Supreme Court E-Library

FIRST DIVISION

[G.R. No. 71837. July 26, 1988]

CHUNG KA BIO, WELLINGTON CHUNG, CHUNG SIONG PEK, VICTORIANO CHUNG, and MANUEL CHUNG TONG OH, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT (2nd Special Cases Division), SECURITIES and EXCHANGE COMMISSION *EN BANC*, HON. ANTONIO R. MANABAT, HON. JAMES K. ABUGAN, HON. ANTERO F.L. VILLAFLOR, JR., HON. SIXTO T.J. DE GUZMAN, JR., ALFREDO CHING, CHING TAN, CHIONG TIONG TAY, CHUNG KIAT HUA, CHENG LU KUN, EMILIO TAÑEDO, ROBERTO G. CENON and PHILIPPINE BLOOMING MILLS COMPANY, INC.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; BOARD OF DIRECTORS; PRESUMPTION OF REGULARITY IN OBTAINING AUTHORIZATION, APPLIED; OPTION GRANTED TO STOCKHOLDERS WHO DID NOT VOTE IN FAVOR OF SAID AUTHORIZATION.—** There is the presumption of regularity which must operate in favor of the private respondents, who insist that the proper authorization as required by the Corporation Law was duly obtained at a meeting called for the purpose. (That authorization was embodied in a unanimous resolution dated March 19, 1977, which was reproduced *verbatim* in the deed of assignment.) Otherwise, the new PBM would not have been issued a certificate of incorporation, which should also be presumed to have been done regularly. It must also be noted that under Section 28-½, "any stockholder who did not vote to authorize the action of the board of directors may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares." The record does not show, nor have the petitioners alleged or proven, that they filed a written objection and demanded payment of their shares during the reglementary forty-day period. This circumstance should bolster the private respondents' claim that the authorization was unanimous.

Supreme Court E-Library

2. ID.; ID.; TRANSFER OF ASSETS OF DISSOLVED CORPORATION TO A NEW ONE, CONSENT OF STOCKHOLDERS NECESSARY.— There is nothing to prevent the stockholders from conveying their respective shareholdings toward the creation of a new corporation to continue the business of the old. Winding up is the sole activity of a dissolved corporation that does not intend to incorporate anew. If it does, however, it is not unlawful for the old board of directors to negotiate and transfer the assets of the dissolved corporation to the new corporation intended to be created as long as the stockholders have given their consent. This was not prohibited by the Corporation Act. In fact, it was expressly allowed by Section 28-½.

3. CIVIL LAW; LACHES; OPERATES TO BAR PARTY FROM QUESTIONING SUBJECT DOCUMENT.— Although the deed of assignment was executed in 1977, it was only in 1981 that it occurred to the petitioners to question its validity. All of four years had elapsed before the petitioners filed their action for liquidation of both the old and the new corporations, and during this period, the new PBM was in full operation, openly and quite visibly conducting the same business undertaken earlier by the old dissolved PBM. The petitioners and the private respondents are not strangers but relatives and close business associates. The PBM office is in the heart of Metro Manila. The new corporation, like the old, employs as many as 2,000 persons, the same personnel who worked for the old PBM. Additionally, one of the petitioners, Chung Siong Pek, was one of the directors who executed the deed of assignment in favor of the old PBM and it was he also who received the deeded assets on behalf and as treasurer of the new PBM. Surely, these circumstances must operate to bar the petitioners now from questioning the deed of assignment after this long period of inaction in the protection of the rights they are now belatedly asserting. Laches has operated against them.

4. ID.; ID.; DEFINED; ESSENTIAL ELEMENTS.— Laches, in a general sense, means the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it. The essential

Supreme Court E-Library

elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (2) delay in asserting complainant's rights after he had knowledge of the defendant's conduct and after he has an opportunity to sue; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; (4) injury or prejudice to the defendant in the event relief is accorded to the complainant.

5. COMMERCIAL LAW; CORPORATION LAW; BY-LAWS; EFFECT OF FAILURE TO FILE SAME.— Section 19 of the Corporation Law, part of which is now Section 22 of the Corporation Code, provided that the powers of the corporation would cease if it did not formally organize and commence the transaction of its business or the continuation of its works within two years from date of its incorporation. Section 20, which has been reproduced with some modifications in Section 46 of the Corporation Code, expressly declared that "every corporation formed under this Act, must within one month after the filing of the articles of incorporation with the Securities and Exchange Commission, adopt a code of by-laws." Whether this provision should be given mandatory or only directory effect remained a controversial question until it became academic with the adoption of PD 902-A. Under this decree, it is now clear that the failure to file by-laws within the required period is only a ground for suspension or revocation of the certificate of registration of corporations. Non-filing of the by-laws will not result in automatic dissolution of the corporation.

