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that proof of motive is immaterial when the identity of the appellant has been clearly established.[22]

WHEREFORE, premises considered, the appealed decision is hereby affirmed with the modification that the death indemnity be increased to P50,000.00 in keeping with recent jurisprudential rules.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and *Panganiban, JJ.,* concur.

FIRST DIVISION

[G.R. No. 117661. July 15, 1996]

DANIEL VILLANUEVA, TERRY VILLANUEVA-YU, SUSAN VILLANUEVA, EDEN VILLANUEVA and FRANKIE VILLANUEVA, *petitioners, vs.* HON. COURT OF APPEALS and BERNARDINO VILLANUEVA, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; NATURE AND PURPOSE OF A TEMPORARY RESTRAINING ORDER.—** A temporary restraining order is generally granted without notice to the opposite party, and is intended only as a restraint on him until the propriety of granting a temporary injunction can be determined, and it goes no further than to preserve

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[22] *People vs. Balatucan,* 206 SCRA 81.

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the *status quo* until that determination (The Revised Rules of Court in the Philippines, Vol. IV-A by Vicente J. Francisco, 1971, pp. 184-185). Its purpose is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted, and it is not intended to operate as an injunction *pendente lite*, and should not in effect determine the issues involved before the parties can have their day in court, or give an advantage to either party by proceeding in the acquisition or alteration of the property the right to which is disputed while the hands of the other party are tied.

2. ID.; ID.; LIMITATION ON THE ISSUANCE OF A PRELIMINARY MANDATORY INJUNCTION; RATIONALE.— The rule that a court should not, by any means of a preliminary injunction, transfer property in litigation from the possession of one party to another, is more particularly applicable where the legal title is in dispute and the party having possession asserts ownership in himself (*Gordillo and Martinez v. Del Rosario,* 39 Phil. 829). The rule is predicated on the proposition that the ownership as well as the possession of the (properties) in dispute are the main issue and that the relief was prayed for before the issue had been decided on the merits. The philosophy of the rule seems to be that before the issue is determined in the light of the evidence presented, justice and equity demand that the parties be maintained in their *status quo* so that no advantage may be given to one to the prejudice of the other, and so it was ruled that unless there is a clear pronouncement regarding ownership and possession of the land, or unless the land is covered by a torrens title pointing to one of the parties as the undisputed owner, a writ of preliminary injunction should not issue to take the (properties) out of possession of one party to place it in the hand of another. (The Revised Rules of Court in the Philippines, Vol. IV-A, by Vicente

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J. Francisco, 1971, p. 226, citing *Villadores v. Encarnacion*, 95 Phil. 913).

APPEARANCES OF COUNSEL

Villaraza and *Cruz* for petitioners.

Cesar P. Uy for private respondent.

DECISION

HERMOSISIMA, JR., *J.*

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals[2] which affirmed an Order[3] issued en banc by public respondent Securities and Exchange Commission (hereafter, SEC).[4] That Order, in turn, affirmed the validity of a Temporary Restraining Order (TRO)[5] issued by a SEC Hearing Panel[6] upon motion of private respondent who alleged that petitioners had invalidly constituted themselves to be the directors and officers of Filipinas Textile Mills, Inc. (hereafter, FTMI) and had, through misrepresentations and with the use of violence and threats,

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[1] Promulgated on July 4, 1994 in CA-G.R. SP No. 31205, entitled, "Daniel Villanueva, Terry Villanueva-Yu, Susan Villanueva, Eden Villanueva, and Frankie Villanueva *vs.* Hon. Securities and Exchange Commission and Bernardino Villanueva"; *Rollo*, pp. 43-56.

[2] Special Fourth Division with the following members: Justices Artemon D. Luna, Asaali S. Isnani and Ruben T. Reyes.

[3] Dated May 24, 1993 and issued in SEC-EB No. 313, entitled, "Daniel Villanueva, et al. *vs.* Juanito Almosa, Jr., et al. and Bernardino Villanueva"; *Rollo*, pp. 195-199.

[4] Composed of Commissioners Rosario Lopez, Rodolfo Samarista, Merle Manuel and Fe Eloisa Gloria.

[5] Dated May 14, 1992; *Rollo*, pp. 54-56.

[6] Composed of Juanito Almosa, Jr., Ysobel Yasay-Murillo, and Macario Mallari.

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taken over the actual and physical possession of and control over the FTMI factory in Cainta, Rizal. On the strength of that TRO, petitioners were compelled to evacuate and restore and surrender peacefully to private respondent the actual physical possession of and control over, the premises in question.

The following antecedent facts are hardly in dispute:

On November 22, 1991, private respondent, claiming to be an incorporator and stockholder and the President of FTMI, filed against petitioners an injunction suit with the SEC.

