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(c) ₱100,000.00 as exemplary damages,

(2) All of these amounts shall earn interest at the rate of six percent (6%) per annum from the date of the finality of the Court's Resolution until fully paid.

SO ORDERED.

Peralta,[**] *Bersamin, Perez,* and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 204089. July 29, 2015]

GRACE BORGOÑA INSIGNE, DIOSDADO BORGOÑA, OSBOURNE BORGOÑA, IMELDA BORGOÑA RIVERA, and ARISTOTLE BORGOÑA, *petitioners, vs.* **ABRA VALLEY COLLEGES, INC. and FRANCIS BORGOÑA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY, WHETHER THE PLAINTIFF OR THE DEFENDANT, WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE BEARS THE *ONUS* TO PROVE HIS ASSERTION IN ORDER TO OBTAIN A FAVORABLE JUDGMENT.— In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Thus, the party, whether the plaintiff or the defendant, who asserts the affirmative of an issue bears the *onus* to prove his assertion in order to obtain a favorable judgment. From the plaintiff

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[**] Per Special Order No. 2103 dated July 13, 2015.

the burden to prove his positive assertions never parts. Yet, for the defendant, an affirmative defense is one that is not a denial of an essential ingredient in the plaintiff's cause of action, but rather one that, if established, will be a good defense – *i.e.*, an "avoidance" of the claim. The petitioners' causes of action against the respondents were premised on Sections 50, 74 and 75 of the *Corporation Code* x x x. Conformably with these provisions, the petitioners had to establish that they were stockholders of Abra Valley.

2. ID.; ID.; ID.; ID.; THE RESPONDENTS BEAR THE BURDEN OF PROOF TO ESTABLISH THAT THE PETITIONERS WERE *NOT* STOCKHOLDERS OF THE SUBJECT CORPORATION.— [T]he present issue was the offshoot of the RTC's resolution of the *Motion for Preliminary Hearing of Special and Affirmative Defenses*, wherein the respondents alleged that the petitioners were not stockholders of Abra Valley; and that they had no cause of action against the respondents. Being the parties who filed the *Motion for Preliminary Hearing of Special and Affirmative Defenses*, the respondents bore the burden of proof to establish that the petitioners were *not* stockholders of Abra Valley. The respondents' assertion therein, albeit negative, partook of a good defense that, if established, would result to their "avoidance" of the claim. On that basis, the CA erroneously laid the burden of proof on the petitioners.

3. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; STOCK CERTIFICATE; THE CERTIFICATE IS NOT STOCK IN THE CORPORATION BUT IS MERELY EVIDENCE OF THE HOLDER'S INTEREST AND STATUS IN THE CORPORATION, HIS OWNERSHIP OF THE SHARE REPRESENTED THEREBY, BUT IS NOT IN LAW THE EQUIVALENT OF SUCH OWNERSHIP.— [T]he petitioners, assuming that they bore the burden of proving their status as stockholders of Abra Valley, nonetheless discharged their burden despite their non-production of the stock certificates. A stock certificate is *prima facie* evidence that the holder is a shareholder of the corporation, but the possession of the certificate is not the sole determining factor of one's stock ownership. A certificate of stock is merely: – x x x the paper representative or tangible evidence of the stock itself and of the various interests therein. **The certificate is not stock in the corporation but is merely**

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evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby, but is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. x x x To establish their stock ownership, the petitioners actually turned over to the trial court through their *Compliance and Manifestation* submitted on April 7, 2010 the various documents showing their ownership of Abra Valley's shares.

4. ID.; ID.; ID.; RESPONDENTS ARE ESTOPPED FROM DENYING PETITIONERS' STATUS AS STOCKHOLDERS OF SUBJECT CORPORATION.— [T]he petitioners adduced competent proof showing that the respondents had allowed the petitioners to become members of the Board of Directors. According to the *Minutes of the Annual Meeting of Directors and Stockholders of the Abra Valley College of January 29, 1989*, which was among the documents submitted to the trial court on April 7, 2010 through the *Compliance and Manifestation*, the petitioners attended the annual meeting of January 29, 1989 as stockholders of Abra Valley, and participated in the election of the Board of Directors at which some of them were chosen as members. Considering that Section 23 of the *Corporation Code* requires every director to be the holder of at least one share of capital stock of the corporation of which he is a director, the respondents would not have then allowed any of the petitioners to be elected to sit in the Board of Directors as members unless they believed that the petitioners so elected were not disqualified for lack of stock ownership. Neither did the respondents thereafter assail their acts as Board Directors. Conformably with the doctrine of estoppel, the respondents could no longer deny the petitioners' status as stockholders of Abra Valley. The application of the doctrine of estoppel, which is based on public policy, fair dealing, good faith and justice, is only appropriate because the purpose of the doctrine is to forbid one from speaking against his own act, representations, or commitments to the injury of another to whom he directed such act, representations, or commitments, and who reasonably relied thereon. The doctrine springs from equitable principles and the equities in the case, and is designed to aid the law in the administration of justice where without its aid injustice might result. The Court has applied the doctrine

wherever and whenever special circumstances of the case so demanded.