6. ID.; ID.; ID.; HEARING INDISPENSABLE TO DETERMINE GROUND FOR FAILURE TO FILE SAME WITHIN THE REQUIRED PERIOD.— Under Section 6(i) of PD 902-A, the SEC is empowered to "suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of a corporation" on the ground *inter alia* of "failure to file by-laws within the required period." It is clear from this provision that there must first of all be a hearing to determine the existence of the ground, and secondly, assuming such finding, the penalty is not necessarily revocation but may be only suspension of the charter.

7. ID.; ID.; ID.; PENALTY FOR NON-FILING THEREOF.— Under the rules and regulations of the SEC, failure to file the

Supreme Court E-Library

by-laws on time may be penalized merely with the imposition of an administrative fine without affecting the corporate existence of the erring firm.

8. ID.; ID.; ID.; CONDITION PRECEDENT IN ACQUISITION OF CORPORATE PERSONALITY; DATE WHEN A CORPORATION IS DEEMED INCORPORATED.— Organization and commencement of transaction of corporate business are but conditions subsequent and not prerequisites for acquisition of corporate personality. The adoption and filing of by-laws is also a condition subsequent. Under Section 19 of the Corporation Code, a corporation commences its corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal. This may be done even before the filing of the by-laws, which under Section 46 of the Corporation Code, must be adopted "within one month after receipt of official notice of the issuance of its certificate of incorporation."

9. ID.; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION LIMITED TO THOSE CASES WHICH ARE SPECIFICALLY PROVIDED FOR ITS ENABLING STATUTES.— The respondent court justifies assumption by the SEC of jurisdiction over the petition for suspension of payment filed by an individual on the general principle against multiplicity of suits. Section 5(d), PD 902-A clearly does not allow a mere individual to file the petition which is limited to "corporations, partnerships or associations." Administrative agencies like the SEC are tribunals of limited jurisdiction and, as such, can exercise only those powers which are specifically granted to them by their enabling statutes. Consequently, where no authority is granted to hear petitions of *individuals* for suspension of payments, such petitions are beyond the competence of the SEC. The analogy offered by the respondent court is clearly inappropriate for while it is true that the Sandiganbayan may assume jurisdiction over private individuals, it is because its charter expressly allows this in specified cases. No similar permission is found in PD 902-A.

10. REMEDIAL LAW; CIVIL ACTIONS; JURISDICTION; CANNOT BE FIXED BY AGREEMENT OF PARTIES. — The circumstance that Ching is a co-signer in the corporation's promissory notes, collateral or guarantee or security

Supreme Court E-Library

agreements, does not make him a proper party. Jurisdiction over the subject matter must exist as a matter of law and cannot be fixed by agreement of the parties, acquired through, or waived, enlarged or diminished by, any act or omission; neither can it be conferred by acquiescence of the tribunal. Hence, Alfredo Ching, as a mere individual, cannot be allowed as a co-petitioner in SEC Case No. 2250.

APPEARANCES OF COUNSEL

Blanco Law Firm for petitioners.

The Solicitor General for respondent SEC.

Balgos & Perez Law Office for Philippine Blooming Mills Company, Inc.

Quiason, Ermitaño, Makalintal & Barot Law offices for private respondents Ching Tan and Chiong Tiong Tay.

Angara, Concepcion, Regala & Cruz Law Offices for private respondents.

DECISION

CRUZ, *J.*:

The Philippine Blooming Mills Company, Inc. was incorporated on January 19, 1952, for a term of 25 years which expired on January 19, 1977.[1] On May 14, 1977, the members of its board of directors executed a deed of assignment of all of the accounts receivables, properties, obligations and liabilities of the old PBM in favor of Chung Siong Pek in his capacity as treasurer of the new PBM, then in the process of reincorporation.[2] On June 14, 1977, the new PBM was issued a certificate of incorporation by the Securities and Exchange Commission.[3]

On May 5, 1981, Chung Ka Bio and the other petitioners herein, all stockholders of the old PBM, filed with the SEC a

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[1] *Rollo*, pp. 41, 86.

