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THIRD DIVISION

[G.R. Nos. 202647-50. March 9, 2016]

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT and MARIE GRACE H. RICAFORT, *petitioners, vs.* **The Honorable ISAIAS P. DICDICAN, the Honorable RAMON M. BATO, JR., and the Honorable EDUARDO B. PERALTA, JR., in their official capacities as Members of the Special Fourteenth Division of the Court of Appeals, NATIONWIDE DEVELOPMENT CORPORATION, ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA and LUIS MANUEL GATMAITAN,** *respondents.*

[G.R. Nos. 205921-24. March 9, 2016]

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT and MARIE GRACE H. RICAFORT, *petitioners, vs.* **ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA, NATIONWIDE DEVELOPMENT CORPORATION and LUIS MANUEL L. GATMAITAN,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; SECURITIES REGULATION CODE (R.A. NO. 8799); SECTIONS 1 TO 3 OF RULE 6 OF THE INTERIM RULES; SEC CASE NO. 11-164 IS BARRED BY PRESCRIPTION SINCE IT WAS FILED BEYOND THE 15-DAY PRESCRIPTIVE PERIOD ALLOWED FOR AN ELECTION PROTEST.— Claiming to be stockholders of record who were denied due notice of NADECOR's August 15, 2011 ASM, the petitioner filed the Complaint in SEC Case No. 11-164 purportedly to void and nullify "the August 15, 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto. x x x. Yet there can be no denying that by

Supreme Court E-Library

(a) asserting their "right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affairs," because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting, and (b) by praying for the voiding of the August 15, 2011 ASM, and for "other just and equitable reliefs," the petitioners were really seeking the holding of a new election for members of the Board of Directors of NADECOR for FY 2011-2012. x x x. Under Sections 1 to 3 of Rule 6 of the Interim Rules, SEC Case No. 11-164 should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest.

2. **ID.; CORPORATIONS; STOCKHOLDERS' MEETING; LACK OF NOTICE TO PETITIONERS IS INCONSEQUENTIAL AS THEY WERE DULY REPRESENTED IN THE AUGUST 15, 2011 ANNUAL STOCKHOLDERS' MEETING BY THEIR PROXY JG RICAFORT.—** During the stockholders' registration for the August 15, 2011 ASM, no one questioned JG Ricafort's Irrevocable Proxy dated April 26, 2010 as attorney and proxy for the petitioners. x x x. Equally significantly, the petitioners do not deny that they each executed a Nominee Agreement dated June 4, 2007 wherein they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. x x x. Thus, JG Ricafort being the real and beneficial owner of the petitioners' shares, lack of notice to them is inconsequential because he attended and represented them at the August 15, 2011 ASM.

3. **ID.; ID.; ID.; PETITIONERS WERE NOTIFIED OF THE AUGUST 15, 2011 ANNUAL STOCKHOLDERS' MEETING. —** As shown in the Affidavit dated October 13, 2011 of San Juan, NADECOR's messenger, he mailed the notices for the August 15, 2011 ASM to the petitioners' address at the Ortigas Post Office on August 11, 2011, four days prior to the ASM. This was confirmed by Gatmaitan in his Affidavit dated November 21, 2011. It must be noted that under Article I, Section 3 of NADECOR's Amended By-Laws, what is required is the mailing out of notices by registered mail at least three days before the ASM: x x x. The shorter notice of three days instead of two weeks for stockholders' regular or special meeting is clearly allowed under Section 50 of the Corporation Code, to wit: SECTION 50. Regular and Special Meetings of Stockholders

Supreme Court E-Library

or Members. — x x x. Provided that written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, **unless a different period is required by the by-laws.** x x x. **Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member**. x x x. By failing to file their complaint below seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM.

4. ID.; ID.; ID.; THE VALIDITY OF THE ANNUAL STOCKHOLDERS' MEETING OR THE PROCEEDINGS THEREIN NOT AFFECTED BY FAILURE TO GIVE NOTICE OF THE REGULAR OR ANNUAL MEETINGS, WHERE THE DATE THEREOF IS FIXED IN THE BY-LAWS.— Section 50 provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR, which is *"at twelve thirty P.M., on the THIRD MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the first day following which is not a legal holiday,"* will not affect the validity of the ASM or the proceedings therein.

APPEARANCES OF COUNSEL

Zamora Pobaldor Vasquez & Bretana for petitioners.

Villaraza & Angangco Law Offices for Calalang, Ayala, Engle, Nitorreda & Romulo.

Picazo Buyco Tan Fider & Santos for Luis Manuel Gatmaitan.

D E C I S I O N

REYES, *J.*:

Before this Court are two joint petitions: (i) G.R. Nos. 202647-50, for *certiorari* and prohibition under Rule 65 seeking to set aside the Resolution[1] dated June 13, 2012 of the Court of Appeals

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Eduardo B. Peralta, Jr. concurring; *rollo* (G.R. Nos. 202647-50), Vol. I, pp. 64-71.

(CA) Special 14th Division in four consolidated petitions before it, namely, CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, which granted the application for Writ of Preliminary Injunction (WPI) of the Nationwide Development Corporation (NADECOR), Roberto R. Romulo (Romulo), Conrado T. Calalang (Calalang), Alfredo I. Ayala (Ayala), John Engle (Engle), Leocadio Nitorreda (Nitorreda) and Luis Manuel L. Gatmaitan (Gatmaitan) (private respondents);[2] and (ii) G.R. Nos. 205921-24, for review on *certiorari* under Rule 45 of the Rules of Court from the CA Special 14th Division's consolidated Decision[3] dated February 18, 2013 in CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, which nullified and set aside the Order[4] dated December 21, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 159, in SEC Case No. 11-164, and made permanent the WPI it issued on June 13, 2012.[5]

Antecedent Facts

The NADECOR is a domestic company which was first registered with the Securities and Exchange Commission (SEC) on September 6, 1956. It is the holder of a Mining Production Sharing Agreement (MPSA), MPSA 009-92-XI, with the Department of Environment and Natural Resources (DENR), which covers the King-king Gold and Copper Project (King-king Project), a 1,656-hectare gold and copper mining concession in Barangay King-king, Municipality of Pantukan, Province of Compostela Valley in Mindanao. The King-king Project is the second largest copper and gold mine in the country with proven copper deposits of 5.4 billion pounds and gold deposits of 10.3 million troy ounces.[6]

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[2] *Id.* at 3-62.

[3] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 101-135.

[4] Rendered by Judge Rodolfo R. Bonifacio; *id.* at 429-446.

[5] *Id.* at 48-99.

[6] <http://www.nadecor.com.ph> (visited March 1, 2016). Per www.lme.com, the website of London Metal Exchange, which claims to be world centre for industrial metals trading, as of March 1, 2016 copper was trading at US$4,780.00/ton, or US$2.173/lb; per www.apmex.com, website of APMEX,

Supreme Court E-Library

Pursuant to Section 1, Article I of NADECOR's Amended By-Laws,[7] its regular annual stockholders' meeting (ASM) was held on August 15, 2011 to elect its Board of Directors for Fiscal Year (FY) 2011-2012. The meeting was held in the Turf Room of the Manila Polo Club, South Forbes Park, Makati City. In his Affidavit[8] dated November 21, 2011, Gatmaitan, NADECOR Corporate Secretary, attested to the presence of a quorum representing 94.81% of NADECOR's outstanding shares of stock, and the election of new set of its Board of Directors, namely, Calalang, Jose G. Ricafort (JG Ricafort), Jose P. De Jesus (De Jesus), Romulo, Ayala, Victor P. Lazatin (Lazatin), Ethelwoldo E. Fernandez (Fernandez), Nitorreda and Engle.[9]

But on October 20, 2011, more than two months after the ASM, Corazon H. Ricafort (Corazon), wife of JG Ricafort, along with their children, Jose Manuel H. Ricafort (Jose Manuel), Marie Grace H. Ricafort (Marie Grace) (petitioners), and Maria Teresa Flora R. Santos (Maria Teresa) (plaintiffs), claiming to be stockholders of record, filed a complaint before the RTC to declare null and void "*the 15 August 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto*,"[10] against NADECOR itself, the newly-elected members of its Board of Directors, and Gatmaitan (defendants). The plaintiffs alleged, among others, that "they had no knowledge or prior notice of, and were thus unable to attend, participate in, and vote at, the said [ASM]"[11] since they received the notice of the ASM only on August 16, 2011, or one day late, in violation of the three-day notice provided in NADECOR's By-Laws; that due to lack of notice, they failed to attend the said ASM and

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which claims to be the leading Precious Metals retailer in the U.S., the bid price for gold was US$1,239.90/oz. on March 2, 2016.

[7] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 157-169.

[8] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1343-1353.

[9] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 103.

[10] *Id.* at 178.

[11] *Id.* at 174.

