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may be barred by laches.[13] Petitioners were, therefore, correctly faulted for their unjustified inaction.

WHEREFORE, the judgment of the respondent Court is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and *Sarmiento, JJ.*, concur.

FIRST DIVISION

[G.R. No. 77860. November 22, 1988]

BOMAN ENVIRONMENTAL DEVELOPMENT CORPORATION, *petitioners, vs.* **HON. COURT OF APPEALS and NILCAR Y. FAJILAN,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; ORIGINAL AND EXCLUSIVE JURISDICTION TO SETTLE CONTROVERSIES ARISING OUT OF INTRA-CORPORATE OR PARTNERSHIP RELATIONS. — Under Section 5 (b) of P.D. No. 902-A, as amended, grants the SEC original and exclusive jurisdiction to hear and decide cases involving "b) *Controversies arising out of intra-corporate or partnership relations*, between and among stockholders, members, or associates; *between any or all of them and the corporation*, partnership or association of which they are stockholders, members or associates, respectively; x x x"

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[13] *Ramos, et al. vs. Ramos, et al., supra,* citing 90 C.J.S. 887-889; 54 Am. Jur. 449-450

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2. **ID.; CORPORATION CODE; PERFECTION OF AGREEMENT TO SELL SHARES AND INTERESTS AS WELL AS EXECUTION OF THE PROMISSORY NOTE AS PAYMENT OF THE PRICE OF SALE, AN INTRA-CORPORATE TRANSACTION WITHIN THE COVERAGE OF SECTION 5 (b) OF P.D. NO. 902, AS AMENDED.**— This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement and the promissory note arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy.

3. **ID.; ID.; SALE OF SHARES OF STOCKS NOT FULLY PAID, RETAINS MEMBERSHIP OF SELLER AS STOCK-HOLDER.** — Fajilan's offer to resign as president and director "effective as soon as my shares and interests thereto (sic) are sold fully paid" implied that he would remain a stockholder until his shares and interests were fully paid for, for one cannot be a director or president of a corporation unless he is also a stockholder thereof. The fact that he was replaced as president of the corporation did not necessarily mean that he ceased to be a stockholder considering how the corporation failed to complete payment of the consideration for the purchase of his shares of stock and interests in the goodwill of the business. There has been no actual transfer of his shares to the corporation. In the books of the corporation he is still a stockholder.

4. **ID.; ID.; ID.; STOCKHOLDER'S SUIT AGAINST CORPORATION TO ENFORCE PAYMENT OF SHAREHOLDINGS SOLD TO IT, COGNIZABLE BY THE SEC ALONE.**— Fajilan's suit against the corporation to enforce the latter's promissory note or compel the corporation to pay for his shareholdings is cognizable by the SEC alone which shall determine whether such payment will not constitute a distribution of corporate assets to a stockholder in preference over creditors of the corporation.

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5. ID.; ID.; SEC; EXCLUSIVE SUPERVISION, CONTROL AND REGULATORY JURISDICTION TO INVESTIGATE SALE OF SHAREHOLDINGS TO THE CORPORATION.— The SEC has exclusive supervision, control and regulatory jurisdiction to investigate whether the corporation has unrestricted retained earnings to cover the payment for the shares, and whether the purchase is for a legitimate corporate purpose as provided in Sections 41 and 122 of the Corporation Code.

6. ID.; ID.; SECTIONS 41 AND 122 OF THE CORPORATION CODE DEEMED WRITTEN INTO THE AGREEMENT BETWEEN THE CORPORATION AND THE STOCKHOLDERS. — Section 41 and 122 of the Corporation Code should be deemed written into the agreement between the corporation and the stockholders even if there is no express reference to them in the promissory note. The principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties' expressly making reference to it.

7. ID.; ID.; CORPORATE CREDITORS; PREFERENCE OVER STOCKHOLDERS IN THE DISTRIBUTION OF CORPORATE ASSETS.— The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. "Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock . . ."

APPEARANCES OF COUNSEL

Lim, Duran & Associates for petitioners.

Renato J. Dilag for private respondent.

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DECISION

GRIÑO-AQUINO, *J.*:

The only issue in this case is whether or not a suit brought by a withdrawing stockholder against the corporation to enforce payment of the balance due on the consideration (evidenced by a corporate promissory note) for the surrender of his shares of stock and interests in the corporation, involves an intra-corporate dispute. The resolution of that issue will determine whether the Securities and Exchange Commission (SEC) or a regular court has jurisdiction over the action.

On May 7, 1984, respondent Nilcar Y. Fajilan offered in writing to resign as President and Member of the Board of Directors of petitioner, Boman Environmental Development Corporation (BEDECO), and to sell to the company all his shares, rights, and interests therein for ₱300,000 plus the transfer to him of the company's Isuzu pick-up truck which he had been using. The letter-offer (Exh. A-1) reads as follows:

"07 May 1984

"*THE BOARD OF DIRECTORS*
BOMAN ENVIRONMENTAL DEVELOPMENT CORPORATION
2nd Floor, AGS Building,
466 EDSA, Makati,
Metro Manila

Gentlemen:

"With deepest regrets, I am tendering my resignation as member of the Board of Directors and President of the Company effective as soon as my shares and interests thereto are sold and fully paid.