[2] *Ibid.*

[3] *Id.*

Supreme Court E-Library

petition for liquidation (but not for dissolution) of both the old PBM and the new PBM. The allegation was that the former had become legally non-existent for failure to extend its corporate life and that the latter had likewise been *ipso facto* dissolved for non-use of the charter and continuous failure to operate within 2 years from incorporation.[4]

Dismissed for lack of a cause of action, the case, docketed as AC No. 055, was reinstated on appeal to the SEC *en banc* and remanded to a new panel of hearing officers for further proceedings, including the proper accounting of the assets and liabilities of the old PBM. This order was appealed to the Intermediate Appellate Court in a petition for partial review, docketed as AC GR SP No. 00843, questioning the authority of the SEC in Case No. 055 to adjudicate a matter not properly raised on appeal or resolved in the order appealed from.[5]

In a related development, Alfredo Ching, one of the members of the board of directors of the old PBM who executed the deed of assignment, filed with the Intermediate Appellate Court a separate petition for *certiorari*, docketed as AC GR No. 01099, in which he questioned the same order and the decision of the SEC in AC Case No. 055. He alleged that the SEC had gravely erred in not dismissing the petition for liquidation since the action amounted to a *quo warranto* proceeding which only the state could institute through the Solicitor General.[6]

Earlier, on April 1, 1982, the new PBM and Alfredo Ching had filed with the SEC a petition for suspension of payment, which was opposed by Chung Ka Bio, *et al.*, on the ground that the SEC had no jurisdiction over a petition for suspension of payments initiated by a mere individual. The opposition was rejected and the case was set for hearing. Chung Ka Bio elevated the matter to the SEC *en banc* on *certiorari* with preliminary injunction and receivership, docketed as SEC EB No. 018,

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[4] *Id.*, pp. 11, 41.

[5] *Id.*, p. 41.

[6] *Id.*, pp. 41-42.

Supreme Court E-Library

praying for the annulment and setting aside of the proceedings. On May 10, 1983, the case was remanded to the hearing officers for further proceedings.[7]

Chung Ka Bio came to this Court but we referred his case to the Intermediate Appellate Court where it was docketed as GR SP No. 01007. The three cases, *viz.*, *PBM Co., Inc. v. SEC*, AC GR SP 00843; *Chung Ka Bio, et al. v. SEC*, AC GR SP No. 01007; and *Alfredo Ching, et al. v. SEC*, AC GR SP No. 01099 were then consolidated in the respondent court which, on February 28, 1985, issued the decision now challenged on *certiorari* by the petitioners in the case at bar. The decision affirmed the orders issued by the SEC in the said cases except the requirement for the accounting of the assets of the old PBM, which was set aside.[8]

The petitioners now contend as follows:

1. The board of directors of an already dissolved corporation does not have the inherent power, without the express consent of the stockholders, to convey all its assets to a new corporation.

2. The new corporation is accountable for the said assets to the stockholders of the dissolved corporation who had not consented to the conveyance of the same to the new corporation.

3. The new corporation has not substantially complied with the two-year requirement of Section 22 of the new Corporation Code on non-user because its stockholders never adopted a set of by-laws.

4. A *quo warranto* proceeding is no longer necessary to dissolve a corporation which is already "deemed dissolved" under Section 22 of the new Corporation Code.

5. The Securities and Exchange Commission has no jurisdiction over a petition for suspension of payments filed by an individual only.[9]

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[7] *Id.*, pp. 12-13, 42.

[8] *Id.*, pp. 13, 45.

[9] *Id.*, pp. 8-9.

Supreme Court E-Library

On the first contention, the petitioners insist that they have never given their consent to the creation of the new corporation nor have they indicated their agreement to transfer their respective stocks in the old PBM to the new PBM. The creation of the new corporation with the transfer thereto of the assets of the old corporation was not within the powers of the board of directors of the latter as it was authorized only to wind up the affairs of such company and not in any case to continue its business. Moreover, no stockholders' meeting had been convened to discuss the deed of assignment and the 2/3 vote required by the Corporation Law to authorize such conveyance had not been obtained.[10]

The pertinent provisions of the Corporation Law, which was the law then in force, are the following:

"SEC. 77. Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established."

