 18, 1982, this case and all pending incidents were set for hearing on February 3, 1982. (*Rollo*, p. 268).

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On February 1, 1982, Lesaca and Espiritu Law Offices filed a Manifestation and Motion for Leave to withdraw as counsel for petitioners. (*Rollo*, pp. 274-275).

When this case was called for hearing on February 3, 1982, counsel for both parties appeared and argued their causes and both were required by the Court within an unextendible period of ten (10) days to file their respective memoranda in support of their positions on all pending incidents of the case at bar while the hearing on the contempt proceedings was reset for February 10, 1982 where the personal appearance of private respondent Lourdes Jureidini through her counsel was required. (*Rollo*, p. 279).

On February 9, 1982, counsel for private respondent Jureidini filed an Urgent Motion and Manifestation that he was informed by his client that she is physically exhausted and is beset with hypertension and praying that she be excused from appearing at the hearing set for February 10, 1982, that the hearing be cancelled and the contempt incident be considered submitted for decision on the basis of pleadings previously filed. (*Rollo*, pp. 280-282).

On the same date, February 9, 1982, counsel for petitioners filed his Memorandum in support of his oral argument at the hearing of February 3, 1982, (*Rollo*, pp. 283-287) while a supplement thereto was filed on February 12, 1982. (*Rollo*, pp. 291-294).

At the hearing of February 10, 1982, private respondent Lourdes Jureidini and her counsel failed to appear. Accordingly the Court Resolved: (a) to IMPOSE on said counsel Atty. Canlas a fine of P200.00 or to suffer imprisonment if said fine is not paid; (b) to RESET the hearing on the contempt incidents on March 3, 1982 and (c) to REQUIRE the presence of Atty. Canlas and respondent Lourdes Jureidini and of complainants Attys. Bibiano P. Lasaca, Rodolfo A. Espiritu and Renato T. Paqui. (Resolution of February 10, 1982, Rollo, p. 290).

On February 15, 1982, private respondents file their memorandum in compliance with the resolution of this Court

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of February 3, 1982 while petitioners on February 25, 1982 filed their reply thereto.

At the hearing of March 3, 1982, both counsel as well as private respondent Lourdes Jureidini, Attys. Bibiano P. Lesaca, Rodolfo A. Espiritu and Renato R. Paguio appeared. Atty. Canlas, Lourdes Jureidini, Atty. Lesaca and a representative of the petitioners were interpellated by the Court. Thereafter, the incident was declared submitted for resolution. (Resolution of March 3, 1982, *Rollo*, p. 316).

On March 5, 1982, counsel for private respondents filed his compliance with the resolution of February 10, 1982 enclosing a check payable to this Court in the amount of P200.00 in payment of the fine imposed with motion for reconsideration explaining why he should not be declared in contempt and praying that the aforesaid resolution of February 10, 1982 be set aside, (*Rollo*, pp. 312-314). However, in the resolution of March 10, 1982, (*Rollo*, p. 317) the Court acting on the compliance of Atty. Arthur Canlas with motion for reconsideration, denied the motion and required the Chief of the Docket Division to return to Atty. Canlas the check in the amount of P200.00 it being an out of town check, and Atty. Canlas to pay the fine in cash, and to show cause why he should not be disciplinary dealt with or held in contempt for wilful delay in paying the fine by mail through an out of town check contrary to his manifestation at the hearing that he had promptly paid the fine, both within forty eight hours from notice.

Meanwhile, counsel for petitioners filed on April 6, 1982 an Urgent Petition for Permission to Implement Injunction Writ issued on August 21, 1981 (*Rollo*, pp. 323-325) which was granted in the resolution of May 26, 1982 (*Rollo*, p. 313). In the same resolution the Court ordered Lourdes Jureidini and Milagros Tsuchiya to strictly and immediately comply with the Court's aforesaid writ of preliminary injunction; indicated that it would resolve the pending incident for contempt against private respondent Lourdes Jureidini when the Court decides the case on the merits; and gave the parties thirty (30) days from notice within which to submit simultaneously their respective memoranda on the merits of the case.

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On May 31, 1982, counsel for private respondent Atty. Canlas filed in compliance with the resolution of March 10, 1982, his explanation and manifestation why he should not be disciplinarily dealt with and held in contempt of Court (*Rollo*, pp. 316-318). In the resolution of June 2, 1982, the Court Resolved to set aside and lift the Order of Atty. Canlas' arrest and commitment it had issued on March 31, 1982 but found the explanation and manifestation of Atty. Canlas dated May 29, 1982 unsatisfactory. In view thereof, he was reprimanded for negligence and undue delay in complying with the Court's resolution. (*Rollo*, p. 319).