"It is really painful to leave the Company which we painstakingly labored and nurtured for years to attain its success today, however, family interests and other considerations dictate me otherwise.

"Thank you for your interest of buying my shares and other interests on the Company. It is really my intention to divest myself

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of these investments and sell them all for PESOS: THREE HUNDRED THOUSAND (₱300,000) payable in cash in addition to the Isuzu pick up I am presently using for and in behalf of the Company.

"Thank you.

NILCAR Y. FAJILAN
Director/President" (p. 239, Rollo.)

At a meeting of the Board of Directors of BEDECO on June 14, 1984, Fajilan's resignation as president was accepted and new officers were elected. Fajilan's offer to sell his shares back to the corporation was approved, the Board promising to pay for them on a staggered basis from July 15, 1984 to December 15, 1984 (Annex B).

The resolution of the Board was communicated to Fajilan in the following letter-agreement dated June 25, 1984 to which he affixed his conformity (Annex C):

"June 25, 1984

"Mr. Nilcar Y. Fajilan
No. 159 Aramismis Street
Project 7, Quezon City

"Dear Mr. Fajilan:

"Please be informed that after due deliberation the Board of Directors has accepted your offer to sell your share and interest in the company at the price of ₱300,000.00, inclusive of your unpaid salary from February 1984 to May 31, 1984, loan principal, interest on loan, profit sharing and share on book value of the corporation as at May 31, 1984. Payment of the ₱300,000.00 shall be as follows:

"July 15, 1984	-	*₱100,000.00*
September 15, 1984	-	*75,000.00*
October 15, 1984	-	*62,500.00*
December 15, 1984	-	*62,500.00*
		₱300,000.00

"To assure you of payment of the above amount on respective due dates, the company will execute the necessary promissory note.

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"In addition to the above, the Ford Courier Pick-up will belong to you subject to your assumption of the outstanding obligation thereof with Fil-Invest. It is understood that upon your full payment of the pick-up, arrangement will be made and negotiated with Fil-Invest regarding the transfer of the ownership of the vehicle to your name.

"If the above meets your requirements, kindly signify your conformity/approval by signing below.

Very truly yours,

(SGD) JAMES C. PERALTA
Corporate Secretary

"CONFORME:

(SGD) NILCAR Y. FAJILAN

Noted:

(SGD) ALFREDO S. PANGILINAN (SGD) MAXIMO R. REBALDO

(SGD) BENEDICTO M. EMPAYNADO"

"SUBSCRIBED AND SWORN TO before me, this 3rd day of July, 1984, Alfredo S. Pangilinan exhibiting to me his Residence Certificate No. 1696224 issued at Makati, Metro Manila on January 24, 1984, in his capacity as President of Boman Environmental Development Corporation with Corporate Residence Certificate No. 207911 issued at Makati, Metro Manila on March 26, 1984.

"(SGD) ERNESTO B. DURAN
NOTARY PUBLIC

Until December 31, 1984
PTR No. 8582861 Issued
on January 24, 1984 at
Makati, Metro Manila

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Book No. X
Series of 1984." (p. 245, Rollo.)

A promissory note dated July 3, 1984, was signed by BEDECO'S new president, Alfredo Pangilinan, in the presence of two directors, committing BEDECO to pay him ₱300,000

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over a six-month period from July 15, 1984 to December 15, 1984. The promissory note (Exh. D) provided as follows:

"PROMISSORY NOTE

Makati, Metro Manila
July 3, 1984

"FOR VALUE RECEIVED, BOMAN ENVIRONMENTAL DEVELOPMENT CORPORATION, a domestic corporation duly registered with the Securities and Exchange Commission, with office at Rm. 608, Metro Bank Bldg., Ayala Blvd., Makati, Metro Manila, promise to pay NILCAR Y. FAJILAN of 17 Aramismis St., Project 7, Quezon City, the sum of PESOS: THREE HUNDRED THOUSAND (₱300,000.00), Philippine Currency, payable as follows:

"₱100,000.00	—	*July 15, 1984*
75,000.00	—	*Sept. 15, 1984*
62,500.00	—	*October 15, 1984*
62,500.00	—	*Dec. 15, 1984*
₱300,000.00		

BOMAN ENVIRONMENTAL DEVELOPMENT CORPORATION

By:

(SGD) ALFREDO S. PANGILINAN
President

"Signed in the presence of:

(SGD) MAXIMO R. REBALDO

(SGD) BENEDICTO M. EMPAYNADO"
(Annex D, p. 247, Rollo.)

However, BEDECO paid only ₱50,000 on July 15, 1984 and another ₱50,000 on August 31, 1984 and defaulted in paying the balance of ₱200,000.

On April 30, 1985, Fajilan filed a complaint in the Regional Trial Court of Makati for collection of that balance from BEDECO.