Petitioners Daniel Villanueva, Terry Villanueva-Yu, Susan Villanueva, Eden Villanueva and Frankie Villanueva are stockholders of record of FTMI. Apparently, there is no document in the corporate records to show the transfer of shares to the other petitioners, namely, Artemio Toquero, Mel Dimat, Innocencio Ferrer, Jr., and Peter John Calderon.

Petitioner Daniel Villanueva, also claiming to be the President of FTMI, prepared and sent a notice of special stockholders' meeting to be held on November 23, 1991 at 10:00 a.m. at the Paraiso Restaurant in Cainta, Rizal, on the ground that no regular or special meeting of the stockholders has been called by FTMI for more than five (5) years.

Through the aforecited petition for injunction filed with the SEC, private respondent sought to enjoin petitioners from proceeding with the November 23 meeting on the ground that annual stockholders' meetings were held on January 31, 1988 and January 26, 1991, respectively, in accordance with the constitution and by-laws of FTMI and that petitioners only jointly own 24% of the outstanding capital stock of FTMI while private respondent and his group own 76% thereof.

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The case was assigned to the aforecited SEC Hearing Panel composed of three hearing officers belonging to the SEC Securities and Investigations Clearing Department (hereafter, SEC SICD). These officers were Juanito Almosa, Macario Mallari and Ysobel Yasay-Murillo.

On November 22, 1991, SEC SICD Hearing Officer Macario Mallari issued a TRO[7] enjoining petitioners from conducting the said special stockholders' meeting scheduled for November 23, 1991.

On December 12, 1991, the said temporary restraining order lapsed. No writ of preliminary injunction having been issued by the SEC Hearing Panel or any SEC SICD hearing officer, petitioners proceeded with the special stockholders' meeting on January 10, 1992. During the said meeting, several of herein petitioners were elected as directors and/or officers of FTMI. There is no showing, however, that the corresponding general information sheet indicating the names of the officers elected in the said meeting, was filed with the SEC.

On January 25, 1992, FTMI held its regular annual stockholders' meeting. During that meeting, private respondent, among others, was elected to the board of directors of FTMI for the year 1992-1993. The corresponding general information sheet stating the names of the officers elected in the said meeting, was filed with the SEC on January 27, 1992.

Thereupon, thus, there existed two sets of FTMI directors and corporate officers.

Consequently, on January 29, 1992, private respondent filed a Supplemental Petition maintaining the issuance of a writ of preliminary injunction albeit sought under a set of circumstances significantly and substantially distinct from

[7] Dated November 23, 1991; *Rollo*, pp. 162-165.

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the earlier circumstances which justified the issuance of the earlier TRO issued on November 22, 1991. In that supplemental petition, private respondent assailed the January 10 meeting convened by petitioners as well as their elections to and assumption of, the office of directors and/or officers of FTMI. Private respondent further alleged that petitioners were consequently acting for and on behalf of FTMI and holding themselves as such to the public in general.

Acting on this supplemental petition, SEC SICD Hearing Officer Macario Mallari set the hearing on the injunction relief for February 20, 1992 at 2:00 p.m. Private respondent and his lawyers, however, failed to appear at the hearing. Thus, petitioners moved for dismissal of the petition; their motion was granted, and, on the ground of failure to prosecute, the case was dismissed but without prejudice.

On April 22, 1992, private respondent having moved for the reconsideration of the aforecited dismissal of his supplemental petition, said dismissal was set aside and the said petition reinstated.

On May 4, 1992, private respondent filed an urgent motion[8] reiterating his prayer that a writ of preliminary injunction be issued. In the said motion, in reference to the FTMI factory in Cainta, Rizal, private respondent specifically alleged that:

"x x x on April 4, 1992 at around 11:00 o'clock in the morning, x x x Daniel Villanueva and Mel Dimat, representing themselves to be representatives/officers and/or agents of Filipinas Textile Mills, Inc., with the aid of several other individuals brandishing armalites, hand guns and other weapons, forced their way in the compound, and with the use of violence, threats, force and intimidation, drove away the security guards and employees and took over the actual and physical possession thereof and took control over the

[8] Dated April 29, 1992; *Rollo*, pp. 118-123.