On June 18, 1982, counsel for petitioners allegedly for purposes of clarification as to the laws involved in the matter of contempt of Lourdes Jureidini, filed a pleading entitled "Re Incident of Contempt against Lourdes Jureidini." (*Rollo*, pp. 320-326) which was noted by the Court in the resolution of July 7, 1982. (*Rollo*, p. 328).

Counsel for private respondents manifested (*Rollo,* p. 329), on July 12, 1982 that they are adopting the memorandum submitted in the preliminary injunction incident as their memorandum in the main case. Said manifestation was noted in the resolution of July 26, 1982. (*Rollo*, p. 331). Counsel for petitioners manifested (*Rollo*, p. 333) that they are adopting their memorandum in support of argument last February 3, 1982 as their combined memoranda on the merits of the case. Said manifestation was noted in the resolution of September 15, 1982. (*Rollo*, p. 334). In the resolution of November 29, 1982, this case was transferred to the Second Division. (*Rollo*, p. 336).

In their petition and supplemental petition, petitioners raised the following issues:

I.

THE RESPONDENT COURT OF FIRST INSTANCE HAS NO JURISDICTION OVER THE PETITION FOR *MANDAMUS* AND RECEIVERSHIP "AS WELL AS IN PLACING THE CORPORATE ASSETS UNDER PROVISIONAL RECEIVERSHIP IN THE GUISE OF A WRIT OF PRELIMINARY MANDATORY INJUNCTION."

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II.

EVEN FALSELY ASSUMING THAT THE RESPONDENT COURT HAD JURISDICTION, THE PRIVATE RESPONDENTS' PRINCIPAL ACTION OF *MANDAMUS* IS AN IMPROPER COURSE OF ACTION.

III.

ASSUMING *ARGUENDO* THAT WHAT THE RESPONDENT COURT FOUND IS TRUE, NAMELY THAT PRIVATE RESPONDENTS "ARE OUTSIDERS" AND "NOT YET STOCKHOLDERS," THUS, HAVING NO PERSONALITY AT ALL, THEN PROVISIONAL RECEIVERSHIP, ALBEIT CLOTHED AS A "WRIT OF PRELIMINARY MANDATORY INJUNCTION" WAS ILLEGALLY ISSUED *DE HORS* ITS JURISDICTION.

IV.

ASSUMING *ARGUENDO* THAT THE RESPONDENT COURT HAD JURISDICTION OVER BOTH THE PETITION FOR MANDAMUS AS WELL AS THE PROVISIONAL RECEIVERSHIP STILL THE RESPONDENT COURT ACTED IN EXCESS OF ITS JURISDICTION OR IN GRAVE ABUSE OF ITS DISCRETION TO GRANT RECEIVERSHIP OVER THE MANAGEMENT OF THE CORPORATE BUSINESS AND ASSETS WHICH NEVER WAS NOR IS A SUBJECT MATTER OF LITIGATION.

V.

EVEN GRANTING FOR THE SAKE OF ARGUMENT THAT THE RESPONDENT COURT HAD JURISDICTION OVER THE SUBJECT MATTER OF THE CASE; NONETHELESS IT WAS IN GRAVE ABUSE OF ITS DISCRETION TO UNILATERALLY GRANT TO A "PARTY-IN-LITIGATION," THE PRIVATE RESPONDENTS HEREIN, THE MANAGEMENT OF THE CORPORATE BUSINESS. (Petition and Supplemental Petition; *Rollo*, pp. 2-18; 88-131).

I.

The crucial issue in this case is whether it is the regular court or the Securities and Exchange Commission that has jurisdiction over the present controversy.

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Presidential Decree No. 902-A provides:

"Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

(a) x x x x x x x x x

(b) Controversies arising out of intra-corporate or partnership relations and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively and between such corporations, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity."

It has already been settled that an intracorporate controversy would call for the jurisdiction of the Securities and Exchange Commission. (*Philippine School of Business Administration v. Lanao,* 127 SCRA 781, February 24, 1984). On the other hand, an intra-corporate controversy has been defined as "one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever." (*Philex Mining Corporation v. Reyes*, 118 SCRA 605, November 19, 1982). This Court has also ruled that cases of private respondents who are not shareholders of the corporation, cannot be a "controversy arising out of intracorporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association, of which they are stockholders, members or associates, respectively." (*Sunset View Condominium Corporation v. Campos, Jr.,* 104 SCRA 303, April 27, 1981).