5. REMEDIAL LAW; ACTIONS; DISMISSAL OF ACTIONS; THE TRIAL COURT'S POWER TO DISMISS THE COMPLAINT *MOTU PROPRIO* OR UPON MOTION OF THE DEFENDANT IF, FOR NO JUSTIFIABLE CAUSE, THE PLAINTIFF FAILS TO COMPLY WITH ANY ORDER OF THE COURT, IS NOT TO BE WIELDED INDISCRIMINATELY, BUT ONLY WHEN THE NON-COMPLIANCE CONSTITUTES A WILLFUL VIOLATION OF AN ORDER OF CONSEQUENCE TO THE ACTION, AS DISMISSAL OF THE ACTION CAN BE GROSSLY OPPRESSIVE IF IT IS BASED ON NON-COMPLIANCE WITH THE MOST TRIVIAL ORDER OF THE COURT CONSIDERING THAT THE DISMISSAL EQUATES TO AN ADJUDICATION UPON THE MERITS, UNLESS OTHERWISE DECLARED BY THE COURT.— [T]he dismissal of Special Civil Action Case No. 2070 on June 28, 2010 on the basis that "the documents presented are not Stock Certificates as boldly announced by the plaintiff's counsel, hence, plaintiffs failed to comply with the order of the Court dated March 8, 2010" was unwarranted and unreasonable. Although Section 3, Rule 17 of the *Rules of Court* expressly empowers the trial court to dismiss the complaint *motu proprio* or upon motion of the defendant if, for no justifiable cause, the plaintiff fails to comply with any order of the court, the power to dismiss is not to be wielded indiscriminately, but only when the non-compliance constitutes a willful violation of an order of consequence to the action. Dismissal of the action can be grossly oppressive if it is based on non-compliance with the most trivial order of the court considering that the dismissal equates to "an adjudication upon the merits, unless otherwise declared by the court." A line of demarcation must be drawn between an order whose non-compliance impacts on the case, and an order whose non-compliance causes little effect on the case. For example, the non-compliance of an order to the plaintiff to amend his complaint to implead an indispensable party as defendant should be sanctioned with dismissal with prejudice unless the non-compliance was upon justifiable cause, like such party not being within the jurisdiction of the court. [T]he dismissal of Special Civil Action Case No. 2070 by virtue of Section 3, Rule 17 of the *Rules of Court*

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should be undone because the petitioners' production of the stock certificates was rendered superfluous by their submission of other competent means of establishing their shareholdings in Abra Valley.

6. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; A STOCK AND TRANSFER BOOK (STB) IS NOT EXCLUSIVE EVIDENCE OF THE MATTERS AND THINGS WHICH ORDINARILY ARE OR SHOULD BE WRITTEN THEREIN, AS PAROL EVIDENCE MAY BE ADMITTED TO SUPPLY OMISSIONS IN THE RECORDS OR EXPLAIN AMBIGUITIES, OR TO CONTRADICT SUCH RECORDS. — [I]n *Lanuza v. Court of Appeals*, the Court has underscored that the STB is not the exclusive evidence of the matters and things that ordinarily are or should be written therein, for parol evidence may be admitted to supply omissions from the records, or to explain ambiguities, or to contradict such records, to wit: x x x [A] stock and transfer book is the book which records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made; and such other entries as may be prescribed by law. A stock and transfer book is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. **However, a stock and transfer book, like other corporate books and records, is not in any sense a public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein. In fact, it is generally held that the records and minutes of a corporation are not conclusive even against the corporation but are *prima facie* evidence only, and may be impeached or even contradicted by other competent evidence. Thus, parol evidence may be admitted to supply omissions in the records or explain ambiguities, or to contradict such records.** Considering that Abra Valley's STB was not in the possession of the petitioners, or at their disposal, they could not be reasonably expected or justly compelled to prove that their stock subscriptions and purchases were recorded therein. This,

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more than any other, was precisely why they filed their *Motion for Production/Inspection of Documents* to compel the respondents to produce the STB, but the RTC did not act on the motion.