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buildings, machineries, equipment and other improvements found therein and looted the premises;

x x x That respondents should be stop (sic) and restrained from further using false pretenses, unauthorized acts and misrepresentations and further acts of dispossession, all inimical and prejudicial to the interest of x x x the Corporation, otherwise, irreparable damage will be further sustained due to the illegal and unlawful acts of the respondents."[9]

Understandably, private respondent prayed in that urgent motion that a TRO be issued by the SEC enjoining petitioners from "assuming and performing the functions of Directors/ Officers of the Corporation, and from acting for and on behalf of FTMI x x x and further acts of dispossession."[10]

Incidentally, private respondent, in the Notice of Hearing incorporated in the aforecited urgent motion, did not seek, much less schedule, a hearing thereon; he merely asked the Clerk of the SEC SICD to "please submit the foregoing Motion for the resolution and consideration of the Honorable Commission, immediately upon receipt hereof, considering the extreme urgency thereof."[11]

This matter regarding the said notice of hearing was not lost on petitioners who expectedly filed an Opposition[12] to the aforecited urgent motion. In addition to the argument that a motion with a defective notice of hearing is a mere scrap of paper, petitioners also contended that private respondent sought in the said motion the issuance of a second TRO, which is prohibited under the law.

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[9] Extremely Urgent Motion to Reiterate Issuance of a Writ of Preliminary Injunction dated April 29, 1992, p. 3; *Rollo*, p. 120.

[10] *Ibid.*, p. 4; *Rollo*, p. 121.

[11] *Ibid.*, p. 5; *Rollo*, p. 122.

[12] Dated May 13, 1992; *Rollo*, pp. 124-126.

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On May 13, 1992, private respondent filed an urgent supplemental motion[13] praying that petitioners "be ordered to evacuate, turn over and surrender peacefully"[14] to private respondent the actual physical possession of the FTMI factory in Cainta, Rizal, "including all buildings, machineries, equipment and all improvements found therein immediately"[15] and to restrain from further acts of dispossession. Said urgent supplemental motion contained the same kind of notice of hearing as that in the earlier Urgent Motion dated April 29, 1992.

On May 14, 1992, finding the foregoing two urgent motions sufficient in form and substance, the SEC SICD Hearing Panel issued a TRO[16] enjoining and restraining petitioners, "their representatives and any and all persons under their direction and all person(s) claiming right under them from assuming and performing the functions of Directors/Officers of the corporation, from acting for and in behalf of Filipinas Textile Mills, Inc., holding and misrepresenting themselves to the public as Directors/Officers of the corporation and to evacuate, vacate, restore, turn-over and surrender peacefully x x x the actual physical possession of the property in question"[17] to private respondent, "including all buildings, machineries, equipment and all improvements found therein immediately, as well as further act or acts of dispossession."[18]

On May 18, 1992, petitioners filed an urgent motion to dissolve the TRO. Opposition thereto was filed by private respondent on May 25, 1992.

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[13] Dated May 13, 1992; *Rollo*, pp. 130-132.

[14] Urgent Supplemental Motion, *supra*, p. 1; *Rollo*, p. 130.

[15] *Ibid.*

[16] Dated May 14, 1992; *Rollo*, pp. 54-56.

[17] Order dated May 14, 1992, pp. 1-2; *Rollo*, pp. 55-56.

[18] *Ibid.*, p. 2; *Rollo*, p. 56.

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Hearings on the application for issuance of the writ of preliminary injunction, were set on May 19, 21, and 25, 1992. During said hearings, both petitioners and private respondent presented testimonial and documentary evidence in support of their respective contentions.

Notwithstanding such offer of evidence by both parties, however, the SEC SICD Hearing Panel concluded that neither of the parties presented convincing and adequate evidence to justify the grant of relief to either. Thus in its Order,[19] dated June 2, 1992, the hearing panel held that:

"x x x this Hearing Panel was not indubitably shown by the herein parties that their individual claims of being the majority group is without any shred of doubt. The onus probandi vital on this matter certainly rests on the parties and the appreciation of the Hearing Panel during the hearing of the injunctive relief is that there is no sufficient evidence to sway us to a favorable ruling. While the parties succeeded in showing us that they are stockholders of record of the corporation, the requisite quantum of proof to show the composition/member of the majority block is deficient for us to sanction and grant favorably the ancillary remedy prayed for, sans prejudice to a more thorough disclosure of facts and evidence appurtenant thereto on the trial on the merits."[20]

It did not, however, forget to address the matter of the validity of the TRO issued by the hearing panel on May 14, 1992, coming as it does on the heels of an earlier TRO issued by SEC SICD Hearing Officer Macario Mallari on November 22, 1991. On this issue, the hearing panel ruled that:

"x x x on the x x x opposition to the issuance of the present Temporary Restraining Order (TRO), the propriety of the issuance thereof, and the motion to lift TRO, this Hearing Panel finds no credit in the contention x x x.

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[19] *Rollo*, pp. 163-172.

[20] Order dated June 2, 1992, pp. 4-5; *Rollo*, pp. 167-168.