Under Batas Pambansa Blg. 68 otherwise known as "The Corporation Code of the Philippines," shares of stock are transferred as follow:

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"SEC. 63. *Certificate of stock and transfer of shares.*— The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the book of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

x x x x x x x x x."

As confirmed by this Court, "shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. 'Title may be vested in the transferee by delivery of the certificate with a written assignment or indorsement thereof' (18 C.J.S. 928). There should be compliance with the mode of transfer prescribed by law (18 C.J.S 930)'" (*Nava v. Peers Marketing Corp.*, 74 SCRA 65, 69, Nov. 25, 1976).

As the bone of contention in this case, is the refusal of petitioner Rivera to indorse the shares of stock in question and the refusal of the Corporation to register private respondents' shares in its books, there is merit in the findings of the lower court that the present controversy is not an intracorporate controversy; private respondents are not yet stockholders; they are only seeking to be registered as stockholders because of an alleged sale of shares of stock to them. Therefore, as the petition is filed by outsiders not yet members of the corporation, jurisdiction properly belongs to the regular courts.

II.

On the other hand, there is merit in petitioners' contention that private respondents' principal action of *mandamus* is an improper course of action.

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It is evident that *mandamus* will not lie in the instant case where the shares of stock in question are not even indorsed by the registered owner Rivera who is specifically resisting the registration thereof in the books of the corporation. Under the above ruling, even the shares of stock which were purchased by private respondents from the other incorporators cannot also be the subject of *mandamus* on the strength of mere indorsement of the supposed owners of said shares in the absence of express instructions from them. The rights of the parties will have to be threshed out in an ordinary action.

III - V.

Petitioners insist that what was issued was a provisional receivership, while private respondents maintain that the trial court issued a Writ of Preliminary Mandatory Injunction. Be that as it may, it appears obvious that from the abovementioned rulings of this Court, petitioners' contention that respondent Judge in the issuance thereof committed acts of grave abuse of discretion, is well taken.

In the Order dated June 5, 1981, in Civil Case No. 132673, the basis of aforesaid Writ was as follows:

"Finally, the Court, after assessing the evidence, finds that the issuance of a preliminary mandatory injunction is proper. Respondents Isamu Akasako and Aquilino Rivera, thru their simulated relationship, have succeeded for two years since 1979 to deprive the petitioners to participate in the profit and management of the corporation of which they are the majority stockholders considering that the stocks certificates appearing in the name of Aquilino Rivera (Exh. "8") is 55% to 75% of the total stocks of the corporation by Isamu Akasako would only prolong the injustice committed against the petitioners and the damages they would suffer would be irreparable. The Court is aware that preliminary mandatory injunction is the exception rather than the rule, but according to the Code Commission, in its report on page 98, 'the writ of preliminary mandatory injunction is called for by the fact that there are at present prolonged litigation between owner and usurper and the former is deprived of his possession even when he has an immediate right thereto.' In the instant case, the right of the petitioners is clear and unmistakable on the law and the facts and there exists an urgent and paramount necessity for the issuing

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of the writ in order to prevent extreme or rather serious damage which ensues from withholding it. (43 C.J.S. 413).

"WHEREFORE, in view of the foregoing circumstances, let a writ of preliminary mandatory injunction issue requiring respondents to allow petitioners to manage the corporate property known as the Fujiyama Hotel & Restaurant, Inc. upon petitioners' filing of a bond in the amount of P30,000.00."

A mandatory injunction is granted only on a showing (a) that the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. (*Pelejo v. Court of Appeals,* 117 SCRA 668, Oct. 18, 1982).

A mandatory injunction which commands the performance of some specific act is regarded as of a more serious nature than a mere prohibitive injunction, the latter being intended generally to maintain the *status quo* only. While our courts, being both of law and equity, have jurisdiction to issue a mandatory writ, it has always been held that its issuance would be justified only in clear cases; that it is generally improper to issue it before final hearing because it tends to do more than maintain the *status quo;* that it should be issued only where there is a willful and unlawful invasion of plaintiff's right and that the latter's case is one free from doubt and dispute. (*National Marketing v. Cloribel,* 22 SCRA 1038, March 13, 1968).