7. REMEDIAL LAW; PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS; THE RULES OF DISCOVERY, GOVERNING THE PRODUCTION OR INSPECTION OF ANY DESIGNATED DOCUMENTS, PAPERS, BOOKS, ACCOUNTS, LETTERS, PHOTOGRAPHS, OBJECTS OR TANGIBLE THINGS NOT PRIVILEGED, WHICH CONTAIN OR CONSTITUTE EVIDENCE MATERIAL TO ANY MATTER INVOLVED IN THE ACTION AND WHICH ARE IN THE OTHER PARTY'S POSSESSION, CUSTODY OR CONTROL, ARE TO BE ACCORDED BROAD AND LIBERAL INTERPRETATION; BREADTH OF DISCOVERY, ELABORATED.— [T]he CA concurred with the RTC's inaction on the ground that "the Stock and Transfer Book is one of the corporate books which may be examined only by a stockholder-of-record." In our view, the CA thereby grossly erred. The rules of discovery, including Section 1, Rule 27 of the *Rules of Court* governing the production or inspection of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not privileged, which contain or constitute evidence material to any matter involved in the action and which are in the other party's possession, custody or control, are to be accorded broad and liberal interpretation. In *Republic v. Sandiganbayan*, the Court has dwelt on the breadth of discovery in the following tenor: What is chiefly contemplated is the discovery of every bit of information which may be useful in the preparation for trial, such as the identity and location of persons having knowledge of relevant facts; those relevant facts themselves; and the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things. Hence, the "deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The

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deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility, of surprise," x x x In light of the foregoing, the RTC should have favorably acted on the petitioners' *Motion for Production/ Inspection of Documents* in order to enable the petitioners, consistent with the recognized privileges and disabilities, to enable them to obtain the fullest possible knowledge of the issues and facts to be determined in Special Civil Action Case No. 2070, and thereby prevent the trial from being carried on in the dark, at least from their side.

8. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; RESPONDENTS CANNOT EVADE THE PRODUCTION OF THE STB IN COURT AS THE SAME IS RELEVANT AND NECESSARY TO ASCERTAIN WHETHER OR NOT THE PETITIONERS' SUBSCRIPTIONS TO THE AUTHORIZED AND UNISSUED CAPITAL STOCK OF SUBJECT CORPORATION HAD BEEN DULY REGISTERED.— [T]hat there was no entry or record in the STB showing the petitioners to be stockholders of Abra Valley was no valid justification for the respondents not to produce the same. Otherwise, the disputable presumption under Section 3 (e) of Rule 131 of the *Rules of Court* that "evidence willfully suppressed would be adverse if produced" could arise against them. For sure, the transfer of shares in favor of the petitioners was made through the indorsement by the original holders who were presumably the registered owners of the shares, coupled with the delivery of the stock certificates. Such procedure conformed to Section 63 of the Corporation Code. Although Abra Valley did not yet recognize such stock purchases until the surrender of the stock certificates to the corporate secretary to enable the latter to exercise the ministerial duty of recording the transfers, there was no way of avoiding or evading the production of the STB in court on the part of the respondents. The STB would definitely be relevant and necessary for the purpose of ascertaining whether or not the petitioners' subscriptions to the authorized and unissued capital stock of Abra Valley had been duly registered.

APPEARANCES OF COUNSEL

Oracion Barlis & Associates for petitioners.
Conde Claro C. Venus for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Is the presentation of a stock certificate a condition *sine qua non* for proving one's shareholding in a corporation? This is the decisive question to be resolved in this appeal.

The Case

In this appeal, the petitioners challenge the decision promulgated on June 6, 2012 in C.A.-G.R. SP No. 115203,[1] whereby the Court of Appeals (CA) affirmed the dismissal of their complaint by the Regional Trial Court (RTC), Branch 1, in Bangued, Abra under the order dated June 28, 2010 for their failure to comply with the order to present their stock certificates.[2]

Antecedents

Petitioners Grace Borgoña Insigne, Diosdado Borgoña, Osbourne Borgoña, Imelda Borgoña Rivera, Aristotle Borgoña are siblings of the full blood. Respondent Francis Borgoña (Francis) is their older half-blood brother. The petitioners are the children of the late Pedro Borgoña (Pedro) by his second wife, Teresita Valeros, while Francis was Pedro's son by his first wife, Humvelina Avila.[3] In his lifetime, Pedro was the founder, president and majority stockholder of respondent Abra Valley Colleges, Inc. (Abra Valley), a stock corporation. After

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[1] *Rollo,* pp. 34-43; penned by Associate Justice Florito S. Macalino, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Ramon M. Bato, Jr. concurring.

[2] *Id*. at 176-177.

[3] *Id*. at 14.

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Pedro's death, Francis succeeded him as the president of Abra Valley.[4]

On March 26, 2002, the petitioners, along with their brother Romulo Borgoña and Elmer Reyes, filed a complaint (with application for preliminary injunction) and damages in the RTC against Abra Valley (docketed as Special Civil Action Case No. 2070),[5] praying, among others, that the RTC direct Abra Valley to allow them to inspect its corporate books and records, and the minutes of meetings, and to provide them with its financial statements.[6]

Due to Abra Valley's failure to file its responsive pleading within the reglementary period provided in the *Interim Rules of Procedure Governing Intra-Corporate Controversies*,[7] the RTC rendered judgment on May 7, 2002 in favor of the petitioners,[8] disposing thusly:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:
>
> (1). Ordering respondent Abra Valley College to allow petitioners to inspect its corporate books and records and minutes of meetings at reasonable hours on business days, copies of excerpts from said books, records and minutes shall be allowed reproduction by petitioners at their expense and after written demand pursuant to Section 74 of the Corporation Code;
>
> (2). Ordering respondent Abra Valley College to furnish petitioners its financial statement at their expense within ten (10) days from receipt of a written request pursuant to Section 75 of the Corporation Code;

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[4] *Id*.