Supreme Court E-Library

to exercise their right as stockholders to participate in the management and control of NADECOR. They further noted that the notice announced a time and venue different from those set forth in the By-Laws.[12]

Gatmaitan filed his Answer with Application for Hearing on Affirmative Defenses dated November 18, 2011;[13] Calalang, Romulo, Ayala, Engle and Nitorreda filed their Answer with Compulsory Counterclaim dated November 21, 2011;[14] and NADECOR filed its Answer dated November 23, 2011.[15] The defendants sought the dismissal of SEC Case No. 11-164 on the following grounds: that the complaint involved an election contest, since in effect it sought to nullify the election of the Board of Directors of NADECOR for FY2011-2012, and under Section 3, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules),[16] it should have been filed within 15 days from the date of the election; that the complaint is not only barred by prescription for having been filed more than two months after the ASM complained of, but the plaintiffs have no cause of action because they were duly served with notice of the said meeting, as shown in the affidavit dated October 13, 2011 of the NADECOR messenger, Mario S. San Juan (San Juan), who mailed the notices on August 11, 2011 at the Ortigas Post Office to all stockholders of record of NADECOR, four days prior to the scheduled ASM; that a valid ASM was held on August 15, 2011, the third Monday of August 2011, at which the required quorum was present and successfully conducted business; that the plaintiffs although physically absent were in fact represented by their proxy, JG Ricafort, by virtue of irrevocable proxies which they executed; that JG Ricafort attended and signed the attendance sheet as the plaintiffs' proxy

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[12] *Id.* at 171-180.

[13] *Id.* at 203-209.

[14] *Id.* at 230-250.

[15] *Id.* at 270-296.

[16] A.M. No. 01-2-04-SC, approved on March 13, 2001.

Supreme Court E-Library

and participated in the ASM for himself as well as in the plaintiffs' behalf; that the true and beneficial owner of the shares of stock issued in the plaintiffs' names is JG Ricafort, not the plaintiffs, as shown in the Nominee Agreements which they executed; that aided by the irrevocable proxies and Nominee Agreements, JG Ricafort won election to the NADECOR Board.

In its now assailed Order dated December 21, 2011, the RTC ruled that the petitioners were not validly served with notice of the ASM as required in the Amended By-Laws, and moreover, that their complaint did not involve an election contest, and thus, was not subject to the 15-day prescriptive period for filing an election protest under Section 3, Rule 6 of the Interim Rules.[17] The trial court explained:

> Contrary to defendants' claims, none of the [petitioners] is claiming any elective office in NADECOR. Neither are they questioning the manner and validity of the elections, and qualifications of the candidates for directorship. [Petitioners'] prayer is clear that they seek to have the August 15, 2011 [ASM] declared null and void due to fatal defects committed prior to said meeting. The nullification of the proceedings, including the elections is not only incidental or the logical consequence of a declaration of nullity of the [ASM].
>
> The complaint, not being an election contest, need not comply with the requirements stated in Rule 6, Section 3 of the Interim Rules.[18]

The RTC thus declared as "void and of no force and effect" the assailed ASM, nullified all acts performed by the new Board

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[17] Sec. 3. Complaint. — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

(1) The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws; and

(2) The plaintiff has exhausted all intra-corporate remedies in election cases as provided for in the by-laws of the corporation.

[18] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 433.

Supreme Court E-Library

of Directors elected thereat, and ordered the holding within 30 days of another ASM for FY2011-2012, to wit:

> ***IN VIEW OF THE FOREGOING,*** this Court ***GRANTS***, as it hereby ***GRANTS***, the relief prayed for in the complaint, and ***[DENIES]*** all compulsory counterclaims for lack of merit. Consequently, [NADECOR's] 2011 [ASM] held on August 15, 2011 is hereby declared NULL and VOID, including ALL matters taken up during said [ASM]. Any other acts, decisions, deeds, incidents, matters taken up arising from and subsequent to the 2011 [ASM] are hereby likewise declared ***VOID and OF NO FORCE and EFFECT.***
>
> Defendant NADECOR is hereby directed to: (a) issue a new notice to all stockholders for the conduct of an [ASM] corresponding to the year 2011 since the [ASM] held on August 15, 2011 was declared VOID, ensuring their receipt within three (3) days from the intended date of the annual meeting and (b) hold the [ASM] within thirty (30) days from receipt of this Order.
>
> No pronouncements as to cost.
>
> SO ORDERED.[19]

The RTC refused to apply the case of *Yujuico v. Quiambao*[20] invoked by the defendants on the issue of whether SEC Case No. 11-164 involves an election contest. It reasoned that the petitioners did not seek to annul the election of NADECOR's Board of Directors for FY2011-2012, but rather to void all the proceedings had at the August 15, 2011 ASM, and to call for the holding of a new stockholders' meeting, whereas in *Yujuico* the complaint specifically sought to nullify the results of the election for the new members of the Board of Directors.[21]

As for the irrevocable proxies executed by the plaintiffs in favor of JG Ricafort, the trial court held that the proxies were not valid as they were really only intended as "*comfort documents to give [JG Ricafort] control of NADECOR,*"[22] and moreover,

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[19] *Id.* at 445-446.

[20] 542 Phil. 236 (2007).

[21] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 433.

[22] *Id.* at 442.

Supreme Court E-Library

the proxies must be deemed to have been amended by the Special Power of Attorney[23] (SPA) which the plaintiffs executed on April 27, 2010 in favor of JG Ricafort pertaining to NADECOR's ongoing negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining Ltd.[24]

The RTC Order dated December 21, 2011 elicited the filing in the CA of four separate petitions for *certiorari* by the private respondents against the plaintiffs, with application for temporary restraining order (TRO) and/or a WPI, to wit:

a. CA-G.R. SP No. 122782 dated January 5, 2012 filed by Romulo.[25] The case was raffled to the Special 15th Division,[26] with Associate Justice Jane Aurora C. Lantion (Justice Lantion) as the *ponente*, and Associate Justices Isaias P. Dicdican (Justice Dicdican) and Angelita A. Gacutan (Justice Gacutan) as members.

b. CA-G.R. SP No. 122784 dated January 5, 2012 filed by Calalang, Ayala, Engle and Nitorreda (Calalang group).[27] The case was raffled to the 11th Division.

c. CA-G.R. SP No. 122853 dated January 6, 2012 filed by NADECOR.[28] The case was raffled to the 6th Division.

d. CA-G.R. SP No. 122854 dated January 6, 2012 filed by Gatmaitan.[29] The case was raffled to the 9th Division.

On January 16, 2012, the CA Special 15th Division denied the application for TRO and WPI in CA-G.R. SP No. 122782.[30]

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[23] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1417-1420.

[24] *Id.* at 441-442.

[25] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 130-167.

[26] Later designated Special 14th Division after an internal reorganization of the CA.

[27] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 168-208.

[28] *Id.* at 209-269.

[29] *Id.* at 270-336.

[30] *Id.* at 412-414.

Supreme Court E-Library

But on the same day, the CA 11th Division issued a TRO in CA-G.R. SP No. 122784,[31] after finding that the three conditions for the issuance of an injunctive relief were present, namely: (a) the *prima facie* existence of the right of the Calalang group sought to be protected; (b) the act sought to be enjoined is violative of that right; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage to NADECOR.[32] The 11th Division's order reads:

> **WHEREFORE**, in view of the foregoing, pending the determination by this Court of the merits of the Petition, the Court **GRANTS** [Calalang group's] prayer for the issuance of a [TRO], to prevent the implementation and execution of the assailed Order dated December 21, 2011 of the [RTC], Branch 159, Pasig City.
>
> The **TRO** is conditioned upon the filing by the [Calalang group] of the **bond** in the amount of **ONE HUNDRED THOUSAND (₱100,000.00) PESOS** each, which shall answer for whatever damages *that* [plaintiffs] may incur in the event that the Court finds [Calalang group] not entitled to the injunctive relief issued. The **TRO** shall be **effective for sixty (60) days** upon posting of the required bond unless earlier lifted or dissolved by the Court.
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> During the effectivity of the TRO, the Board of Directors elected and serving before the August 15, 2011 Stockholders[']' Meeting shall discharge their functions as Directors in a hold-over capacity in order to prevent any hiatus and so as not to unduly prejudice the corporation.
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> [Plaintiffs] are **REQUIRED** to submit their Comment to [Calalang group's] petition and why a WPI should not be issued within **TEN (10) days** from notice, and [Calalang group], their Reply thereon, within **FIVE (5) days** from receipt of the said Comment.
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> SO ORDERED.[33] (Underlining ours and emphasis in the original)

Thus, the CA 11th Division directed not only the Board of Directors elected on August 15, 2011 (**New Board**) to cease

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[31] *Id.* at 417-424.

[32] *Id.* at 419-421.

[33] *Id.* at 423-424.

Supreme Court E-Library

its functions until CA-G.R. SP No. 122784 has been resolved on the merits, but it also ordered the immediately preceding Board (**Old Board**), whose term had expired on August 15, 2011, to act as "hold-over" Board for the duration of the TRO, "*to prevent any hiatus and so as not to unduly prejudice the corporation*."[34]

On February 8, 2012, the CA Special 15th Division ordered the consolidation of the four CA petitions;[35] on February 24, 2012, the CA 9th Division consolidated CA-G.R. SP No. 122854 with CA-G.R. SP No. 122782;[36] on March 9, 2012, the CA 10th Division (formerly 11th Division) approved the consolidation of CA-G.R. SP No. 122784 with CA-G.R. SP No. 122782.[37] In its now assailed Resolution dated June 13, 2012, the CA Special 14th Division (formerly Special 15th Division) included CA-G.R. SP No. 122853 in its caption, implying that the CA 6th Division had acceded to its consolidation with the three other petitions.