Respondent court in the instant case violated the fundamental rule of injunctions that a mandatory injunction will not issue in favor of a party whose rights are not clear and free of doubt or as yet undetermined. (*Namarco v. Cloribel*, 22 SCRA 1038-1039, March 13, 1968). It will be recalled that the disputed shares of stock were purchased not from the registered owner but from a Japanese national who allegedly was the real owner thereof. It was also alleged that the registered owner was only a dummy of Akasako. It is also true that the trial court has already made findings to that effect at the hearing for the issuance

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of the Order of June 5, 1981. Nonetheless, these are contentious issues that should properly be ventilated at the trial on the merits. As correctly stated in petitioners' motion for reconsideration, the Order of the trial court is in effect a judgment on the merits, declaring expressly or impliedly that petitioners are stockholders of the Corporation at the hearing of only the incident for the issuance of a Writ of Preliminary Injunction. On the other hand if the Order amounts to a judgment on the merits, the lower court should first rule on what private respondents seek, the registration of their shareholdings in the books of the corporation and the issuance of new stock certificates. It is only thereafter that the subsequent act of management may be ordered and the period of finality of such a judgment should be in accordance with the Rules of Court, giving the respondents the right to an appeal or review and not be immediately executory as the Writ of Preliminary Mandatory Injunction would infer. (*Rollo*, p. 65).

Another fundamental rule which appears to have been violated in the case at bar is that no advantage may be given to one to the prejudice of the other, a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto. (*Rodulfo v. Alonso,* 76 Phil. 225), February 28, 1946), Similarly, the primary purpose of an injunction is to preserve the *status quo*, that is the last actual peaceable uncontested status which preceded the controversy. In the instant case, petitioner Rivera is the registered majority and controlling stockholder of the corporation before the ensuing events transpired. By the issuance of the Writ in question he appears to have been deprived of his rights as stockholder thereof apart from his status as Chairman of the Board and President of the corporation, with Akasako as the Manager of the two restaurants in this case; the same being the last uncontested status which preceded the controversy. (*Rollo*, p. 127).

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On the contempt incident involving private respondent Lourdes Jureidini, a Manifestation and Urgent Motion was filed by petitioners to declare her in contempt of Court for allegedly refusing to acknowledge receipt of the Writ at Preliminary Injunction issued by this Court and for allegedly refusing to comply therewith. Attributed to her were the following statements: "I will not obey that x x x Yes, I am higher than the Supreme Court x x x I will obey only what my lawyer tells me."

In her explanation however, filed through her counsel, she denied having uttered the statements alluded to her, the truth of the matter being that she was alone in the restaurant when this Court's process server, accompanied by petitioners' lawyers, approached her and demanded that she vacate the premises and surrender the management of the Restaurant. Fazed by the unusual display of lawyers she requested that she be given time to confer with her counsel. Said request allegedly precipitated the remark from petitioners' counsel that neither respondent herself, nor her counsel, can be higher than the Supreme Court and that any conference seeking to clarify the effect of the Writ of Preliminary Injunction would be futile. (*Rollo*, pp. 174-175).

It was likewise explained that respondent Jureidini did not sign and acknowledge receipt of the Writ because it was not addressed to her but to the lower court and to her counsel.

Respondent's counsel says that the incident was concocted and devised by the petitioners and their counsel to serve no salutary purpose but to scare and harass respondent Jureidini. He also stated that "it is equally improper, at least in practice, for lawyers to accompany officers of the Court in serving or otherwise executing processes of said court as to create a seeming suspicion to the public that lawyers are not involved only professionally in the case they handle but signify their personal interests as well." (*Rollo*, pp. 208-209).

When this contempt incident was heard on March 3, 1982, Atty. Arthur A. Canlas, counsel for private respondent Lourdes Jureidini, Jureidini herself, Atty. Bibiano P. Lesaca a

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representative of the petitioners were interpellated by the Court. Thereafter, the incident was declared submitted for resolution. (Resolution of March 3, 1982; *Rollo*, p. 316).

Thereafter, counsel for petitioner filed a pleading "The Incident of Contempt of Lourdes Jureidini" in the form of a summation of the incident and reiteration of petitioners' charges of contempt.

Counsel for petitioner invokes the provisions of: Section 3, Rule 71 on Indirect Contempt and par. (b) thereof, on Disobedience of or Resistance to a Lawful Writ, Process, Order, Judgment or Command of a Court; or Injunction granted by a Court or Judge x x x; (2) Section 6, Rule 71 regarding punishment or penalty thereof and (3) Section 5, Rule 135, par. (c) to compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of Court, in a case pending therein.

On the incident itself, petitioners' counsel stressed that present when the writ was served were attorneys for petitioners Bibiano P. Lesaca, and Renato P. Paguio in the company of petitioners Isamu Akasako, Akasako's assistants Furnio, Fujihara and Isamu Tajewakai and this Court's process server, before whose presence the alleged contemptuous acts were committed.