[5] *Id*. at 46-53.

[6] *Id*. at 49.

[7] Section 4, Rule 7 of the *Interim Rules of Procedure Governing Intra-Corporate Controversies* states:

> Section 4. *Answer*. — The defendant shall file his answer to the complaint, serving a copy thereof on the plaintiff, within ten (10) days from service of summons and the complaint.

[8] *Rollo,* pp. 58-59.

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(3) Ordering respondent Abra Valley College to pay petitioners the amount of ₱2,000.00 as attorney's fees.

SO ORDERED.[9]

The RTC denied Abra Valley's motion for reconsideration on August 7, 2002;[10] hence, Abra Valley appealed to the CA, which promulgated its decision on December 20, 2006,[11] ordering the RTC to admit Abra Valley's answer despite its belated filing on May 10, 2002; and remanding the case for further proceedings.

Thereafter, the petitioners amended their complaint[12] to substitute Evelyn Borgoña, the wife of Romulo Borgoña, as one of the plaintiffs due to Romulo's intervening death;[13] to implead Francis as an additional defendant, both in his personal capacity and as the president of Abra Valley; and to include the immediate holding of the annual stockholders' meeting as the second cause of action. The amended complaint also alleged that they were *bona fide* stockholders of Abra Valley, attaching copies of stock certificates indorsed in their favor on the dorsal portion by the original holders.[14]

On November 10, 2009, Abra Valley and Francis filed their respective answers.[15]

In its answer, Abra Valley raised the following special and affirmative defenses, to wit:

18. Inasmuch as the originals of the above enumerated certificates of stock are still in names of the original owners, it is the conclusion

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[9] *Id*. at 59.

[10] *Id*. at 60.

[11] *Id*. at 61-72; penned by Associate Justice Rebecca De Guia-Salvador (retired), with Associate Justice Magdangal M. De Leon and Associate Justice Ramon R. Garcia concurring.

[12] *Id*. at 74-81.

[13] *Id*. at 15-16.

[14] *Id*. at 82-88.

[15] *Id*. at 116-132.

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that the transfers or transactions, if any, that may have transpired between said owners and plaintiffs are not yet recorded and registered with the corporation issuing the same;

19. If said transaction or transfer was already registered, the stock certificates in the name of the assignor, transferor or indorses should have been cancelled and replaced with stock certificates in the name of the assignee, transferee or indorsee;

20. The stocks certificate submitted by the plaintiffs are still not in their respective names, but still in the name of the supposed assignors, transferors or indorsers.

x x x x x x x x x

23. To avail of the rights of stockholders, the plaintiffs must present stock certificates already in their names, and not in the names of other persons;[16]

On his part, Francis averred similar special and affirmative defenses, to wit:

10. From the Annexes of the amended complaint filed by plaintiffs, it appears that not one of them is a stockholder of record of the Abra Valley Colleges, Inc.;

11. Be that as it is, plaintiffs are not vested with the rights to vote, to notice, to inspect, to call for an annual meeting or demand the conduct of one, and such other rights and privileges inherent and available only to stockholders of record;

12. From the copies of Stock Certificate attached to the AMENDED COMPLAINT, some of the plaintiffs are mere assignees or indorsees, and that the other plaintiffs are not even assignees or indorsee;

13. And the right of an assignee or indorsee of a stock certificate is limited only to the issuance of stock certificate in his or her name, after the requirements and conditions are complied with;[17]

The respondents then filed on March 2, 2010 a *Motion for Preliminary Hearing of Special and Affirmative Defenses*.[18]

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[16] *Id*. at 119.

[17] *Id*. at 127.

[18] *Id*. at 133-137.

At the hearing set on March 8, 2010, the RTC ordered the petitioners to present the stock certificates issued by Abra Valley under their names.