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In the perusal of the first Temporary Restraining Order of 22 November 1991, then issued and penned solely by Hearing Officer Macario Mallari x x x the same was issued to enjoin the x x x Special Stockholders' Meeting on 23 November 1991.

In the present TRO by the Hearing Panel, the respondents (petitioners herein) were restrained from acting and representing themselves as directors of Filipinas Textile Mills and by virtue of their use of force, intimidation, violence and guns in taking over the premises of the corporation after the annual Stockholders' meeting was held and after the election of a new set of directors, which has remained unrebutted by the respondents (petitioners herein). There is neither a factual and or (sic) legal similarity between the two events that resulted in the issuance of the first and second TRO."[21]

Nonetheless, the hearing panel concluded that the issue regarding the validity of the TRO dated May 14, 1992 is rendered moot and academic by what the panel considered as the ultimately appropriate remedy to the situation confronting it: receivership.

"A fortiori, persuaded as we are by the attendant facts, the supervening (sic) event of an extra-judicial foreclosure over the corporation's properties, and the patent rift and strained relationships of the parties, constrained us to hold that the proper and equitable remedy under the premises lies not with the provisional remedy of injunction, but in the appointment, motu propio, of a committee to act as 'Receiver,' pursuant to P.D. 902-A, as amended by P.D. 1799.

The Receiver herein appointed (sic) shall be tasked to preserve the assets of the corporation for and in relation to its creditors, majority stockholders and other stockholders, the affected general public, to deter further prejudice and

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[21] *Ibid.*, p. 7; *Rollo*, p. 170.

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injury, pendente lite; it appearing that the corporation has ceased its operations in 1985, the eminent danger of dissipation, loss or wastage or destruction of its corporate assets before the controversy/matters at hand can be fully resolved, is a valid and legitimate apprehension shared presently by both the petitioners and respondents herein.

In furtherance to and as a direct consequence of the appointment of a Receiver by this Hearing Panel, both petitioner (private respondent herein) and respondents (petitioners herein) being stockholders of record, are required under the law not only to relate with, aid and cooperate with the receiver in the performance of his duties, but, likewise, to desist and refrain from actively pursuing the affairs of the corporation, dispossession or alienation of corporate assets, paying off claims and indebtedness of the corporation, as well as to account for all corporation proprieties (sic) which are in the name of the corporation and the precise location thereof.

It is not amiss to point out at this juncture, and we are aware of the opinion and so hold, that by the appointment of a Receiver justice is better served, the rights of parties fully protected, and foremost, that this Forum is ever so cautious in the imposition and granting of the provisional remedy of injunction and interfering needlessly with the substantive rights of the parties.

xxx *xxx* *xxx*

Accordingly, pursuant to P.D. 902-A, as amended by P.D. No. 17999, Atty. Ruben Ladia is hereby appointed as Chairman of the Committee, Atty. Teresita Siao and Atty. Julito Bajan, as members thereof, all of the Securities and Exchange Commission, who shall have the following functions, duties and responsibilities, viz.:

1. To take custody of, and control over all the existing assets and properties in the name of Filipinas Textile Mills, Inc.;

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2. To evaluate the existing assets, liabilities, earnings and operations of subject corporation;

3. To determine the best way to salvage and protect the interest of the investors and creditors and the corporation;

4. To report to this Commission (sic) on all of the above within sixty (60) days from issuance hereof, and be responsible to this Commission for the implementation of all necessary orders, and/or directives of this Forum relative to and in connection with their functions and responsibilities x x x."[22]

Dissatisfied with the aforecited ruling of the hearing panel, petitioners filed with the SEC en banc a petition for certiorari assailing the TRO, dated May 14, 1992, on the ground that it was issued without prior notice and hearing and without the requisite posting of the appropriate bond therefor as well as the order, dated June 2, 1992, which allowed the perpetuation of the effects of the aforementioned TRO if only because the question of its validity has been mooted by the appointment in the same order of June 2, 1992 of a committee of receivers for the corporation. The petition for certiorari was docketed as SEC-EB No. 313.

Opposition thereto was filed by private respondent on June 29, 1992. A reply to that opposition was, in turn, subsequently filed by petitioners on August 17, 1992.

While the aforecited petition for certiorari was pending in the SEC *en banc*, the SEC SICD hearing panel, in an order,[23] dated March 22, 1993, dissolved the committee of receivers. This action of the panel followed the recommendation of the receivership committee that:

"x x x Filipinas Textile Mills, Inc., seemingly without any property or assets to speak of, is virtually bankrupt. The

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[22] *Ibid.*, pp. 5, 6 & 7; *Rollo*, pp. 168-169, 171.

[23] *Rollo*, pp. 196-198.