Counsel for petitioners also reminded the Court that the first summons of the Court were answered only by counsel for private respondent Jureidini while the latter feigned sickness without a medical certificate. The hearing for the contempt charge was reset but neither counsel for private respondent nor the latter appeared for which non-appearance Atty. Canlas was fined P200.00 for contempt when finally both counsel and client appeared on the third day, the hearing was set.

At that hearing, counsel for petitioners narrated that Attys. Lesaca and Paguio and two Japanese nationals testified in unison that Lourdes Jureidini not only disregarded the writ but distinctly uttered the complained of statements.

Petitioners' counsel laid emphasis on the fact that Lourdes Jureidini is a graduate of nursing, who speaks in straight polished English, capable of understanding the Writ of Mandatory

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Injunction of the Respondent Court served on petitioners by herself and a Deputy Sheriff of Manila, but incredibly unable to understand the Writ issued by the Supreme Court. She was assessed as "overbearing to the point of insolence" and capable of uttering "I am higher than the Supreme Court."

There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court, or injunction granted by a court or judge, more particularly in this case, the Supreme Court, constitutes Indirect Contempt punishable under Rule 71 of the Rules of Court. (Rule 71, Section 3(b) and Section 6).

It has been held that contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation. It is defined as a disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice (*Halili v. Court of Industrial Relations*, 136 SCRA 135, April 30, 1985).

However, it is also well settled that" the power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail." (*Villavicencio v. Lukban,* 39 Phil. 778 [1919]; *Gamboa v. Teodoro, et al.*, 91 Phil. 274 [1952]; *Sulit v. Tiangco,* 115 SCRA 207 [1982]; *Lipata v. Tutaan*, 124 SCRA 880 [1983]. "Only in cases of clear and contumacious refusal to obey should the power be exercised. A *bona fide* misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." "Such power 'being drastic and extra-ordinary in its nature x x x should not be resorted to x x x unless necessary in the interest of justice.'" (*Gamboa v. Teodoro, et al., supra*).

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In the case at bar, although private respondent Jureidini did not immediately comply with the Writ of Injunction issued by this Court, it appears reasonable on her part to request that she be allowed to confer with her lawyer first before she makes any move of her own. It is likewise reasonable for counsel for private respondent to request that he be given time to file a motion for clarification with the Supreme Court.

It will also be noted that the testimonies produced at the hearing to establish the fact that she had uttered the alleged contemptuous statements alluded to her were those of Attys. Lesaca and Paguio and two Japanese nationals, a one-sided version for the petitioners.

It appears to Us that the version of counsel for private respondent is more in accord with human experience: Jureidini who was alone in the Restaurant was fazed by the unusual display of might and by the presence of lawyers demanding that she vacate premises and surrender the management of the Restaurant (*Rollo*, p. 204), this is more believable than the version of counsel for petitioners who summed her up as a person "overbearing to the point of insolence" and capable of uttering" I am higher than the Supreme Court." It would therefore be more reasonable to believe that what she uttered in that situation where she felt threatened, was more in self-defense and not an open defiance of the Supreme Court.

Jureidini cannot also be faulted for finding it difficult to understand the writ issued against her by the Supreme Court as she believed that not only have she and her correspondent the legal right to manage the restaurant but the equitable right as well, having been placed in possession of the corporate property only after posting a bond of P120,000.00. (*Rollo*, pp. 197-198).

In connection with this incident, Jureidini through her counsel filed her comment on October 2, 1981 (*Rollo*, p. 201) contrary to the allegation of petitioners' counsel that it was only Atty. Canlas who filed his comment.

WHEREFORE, the assailed orders of respondent Judge are SET ASIDE; the complaint (special civil action for *mandamus*

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with damages, etc.) should ordinarily be dismissed without prejudice to the filing of the proper action; but as all parties are already duly represented, We hereby consider the case as an ordinary civil action for specific performance, and the case is therefore remanded to the lower court for trial on the merits; the charge of contempt against respondent Jureidini is DISMISSED but the order of Our Court restraining respondent from taking over the management of the restaurant remains until after this case is decided.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. L-26284. October 9, 1986]

TOMAS CALASANZ, ET AL., *petitioners, vs.* **THE COMMISSIONER OF INTERNAL REVENUE and the COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; CAPITAL ASSETS; DEFINED.—** The assets of a taxpayer are classified for income tax purposes into ordinary assets and capital assets. Section 34[a][1] of the National Internal Revenue Code broadly defines capital assets as follows: *"[1] Capital assets. — The term 'capital assets' means property held by the taxpayer [whether or not connected with his trade or business], but does not include, stock in trade of the taxpayer or other property of a kind which would properly be included, in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or*