On April 7, 2010, the petitioners submitted their *Compliance and Manifestation*,[19] attaching the following documents:

(1) **Certification of defendant corporation dated April 3, 2001,** issued by its Corporate Secretary, Jocelyn Bernal, officially stating that **"as per Records of the Stock and Transfer Book of the Abra Valley Colleges** the following persons has *[sic]* a share" in defendant corporation, namely: plaintiffs –
(a) Grace V. Borgoña [110 shares],
(b) Aristotle and Imelda V. Borgoña [30 shares],
(c) Diosdado V. Borgoña [15 shares], and
(d) Osbourne V. Borgoña [10 shares].
(Annex "A");

(2) **SEC certified true copy of "ISSUANCE OF PART OF AUTHORIZED AND UNISSUED CAPITAL STOCK" of defendant corporation,** declaring that in a Special Meeting of Trustees held on February 1, 1982, a Resolution to make a private offering of its authorized and unissued capital stock to certain persons, which included the following plaintiffs: **Grace B. Insigne, Osbourne v. Borgoña, Diosdado V. Borgoña, Imelda B. Rivera and Aristotle V. Borgoña,** was duly adopted. **(Annex "B");**

(3) **Official Receipts (O.R.) of defendant corporation** showing that on August 8, 1986, each of the following plaintiffs paid for 36 shares of stock of defendant corporation, to wit:

1. Grace Insigne [O.R. # 62092],
2. Osbourne Borgoña [O.R. # 62094],
3. Diosdado Borgoña [O.R. # 62095],
4. Imelda B. Rivera [O.R. # 62096], and
5. Aristotle Borgoña [O.R. # 62097],
(Annexes "C" to "C-4");

(4) **SEC certified copy of "Letter" of defendant corporation's President Pedro V. Borgoña, dated June 17, 1987,**

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[19] *Id*. at 138-145.

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addressed to the Securities and Exchange Commission (SEC), informing the SEC that defendant corporation issued 324 shares of its authorized and unissued capital stocks to certain offerees, which included the following plaintiffs: **Grace B. Insigne, Osbourne V. Borgoña, Diosdado V. Borgoña, Imelda B. Rivera and Aristotle V. Borgoña. (Annex "D");**

(5) **SEC certified copy of "Secretary's Certificate" of defendant corporation, dated June 17, 1987,** issued by the Corporate Secretary and attested by its President, stating that at a Special Meeting of the Board of Trustees held on February 1, 1982, a Resolution was passed **formally confirming and ratifying** the issuance of 324 shares from the authorized and unissued capital stock of the corporation to certain persons, which included the following plaintiffs: **Grace B. Insigne, Osbourne V. Borgoña, Diosdado V. Borgoña, Imelda B. Rivera and Aristotle V. Borgoña,** and who subscribed and **fully paid** their respective number of shares. **(Annex "E");**

(6) **SEC certified copy of the "General Information Sheet" (GIS) of defendant corporation** showing that in 1989, the following plaintiffs, namely: **Grace B. Insigne, Diosdado V. Borgoña, Imelda B. Rivera and Aristotle V. Borgoña,** together with then President, Pedro V. Borgoña, were members of the Board of defendant corporation. **(Annex "F");** and

(7) **SEC certified copy of the "MINUTES OF THE ANNUAL MEETING OF DIRECTORS AND STOCKHOLDERS OF THE ABRA VALLEY COLLEGE ON JANUARY 29, 1989"** showing that the following plaintiffs, namely: **Grace B. Insigne, Osbourne V. Borgoña, Diosdado V. Borgoña, Imelda B. Rivera and Aristotle V. Borgoña,** attended said Annual Meeting as stockholders, and the same minutes shows that some of the plaintiffs were elected members of the 1989 Board of defendant corporation. **(Annex "G")**[20]

The petitioners likewise filed a *Motion for Production/ Inspection of Documents*,[21] asking that the RTC direct the

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[20] *Id*. at 138-140 (the original text contained the bold underscorings and underlines).

[21] *Id.* at 157-159.

respondents to produce Abra Valley's Stock and Transfer Book (STB); and that petitioners be allowed to inspect the same.

On June 28, 2010, the RTC issued the assailed order dismissing Special Civil Action Case No. 2070 pursuant to Section 3, Rule 17 of the *Rules of Court*, pertinently holding:

> As can be gleaned, the documents presented are not Stock Certificates as boldly announced by the plaintiff's counsel, hence, plaintiffs failed to comply with the order of the Court dated March 8, 2010. Hence, this case is dismissible under Rule 17, Sec. 3 of the Rules of Court which provides:
>
> > Sec. 3. Dismissal due to fault of plaintiff. — "If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the Court's own motion without prejudice to the right of the defendant to prosecute his counter-claim in the same or in a separate action. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the Court."
>
> Going into the merits, the Court is of the considered opinion that the documents presented in the compliance failed to defeat the challenge of the defendant. "A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation x x x cannot be considered a formal Certificate of Stock." (SEC opinion. 20 October 1970, cited in *Bitong vs. CA*)
>
> Further, in a derivative suit, it is required that stockholder is an owner of a stock certificate at the time of the suit. The documents presented are not updated.
>
> WHEREFORE, premises considered this case is ordered DISMISSED.
>
> SO ORDERED.[22]

The petitioners appealed the dismissal.

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[22] *Id*. at 177.