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receivership committee x x x could not, perforce, carry out its assigned task, powers, functions, duties and responsibilities x x x and is therefore left with no alternative but to recommend that the said committee be dissolved. And, in view of the failure of the company to operate as a going concern since 1985, or more than seven (7) years now, coupled with the in-fighting of the stockholders, it is finally recommended that Section 22 of the Corporation Code, particularly, 'if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation,' be enforced and or applied by the Honorable Hearing Panel."[24]

In the same order, the hearing panel appointed Atty. Rene Punzalan as liquidator for purposes of winding up the affairs of the corporation prior to dissolution. Parenthetically, the hearing panel also ruled that the issue of who are the legitimate directors and/or officers of FTMI has been rendered moot by the fact that the corporation has been inoperative since 1985 and has no more assets to speak of, making it a paper corporation in the context of the law; to resolve such an issue thus will no longer serve any effective purpose.

On May 24, 1993, the SEC *en banc* rendered its decision[25] dismissing the petition for certiorari, as it ruled that:

"x x x the questioned orders do not show such grave abuse of discretion as to warrant the grant of this petition.

Bedrock is the rule that 'certiorari is an extraordinary remedy available only in extraordinary cases where the court acted without jurisdiction or with grave abuse of discretion x x x. As a matter of fact, even an abuse of discretion is sufficient by itself to justify the issuance of a writ of

[24] Order dated March 22, 1993, p. 1; *Rollo*, p. 196.

[25] Order dated May 24, 1993; *Rollo*, pp. 195-199.

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certiorari. For that purpose, the abuse of discretion must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically'x x x.

It appears from the above orders that the hearing panel had a basis in rendering their order as they rightfully considered the attendant circumstances of the case, the evidence presented and the best interest of the corporation,"[26]

On June 15, 1993, petitioners brought their cause to the respondent Court of Appeals via a petition for review[27] of the order dated May 24, 1993 issued by the SEC *en banc*, the TRO dated May 14, 1992 issued by the SEC SICD hearing panel, and the order dated June 2, 1992 issued by the same panel which in effect perpetrated the effects of the questioned TRO because the issue of the validity of that TRO was mooted by the constitution of a committee of receivers for FTMI.

Respondent Court of Appeals dismissed the petition for review. In disposing of a side issue raised by petitioners in their pleadings, respondent court found that contrary to petitioners' contentions, the order dated May 24, 1993 issued by the SEC *en banc*, sufficiently complied with the constitutional requirement that a judicial decision ought to state clearly and distinctly the facts and the law on which they are based. It held:

"x x x It is not true as petitioners contend that the SEC merely made a 'simplified ruling.' x x x. Had they considered the Order consisting of four (4) pages, single space in its entirety, they should have no misapprehension as to the ultimate facts, the applicable law and the significance attached to them by the SEC. The Order embodied in chronology the Orders of May 14 and June 2, 1992 rendered by the by (sic) Hearing Panel, the reason and basis why the Panel issued those orders, the pleadings filed and the

[26] *Ibid.*, p. 3; *Rollo*, p. 198.

[27] Docketed as CA-G.R. SP No. 31285.

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contentions presented by the contending parties, the proceedings had and actions taken in connection therewith, and the resolution arrived at by the SEC en banc. Those embodiments provided sufficient foundation for the SEC en banc to hold that its Hearing Panel had sound basis for issuing the Orders of May 14 and June 2, 1992. x x x.

The Order under review contains the salient facts, the law and applicable doctrines. It is needless for the SEC to repeat those embodiments again and again after they have been summarized at length. And, evidently, the SEC conformed to, and agreed with, as well as adopted the findings and conclusions of its Hearing Panel, which is not censurable. To borrow the apt words of Mr. Justice Barredo, in Vda. de Enriquez vs. Court of First Instance, 47 SCRA 354, 367, the SEC's Order is in 'substantial compliance' or substantially complied with the constitutional and statutory requirements. x x x"[28]

In disposing of the main issue pertaining to the validity of the TRO issued by the SEC SICD hearing panel on May 14, 1992, respondent court, upholding the actions of the SEC *en banc* and the SEC SICD hearing panel, ruled that:

"x x x the members of the Hearing Panel did right in issuing the Orders of May 14 and June 2, 1992, and did not violate the due process clause concerning prior notice and hearing. The TRO is interlocutory in its nature and it is by law effective only for twenty (20) days. It remains at all times within the control of the SEC. The Hearing Panel in the very order of May 14, 1992, set the petition for issuance of a writ of preliminary injunction for hearing. The SEC, in upholding the Panel's Orders, must have in mind the protection of the interests of the contending parties and that of the firm which has not been operating for about eight (8) years, thus it is imperative to place the firm under receivership to protect and preserve the interest of the

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[28] Decision of the Court of Appeals in CA-G.R. SP No. 31285, p. 6; *Rollo*, p. 48.