"SEC. 28-½. A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such considerations, which may be money, stocks bonds, or other instruments for the payment of money or other property or other considerations, as its board of directors deem expedient, when and as authorized by the affirmative vote of shareholders holding shares in the corporation entitling them to exercise at least two-thirds of the voting power on such a proposal at a shareholders' meeting called for that purpose. Notice of such meeting shall be given to all of the shareholders of record of the corporation whether or not they shall be entitled to vote thereat: Provided, however, That any stockholder who did not vote to authorize the action of the board of directors, may, within

[10] *Id.*, pp. 28-30.

Supreme Court E-Library

forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares. If, after such a demand by a stockholder, the corporation and the stockholder can not agree upon the value of his share or shares at the time such corporate action was authorized, such value shall be ascertained by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation, and the third by the two thus chosen. The finding of the appraisers shall be final and if their award is not paid by the corporation within thirty days after it is made, it may be recovered in an action by the stockholder against the corporation. Upon payment by the corporation to the stockholder of the agreed or awarded price of his shares, the stockholder shall forthwith transfer and assign the share or shares held by him as directed by the corporation.

"Unless and until such sale, lease, or exchange shall be abandoned, the stockholder making such demand in writing ceases to be a stockholder and shall have no rights with respect to such shares except the right to receive payment therefor as aforesaid.

"A stockholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of capital stock.

"Nothing in this section is intended to restrict the power of any corporation, without the authorization thereof by the shareholders, to sell, lease, exchange, or otherwise dispose of, any of its property if thereby the corporate business be not substantially limited, or if the proceeds of such property be appropriated to the conduct or development of its remaining business."

These are now Sections 122 and 40, respectively, with modifications, of the Corporation Code.

As the first contention is based on the negative averment that no stockholders' meeting was held and the 2/3 consent vote was not obtained, there is no need for affirmative proof. Even so, there is the presumption of regularity which must operate in favor of the private respondents, who insist that the proper authorization as required by the Corporation Law was duly obtained at a meeting called for the purpose. (That

Supreme Court E-Library

authorization was embodied in a unanimous resolution dated March 19, 1977, which was reproduced *verbatim* in the deed of assignment.)[11] Otherwise, the new PBM would not have been issued a certificate of incorporation, which should also be presumed to have been done regularly. It must also be noted that under Section 28-½, "any stockholder who did not vote to authorize the action of the board of directors may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares." The record does not show, nor have the petitioners alleged or proven, that they filed a written objection and demanded payment of their shares during the reglementary forty-day period. This circumstance should bolster the private respondents' claim that the authorization was unanimous.

While we agree that the board of directors is not normally permitted to undertake any activity outside of the usual liquidation of the business of the dissolved corporation, there is nothing to prevent the stockholders from conveying their respective shareholdings toward the creation of a new corporation to continue the business of the old. Winding up is the sole activity of a dissolved corporation that does not intend to incorporate anew. If it does, however, it is not unlawful for the old board of directors to negotiate and transfer the assets of the dissolved corporation to the new corporation intended to be created as long as the stockholders have given their consent. This was not prohibited by the Corporation Act. In fact, it was expressly allowed by Section 28-½.

What the Court finds especially intriguing in this case is the fact that although the deed of assignment was executed in 1977, it was only in 1981 that it occurred to the petitioners to question its validity. All of four years had elapsed before the petitioners filed their action for liquidation of both the old and the new corporations, and during this period, the new PBM was in full operation, openly and quite visibly conducting the same business undertaken earlier by the old dissolved PBM. The petitioners and the private respondents are not strangers but relatives and

[11] *Id.*, pp. 48-49.

Supreme Court E-Library

close business associates.[12] The PBM office is in the heart of Metro Manila.[13] The new corporation, like the old, employs as many as 2,000 persons, the same personnel who worked for the old PBM.[14] Additionally, one of the petitioners, Chung Siong Pek, was one of the directors who executed the deed of assignment in favor of the old PBM and it was he also who received the deeded assets on behalf and as treasurer of the new PBM.[15] Surely, these circumstances must operate to bar the petitioners now from questioning the deed of assignment after this long period of inaction in the protection of the rights they are now belatedly asserting. Laches has operated against them.

We have said in a number of cases that laches, in a general sense, means the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier.[16] It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it.[17] Public policy requires, for the peace of society, the discouragement of claims grown stale for non-assertion.[18] Unlike the statute of limitations, laches does not involve mere lapse or passage of time but is principally an impediment to the assertion or enforcement of a right which has become under the circumstances inequitable or unfair to permit.[19]

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[12] *Id.*, pp. 98-57.