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On June 6, 2012, the CA promulgated its assailed decision,[23] the dispositive portion of which states:

WHEREFORE, premises considered, the Petition is **DENIED.** The Order dated 28 June 2010 of the Regional Trial Court of Bangued, Abra, Branch 1, in Civil Case No. 2070 is hereby **AFFIRMED.**

SO ORDERED.[24]

After the CA denied the petitioners' motion for reconsideration on October 15, 2012,[25] the petitioners have come to the Court for review.

Issue

To be resolved is whether the RTC properly dismissed Special Civil Action Case No. 2070 on the ground of the petitioners' failure to comply with the order issued by the RTC on March 8, 2010 to produce stock certificates. In other words, the Court should determine whether or not the petitioners were *bona fide* stockholders of Abra Valley.

Ruling of the Court

The appeal is meritorious.

At the outset, we stress that the Court's determination is limited to resolving the issue concerning the status or relation of the petitioners with Abra Valley. Whether or not the petitioners could exercise their right to inspect Abra Valley's corporate books, records and minutes of meetings, and be furnished with financial statements, and whether or not they could demand the immediate holding of the annual stockholders' meeting are matters to be tried and resolved by the RTC.

1.

Petitioners were stockholders of Abra Valley

In their amended complaint, the petitioners alleged that they were *bona fide* stockholders of Abra Valley. On the other hand,

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[23] *Supra* note 1.

[24] *Rollo,* p. 43.

[25] *Id*. at 44-45.

the respondents claimed as an affirmative defense that the petitioners were not Abra Valley's stockholders.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Thus, the party, whether the plaintiff or the defendant, who asserts the affirmative of an issue bears the *onus* to prove his assertion in order to obtain a favorable judgment. From the plaintiff the burden to prove his positive assertions never parts. Yet, for the defendant, an affirmative defense is one that is not a denial of an essential ingredient in the plaintiff's cause of action, but rather one that, if established, will be a good defense – *i.e.*, an "avoidance" of the claim.[26]

The petitioners' causes of action against the respondents were premised on Sections 50, 74 and 75 of the *Corporation Code*,[27] to wit:

> Section 50. *Regular and special meetings of stockholders or members.* – Regular meetings of **stockholders** or members shall be 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.
>
> Section 74. *Books to be kept; stock transfer agent.* – x x x
>
> The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, **stockholder** or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.
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> x x x x x x x x x

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[26] *Bank of the Philippine Islands v. Royeca,* G.R. No. 176664, July 21, 2008, 559 SCRA 207, 215.

[27] Batas Pambansa Blg. 68.

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Section 75. *Right to financial statements.* – Within ten (10) days from receipt of a written request of any **stockholder** or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations. (Emphasis ours)

x x x x x x x x x

Conformably with these provisions, the petitioners had to establish that they were stockholders of Abra Valley. Indeed, the CA concluded that it was the petitioners who had failed to discharge the burden of proving their stock ownership because they did not produce their stock certificates.

We reverse the CA.

First of all, the present issue was the offshoot of the RTC's resolution of the *Motion for Preliminary Hearing of Special and Affirmative Defenses*, wherein the respondents alleged that the petitioners were not stockholders of Abra Valley; and that they had no cause of action against the respondents. Being the parties who filed the *Motion for Preliminary Hearing of Special and Affirmative Defenses*, the respondents bore the burden of proof to establish that the petitioners were *not* stockholders of Abra Valley. The respondents' assertion therein, albeit negative, partook of a good defense that, if established, would result to their "avoidance" of the claim. On that basis, the CA erroneously laid the burden of proof on the petitioners.

Secondly, the petitioners, assuming that they bore the burden of proving their status as stockholders of Abra Valley, nonetheless discharged their burden despite their non-production of the stock certificates.

A stock certificate is *prima facie* evidence that the holder is a shareholder of the corporation,[28] but the possession of the certificate is not the sole determining factor of one's stock ownership. A certificate of stock is merely: –

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[28] *Lao v. Lao,* G.R. No. 170585, October 6, 2008, 567 SCRA 558, 570.

x x x the paper representative or tangible evidence of the stock itself and of the various interests therein. **The certificate is not stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby, but is not in law the equivalent of such ownership.** It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation.[29] (Emphasis supplied.)

To establish their stock ownership, the petitioners actually turned over to the trial court through their *Compliance and Manifestation* submitted on April 7, 2010 the various documents showing their ownership of Abra Valley's shares,[30] specifically: the official receipts of their payments for their subscriptions of the shares of Abra Valley; and the copies duly certified by the Securities and Exchange Commission (SEC) stating that Abra Valley had issued shares in favor of the petitioners, such as the issuance of part of authorized and unissued capital stock; the letter dated June 17, 1987; the secretary's certificate dated June 17, 1987; and the general information sheet.