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corporation which is in a state of bankruptcy, and to place its remaining assets under the possession, management and control of the corporate assets under the SEC's control, rather than leaving them under the dictates of the contending parties, what with the events that transpired on April 4, 1992 at the corporate premises which preceded private respondent's prayer for an extraordinary remedy. Unquestionably, the SEC's resolution is the best remedial measure, as clearly circumscribed under the Hearing Panel's Orders of May 14 and June 2, 1992, all well worth and meant to maintain the status quo to meet an extreme urgent necessity for the preservation of the corporate properties which, in its ultimate, is for the best interest of both the petitioners and private respondent and the incorporators."[29]

Petitioners take exception to the decision of respondent Court of Appeals and seek from us a definitive ruling as to the validity of the TRO dated May 14, 1992 which was issued only after an earlier TRO dated November 22, 1991 in the same case. In particular, they ascribe to respondent Appellate Court the following assignment of errors:

"I

THE QUESTIONED ORDER DATED 24 MAY 1993 DENYING PETITIONERS' PETITION FOR *CERTIORARI* IS VOID FOR ITS FAILURE TO CLEARLY AND DISTINCTLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.

II

THE RESPONDENT SECURITIES AND EXCHANGE COMMISSION GRAVELY ABUSED ITS DISCRETION, DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SANCTIONED

[29] *Ibid.*, pp. 13-14; *Rollo*, pp. 55-56.

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SUCH DEPARTURE BY ITS HEARING PANEL WHEN IT ISSUED THE QUESTIONED ORDER DATED 24 MAY 1993 (ANNEX "A") CONSIDERING THAT:

A. THE ORDER DATED 14 MAY 1992 ISSUED BY THE HEARING PANEL IN SEC CASE NO. 4110 IS ACTUALLY A WRIT OF PRELIMINARY MANDATORY INJUNCTION WHICH WAS ISSUED WITHOUT PRIOR NOTICE AND HEARING, WITHOUT THE REQUISITE POSTING OF A BOND AND WHICH WAS ILLEGALLY USED TO TRANSFER POSSESSION OF PROPERTY FROM ONE PARTY TO ANOTHER;

B. THE LACK OF PRIOR NOTICE AND HEARING AND THE FAILURE OF THE PRIVATE RESPONDENT TO POST A BOND PRIOR TO THE ISSUANCE OF THE ORDER DATED 14 MAY 1992 ARE MANDATORY REQUIREMENTS THE ABSENCE OF WHICH RENDERED THE ORDER DATED 14 MAY 1992 NULL AND VOID; AND

C. THE HEARING PANEL CLEARLY ACTED IN EXCESS OF ITS JURISDICTION IN ALLOWING THE PERPETUATION OF THE EFFECTS OF THE ORDER DATED 14 MAY 1992 WHICH PREMATURELY OUSTED THE PETITIONERS FROM ACTING AS THE OFFICERS OF THE CORPORATION WHICH WAS THE CONDITION AT THE TIME THE ORDER OF 14 MAY 1992 WAS ISSUED."[30]

Peremptorily, we find the first assigned error to be utterly devoid of merit. We have cited the refutation by respondent Appellate Court of petitioners' postulate that the assailed resolution of the SEC *en banc* is constitutionally infirm for failure to state clearly and distinctly the facts and the law on which they are based, which legal posture we find to be

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[30] Petition for Review dated November 9, 1994, p. 10; *Rollo*, p. 11.

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satisfactorily in accordance with the applicable law and jurisprudence on the matter.

The crux of petitioners' cause is what they perceive to be the illegality and inefficacy of the TRO issued by the SEC SICD Hearing Panel on May 14, 1992. They anchor their claim of the invalidity of the said TRO upon (1) its real nature of being a writ of preliminary injunction in the issuance of which the law requires prior notice and hearing and posting of bond; (2) the undisputed fact that the TRO in question was issued without prior notice and hearing and without the requisite posting of any bond; (3) the ultimate effect of the issuance of the TRO which was that property already in the possession of petitioners was transferred to private respondent; and (4) the perpetuation of its effects which were not curtailed nor invalidated by the appointment of a receivership committee.

