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FIRST DIVISION

[G.R. No. 117897. May 14, 1997]

ISLAMIC DIRECTORATE OF THE PHILIPPINES, MANUEL F. PEREA and SECURITIES & EXCHANGE COMMISSION, *petitioners, vs.* **COURT OF APPEALS and IGLESIA NI CRISTO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF JUDGMENTS; *RES JUDICATA;* DUAL ASPECTS IN ACTIONS *IN PERSONAM*; BAR BY PRIOR JUDGMENT AND CONCLUSIVENESS OF JUDGMENT.—** Section 49 (b) of the Revised Rules of Court lays down the dual aspects of *res judicata* in actions *in personam*. Section 49(b) enunciates the first concept of *res judicata* known as "bar by prior judgment," whereas, Section 49(c) is referred to as "conclusiveness of judgment." There is "bar by former judgment" when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. But where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is only identity of parties but there as is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed "conclusiveness of judgment."

2. **ID.; ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE IN CASE AT BAR.—** Neither of the concepts of *res judicata* find relevant application in the case at bench. While there may be identity of subject matter (IDP property) in both cases, there is no identity of parties. The principal parties in G.R. No. 107751 were mortgagee Leticia P. Ligon, as petitioner, and the Iglesia Ni Cristo, as private respondent. The IDP, as represented by the 1971 Board of Trustees or the Tamano Group, was only made an ancillary party in G.R. No. 107751 as intervenor. It was never

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originally a principal party thereto. It must be noted that intervention is not an independent action, but is merely collateral, accessory, or ancillary to the principal action. It is just an interlocutory proceeding dependent on or subsidiary to the case between the original parties. It is only in the present case, actually, where the IDP-Tamano Group became a principal party, as petitioner, with the Iglesia Ni Cristo, as private respondent. Clearly, there is no identity of parties in both cases. In this connection, although it is true that Civil Case No. Q-90-6937, which gave rise to G. R. No. 107751, was entitled, *"Iglesia Ni Cristo, Plaintiff v. Islamic Directorate of the Philippines, Defendant,"* the IDP can not be considered essentially a formal party thereto for the simple reason that it was not duly represented by a legitimate Board of Trustees in that case. Granting *arguendo*, that IDP may be considered a principal party in *Ligon, res judicata* as a "bar by former judgment" will still not set in on the ground that the cause of action in the two cases are different. The cause of action in G. R. No. 107751 is the surrender of the owner's duplicate copy of the transfer certificates of title to the rightful possessor thereof, whereas the cause of action in the present case is the validity of the Carpizo Group-INC Deed of Absolute Sale. *Res Judicata* in the form of "conclusiveness of judgment" cannot likewise apply for the reason that any mention at all in *Ligon* as to the validity of the disputed Carpizo Board-INC sale may only be deemed incidental to the resolution of the primary issue posed in said case which is: Who between Ligon and INC has the better right of possession over the owner's duplicate copy of the TCTs covering the IDP property? G.R. No. 107751 cannot be considered determinative and conclusive on the matter of the validity of the sale for this particular issue was not the principal thrust of *Ligon*. To rule otherwise would be to cause grave and irreparable injustice to IDP which never gave its consent to the sale, thru a legitimate Board of Trustees. In any case, while it is true that the principle of *res judicata* is a fundamental component of our judicial system, it should be disregarded if its rigid application would involve the sacrifice of justice to technicality.

3. **COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; AUTHORITY TO DECIDE THE LEGITIMATE BOARD OF TRUSTEES OF IDP.** — There can be no question as to the authority of the SEC to pass upon the issue as to who among the different contending groups is the legitimate Board of Trustees of the IDP since this

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is a matter properly falling within the original and exclusive jurisdiction of the SEC by virtue of Sections 3 and 5(c) of Presidential Decree No. 902-A. If the SEC can declare who is the legitimate IDP Board, then by parity of reasoning, it can also declare who is not the legitimate IDP Board. This is precisely what the SEC did in SEC Case No. 4012 when it adjudged the election of the Carpizo Group to the IDP Board of Trustees to be null and void. Consequently, the Carpizo Group is bereft of any authority whatsoever to bind IDP in any kind of transaction including the sale or disposition of IDP property.