And, thirdly, the petitioners adduced competent proof showing that the respondents had allowed the petitioners to become members of the Board of Directors. According to the *Minutes of the Annual Meeting of Directors and Stockholders of the Abra Valley College of January 29, 1989*, which was among the documents submitted to the trial court on April 7, 2010 through the *Compliance and Manifestation*, the petitioners attended the annual meeting of January 29, 1989 as stockholders of Abra Valley, and participated in the election of the Board of Directors at which some of them were chosen as members. Considering that Section 23 of the *Corporation Code* requires every director to be the holder of at least one share of capital stock of the corporation of which he is a director, the respondents

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[29] *Tan v. Securities and Exchange Commission,* G.R. No. 95696, March 3, 1992, 206 SCRA 740, 749-750.

[30] *Rollo*, pp. 133-137.

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would not have then allowed any of the petitioners to be elected to sit in the Board of Directors as members unless they believed that the petitioners so elected were not disqualified for lack of stock ownership. Neither did the respondents thereafter assail their acts as Board Directors. Conformably with the doctrine of estoppel, the respondents could no longer deny the petitioners' status as stockholders of Abra Valley. The application of the doctrine of estoppel, which is based on public policy, fair dealing, good faith and justice, is only appropriate because the purpose of the doctrine is to forbid one from speaking against his own act, representations, or commitments to the injury of another to whom he directed such act, representations, or commitments, and who reasonably relied thereon. The doctrine springs from equitable principles and the equities in the case, and is designed to aid the law in the administration of justice where without its aid injustice might result. The Court has applied the doctrine wherever and whenever special circumstances of the case so demanded.[31]

Under the circumstances, the dismissal of Special Civil Action Case No. 2070 on June 28, 2010 on the basis that "the documents presented are not Stock Certificates as boldly announced by the plaintiff's counsel, hence, plaintiffs failed to comply with the order of the Court dated March 8, 2010" was unwarranted and unreasonable. Although Section 3, Rule 17 of the *Rules of Court*[32] expressly empowers the trial court to dismiss the complaint *motu proprio* or upon motion of the defendant if, for no justifiable cause, the plaintiff fails to comply with any order

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[31] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo,* G.R. No. 170352, June 1, 2011, 650 SCRA 100, 110.

[32] Section 3. *Dismissal due to fault of plaintiff.* - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (3a)

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of the court, the power to dismiss is not to wielded indiscriminately, but only when the non-compliance constitutes a willful violation of an order of consequence to the action. Dismissal of the action can be grossly oppressive if it is based on non-compliance with the most trivial order of the court considering that the dismissal equates to "an adjudication upon the merits, unless otherwise declared by the court."[33] A line of demarcation must be drawn between an order whose non-compliance impacts on the case, and an order whose non-compliance causes little effect on the case. For example, the non-compliance of an order to the plaintiff to amend his complaint to implead an indispensable party as defendant should be sanctioned with dismissal with prejudice unless the non-compliance was upon justifiable cause, like such party not within the jurisdiction of the court.

As we have seen, however, the dismissal of Special Civil Action Case No. 2070 by virtue of Section 3, Rule 17 of the *Rules of Court* should be undone because the petitioners' production of the stock certificates was rendered superfluous by their submission of other competent means of establishing their shareholdings in Abra Valley.

2.
Petitioners were entitled to demand the production of the STB of Abra Valley

The respondents insist that the petitioners should establish that the indorsement of the stock certificates by the original holders was registered in their favor in the STB of Abra Valley.[34]

We do not agree with this insistence.

A person becomes a stockholder of a corporation by acquiring a share through either purchase or subscription. Here, the petitioners acquired their shares in Abra Valley: (1) by subscribing to 36 shares each from Abra Valley's authorized and unissued

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[33] 9 Wright and Miller, Federal Practice and Procedure, Civil 2nd, § 2369, which warns that the dismissal, being with prejudice, is a drastic sanction to be applied only in extreme situations.

[34] *Rollo,* pp. 133-136.

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capital stock;[35] and (2) by purchasing the shareholdings of existing stockholders, as borne out by the latter's indorsement on the stock certificates.[36]

In determining the validity of the transfer of shares through purchase, we resort to Section 63 of the *Corporation Code*, which pertinently provides:

> Section 63. *Certificate of stock and transfer of shares*. – x x x Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
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> No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

In this regard, the Court has instructed in *Ponce v. Alsons Cement Corporation*[37] that:

> x x x [A] transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.

Nonetheless, in *Lanuza v. Court of Appeals*,[38] the Court has underscored that the STB is not the exclusive evidence of the

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[35] *Id*. at 147.

[36] *Id*. at 82-88.

[37] G.R. No. 139802, December 10, 2002, 393 SCRA 602, 612.