Significantly, the Solicitor General agrees with petitioners that the TRO issued by the SEC SICD Hearing Panel on May 14, 1992, is in the nature of a writ of preliminary mandatory injunction the issuance of which without prior notice and hearing and the issuance of the proper bond, amounts to grave abuse of discretion on the part of said Hearing Panel. The Solicitor General ratiocinated:

"We agree x x x with the petitioners' contention that the Order of the hearing panel dated May 14, 1992 x x x is actually a writ preliminary mandatory injunction and not merely a temporary restraining order. Since the Order required the petitioners to deliver possession of the properties of the Corporation to private respondent and to evacuate, vacate, restore, turn-over and surrender peacefully the actual physical possession of the property in question, including all buildings, machinery, equipment and all improvements found thereon to the private respondents, it is clear that the Order was in effect a writ of preliminary mandatory injunction.

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We therefore submit that the Order dated May 14, 1992 was issued with grave abuse of discretion since properties in dispute were transferred before the issue of ownership was finally adjudicated. Thus, in Government Service and Insurance System *v.* Florendo, 178 SCRA 76 (1989), it was held:

> 'A temporary restraining order is generally granted without notice to the opposite party, and is intended only as a restraint on him until the propriety of granting a temporary injunction can be determined, and it goes no further than to preserve the *status quo* until that determination (The Revised Rules of Court in the Philippines, Vol. IV-A by Vicente J. Francisco, 1971, pp. 184-185). Its purpose is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted, and it is not intended to operate as an injunction *pendente lite*, and should not in effect determine the issues involved before the parties can have their day in court, or give an advantage to either party by proceeding in the acquisition or alteration of the property the right to which is disputed while the hands of the other party are tied.
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> xxx xxx xxx

And since the legal title of the questioned properties is in dispute, with GSIS (the one in possession) asserting ownership in itself, with more reasons that the writ of injunction should not have issued. In the earlier case of Rodulfo *v.* Alfonso, etc., et al., 76 Phil. 225, We held:

> The rule that a court should not, by any means of a preliminary injunction, transfer property in litigation from the possession of one party to another, is more particularly applicable where the legal title is in dispute and the party having possession asserts ownership in himself (Gordillo and Martinez *v.* Del Rosario, 39 Phil. 829).

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> The rule is predicated on the proposition that the ownership as well as the possession of the (properties) in dispute are the main issue and that the relief was prayed for before the issue had been decided on the merits. The philosophy of the rule seems to be that before the issue is determined in the light of the evidence presented, justice and equity demand that the parties be maintained in their *status quo* so that no advantage may be given to one to the prejudice of the other, and so it was ruled that unless there is a clear pronouncement regarding ownership and possession of the land, or unless the lands is covered by a torrens title pointing to one of the parties as the undisputed owner, a writ of preliminary injunction should not issue to take the (properties) out of possession of one party to place it in the hand of another (The Revised Rules of Court of the Philippines, Vol. IV-A, by Vicente J. Francisco, 1971, p. 226, citing Villadores *v.* Encarnacion, 95 Phil. 913) x x x.'

We likewise agree with the petitioners that since the Order of May 14, 1992 was, in effect, a writ of preliminary mandatory injunction, the same should have been issued only after hearing and after private respondent was required to post a bond in accordance with Section 4, Rule 58 of the Rules of Court. Thus in Teotico *v.* Agda, Sr., 197 SCRA 675 (1991), the Supreme Court held:

> The respondent Judge did not stop there. As complained by Teotico, on 16 December 1988 the former issued an Order wherein although he denied the motion for the reconsideration of his 8 September 1988 Order denying the motion for contempt, he ordered Teotico to immediately reinstate Agda from (sic) his previous position as Fiber Regional Administrator, FIDA Region I, with full backwages and allowances mandated by law. *This, in effect, amounted to a mandatory injunction, issued without a hearing and in violation*

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of Section 5 of Rule 58 of the Rules of Court (Italics supplied)."[31]

Indeed, the assailed TRO, dated May 14, 1992, is in fact a writ of preliminary mandatory injunction.

Section 1 of Rule XVIII of the Revised Rules of Procedure in the Securities and Exchange Commission defines a preliminary mandatory injunction as an "order granted at any stage of an action prior to the final judgment, requiring x x x the performance of a particular act." The face of the assailed TRO belies any pretension that the same does nothing but require "a person to refrain from a particular act,[32] which is the office of a preliminary injunction. So categorically, does it order petitioners to "evacuate, vacate, restore, turn-over and surrender peacefully x x x the actual physical possession of the property in question"[33] to private respondent, "including all buildings, machineries, equipment and all improvements found therein immediately."[34] What in fact the questioned TRO does, is that it arbitrarily transfers possession of the FTMI factory in Cainta, Rizal, from petitioners to private respondent without affording petitioners their right to defend their possession and meet and refute private respondent's contrary claims, if any.

True, private respondent vehemently submits that petitioners are misrepresenting themselves to be FTMI directors and/or corporate officers and that they gained possession of the FTMI factory premises allegedly through violence and intimidation. If only the records now bear out

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[31] Comment of the Solicitor General dated November 26, 1993 filed in CA-G.R. SP No. 31285, pp. 8-10; *Rollo*, pp. 317-319.