[13] *Id.*, p. 113.

[14] *Id.*, p. 95.

[15] *Id.*, pp. 49, 58, 92, 98.

[16] *Tijam v. Sibonghanoy*, 23 SCRA 29; *Sotto v. Teves*, 86 SCRA 154; *De Castro v. Tan*, 129 SCRA 85; *Burgos, Sr. v. Chief of Staff*, AFP, 133 SCRA 800; *Corro v. Lising*, 137 SCRA 541; *Tejido v. Zamacoma*, 138 SCRA 78.

[17] *Supra.*

[18] *Tijam v. Sibonghanoy, supra.*

[19] *Ibid.*

Supreme Court E-Library

The essential elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (2) delay in asserting complainant's rights after he had knowledge of the defendant's conduct and after he has an opportunity to sue; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; (4) injury or prejudice to the defendant in the event relief is accorded to the complainant.[20]

All the requisites are present in the case at bar. To begin with, what gave rise to the situation now complained of by the petitioners was the adoption of the deed of assignment by the directors of the old PBM allegedly without the consent of its stockholders and the acceptance of the deeded assets by the new PBM. Secondly, there was delay on the petitioners' part since it took them nearly four years, *i.e.*, from May 14, 1977 to May 5, 1981, before they made their move to assail the transfer despite complete knowledge of the transaction. It is also evident that the new PBM could not have had the slightest suspicion that the petitioners would assert the right on which they now base their suit, especially Chung Siong Pek, who in fact acted not only as director of the old PBM but also as treasurer of the new PBM in the transaction. Finally, the injury or prejudice in the event relief is granted is obvious as all the transactions of the new PBM will have to be undone, including credits extended and commitments made to third parties in good faith.

The second contention must also fall with the first, and for the same reasons.

The third contention is likewise rejected for, as already shown, it is undeniable that the new PBM has in fact been operating all these years. The petitioners' argument that Alfredo Ching was

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[20] *Z.E. Lotho, Inc. v. Ice & Cold Storage Industries, Inc.*, 3 SCRA 744; *Abraham v. Intestate Estate of Juan C. Ysmael*, 4 SCRA 298; *Custodio v. Casiano*, 9 SCRA 841; *Nielsen & Co., Inc. v. Lepanto Consolidated Mining Co.*, 18 SCRA 1040; *Miguel v. Catalino*, 26 SCRA 234; *Perez v. Ong Chua*, 116 SCRA 732, citing *Go Chi Gun, et al. v. Co Cho, et al.*, 96 Phil. 622.

Supreme Court E-Library

merely continuing the business of the old PBM is self-defeating for they themselves argue that the old PBM had already been dissolved. As for the contention that the election of Wellington Chung and J.R. Blanco as directors was subject to the outcome of the petition for liquidation, this is clearly self-serving and completely without proof. Moreover, failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution.

Section 19 of the Corporation Law, part of which is now Section 22 of the Corporation Code, provided that the powers of the corporation would cease if it did not formally organize and commence the transaction of its business or the continuation of its works within two years from date of its incorporation. Section 20, which has been reproduced with some modifications in Section 46 of the Corporation Code, expressly declared that "every corporation formed under this Act, must within one month after the filing of the articles of incorporation with the Securities and Exchange Commission, adopt a code of by-laws." Whether this provision should be given mandatory or only directory effect remained a controversial question until it became academic with the adoption of PD 902-A. Under this decree, it is now clear that the failure to file by-laws within the required period is only a ground for suspension or revocation of the certificate of registration of corporations.

Non-filing of the by-laws will not result in automatic dissolution of the corporation. Under Section 6(i) of PD 902-A, the SEC is empowered to "suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of a corporation" on the ground *inter alia* of "failure to file by-laws within the required period." It is clear from this provision that there must first of all be a hearing to determine the existence of the ground, and secondly, assuming such finding, the penalty is not necessarily revocation but may be only suspension of the charter. In fact, under the rules and regulations of the SEC, failure to file the by-laws on time may be penalized merely with the imposition

Supreme Court E-Library

of an administrative fine without affecting the corporate existence of the erring firm.[21]

It should be stressed in this connection that substantial compliance with conditions subsequent will suffice to perfect corporate personality. Organization and commencement of transaction of corporate business are but conditions subsequent and not prerequisites for acquisition of corporate personality. The adoption and filing of by-laws is also a condition subsequent. Under Section 19 of the Corporation Code, a corporation commences its corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal. This may be done even before the filing of the by-laws, which under Section 46 of the Corporation Code, must be adopted "within one month after receipt of official notice of the issuance of its certificate of incorporation."