The petitioners filed a Comment *Ad Cautelam* dated February 17, 2012 to the petition in CA-G.R. SP No. 122784.[38] Thereafter, the Calalang group filed **three** urgent motions to resolve their application for WPI, dated March 8, 2012,[39] May 21, 2012[40] and June 6, 2012.[41]

On June 6, 2012, ***before the CA could resolve the Calalang group's application for WPI***, Deogracias G. Contreras, Jr. (Contreras), acting as Corporate Secretary of the Old Board, issued a notice of special stockholders' meeting (SSM) on June

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[34] *Id.* at 424.

[35] *Id.* at 428-431.

[36] *Id.* at 485-488.

[37] *Id.* at 497-499.

[38] *Id.* at 433-484.

[39] *Id.* at 489-495.

[40] *Id.* at 500-508.

[41] *Id.* at 537-553.

Supreme Court E-Library

13, 2012 at 12:30 p.m. at the Jollibee Centre Building in Pasig City. The notice was published on June 7, 2012 in *The Philippine Star*.[42] Not long after the announcement, the CA issued the now assailed WPI, also on June 13, 2012.

As published, among the agenda of the June 13, 2012 SSM were:

(a) Ratification of the **rescission** by the Old Board of NADECOR's memoranda of understanding (MOUs) with *St. Augustine Gold and Copper Ltd.* and *St. Augustine Mining, Ltd.,* (St. Augustine group), both dated April 27, 2010;

(b) Ratification of the subscription by a new investor, Queensberry Mining and Development Corporation (Queensberry), controlled by the group of former Senator Manuel Villar (Villar Group), to 25% of NADECOR's capital stock for ₱1.8 Billion, a price which the petitioners' claim is 60 times the book value of NADECOR's shares (of the said price Queensberry had paid ₱335 Million as of September 13, 2012);[43] the Old Board approved the subscription on May 25, 2012;[44] and

(c) Election of Directors.

The Calalang group filed a *Supplement to Third Urgent Motion to Resolve with Manifestation*[45] dated June 7, 2012, wherein they contended that the rescission by the Old Board of NADECOR's MOUs with the St. Augustine group would result in grave and irreparable damage to NADECOR since, according to them, only the St. Augustine Group has the financial and technical capability to develop the King-king Project, with the reminder that NADECOR's MPSA over King-king Project is its only valuable corporate asset.

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[42] *Id.* at 601.

[43] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2706-2709.

[44] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 54.

[45] *Id.* at 594-600.

Supreme Court E-Library

On June 13, 2012 at 12:30 p.m., the SSM called by the Old Board took place as scheduled, presided by Calalang. But while the meeting was in progress, Calalang's counsel received a facsimile of the assailed Resolution dated June 13, 2012 of the CA Special 14th Division granting the Calalang group's application for WPI. Whereupon, on motion by his counsel, Calalang declared the SSM adjourned, but he was overruled by the stockholders representing 64% of the outstanding shares, counting the Queensberry shares. In protest, Calalang and his minority group walked out of the meeting, but the meeting continued after De Jesus, NADECOR's President, was designated to preside over the meeting. A new set of directors (Third Board) was elected, and the rescission of NADECOR's MOUs with the St. Augustine group and the 25% subscription of Queensberry were ratified by the assembly.[46]

The *fallo* of the CA Resolution dated June 13, 2012 reads:

WHEREFORE, premises considered, the application for a [WPI] is **GRANTED**. Let a [WPI] be issued enjoining the implementation of the Order dated December 21, 2011 of the [RTC] of Pasig City, Branch 159 and allowing the Board of Directors elected during the August 15, 2011 [ASM] to continue to act as Board of Directors of NADECOR.

Likewise, the parties, including the hold-over Board of Directors elected and acting before the August 15, 2011 [ASM] are enjoined and prohibited from acting as hold-over board and from scheduling and holding any stockholders' meeting, including the scheduled June 13, 2012 stockholders' meeting. Any effects of said June 13, 2012 stockholders' meeting, including the ratification of the rescission of all MOUs dated April 27, 2010 and Related Transaction Agreements between NADECOR and [St. Augustine group], the election of any new Board of Directors and their acting as such thereafter and the sale and ratification of the sale of Unissued Certificates of Shares of NADECOR constituting 25% of its authorized capital stock to Queensberry are also hereby enjoined.

[Private respondents] are thus mandated to post a bond of Five Hundred Thousand Pesos (₱500,000.00) to answer for any damages which may result by virtue of the [WPI].

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[46] *Rollo* (G.R. Nos. 205921-24), Vol. II, pp. 990-991.

SO ORDERED.[47]

The assailed resolution was penned by Associate Justice Ramon Bato, Jr. (Justice Bato), acting Senior Member of the CA Special 14th Division, vice Justice Lantion to whom CA-G.R. SP No. 122782 had been initially assigned, but who was on a 15-day leave beginning on June 1, 2012.[48] It enjoined the holding of the June 13, 2012 SSM and suspended the effects of all actions taken thereat, specifically the ratification of the rescission of the MOUs and Related Transaction Agreements with the St. Augustine group to develop the King-king Project, the election of a new Board of Directors and their acting as such, and the ratification of Queensberry's 25% subscription to NADECOR's capital stock. The CA also allowed the New Board "to continue to act as Board of Directors of NADECOR,"[49] thereby reversing the CA 11th Division in CA-G.R. SP No. 122784.

The CA Special 14th Division justified its issuance of a WPI by citing new and subsequent matters which it said could not have been contemplated in the RTC Order dated December 21, 2011, such as the rescission of NADECOR's MOUs with the St. Augustine group, and the sale of 25% of NADECOR's capital stock to Queensberry. It determined that as stockholders and members of the New Board, the petitioners have a right *in esse* to preserve the only valuable property of NADECOR, its MPSA over the King-King Project, that the action of the Old Board of calling the June 13, 2012 SSM violated the TRO issued by the CA 11th Division, and that the special agenda taken at the said meeting could adversely affect the future viability of NADECOR.[50]

The CA also acknowledged that the MOUs with the St. Augustine group reflected NADECOR's determination that the former had the technical and financial capabilities to put the

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[47] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 70-71.

[48] Per CA Office Order No. 201-12-ABR dated May 31, 2012.

[49] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 70.

[50] *Id.* at 69-70.

Supreme Court E-Library

King-king Project into production, and thus, the rescission thereof might result in the recall by the DENR of the MPSA, to NADECOR's irreparable injury.[51] Moreover, the June 13, 2012 SSM would render moot and academic the four consolidated CA petitions, since a "third" Board which would be elected thereat could effectively supplant the New Board while the validity of the latter's election was pending resolution.

On June 15, 2012, the Third Board issued a resolution calling for the next ASM on August 22, 2012.[52]

Meanwhile, the petitioners received a copy of the assailed CA Resolution on June 14, 2012;[53] on June 14, 2012, the CA directed all the parties to the four *certiorari* petitions to simultaneously submit their Memoranda on the merits within 15 days;[54] the petitioners filed their Memorandum *Ad Cautelam* dated July 5, 2012, Romulo filed his Memorandum dated July 11, 2012, and the Calalang group filed their Memorandum dated July 17, 2012.[55]

The petitioners filed its motion for reconsideration dated June 21, 2012 of the CA Resolution[56] dated June 13, 2012 contending that it is void *ab initio* because (a) the CA Special 14th Division had no jurisdiction to issue the WPI because its Resolution was penned by Justice Bato, a mere acting Senior Member *vice* the regular *ponente*, Justice Lantion, to whom the consolidated CA petitions had been raffled;[57] (b) the Calalang group's "Third Urgent Motion to Resolve" and "Supplement to Third Urgent Motion to Resolve" in CA-G.R. SP No. 122784, which the CA Special 14th Division acted upon, were *unverified* and contained

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[51] *Id.* at 68-69.

[52] *Rollo* (G.R. Nos. 202647-50), Vol. II, p. 1210.

[53] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 76.

[54] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 112.

[55] *Id.*

[56] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 75-106.

[57] *Id.* at 76-81.

Supreme Court E-Library

"new matters and subsequent events";[58] and (c) the Calalang group's application for a WPI was granted *without notice and hearing* as required under Section 5, Rule 58 of the Rules of Court.[59]

The petitioners further alleged that the Calalang group failed to post a timely injunction bond of ₱500,000.00;[60] that the Resolution dated June 13, 2012 had become moot and academic because the acts it sought to enjoin were already *fait accompli,* namely, (a) the holding of the June 13, 2012 SSM, wherein 67% of the outstanding shares was present and voted, (b) the rescission of the MOUs with the St. Augustine group, and (c) the issuance of 25% shares of stock to Queensberry; that the CA resolution disrupted the status *quo* ordered by the CA 11th Division since it did not merely maintain the *status quo ante litem motam*, but in fact it created new relationships between the parties by ordering the New Board to **replace** the Old Board, notwithstanding that the members of the latter had not been impleaded in the CA petitions and therefore were not bound thereby; that the powers of the Old Board included not merely the maintenance of the status *quo*, but all powers which a regular Board might exercise; that there was no showing of irreparable injury to the Calalang group, whereas the acts of the Old Board involved business judgment intended to preserve and protect NADECOR against the contractual violations of the St. Augustine group, such as its self-dealing with affiliates, bloated and fraudulent project expenses, non-payment of project expenses, and non-infusion of committed capital totalling US$96.7 Million, not only US$32 Million, to justify their 60% interest in King-king Project;[61] that after St. Augustine group threatened to pull out, the Old Board sought a new partner to obtain the much-needed capital infusion; that Queensberry was willing to pay ₱1.8 Billion for a mere 25%, not 60%, interest in NADECOR, for a price

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[58] *Id.* at 82-90.