4. **CIVIL LAW; CONTRACTS; REQUISITES; CONSENT; WANTING IN CASE AT BAR—** Article 1318 of the New Civil Code lays down the essential requisites of contracts. All these elements must be present to constitute a valid contract. For, where even one is absent, the contract is void. As succinctly put by Tolentino, consent is essential for the existence of a contract, and where it is wanting, the contract is non-existent. In this case, the IDP, owner of the subject parcels of land, never gave its consent, thru a legitimate Board of Trustees, to the disputed Deed of Absolute Sale executed in favor of INC. This is, therefore, a case not only of vitiated consent, but one where consent on the part of one of the supposed contracting parties is totally wanting. Ineluctably, the subject sale is void and produces no effect whatsoever.

APPEARANCES OF COUNSEL

Blo Umpar Adiong for petitioners.
Cuevas de la Cuesta & De las Alas for private respondent.

D E C I S I O N

HERMOSISIMA, JR., *J.*:

The subject of this petition for review is the Decision of the public respondent Court of Appeals,[1] dated October 28, 1994, setting aside the portion of the Decision of the Securities and Exchange Commission (SEC, for short) in SEC Case No. 4012 which declared null and void the sale of two (2) parcels of land

[1] Docketed as CA G.R. SP No. 33295.

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in Quezon City covered by the Deed of Absolute Sale entered into by and between private respondent Iglesia Ni Cristo (INC, for short) and the Islamic Directorate of the Philippines, Inc., Carpizo Group, (IDP, for short).

The following facts appear of record.

Petitioner IDP-Tamano Group alleges that sometime in 1971, Islamic leaders of all Muslim major tribal groups in the Philippines headed by Dean Cesar Adib Majul organized and incorporated the ISLAMIC DIRECTORATE OF THE PHILIPPINES (IDP), the primary purpose of which is to establish an Islamic Center in Quezon City for the construction of a "Mosque (prayer place), Madrasah (Arabic School), and other religious infrastructures" so as to facilitate the effective practice of Islamic faith in the area.[2]

Towards this end, that is, in the same year, the Libyan government donated money to the IDP to purchase land at Culiat, Tandang Sora, Quezon City, to be used as a Center for the Islamic populace. The land, with an area of 49,652 square meters, was covered by two titles: Transfer Certificate of Title Nos. RT-26520 (176616)[3] and RT-26521 (170567),[4] both registered in the name of IDP.

It appears that in 1971, the Board of Trustees of the IDP was composed of the following per Article 6 of its Articles of Incorporation:

Senator Mamintal Tamano[5]
Congressman Ali Dimaporo
Congressman Salipada Pendatun
Dean Cesar Adib Majul
Sultan Harun Al-Rashid Lucman
Delegate Ahmad Alonto
Commissioner Datu Mama Sinsuat
Mayor Aminkadra Abubakar[6]

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[2] *Rollo*, p. 197.

[3] Annex "C"; *Rollo*, p. 40.

[4] Annex "B"; *Rollo*, p. 39.

[5] Now deceased.

[6] *Rollo*, p. 99.

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According to the petitioner, in 1972, after the purchase of the land by the Libyan government in the name of IDP, Martial Law was declared by the late President Ferdinand Marcos. Most of the members of the 1971 Board of Trustees like Senators Mamintal Tamano, Salipada Pendatun, Ahmad Alonto, and Congressman Al-Rashid Lucman flew to the Middle East to escape political persecution.

Thereafter, two Muslim groups sprung, the Carpizo Group, headed by Engineer Farouk Carpizo, and the Abbas Group, led by Mrs. Zorayda Tamano and Atty. Firdaussi Abbas. Both groups claimed to be the legitimate IDP. Significantly, on October 3, 1986, the SEC, in a suit between these two contending groups, came out with a Decision in SEC Case No. 2687 declaring the election of both the Carpizo Group and the Abbas Group as IDP board members to be null and void. The dispositive portion of the SEC Decision reads:

"*WHEREFORE, judg*ment is hereby rendered declaring the elections of both the petitioners [7] *and respondents* [8] *as null and void for being violative of the Articles of Incorporation of petitioner corporation. With the nullification of the election of the respondents, the approved by-laws which they certified to this Commission as members of the Board of Trustees must necessarily be likewise declared null and void.* However, before any election of the members of the Board of Trustees could be conducted, there must be an approved by-laws to govern the internal government of the association including the conduct of election. And since the election of both petitioners and respondents have been declared null and void, a vacuum is created as to who should adopt the by-laws and certify its adoption. To remedy this unfortunate situation that the association has found itself in, the members of the petitioning corporation are hereby authorized to prepare and adopt their by-laws for submission to the Commission. Once approved, an election of the members of the Board of Trustees shall immediately be called pursuant to the approved by-laws.