Distinguishing creation from defects in organization, Fletcher has the following to say:

"x x x. Ordinarily, want of, or defects in, the organization of a corporation, as distinguished from its creation, do not preclude the existence of a *de facto* corporation; and requirements in special charters or general incorporation laws relating to organization are

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[21] Under Memorandum Circular No. 11, SMD Series of 1987, it is provided:

"Pursuant to the powers vested in the Commission by Batas Pambansa Blg. 68, and Republic Act No. 1143 and in order to effectively implement Section 46 of the new Corporation Code of the Philippines, the following guidelines shall be observed:

'All corporations which failed to file their by-laws within one month from receipt of the certificate of incorporation shall be fined in the amount of ₱25.00 in case of non-stock corporations and ₱50.00 for stock corporations for every month of delay but in no case shall the aggregate fines exceed ₱100.00 and ₱250.00, respectively.

'Corporations which have no by-laws but are active or operating are required to submit their General Information Sheet to the Commission within thirty (30) days to be counted after the end of one (1) year from the date of incorporation and every year thereafter until their by-laws are filed and approved by the Commission. Non-compliance thereto shall subject the corporation to a penalty in accordance with the scale of fines for late filing of the General Information Sheet.'"

Supreme Court E-Library

often construed to be merely directory, or to conditions subsequent rather than conditions precedent, so that compliance therewith is not necessary to create even a *de jure* corporation. It has been held that there may be a *de facto* corporation notwithstanding a failure to give the notice required by the statute of the meeting for the purpose of organization; or though there was a failure to fix and limit the amount of the capital stock of the company at the first meeting; or a failure to issue stock; or that there were informalities in the proceedings of such meeting, or that no certificate of organization was executed or filed. And the same has been held to be true though no board of directors has been elected, and though there were irregularities with respect to the number, term, place of residence and of meeting of the board of directors, or some of the persons chosen as directors are not qualified, even though the taking of these various steps is necessary to the proper use of the franchise. x x x."

In any case, the deficiency claimed by the petitioners was corrected when the new PBM adopted and filed its by-laws on September 6, 1981,[22] thus rendering the third issue also moot and academic.

It is needless as well to dwell on the fourth contention, in view of the findings that the new PBM has not been *ipso facto* dissolved.

On the fifth and final issue, the respondent court justifies assumption by the SEC of jurisdiction over the petition for suspension of payment filed by an individual on the general principle against multiplicity of suits.

Under Section 5(d), PD 902-A, as amended by PD 1758, however, it is clearly provided that such jurisdiction may be exercised only in:

"d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possess sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the

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[22] *Rollo*, p. 96.

Supreme Court E-Library

corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree."

This section clearly does not allow a mere individual to file the petition which is limited to "corporations, partnerships or associations." Administrative agencies like the SEC are tribunals of limited jurisdiction and, as such, can exercise only those powers which are specifically granted to them by their enabling statutes.[23] Consequently, where no authority is granted to hear petitions of *individuals* for suspension of payments, such petitions are beyond the competence of the SEC. The analogy offered by the respondent court is clearly inappropriate for while it is true that the Sandiganbayan may assume jurisdiction over private individuals, it is because its charter expressly allows this in specified cases. No similar permission is found in PD 902-A.

The circumstance that Ching is a co-signer in the corporation's promissory notes, collateral or guarantee or security agreements, does not make him a proper party. Jurisdiction over the subject matter must exist as a matter of law and cannot be fixed by agreement of the parties, acquired through, or waived, enlarged or diminished by, any act or omission; neither can it be conferred by acquiescence of the tribunal. Hence, Alfredo Ching, as a mere individual, cannot be allowed as a co-petitioner in SEC Case No. 2250.

WHEREFORE, the appealed decision is AFFIRMED as above modified, with costs against the petitioners.

SO ORDERED.

Narvasa, Gancayco, and *Medialdea, JJ.*, concur.

Griño-Aquino, J., no part as she signed CA resolution of August 6, 1985.

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[23] *Union Glass & Container Corp. v. SEC, 126 SCRA* 31, 39; see also *DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.*, 132 SCRA 293.