[59] *Id.* at 82-83, 87.

[60] *Id.* at 90-91.

[61] *Id.* at 99-100.

Supreme Court E-Library

premium equal to 60 times the par value of its shares, whereas the Calalang group offered only 20 times above the par value;[62] and finally, that the Calalang group is guilty of forum shopping.[63]

On July 20, 2012, the CA Special 14th Division resolved to hold in abeyance further actions on the pending incidents until the Committee on Internal Rules of the CA (IRCA) had made its recommendation on whether Justice Bato should retain and resolve the consolidated *certiorari* petitions, or whether they should be returned to the original *ponente*, Justice Lantion.[64] On December 18, 2012, the Committee on IRCA recommended that the cases "should remain consolidated with the special division that issued a [WPI] regardless of the fact that [Justice] Bato acted thereat merely as a substitute for [Justice] Lantion."[65] The recommendation was approved by Presiding Justice Andres Reyes in his Memorandum dated January 11, 2013.[66] On February 7, 2013, the CA dismissed[67] the petitioners' motion for inhibition against Justices Dicdican, Bato and Eduardo B. Peralta, Jr. (Justice Peralta) (respondent Justices).

Meanwhile, on July 23, 2012, the petitioners filed a Manifestation of Withdrawal of Motion for Reconsideration,[68] without giving an explanation.

G.R. Nos. 202647-50

On August 1, 2012, the petitioners filed before this Court the herein first joint petition for *certiorari*, **G.R. Nos. 202647-50**, with prayer for issuance of a TRO. It reiterated the grounds invoked in their aforesaid withdrawn motion for reconsideration. To justify their petition, they pointed out that the WPI of the

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[62] *Id.* at 102-103.

[63] *Id.* at 104.

[64] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 112-113.

[65] *Rollo* (G.R. Nos. 205921-24), Vol. III, p. 1527.

[66] *Id.* at 1528.

[67] *Id.* at 1526-1538.

[68] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 107-111.

CA remained in force and the CA Special 14th Division had not relinquished control of the CA petitions, and thus it could still undertake further actions; and, they were without remedy *a quo* since action on their motion for reconsideration would still have been suspended in light of the CA's Order dated July 20, 2012.[69]

On September 26, 2012, the petitioners filed a *Manifestation and Motion*,[70] wherein they revealed that on August 22, 2012 at 12:30 p.m., an ASM, called by the Third Board, was held at NADECOR's head office at the Jollibee Centre in Pasig City, attended by stockholders representing 62.67%, or 7,496,090,800 shares, of the outstanding shares of 11,961,403,333, counting Queensberry's 3,000,000,000 shares.[71] Controlled by the petitioners' group, the assembly elected a new set of Board of Directors (Fourth Board), composed of JG Ricafort, De Jesus, Lazatin, Fernandez, Maria Nalen Rosero-Galang (Galang), Antonio A. Henson (Henson), Angel S. Ong (Ong), Teodorico C. Taguinod (Taguinod), and Marc Paolo A. Villar (Marc Paolo). Elected as corporate officers were JG Ricafort as Chairman, De Jesus as President, Henson as Treasurer, Contreras as Corporate Secretary, and Lemuel M. Santos as Assistant Corporate Secretary. At 1:38 p.m., the Fourth Board filed a General Information Sheet with the SEC to report the above ASM results.[72] Thus, the petitioners moved for the dismissal of their petition for having become moot and academic, on the ground that the RTC's Order dated December 21, 2011 in SEC Case No. 11-164 had been overtaken by a supervening event, the holding of the August 22, 2012 ASM and the election of the Fourth Board.[73]

But the Calalang group in their *Comment/Opposition with Counter Manifestation and Opposition*[74] dated October 19, 2012

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[69] *Id.* at 3-62.

[70] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 1006-1023.

[71] *Id.* at 1014.

[72] *Id.* at 1015-1023.

[73] *Id.* at 1010-1011.

[74] *Id.* at 1098-1222.

Supreme Court E-Library

also disclosed that the New Board had sent notices on August 15, 2012, signed by Cynthia Corazon G. Roxas (Roxas) as Corporate Secretary, calling for the holding of the regular ASM on August 22, 2012; that the said meeting was successfully held on August 22, 2012 at 12:30 p.m. at Last Chukker, Manila Polo Club, McKinley Road, Forbes Park, Makati City; that during the said meeting, new directors were elected, namely, Romulo, Calalang, Ayala, Engle, Nitorreda, Juan Kevin Belmonte, Peter Mutuc, Benjamin C. Sevilla (Sevilla), and Maria Veronica Calalang; that NADECOR's new corporate officers were Romulo as Chairman, Calalang as President, Nitorreda as Chief Operating Officer and General Counsel, Sevilla as Chief Financial Officer, Raymond H. Ricafort (Raymond) as Treasurer, and Roxas as Corporate Secretary; that a General Information Sheet[75] was filed with the SEC on September 21, 2012 disclosing the above actions of the stockholders and the newly-elected Board.[76] Thus, the Calalang group contended that the August 22, 2012 ASM called by the Third Board was void for being in violation of the WPI of the CA Special 14th Division, which recognized the authority of the New Board to continue to act as NADECOR's lawful Board of Directors.

**Administrative Case *versus*
Members of the CA Special 14th Division**

On July 9, 2012, Fernandez, Henson, and Ong filed with this Court an administrative **case** against herein respondent Justices, docketed as A.M. OCA IPI No. 12-201-CA-J. They alleged that the respondent Justices were guilty of grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality, as follows: (i) they issued the above WPI without notice and hearing as required in Section 5, Rule 58 of the Rules of Court, upon an unverified "Third Motion to Resolve" and upon a "Supplement to the Third Urgent Motion to Resolve" in CA-G.R. SP No. 122784 which contained new factual matters; (ii) it was irregular

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[75] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1817-1824.

[76] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 1212-1214.

Supreme Court E-Library

for Justice Bato, as mere acting member, to have penned the resolution granting the WPI since the consolidated CA petitions had not been re-raffled to him; (iii) granting that the WPI was a matter of extreme urgency, Section 5 of Rule VI of the IRCA authorizes the two remaining regular Division members, Justices Dicdican and Peralta, not Justice Bato, to act on the application; (iv) the WPI did not just preserve the status *quo*, but in fact disposed of the petitions on the merits.[77]

On February 19, 2013, the Court dismissed the administrative case, holding as valid the WPI penned by Justice Bato and concurred in by Justices Dicdican and Peralta.[78]

Coincidentally, on February 18, 2013, the CA Special 14th Division issued its now assailed Decision[79] nullifying the RTC's Order dated December 21, 2011 in SEC Case No. 11-164 and making the WPI it issued in CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, permanent. The *fallo* thereof reads:

> ***WHEREFORE***, the petitions are ***GRANTED*** and the RTC Order dated December 21, 2011 is ***NULLIFIED*** **and** ***SET ASIDE***. The [ASM] of NADECOR held on August 15, 2011 is hereby declared valid and the Board of Directors and Officers elected thereat are declared lawfully elected. Any and all acts of the Board of Directors elected during the August 15, 2011 NADECOR [ASM] are declared ***VALID***. All acts performed pursuant to the assailed Order dated December 21, 2011 in SEC Case No. 11-164 are likewise declared ***NULL*** and ***VOID***.
>
> Likewise, the [WPI] dated June 13, 2012 is made ***PERMANENT***.
>
> ***SO ORDERED.***[80]

Meanwhile, on July 18, 2012 the Court resolved to dismiss **G.R. Nos. 202218-21**, entitled "*Jose G. Ricafort, et al. v. CA [Special 14th Division], et al.*," for *certiorari* and prohibition,

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[77] *Fernandez, et al. v. Justices Bato, Jr., et al.*, 704 Phil. 175 (2013).

[78] *Id.* at 205.

[79] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 101-135.

[80] *Id.* at 134-135.

Supreme Court E-Library

filed by JG Ricafort, De Jesus, Marc Paolo, and Galang to question the validity of the WPI issued by the CA Special 14th Division, because they were not parties to any of the consolidated petitions in the CA, and thus had no personality to assail the CA's injunctive writ.[81]

Also on July 18, 2012, the Court dismissed **G.R. Nos. 202257-60**, entitled "*Ethelwoldo E. Fernandez, et al. v. Court of Appeals (Special 14th Division), et al.*," also assailing the WPI, since therein petitioners were also strangers to the consolidated CA petitions.[82] Fernandez and Henson were members of the Old Board of NADECOR, elected in August 2010, while Ong was among those elected to NADECOR's Third Board on June 13, 2012; therein petitioners were also elected to the Fourth Board of NADECOR on August 22, 2012.

G.R. Nos. 205921-24

On April 12, 2013, the petitioners filed their second joint petition, docketed as **G.R. Nos. 205921-24**,[83] raising substantially the same issues in G.R. Nos. 202647-50 and praying that the CA Special 14th Division's decision be set aside. On July 31, 2013, the Court consolidated G.R. Nos. 205921-24 with G.R. Nos. 202647-50.[84]

On December 20, 2013, Gatmaitan filed his Comment,[85] followed on January 6, 2014 by the Comment[86] of Calalang group.