[38] G.R. No. 131394, March 28, 2005, 454 SCRA 54, 67.

matters and things that ordinarily are or should be written therein, for parol evidence may be admitted to supply omissions from the records, or to explain ambiguities, or to contradict such records, to wit:

> x x x [A] stock and transfer book is the book which records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made; and such other entries as may be prescribed by law. A stock and transfer book is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters. **However, a stock and transfer book, like other corporate books and records, is not in any sense a public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein. In fact, it is generally held that the records and minutes of a corporation are not conclusive even against the corporation but are *prima facie* evidence only, and may be impeached or even contradicted by other competent evidence. Thus, parol evidence may be admitted to supply omissions in the records or explain ambiguities, or to contradict such records.** (Emphasis supplied.)

Considering that Abra Valley's STB was not in the possession of the petitioners, or at their disposal, they could not be reasonably expected or justly compelled to prove that their stock subscriptions and purchases were recorded therein. This, more than any other, was precisely why they filed their *Motion for Production/ Inspection of Documents*[39] to compel the respondents to produce the STB, but the RTC did not act on the motion.

Unfortunately, the CA concurred with the RTC's inaction on the ground that "the Stock and Transfer Book is one of the corporate books which may be examined only by a stockholder-of-record."[40]

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[39] *Rollo,* pp. 157-159.

[40] *Supra* note 1, at 42.

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In our view, the CA thereby grossly erred. The rules of discovery, including Section 1, Rule 27 of the *Rules of Court*[41] governing the production or inspection of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not privileged, which contain or constitute evidence material to any matter involved in the action and which are in the other party's possession, custody or control, are to be accorded broad and liberal interpretation.[42] In *Republic v. Sandiganbayan*,[43] the Court has dwelt on the breadth of discovery in the following tenor:

> What is chiefly contemplated is the discovery of every bit of information which may be useful in the preparation for trial, such as the identity and location of persons having knowledge of relevant facts; those relevant facts themselves; and the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things. Hence, the "deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-

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[41] Section 1. *Motion for production or inspection; order.* Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

[42] *Security Bank Corporation v. Court of Appeals,* G.R. No. 135874, January 25, 2000, 323 SCRA 330, 333.

[43] G.R. No. 90478, November 21, 1991, 204 SCRA 213, 224.

discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility, of surprise," x x x

In light of the foregoing, the RTC should have favorably acted on the petitioners' *Motion for Production/Inspection of Documents* in order to enable the petitioners, consistent with the recognized privileges and disabilities, to enable them to obtain the fullest possible knowledge of the issues and facts to be determined in Special Civil Action Case No. 2070, and thereby prevent the trial from being carried on in the dark, at least from their side.[44] Doing so would not have caused any prejudice to the respondents, for, after all, even had the petitioners not filed the *Motion for Production/Inspection of Documents*, the respondents would themselves also be expected to produce the STB in court in order to substantiate their affirmative defense that the petitioners were not stockholders-of-record of Abra Valley. Verily, that there was no entry or record in the STB showing the petitioners to be stockholders of Abra Valley was no valid justification for the respondents not to produce the same. Otherwise, the disputable presumption under Section 3 (e) of Rule 131 of the *Rules of Court* that "evidence willfully suppressed would be adverse if produced" could arise against them.

For sure, the transfer of shares in favor of the petitioners was made through the indorsement by the original holders who were presumably the registered owners of the shares, coupled with the delivery of the stock certificates. Such procedure conformed to Section 63 of the *Corporation Code*. Although Abra Valley did not yet recognize such stock purchases until the surrender of the stock certificates to the corporate secretary to enable the latter to exercise the ministerial duty of recording the transfers,[45] there was no way of avoiding or evading the production of the STB in court on the part of the respondents.

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[44] *Supra* note 42, at 339.

[45] See *Rural Bank of Salinas, Inc. vs. Court of Appeals,* G.R. No. 96674, June 26, 1992, 210 SCRA 510, 516.

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The STB would definitely be relevant and necessary for the purpose of ascertaining whether or not the petitioners' subscriptions to the authorized and unissued capital stock of Abra Valley had been duly registered.

Lastly, we take notice of the petitioners' submission of the certification issued on April 3, 2001 by Abra Valley's corporate secretary stating that the petitioners were shareholders "as per Records of the Stock and Transfer Book of the Abra Valley Colleges" belied the respondents' claim that no entry or record had been made in the STB.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on June 6, 2012 in C.A.-G.R. SP No. 115203; **NULLIFIES** and **SETS ASIDE** the order issued in Special Civil Action Case No. 2070 on June 28, 2010 by the Regional Trial Court, Branch 1, in Bangued, Abra; **DECLARES** the petitioners as stockholders of respondent Abra Valley Colleges, Inc.; **ORDERS** the Regional Trial Court, Branch 1, in Bangued, Abra **TO REINSTATE** Special Civil Action Case No. 2070, and **TO RESUME** its proceedings therein; and **DIRECTS** the respondents to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Peralta,*[**] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[*] Acting Chairperson per Special Order No. 2102.

[**] Acting Member per Special Order No. 2103.