SO ORDERED."[9]

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[7] IDP-Carpizo Group.

[8] Hadja Potri Zorayda Tamano, et al.

[9] *Rollo*, p. 45.

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Neither group, however, took the necessary steps prescribed by the SEC in its October 3, 1986 Decision, and, thus, no valid election of the members of the Board of Trustees of IDP was ever called. Although the Carpizo Group[10] attempted to submit a set of by-laws, the SEC found that, aside from Engineer Farouk Carpizo and Atty. Musib Buat, those who prepared and adopted the by-laws were not *bona fide* members of the IDP, thus rendering the adoption of the by-laws likewise null and void.

On April 20, 1989, without having been properly elected as new members of the Board of Trustees of IDP, the Carpizo Group caused to be signed an alleged Board Resolution[11] of the IDP, authorizing the sale of the subject two parcels of land to the private respondent INC for a consideration of P22,343,400.00, which sale was evidenced by a Deed of Absolute Sale[12] dated April 20, 1989.

On May 30, 1991, the petitioner 1971 IDP Board of Trustees headed by former Senator Mamintal Tamano, or the Tamano Group, filed a petition before the SEC, docketed as SEC Case No 4012, seeking to declare null and void the Deed of Absolute Sale signed by the Carpizo Group and the INC since the group of Engineer Carpizo was not the legitimate Board of Trustees of the IDP.

Meanwhile, private respondent INC, pursuant to the Deed of Absolute Sale executed in its favor, filed an action for Specific Performance with Damages against the vendor, Carpizo Group, before Branch 81 of the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-90-6937, to compel said group to clear the property of squatters and deliver complete and full physical possession thereof to INC. Likewise, INC filed a motion in the same case to compel one Mrs. Leticia P. Ligon to produce and surrender to the Register of Deeds of Quezon City the owner's

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[10] Composed of Farouk Carpizo, Musib M. Buat, Abdulla U. Camlian, Suleiman Clem Antonio, Al-Haj, Ustadz Iljas Ismael, Abdurafih Sayedy, and Abdurahman Linzag.

[11] *Rollo*, pp. 135-145.

[12] Annex "E"; *Rollo*, pp. 46-48.

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duplicate copy of TCT Nos. RT-26521 and RT-26520 covering the aforementioned two parcels of land, so that the sale in INC's favor may be registered and new titles issued in the name of INC. Mrs. Ligon was alleged to be the mortgagee of the two parcels of land executed in her favor by certain Abdulrahman R.T. Linzag and Rowaida Busran-Sampaco claimed to be in behalf of the Carpizo Group.

The IDP-Tamano Group, on June 11, 1991, sought to intervene in Civil Case No. Q-90-6937 averring, *inter alia*:

"x x x x x x x x x

2. That the Intervenor has filed a case before the Securities and Exchange Commission (SEC) against Mr. Farouk Carpizo, et, al., who, through false schemes and machinations, succeeded in executing the Deed of Sale between the IDP and the Iglesia Ni Kristo (plaintiff in the instant case) and which Deed of Sale is the subject of the case at bar;

3. That the said case before the SEC is docketed as Case No. 04012, the main issue of which is whether or not the aforesaid Deed of Sale between IDP and the Iglesia ni Kristo is null and void, hence, Intervenor's legal interest in the instant case. A copy of the said case is hereto attached as Annex 'A';

4. That, furthermore, Intervenor herein is the duly constituted body which can lawfully and legally represent the Islamic Directorate of the Philippines;

x x x x x x x x x."[13]

Private respondent INC opposed the motion arguing, *inter alia*, that the issue sought to be litigated by way of intervention is an intra-corporate dispute which falls under the jurisdiction of the SEC.[14]

Judge Celia Lipana-Reyes of Branch 81, Regional Trial Court of Quezon City, denied petitioner's motion to intervene on the ground of lack of juridical personality of the IDP-Tamano Group

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[13] *Rollo*, pp. 51-52.