Meanwhile, on November 29, 2013, the petitioners, through Contreras acting as Corporate Secretary, represented by law firm of Zamora Poblador Vasquez & Bretana, filed allegedly in behalf of NADECOR a "Consolidated Comment"[87] praying

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[81] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1667-1670.

[82] *Id.* at 1671-1674.

[83] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 48-99.

[84] *Rollo* (G.R. Nos. 205921-24), Vol. III, p. 1443.

[85] *Id.* at 1761-1801.

[86] *Id.* at 1807-1865.

[87] *Id.* at 1447-1478.

that the CA Special 14th Division's WPI dated June 13, 2012 and Decision dated February 18, 2013 be set aside, and that the RTC's Order dated December 21, 2011 be reinstated. Thus, NADECOR through Contreras argued for the validity of the June 13, 2012 SSM called by the Old Board, and that the WPI had become *functus officio* for having been mooted not just once but thrice: first, since the WPI was served after the successful holding of the June 13, 2012 SSM, then second and third, by the holding of the ASM on August 22, 2012 and on August 19, 2013.

The petitioners also manifested that the August 22, 2012 ASM was attended by stockholders representing 62.67% interest, counting the Queensberry's 3,000,000,000 shares; that the members of the Third Board were re-elected, namely, JG Ricafort, De Jesus, Lazatin, Fernandez, Galang, Henson, Ong, Taguinod, and Marc Paolo; and also, that elected at the August 19, 2013 ASM were JG Ricafort, De Jesus, Henson, Lazatin, Fernandez, Taguinod, Ong, Ruy Y. Moreno and Contreras.[88]

On December 12, 2013, the petitioners, again through the firm of Zamora Poblador Vasquez & Bretana, filed a "Supplemental Petition"[89] wherein they maintained that nothing in the June 13, 2012 WPI specifically enjoined the stockholders who attended the August 22, 2012 ASM called by the Third Board, nor the holding of the said ASM, and thus, the Fourth Board had superseded the New Board. Incidentally, in the August 19, 2013 ASM, JG Ricafort appeared to also be representing the shares of the Queensberry.[90]

The petitioners then informed this Court of supervening events which have allegedly added new confusion concerning the respective rights of the parties, and further delay in the settlement of their claims. Thus, they now urge this Court to resolve G.R. Nos. 202647-50 and G.R. Nos. 205921-24 on the merits, *notwithstanding their earlier insistence that the June 13, 2012,*

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[88] *Id.* at 1448-1452.

[89] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2567-2602.

[90] *Id.* at 2568-2573.

Supreme Court E-Library

August 22, 2012 and August 19, 2013 ASMs have mooted the CA's WPI.

The petitioners narrated that people in the employ of the Calalang group, invoking the WPI and the CA decision, had broken into the King-king Project's warehouse and taken custody of core mine samples which they surrendered to the Mines and Geosciences Bureau (MGB);[91] that sometime in June 2013, with the aid of armed men, they forcibly carted away various items and equipment of the mine worth ₱1.7 Million;[92] that the Calalang group had demanded the turnover of corporate records, such as the Stock and Transfer Book and certain corporate documents;[93] that the Calalang group fraudulently procured a spurious Stock and Transfer Book;[94] that the Calalang group held a bogus stockholders' meeting on August 19, 2013 and filed a false General Information Sheet with the SEC;[95] that the Calalang group announced to media additional subscription by the St. Augustine group;[96] that on August 25, 2013, five security men of the Calalang group killed a watchman and wounded another from the petitioners' group;[97] that on October 17, 2013, the Calalang group was able to withdraw ₱225,000,050.00 from King-king Project's bank account maintained with Metrobank;[98] that on November 4, 2013, the Calalang group held a SSM to ratify the rescission of the transfer of NADECOR's MPSA to King-king Project, and to ratify its authority to transfer the MPSA to another entity and to enforce its project agreement with St. Augustine group;[99] that on November 27, 2013, the MGB-Region

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[91] *Id.* at 2577-2578.

[92] *Id.* at 2579.

[93] *Id.* at 2578-2579.

[94] *Id.* at 2579.

[95] *Id.* at 2580-2581.

[96] *Id.* at 2581.

[97] *Id.*

[98] *Id.* at 2577.

[99] *Id.* at 2581.

XI announced the suspension of the processing of NADECOR's Declaration of Mining Project Feasibility (DMPF) of King-king Project due to the present intra-corporate dispute, and even threatened to recommend the cancellation of MPSA No. 009-92-XI due to NADECOR's inability to start production after 21 years, to the great disadvantage of the Government.[100]

On January 20, 2014, the private respondents, except NADECOR, filed a Motion to Expunge the petitioners' Supplemental Petition on the ground that the same was filed without leave of court.[101]

On January 30, 2014, the law firm of Molo Sia Velasco Dy Tuazon Ty & Coloma, claiming to represent the Board of Directors of NADECOR elected pursuant to the CA Decision dated February 18, 2013, which made permanent the WPI it issued on June 13, 2012, filed a Motion to Withdraw[102] the Consolidated Comment filed by the law firm of Zamora Poblador Vasquez & Bretana, through Contreras, for lack of authority from NADECOR's legitimate Board of Directors.

On March 31, 2014, the petitioners, also through Zamora Poblador Vasquez & Bretana, filed their Consolidated Reply[103] to the Calalang group's Comment[104] dated January 6, 2014 and Gatmaitan's Comment[105] filed on December 20, 2012. Among others, they tried to point out that at the August 15, 2011 ASM, the Calalang group was in the minority with 47.40% interest in NADECOR; that knowing that they would lose in the next stockholders' meeting to be called under the RTC Order dated December 21, 2011 in SEC Case No. 11-164, they filed the four petitions in the CA to annul the said order;[106] that the

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[100] *Id.* at 2590-2592.

[101] *Id.* at 2875-2881.

[102] *Id.* at 2895-2902.

[103] *Id.* at 2912-2928.

[104] *Rollo* (G.R. Nos. 205921-24), Vol. III, pp. 1807-1865.

[105] *Id.* at 1761-1801.

[106] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2914-2916.

Supreme Court E-Library

private respondents belatedly posted a bond for ₱500,000.00 required under the WPI but the bond did not bear the approval of the CA, and thus, the WPI is a mere scrap of paper;[107] that the WPI granted in advance the ultimate reliefs sought in the CA petitions;[108] that SEC Case No. 11-164 is not an election contest but a general intra-corporate case falling under Rule 1, Section 1 (a) (2) of the Interim Rules; and that the supposed principal-nominee relationship between the petitioners and JG Ricafort is immaterial because under Section 6 of the Corporation Code, they were not furnished a notice as stockholders of record.[109]

On May 27, 2014, Romulo and the Calalang group filed their Comment[110] to the Supplemental Petition of the petitioners. Chiefly, they argued that the June 13, 2012 SSM and August 22, 2012 and August 19, 2013 ASMs are null and void for being in violation of the WPI, which was immediately executory and later made permanent by the CA Decision on February 18, 2013; that the acts of the Calalang group are authorized under the WPI and the CA decision; that the petitioners' group initiated the shooting incident on August 24, 2013; that the MGB-Region XI suspended the processing of NADECOR's DMPF not due to fraud or mischief committed by the Calalang group but in view of the present intra-corporate dispute; that JG Ricafort attended the August 15, 2011 ASM both as beneficial owner and as proxy of the petitioners; that the Calalang group comprised the majority of the stockholders at the August 15, 2011 ASM with 50.03% of the shares; that SEC Case No. 11-164 involves an election contest which was barred by prescription and therefore should have been dismissed outright by the RTC; that all indispensable parties were duly impleaded in the CA petitions; and that the participation of Justice Bato in the CA petitions conformed to Section 2(C), Rule VI of the 2009 IRCA.

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[107] *Id.* at 2918-2919.

[108] *Id.* at 2918.

[109] *Id.* at 2923.

[110] *Id.* at 2966-3045.

Supreme Court E-Library

Ruling of the Court

The Court finds no merit in the petitions.

SEC Case No. 11-164 is time-barred because it involves an election contest and therefore is subject to the 15-day prescription period.

Claiming to be stockholders of record who were denied due notice of NADECOR's August 15, 2011 ASM, the petitioners filed the Complaint[111] in SEC Case No. 11-164 purportedly to void and nullify "the August 15, 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto."[112] In justifying its Order dated December 21, 2011 declaring that the complaint had not prescribed since it did not involve an election contest, the RTC adverted to the fact that none of the petitioners was claiming an elective office in NADECOR, or questioning the manner and validity of the election of the New Board, or the qualifications of the candidates for directors.

But the real motive of the petitioners could not have escaped the trial court's notice, being readily discernible from a perusal of the Second Cause of Action of their complaint, which reads:

15. One of the cardinal rights of a stockholder is the right to participate in the control and management of the corporation. This right is exercised through his vote. The right to vote is a right inherent in and incidental to the ownership of corporate stock, and as such is a property right. The stockholder cannot be deprived of the right to vote his stock nor may the right be essentially impaired, either by the legislature or by the corporation, without his consent, though amending the charter, or the by-laws.

16. The right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affair x x x. The right to choose these persons is exercised

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[111] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 171-180.