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In an order dated September 9, 1985, the trial court, through Judge Ansberto Paredes, dismissed the complaint for lack of jurisdiction. It ruled that the controversy arose out of intra-corporate relations, hence, the Securities and Exchange Commission has original and exclusive jurisdiction to hear and decide it.

His motion for reconsideration of that order having been denied, Fajilan filed a "Petition for *Certiorari*, and *Mandamus* with Preliminary Attachment" in the Intermediate Appellate Court.

In a decision dated March 2, 1987, the Court of Appeals set aside Judge Paredes' order of dismissal and directed him to take cognizance of the case. BEDECO's motion for reconsideration was denied in a resolution dated March 24, 1987 of the Court of Appeals.

In its decision, the Appellate Court characterized the case as a suit for collection of a sum of money as Fajilan "was merely suing on the balance of the promissory note" (p. 4, Decision; p. 196, *Rollo*) which BEDECO failed and refused to pay in full. More particularly, the Court of Appeals held:

> "*While it is true that the circumstances which led to the execution of the promissory note by the Board of Directors of respondent corporation was an intra-corporate matter, there arose no controversy as to the sale of petitioner's interests and rights as well as his shares as Member of the Board of Directors and President of respondent corporation. The intra-corporate matter of the resignation of petitioner as Member of the Board of Directors and President of respondent corporation has long been settled without issue.*
>
> *"The Board of Directors of respondent corporation has likewise long settled the sale by petitioner of all his shares, rights and interests in favor of the corporation. No controversy arose out of this transaction. The jurisdiction of the Securities and Exchange Commission therefore need not be invoked on this matter." (p. 196, Rollo.)*

The petition is impressed with merit.

Section 5(b) of P.D. No. 902-A, as amended, grants the SEC original and exclusive jurisdiction to hear and decide cases involving —

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"b) *Controversies arising out of intra-corporate or partnership relations,* between and among stockholders, members, or associates; *between any or all of them and the corporation*, partnership or association of which they are stockholders, members or associates, respectively; x x x" (Italics supplied.)

This case involves an intra-corporate controversy because the parties are a stockholder and the corporation. As correctly observed by the trial court, the perfection of the agreement to sell Fajilan's participation and interests in BEDECO and the execution of the promissory note for payment of the price of the sale did not remove the dispute from the coverage of Section 5(b) of P.D. No. 902, as amended, for both the said agreement (Annex C) and the promissory note (Annex D) arose from intra-corporate relations. Indeed, all the signatories of both documents were stockholders of the corporation at the time of signing the same. It was an intra-corporate transaction, hence, this suit is an intra-corporate controversy.

Fajilan's offer to resign as president and director "effective as soon as my shares and interests thereto (sic) are sold and fully paid" (Annex A-1, p. 239, *Rollo*) implied that he would remain a stockholder until his shares and interests were fully paid for, for one cannot be a director or president of a corporation unless he is also a stockholder thereof. The fact that he was replaced as president of the corporation did not necessarily mean that he ceased to be a stockholder considering how the corporation failed to complete payment of the consideration for the purchase of his shares of stock and interests in the goodwill of the business. There has been no actual transfer of his shares to the corporation. In the books of the corporation he is still a stockholder.

Fajilan's suit against the corporation to enforce the latter's promissory note or compel the corporation to pay for his shareholdings is cognizable by the SEC alone which shall determine whether such payment will not constitute a distribution of corporate assets to a stockholder in preference over creditors of the corporation. The SEC has exclusive supervision, control and regulatory jurisdiction to investigate whether the corporation has unrestricted retained earnings to cover the payment for the

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shares, and whether the purchase is for a legitimate corporate purpose as provided in Sections 41 and 122 of the Corporation Code, which read as follows:

"SEC. 41. Power to acquire own shares. — A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: Provided, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired;

"1. To eliminate fractional shares arising out of stock dividends;

"2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and

"3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code. x x x."

"Sec. 12. Corporate liquidation x x x.

xxx xxx xxx

"Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities, (77a, 89a, 16a)."

These provisions of the Corporation Code should be deemed written into the agreement between the corporation and the stockholders even if there is no express reference to them in the promissory note. The principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties expressly making reference to it (*Lakas ng Manggagawang Makabayan vs. Abiera*, 36 SCRA 437).

The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There

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can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. "Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock . . ." (*Steinberg vs. Velasco*, 52 Phil. 953.)

WHEREFORE, the petition for *certiorari* is granted. The decision of the Court of Appeals is reversed and set aside. The order of the trial court dismissing the complaint for lack of jurisdiction is hereby reinstated. No costs.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and *Medialdea, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-31440. November 23, 1988]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO BANDOQUILLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT; RESPECTED ON APPEAL; EXCEPTION.— Quite apart from the doctrine of long standing that because a trial court enjoys the distinct advantage of observing the witnesses and the evidence personally and directly, its factual findings consequently carry with them a strong presumption of correctness and will not be modified or reversed on appeal absent any persuasive showing that it has overlooked certain facts substantially affecting its conclusions, we are