[32] Section 1, Rule XVIII, Revised Rules of Procedure in the Securities and Exchange Commission.

[33] See Note 17.

[34] See Note 18.

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these allegations, the assailed TRO may find legal basis in our ruling in the case of Buayan Cattle Co., Inc. *vs.* Quintillan[35] to the effect that injunction, on the other hand, may not also be allowed to sanction acts of usurpation of property immediate relief from which is sought through the issuance of a TRO. When parties are ordered to maintain the *status quo* in a TRO, but the prevailing condition at the time of its issuance is already that resulting from acts of usurpation by one of the parties, which acts of usurpation are clearly established in the pleadings, that TRO amounts to a perpetuation of the injurious effects of such acts of usurpation; such a state of things cannot clearly be allowed, for the office of the writ of injunction is to restrain the wrongdoer, not to protect him.[36]

There is, however, an utter dearth of evidence on record proving usurpation and illegal entry on the part of petitioners with respect to their possession of the FTMI factory premises. Even the SEC SICD Hearing Panel, after hearing the herein parties on the application for the issuance of a writ of preliminary injunction, were of the conclusion that neither of them presented convincing and adequate evidence to justify the grant of relief to either.[37]

In the light of the aforegoing, we find that the issuance of the assailed TRO, dated May 14, 1992, is tainted with grave abuse of discretion for having been admittedly issued without prior notice and hearing and without posting of the proper applicable bond.

We are fully aware of the fact that as things stand now, following the recommendation of the receivership committee which was dissolved in an order promulgated on March

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[35] 128 SCRA 276.

[36] Buayan Cattle Co., Inc. *vs.* Quintillan, *supra*.

[37] Order dated June 2, 1992; *Rollo*, pp. 163-172.

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22, 1993 by the SEC SICD Hearing Panel, FTMI must currently be in the process of being dissolved as a corporate entity, that is, if it has not yet in fact been already dissolved, considering that three (3) years have now lapsed since that order was issued. Possession of the subject property, thus, while we have heretofore ruled that possession by private respondent thereof was facilitated by an illegal TRO the issuance of which amounts to grave abuse of discretion, cannot be said to even be properly vested in petitioners since their right to hold the same hinges on the legality of their assumption to office as directors and/or corporate officers of FTMI. Worth repeating to the point of bordering on redundancy is the finding not without ample basis, of the SEC SICD Hearing Panel, that neither petitioners nor private respondent presented clear evidence to warrant a fair and correct resolution as to the issue of who are the true directors and/or officers of FTMI who are authorized by law to administer and hold corporate property in behalf of the said corporation.

WHEREFORE, the petition for review is HEREBY GRANTED. The TRO, dated May 14, 1992, is declared null and void for being in fact a writ of preliminary injunction issued without prior notice and hearing and without posting of the proper applicable bond. The SEC SICD Hearing Panel, through Atty. Rene Punzalan or some other duly appointed liquidator or other authorized representative, is hereby directed to take possession of the FTMI Factory premises in Cainta, Rizal, in behalf of FTMI; complete the process of winding up the affairs of FTMI; and ultimately effectuate the dissolution of FTMI. The status of the title to the subject property being obscure in the records of this case, the SICD Hearing Panel, through Atty. Rene Punzalan or some other duly appointed liquidator or other authorized representative, is directed to take into consideration any third-party claims with respect to the subject property without prejudice to upholding and protecting the rights thereto of FTMI.

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SO ORDERED.

Bellosillo, Vitug, and *Kapunan, JJ.,* concur.

Padilla, J., took no part.

SECOND DIVISION

[G.R. Nos. 83437-38. July 17, 1996]

PEOPLE OF THE PHILIPPINES, ***plaintiff-appellee, vs.*** **WILFREDO GUARIN y REYES,** ***accused-appellant.***

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; NEGATED BY EVIDENCE.**— The gunshot wounds sustained by the victim were undoubtedly numerous and almost all are fatal. This was an *indicium* of the manifest intent to kill on the part of appellant. The number and lethal nature of the injuries inflicted by him on the hapless and unarmed victim completely demolishes appellant's pretense of having acted in self-defense.

2. **REMEDIAL LAW; EVIDENCE; TESTIMONIES; FINDINGS OF TRIAL COURT, RESPECTED.**— We agree with the trial court that the testimonies of the prosecution witnesses were clear, convincing and credible. They categorically established that they saw at close range how appellant shot and killed the victim while the latter was micturating near the door of their house. Their testimonies were unequivocal, forthright and replete with details, all of which were seals of