[112] *Id.* at 178.

Supreme Court E-Library

through the voting process. This right is enshrined in Article I, Section 6 of NADECO[R]'s amended by-laws, which provides that "(a)t all meetings of the Stockholders, each Stockholder shall be entitled to one vote for each share of stock owned by him."[113] (Citation omitted)

The *fallo* of the trial court's Order[114] dated December 21, 2011 appears to be carefully worded as to avoid seeming to direct the holding of a new election of the members of the Board of Directors of NADECOR for FY2011-2012, and thus be consistent with its ruling that SEC Case No. 11-164 is not an election contest. The trial court reasoned:

> Contrary to defendants' claims, none of the plaintiffs is claiming any elective office in NADECOR. Neither are they questioning the manner and validity of the elections, and qualifications of the candidates for directorship. Plaintiffs['] prayer is clear that they seek to have the August 15, 2011 [ASM] declared null and void due to fatal defects committed prior to said meeting. The nullification of proceedings, including the elections is not only incidental or the logical consequence of a declaration of nullity of the [ASM].
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> The complaint, not being an election contest, need not comply with the requirements stated in Rule 6, Section 3 of the Interim Rules.[115]

Yet, there can be no denying that by (a) asserting their "right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affairs,"[116] because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting, and (b) by praying for the voiding of the August 15, 2011 ASM, and for "other just and equitable reliefs,"[117] the petitioners were

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[113] *Id.* at 177-178.

[114] *Id.* at 429-446.

[115] *Id.* at 433.

[116] *Id.* at 177.

[117] *Id.* at 178.

really seeking the holding of a new election for members of the Board of Directors of NADECOR for FY2011-2012. As the CA noted, by seeking to nullify the August 15, 2011 ASM of NADECOR, "*including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto*,"[118] the petitioners were clearly challenging the validity of the election of the new Board of Directors. As the NADECOR's Amended By-Laws itself expressly provides, the purpose of the ASM is "for the election of Directors and for the transaction of general business of its office."[119]

Indeed, to nullify the August 15, 2011 ASM would have had no practical effect except to void the election of the Board of Directors.[120] And no doubt, this was the trial court's understanding of the petitioners' intent when it voided the August 15, 2011 ASM and all matters taken up thereat. Thus, by declaring as void all "acts, decisions, deeds, incidents, matters taken up arising ***from and subsequent*** to the 2011 [ASM],"[121] things which could only be performed by the newly-elected Board, and then by directing the issuance of a three-day notice for the holding of a new ASM corresponding to FY2011-2012, the trial court clearly understood that a new election should be held for Board of Directors of NADECOR for FY2011-2012, notwithstanding its express ruling that SEC Case No. 11-164 did not involve an election contest and therefore the 15-day prescriptive period to file the petitioners' complaint did not apply.

But more importantly, the defendants did not fail to point out to the trial court, as the appellate court has made copiously clear in its decision, that contrary to the petitioners' feigned lament that they were unlawfully deprived of their right as stockholders to participate in the ASM due to late notice, they were in fact represented by JG Ricafort under an irrevocable

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[118] *Id.*

[119] *Id.* at 157.

[120] *Id.* at 132.

[121] *Id.* at 446.

Supreme Court E-Library

proxy which they executed on April 26, 2010. The defendants further noted that the petitioners even shared the same address as JG Ricafort, who is the husband of petitioner Corazon, and the father of petitioners Jose Manuel and Marie Grace. Thus, the defendants insisted that the petitioners deliberately misled the trial court by pretending to be ignorant of the August 15, 2011 ASM.

Equally significantly, it has never been plausibly debunked that the real and beneficial owner of the shares in their names is JG Ricafort himself, as shown in the Nominee Agreements[122] which they executed back in 2007; hence, the petitioners' non-participation at the hearings in the RTC. The claimed violation of the petitioners' right as owners to vote their shares in the assailed assembly is thus exposed as a complete fabrication. As the private respondents pointed out in their Comment to the petitioners' Supplemental Petition, JG Ricafort appeared at the RTC hearing on December 2, 2011 and spoke for the petitioners, notwithstanding that he was in fact one of the defendants named in the complaint, being a member of the New Board whom the petitioners wanted ousted.[123]

As subsequent events since the filing of SEC Case No. 11-164 now amply show, the complaint is traced to a tenacious struggle between two contending groups of stockholders of NADECOR, the petitioners' group and the Calalang group, for control of the fabled riches of the King-king Project. The petitioners' group wanted to rescind NADECOR's MOUs with the St. Augustine group and to bring in a new investor, the Villar group, which the Calalang group strongly opposed. It is not for this Court to say which of the contending stockholders' blocs is justified in the direction they want NADECOR to take, but the Calalang group now blames the petitioners for exposing the NADECOR's all too precious MPSA to the threat of cancellation by the DENR by filing SEC Case No. 11-164. Undoubtedly, the complaint

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[122] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 793-798.

[123] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 3005-3006.

Supreme Court E-Library

was a clear attempt by, or on behalf of, the petitioners' group to oust the New Board for FY2011-2012. In fact, the petitioners are even represented by the very same law firm which the petitioners' group has employed.

Under Sections 1 to 3 of Rule 6 of the Interim Rules, SEC Case No. 11-164 should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest. In substance, the main issues therein are on all fours with *Yujuico*,[124] wherein the Court expressly ruled that where one of the reliefs sought in the complaint is to nullify the election of the Board of Directors at the ASM, the complaint involves an election contest. Both cases put in issue the validity of the ASM and, expressly in *Yujuico* and indirectly below, the election of the members of the Board of Directors. The ostensible difference is that in SEC Case No. 11-164 the petitioners invoked lack of notice of the August 15, 2011 ASM, while in *Yujuico* the ground invoked was improper venue.

In *Yujuico*, the Articles of Incorporation of the Strategic Alliance Development Corporation (STRADEC), a domestic corporation engaged in financial and investment advisory services were amended on July 27, 1998 to change its principal office from Pasig City to Bayambang, Pangasinan. On March 1, 2004, STRADEC held its ASM in its former Pasig City office as indicated in the notices it sent to the stockholders. Alderito Z. Yujuico (Yujuico), Bonifacio C. Sumbilla (Bonifacio) and Dolney S. Sumbilla (petitioners therein) were elected as members of the Board of Directors, along with Cesar T. Quiambao, Jose M. Magno III and Ma. Christina Ferreros (respondents therein). Yujuico became Chairman and President, while Bonifacio was elected Treasurer.[125]

On August 16, 2004, five months after the ASM, the respondents therein filed with the RTC of San Carlos City, Pangasinan a complaint praying that: (1) the March 1, 2004

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[124] *Supra* note 20.

[125] *Id.* at 241.

Supreme Court E-Library

election be nullified on the ground of **improper venue**, pursuant to Section 51 of the Corporation Code; (2) all ensuing transactions conducted by the elected directors be likewise nullified; and (3) a SSM be held anew. On September 2, 2004, the complaint was amended to include a prayer for issuance of a TRO and/or WPI to enjoin petitioners therein from discharging their functions as directors and officers of STRADEC. On September 22, 2004, they filed a supplemental complaint to direct the surrender of the original and reconstituted Stock and Transfer Book and other corporate documents of STRADEC, and to nullify the reconstituted Stock and Transfer Book and all transactions of the corporation.[126]

The petitioners therein sought to dismiss the complaint for, among others: (a) lack of cause of action; (b) being barred by prescription since it was filed beyond the 15-day prescriptive period provided by Section 2, Rule 6 of the Interim Rules under Republic Act No. 8799; and (c) the respondents therein waived their right to object to the venue since they attended and participated in the March 1, 2004 ASM and election **without any protest**.[127]

On November 25, 2004, the RTC granted the respondents' application for preliminary injunction and ordered (1) the holding of a SSM on December 10, 2004 in the principal office of the corporation in Bayambang, Pangasinan, and (2) the turnover by Bonifacio to the court of the duplicate key to STRADEC's safety deposit box in Export Industry Bank, Shaw Boulevard, Pasig City where the original Stock and Transfer Book of STRADEC was deposited.[128]

On petition for *certiorari* by the petitioners therein, the CA sustained the RTC Order dated November 25, 2004. Their motion for reconsideration was denied.[129] On petition for review on

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[126] *Id.* at 241-242.

[127] *Id.* at 242-243.

[128] *Id.* at 243.

[129] *Id.* at 245-246.

certiorari, the Court held that the complaint below involved an election contest as defined in Sections 1 and 2, Rule 6 of the Interim Rules, since one of the reliefs sought by therein respondents was the nullification of the election of the Board of Directors and corporate officers at the March 1, 2004 ASM.[130] Sections 1 and 2, Rule 6 of the Interim Rules provide:

> SEC. 1. *Cases covered*. — The provisions of this rule shall apply to **election contests** in stock and non-stock corporations.
>
> SEC. 2. *Definition*. — An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and **validity of elections**, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. (Emphasis ours)

Since the action questioning the validity of the March 1, 2004 stockholders' election was filed by respondents therein well beyond the 15-day prescriptive period in Section 3, Rule 6 of the Interim Rules, the Court set aside the RTC Order dated November 25, 2004, nullified the SSM and election held on December 10, 2004 in Bayambang, Pangasinan, and restored the last actual peaceable uncontested status of the parties prior to the filing of Civil (SEC) Case No. U-14.[131]

The petitioners have no cause of action because they were duly represented at the August 15, 2011 ASM by their proxy, JG Ricafort.

As found by the CA, the petitioners did participate in the stockholders' meeting through their authorized representative and proxy, JG Ricafort. In his Affidavit[132] dated November 21,

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[130] *Id.* at 257-258.

[131] *Id.* at 258-259.

[132] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1343-1353.

Supreme Court E-Library

2011, Gatmaitan, NADECOR Corporate Secretary, categorically declared under oath that JG Ricafort held a valid irrevocable proxy from the petitioners to attend and vote their shares at all meetings of the stockholders, and that JG Ricafort signed the attendance sheet for and in behalf of the plaintiffs as shown by his signatures in the rows in the said attendance sheet for the names of the plaintiffs who had appointed him as his proxy.[133]

During the stockholders' registration for the August 15, 2011 ASM, no one questioned JG Ricafort's Irrevocable Proxy[134] dated April 26, 2010 as attorney and proxy for the petitioners. His irrevocable proxy reads:

IRREVOCABLE PROXY

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned parties, shareholders of **[NADECOR]** (hereinafter referred to as the "Company"), hereby **irrevocably** constitute and appoint **[JG RICAFORT]**, acting through its representatives, as the attorney and proxy of the undersigned, **to attend and represent the undersigned at [any and all meetings of the shareholders of the Company], and for and on behalf of the undersigned, to vote upon any and all matters to be taken up at said meeting, according to the number of share(s) of stock of the Company of which the undersigned are the lawful record and beneficial owners, and which they would be entitled to vote if personally present,** hereby ratifying and confirming all that said attorney and proxy shall do in the premises, and giving and granting unto said attorney and proxy full power of substitution and revocation.

This proxy shall continue in force for the maximum term allowed under Philippine law, unless revoked earlier by the undersigned."

Dated this 26th day of April, 2010.

(signed)
Corazon H. Ricafort

(signed)
Jose Manuel H. Ricafort

(signed)
Juan Carlos H. Ricafort

(signed)
Marie Grace H. Ricafort

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[133] *Id.* at 1347.

[134] *Id.* at 1357.

(signed) (signed)
Ma. Theresa Flora Santos Raymond H. Ricafort[135]
(Emphasis ours)

The CA also cited the Affidavit[136] dated November 21, 2011 of Atty. Timothy Joseph M. Mendoza (Atty. Mendoza), who together with Atty. Armina Dielle R. Kapunan assisted Gatmaitan in taking the attendance at the August 15, 2011 ASM. Atty. Mendoza declared under oath as follows:

Q12: The plaintiffs in SEC Case No. 11-164 are claiming that they were not properly notified of the [ASM] held on 15 August 2011. What can you say, if any, regarding this claim of plaintiffs?

A12: Based on the records, plaintiffs were given notices of the meeting through registered mail sent at least four days prior to the meeting in accordance with the requirements of the Amended By-Laws. Besides, the Amended By-laws already provides that annual meetings of NADECOR shall be held on the third Monday of August in each year. The date of the meeting, 15 August 2011, was the third Monday of August 2011.

Q13: Were the plaintiffs in SEC Case No. 11-164, x x x present or represented in the said meeting?

A13: They were represented during the subject meeting by [JG Ricafort], one of the defendants in SEC Case No. 11-164.

Q14: How do you know that the plaintiffs in SEC Case No. 11-164 were represented by [JG Ricafort] in the meeting?

A14: Together with Atty. Armina Dielle R. Kapunan, I was responsible for taking attendance at the stockholders' meeting in order to assist Atty. Gatmaitan, as corporate secretary and secretary of the said meeting, to determine whether stockholders holding at least a majority of NADECOR's issued and outstanding capital stock were present for quorum purposes. Atty. Kapunan and I manned the designated registration area in front of the entrance to the venue of the meeting. When [JG Ricafort] arrived at

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[135] *Id.*

[136] *Rollo* (G.R. Nos. 202647-50), Vol. IV, pp. 1887-1891.

Supreme Court E-Library

the subject meeting, he approached our table and I asked him to register his attendance at the meeting and sign the attendance sheet we had prepared for this purpose. He asked me where he can sign in the attendance sheet. I showed him where he should sign his name and asked him whether he was also attending as proxy for those NADECOR shares whose registered owners had appointed him as proxy through an irrevocable proxy, which includes the NADECOR shares owned by all of the plaintiffs in SEC Case No. 11-164. [JG Ricafort] said yes and in fact, he signed the attendance sheet for and on behalf of the plaintiffs as shown by his signature in the spaces or rows in the said attendance sheet for the names of the plaintiffs who had appointed him as proxy.

Q15: If I show you a copy of the attendance sheet which you said was signed by [JG Ricafort], would you be able to identify the same?

A15: Yes.

Q16: I am showing to you a copy of an attendance sheet for the NADECOR stockholders' meeting on 15 August 2011, what relation, if any, does this have to the attendance sheet you just mentioned.

A16: It is the same document.

Q17: In the spaces or rows in the attendance sheet for the names of the plaintiffs, there are signatures appearing beside the printed name Jose G. Ricafort, whose signatures are these?

A17: These are all the signatures of [JG Ricafort].

Q18: Why do you know that these are the signatures of [JG Ricafort]?

A18: I saw him sign the attendance sheet. Also, I am familiar with his signature because I have seen it before and also because I have acted on the same signature before.

Q19: What is your basis for saying that [JG Ricafort] can represent the shares held by the plaintiffs in SEC Case No. 11-164?

A19: We have on our file as the Corporate Secretary of NADECOR an Irrevocable Proxy signed by the plaintiffs in SEC Case No. 11-164 together with Messrs. Jose Carlos

Supreme Court E-Library

> H. Ricafort and Raymo[n]d H. Ricafort, which constituted and appointed [JG Ricafort] as their attorney and proxy to attend and represent them at any and all meetings of the shareholders of NADECOR, and to vote upon any and all matters to be taken up at said meeting for and on their behalf. We also have copies of the respective Nominee Agreements of each of the plaintiffs where each plaintiff confirmed and acknowledged his/her status as nominee for [JG Ricafort] for the purpose of holding legal title to the shares owned by [JG Ricafort] in NADECOR. Further, in previous meetings with [JG Ricafort] involving other NADECOR matters, [JG Ricafort] had repeatedly said that those shares are really owned by him and that he controls the voting for such shares.[137]

JG Ricafort's proxy authority was "to attend and represent the [petitioners] at [any and all meetings of the shareholders of the Company], and for and on behalf of the [petitioners], *to vote upon any and all matters to be taken up at said meeting, according to the number of share(s) of stock of the Company of which the [petitioners] are the lawful record and beneficial owners, and which they would be entitled to vote if personally present*."[138] Thus, the CA concluded, there is no doubt that JG Ricafort was duly constituted by the petitioners as their proxy to attend "any and all" stockholders' meetings.

But the RTC saw it differently, and held that the SPA[139] which the petitioners executed in favor of JG Ricafort on April 27, 2010, a day after the Irrevocable Proxy, "*amended and limited the authority conferred [by the petitioners] on [JG Ricafort] in the Irrevocable Proxies to matters and issues affecting on-going negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining, Ltd.*"[140] It agreed with the petitioners that they never really intended "to name, appoint and constitute

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[137] *Id.* at 1889-1891.

[138] *Rollo* (G.R. Nos. 202647-50), Vol. III, p. 1357.

[139] *Id.* at 1417-1420.

[140] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 441-442.

Supreme Court E-Library

[JG Ricafort] as their proxy,"[141] but "[t]hese documents were merely executed as *comfort documents* to give [JG Ricafort] control of NADECOR."[142] According to the RTC, "[a] careful perusal of the provisions of both the Irrevocable Proxies and the [SPA] lends credence to [petitioners'] assertion."[143] Yet, as the CA pointed out, the RTC failed to mention what these provisions are which amended and limited the applicability of the Irrevocable Proxies only to matters and issues affecting on-going negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining, Ltd.[144]

On the other hand, the Irrevocable Proxy expressly authorized JG Ricafort to participate and vote "*upon any and all matters to be taken up at [the stockholders'] meeting, according to the number of share(s) of stock of the Company of which the [petitioners] are the lawful record and beneficial owners, and which they would be entitled to vote if personally present*."[145] Moreover, the CA noted that under the SPA, JG Ricafort was even authorized to appoint a "proxy to vote upon the shares of stock owned by the Shareholders or standing in its name in the books of the [NADECOR], at any meeting of the shareholders of [NADECOR], whether regular or special."[146] Thus, not only did the SPA acknowledge JG Ricafort's proxy authority from the petitioners, it even expanded his authority to include naming another person as proxy of the petitioners.[147]

Equally significantly, the petitioners do not deny that they each executed a Nominee Agreement[148] dated June 4, 2007 wherein

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[141] *Id.* at 442.

[142] *Id.*

[143] *Id.*

[144] *Id.* at 123.

[145] *Rollo* (G.R. Nos. 202647-50), Vol. III, p. 1357.

[146] *Id.* at 1418.

[147] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 123.

[148] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 793-798.

Supreme Court E-Library

they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. Each of the nominee agreements uniformly provide:

> The undersigned x x x (hereinafter referred to as the "Nominee") hereby confirms and acknowledges her status as nominee for [JG Ricafort] (hereinafter referred to as the "Principal") x x x. The relationship of the Principal and the Nominee with respect to the Shares is governed by the following terms and conditions:
>
> 1. **The Nominee holds the legal title to the Shares for and in behalf of Principal who is the beneficial owner thereof.** Any and all payments made by the Nominee on the Shares, including but not limited to the subscription payment therefor, were funded by, and made on behalf and for the benefit of the Principal.
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> 2. All dividends, whether cash, stock or property, all future shares from the exercise of stock rights or preemptive rights and other fruits or proceeds accruing to or on the Shares or from any disposition thereof shall be for the account, funding, expense or benefit of the Principal, and accordingly, the Nominee shall deliver the same to the Principal or to whoever the latter may designate. x x x
>
> x x x x x x x x x
>
> 5. In case the Principal decides at any time to transfer the Shares or any portion thereof to its own name, or to another nominee or to an assignee, the Principal is hereby given full and irrevocable special power and authority, with right of substitution, to cause the transfer of the legal title to the Shares to the name of the Principal or to such other nominee or assignee of the Principal, as the case may be, by conveying such instruction to the Corporate Secretary of the Corporation. x x x
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> x x x x x x x x x
>
> 8. The Corporate Secretary of the Corporation is hereby given full special power and authority to do all acts and deeds necessary to effect the transfer in the books of the Corporation of the Shares from the name of the Nominee to the name of the Principal, another nominee, or the assignee of the Principal, as the case may be.
>
> 9. The Nominee shall not in any manner mortgage, assign, or otherwise encumber her legal rights, title and interests in and to the Shares without the prior written instructions of the Principal.

Supreme Court E-Library

10. The Principal may assign any and all of its rights, title and interests in and to the Shares and/or this Nominee Agreement in favor of any person upon prior written notice to the Nominee.[149] (Emphasis ours)

As Nominees, the petitioners expressly acknowledged that they held "the legal title to the Shares ***for and in behalf*** *of Principal [JG Ricafort] who is the beneficial owner thereof," and that "[a]ny and all payments made by the Nominee on the Shares, including but not limited to the subscription payment therefor, were funded by, and made on behalf and for the benefit of the Principal [JG Ricafort].*"[150] Thus, the petitioners misled the trial court into thinking that they had an inherent right to vote as an incident of their ownership of corporate stock, although they always knew that JG Ricafort was the real and beneficial owner and that he himself attended the stockholders' meeting and voted as their "proxy" the shares in their names.

Raymond, in his Affidavit[151] dated November 18, 2011, confirmed the execution by the petitioners of the Nominee Agreements; that his father JG Ricafort retained beneficial ownership of the shares as well as the custody of the certificates of stock; that the petitioners all knew about the Annual General Meeting (AGM) of NADECOR that was scheduled on August 15, 2011;"[152] and, even that his mother Corazon never attended any stockholders' meetings of NADECOR:

1. I am one of the six children of [JG Ricafort] and [Corazon], and my siblings are [Jose Manuel], Juan Carlos H. Ricafort, Victor Dennis H. Ricafort, [Marie Grace] and [Maria Teresa] (a family of 8);

2. My father, [JG Ricafort], is and has been a Director of [NADECOR] for more than 20 years and was more recently the

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[149] *Id.*

[150] *Id.*

[151] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1366-1367.

[152] *Id.* at 1366.

president of NADECOR within the period covering January 1, 2011 to August 31, 2011;

3. Sometime in June 2007, my father had asked all of us, myself, my mother and all my sisters and brothers, except for Victor Dennis H. Ricafort, to execute Nominee Agreements covering shares that he assigned in favor of the various members of the family, copies of which are attached hereto as Annexes "A" to "D";

4. In essence, the Nominee Agreements specifically state that my father, as the "Principal", retains beneficial ownership of the shares and custody of the certificates of stock;

5. My father, [JG Ricafort], also required all the family members who are nominees, to sign irrevocable proxies from time to time, providing him the authority to vote the NADECOR shares in the names of the various members of our family and these proxies authorized my father to attend meetings and vote the shares of NADECOR on behalf of the family members who were the registered shareholders of NADECOR;

6. None of the shares that are in the name of my mother and/or in the name of my brothers and/or sisters have been paid for by the respective named shareholder and all these are beneficially owned by my father, [JG Ricafort];

7. My mother has never attended a stockholders' meeting of NADECOR but has always been represented by my father in all of the shareholders' meetings attended by my father since shares of NADECOR were placed in the name of my mother as Nominee;

8. My sisters [Marie Grace] and [Maria Teresa], and my mother, [Corazon], all knew about the Annual General Meeting (AGM) of NADECOR that was scheduled on August 15, 2011[.][153]

Thus, JG Ricafort being the real and beneficial owner of the petitioners' shares, lack of notice to them is inconsequential because he attended and represented them at the August 15, 2011 ASM. It defies reason, too, that he could not have informed his wife and children, who live in the same house with him, of the scheduled ASM.

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[153] *Id.*

Supreme Court E-Library

The petitioners were given due notice of the August 15, 2011 ASM.

As shown in the Affidavit dated October 13, 2011 of San Juan, NADECOR's messenger, he mailed the notices for the August 15, 2011 ASM to the petitioners' address at the Ortigas Post Office on August 11, 2011, four days prior to the ASM. This was confirmed by Gatmaitan in his Affidavit dated November 21, 2011. It must be noted that under Article I, Section 3 of NADECOR's Amended By-Laws, what is required is the mailing out of notices by registered mail at least three days before the ASM:

SECTION 3. Notice of Meetings. — Written or printed notice of every annual or special meeting of the stockholders shall be given to each Stockholder entitled to vote at such meeting, by leaving the same with him or at his residence, or usual place of business, **or by mailing it**, postage prepaid, and addressed to him at his address as it appears upon the books of the Corporation **at least three days before such meeting**. Notice of every special meeting shall state the place, day and hour of such meeting and the general nature of the business proposed to be transacted thereat. **Failure to give notice of annual meeting, or any irregularity in such notice, shall not affect the validity of such annual meeting or of any proceedings at such meeting** (other than proceedings or which special notice is required by law or by these By-Laws). It shall not be requisite to the validity of any meeting of Stockholders that notice thereof whether prescribed by law or by these By-laws, shall have been given to any stockholder who attends in person or by proxy, or to any Stockholder who in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. No notice other than verbal announcement need be given of any adjourned meetings of Stockholders.[154] (Emphasis ours)

The shorter notice of three days instead of two weeks for stockholders' regular or special meeting is clearly allowed under Section 50 of the Corporation Code, to wit:

SECTION 50. Regular and Special Meetings of Stockholders or Members. — Regular meetings of stockholders or members shall be

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[154] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 157-158.

Supreme Court E-Library

held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, **unless a different period is required by the by-laws.**

Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: Provided, however, That at least one (1) week written notice shall be sent to all stockholders or members, **unless otherwise provided in the by-laws.**

Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member. x x x[155] (Emphasis ours)

By failing to file their complaint below seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM. Section 50 provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR,[156] which is "*at twelve thirty P.M., on the THIRD MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the first day following which is not a legal holiday*,"[157] will not affect the validity of the ASM or the proceedings therein. Thus, it is also provided in Section 3, Article 1 of NADECOR's Amended By-Laws that:

Sec. 3. x x x. Failure to give notice of annual meeting, or any irregularity in such notice, *shall not affect the validity of such annual meeting or of any proceedings at such meeting* (other than proceedings of which special notice is required by law or by these By-laws). x x x[158] (Italics ours)

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[155] Section 51 of the Corporation Code provides that "[a]ll proceedings had and any business transacted at any meeting of the stockholders or members, if within the powers or authority of the corporation, shall be valid, even if the meeting be improperly held or called, provided ***all*** the stockholders or members of the corporation are present or duly represented at the meeting."

[156] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 157.

[157] *Id.*

[158] *Id.*

Supreme Court E-Library

The Court concludes that the RTC undoubtedly erred in nullifying NADECOR's August 15, 2011 ASM and in not dismissing SEC Case No. 11-164.

WHEREFORE, the petitions in G.R. Nos. 202647-50 and G.R. Nos. 205921-24 are **DISMISSED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 206941. March 9, 2016]

MILAGROSA JOCSON, *petitioner, vs.* **NELSON SAN MIGUEL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DARAB RULES OF PROCEDURE; APPEALS; FOR COMPLAINT FILED PRIOR TO THE DATE OF THE EFFECTIVITY OF THE 2009 DARAB RULES OF PROCEDURE, THE APPLICABLE RULE IN THE COUNTING OF THE PERIOD FOR FILING A NOTICE OF APPEAL WITH THE BOARD IS GOVERNED BY SECTION 12, RULE X OF THE 2003 DARAB RULES OF PROCEDURE.— [S]ection 1, Rule XXIV of the 2009 DARAB Rules of Procedure explicitly states that: Sec. 1. *Transitory Provisions.* These Rules shall govern all cases filed on or after its effectivity. **All cases pending with the Board and the Adjudicators, prior to the date of effectivity of these Rules, shall be governed by the DARAB Rules prevailing at the time of their filing.** In the present case, the Complaint was filed on September 10, 2008 prior to the date of effectivity of the 2009 DARAB Rules of Procedure