[14] *Rollo*, pp. 67-72.

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and that the issues being raised by way of intervention are intra-corporate in nature, jurisdiction thereto properly pertaining to the SEC.[15]

Apprised of the pendency of SEC Case No. 4012 involving the controverted status of the IDP-Carpizo Group but without waiting for the outcome of said case, Judge Reyes, on September 12, 1991, rendered Partial Judgment in Civil Case No. Q-90-6937 ordering the IDP-Carpizo Group to comply with its obligation under the Deed of Sale of clearing the subject lots of squatters and of delivering the actual possession thereof to INC.[16]

Thereupon, Judge Reyes in another Order, dated March 2, 1992, pertaining also to Civil Case No. Q-90-6937, treated INC as the rightful owner of the real properties and disposed as follows:

"WHEREFORE, Leticia P. Ligon is hereby ordered to produce and/or surrender to plaintiff [17] the owner's copy of RT-26521 (170567) and RT-26520 (176616) in open court for the registration of the Deed of Absolute Sale in the latter's name and the annotation of the mortgage executed in her favor by herein defendant Islamic Directorate of the Philippines on the new transfer certificate of title to be issued to plaintiff.

SO ORDERED."[18]

On April 6, 1992, the above Order was amended by Judge Reyes directing Ligon "to deliver the owner's duplicate copies of TCT Nos. RT-26521 (170567) and RT-26520 (176616) to the *Register of Deeds of Quezon City* for the purposes stated in the Order of March 2, 1992."[19]

Mortgagee Ligon went to the Court of Appeals, thru a petition for *certiorari*, docketed as CA-G.R. No. SP-27973, assailing the foregoing Orders of Judge Reyes. The appellate court dismissed her petition on October 28, 1992.[20]

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[15] Order, pp. 1-2; *Rollo*, pp. 75-76.

[16] *Rollo*, p. 79.

[17] Iglesia Ni Cristo.

[18] *Rollo*, p. 82.

[19] *Rollo*, p. 158.

[20] *Rollo*, p. 164.

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Undaunted, Ligon filed a petition for review before the Supreme Court which was docketed as G.R. No. 107751.

In the meantime, the SEC, on July 5, 1993, finally came out with a Decision in SEC Case No. 4012 in this wise:

"1. Declaring the by-laws submitted by the respondents[21] as unauthorized, and hence, null and void.

2. Declaring the sale of the two (2) parcels of land in Quezon City covered by the Deed of Absolute Sale entered into by Iglesia ni Kristo and the Islamic Directorate of the Philippines, Inc.[22] null and void.

3. Declaring the election of the Board of Directors[23] of the corporation from 1986 to 1991 as null and void;

4. Declaring the acceptance of the respondents, except Farouk Carpizo and Musnib Buat, as members of the IDP null and void.No pronouncement as to cost.

SO ORDERED."[24]

Private respondent INC filed a Motion for Intervention, dated September 7, 1993, in SEC Case No. 4012, but the same was denied on account of the fact that the decision of the case had become final and executory, no appeal having been taken therefrom.[25]

INC elevated SEC Case No. 4012 to the public respondent Court of Appeals by way of a special civil action for *certiorari*, docketed as CA-G.R. SP No 33295. On October 28, 1994, the court *a quo* promulgated a Decision in CA-G.R. SP No. 33295 granting INC's petition. The portion of the SEC Decision in SEC Case No. 4012 which declared the sale of the two (2) lots in question to INC as void was ordered set aside by the Court of Appeals.

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[21] Engr. Farouk Carpizo, et al.

[22] Carpizo Group.

[23] *Ibid.*

[24] Decision, p. 19; *Rollo*, p. 104.

[25] Annex "P"; *Rollo*, p. 109.

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Thus, the IDP-Tamano Group brought the instant petition for review, dated December 21, 1994, submitting that the Court of Appeals gravely erred in:

1) Not upholding the jurisdiction of the SEC to declare the nullity of the sale;

2) Encouraging multiplicity of suits; and

3) Not applying the principles of estoppel and laches.[26]

While the above petition was pending, however, the Supreme Court rendered judgment in G.R. No. 107751 on the petition filed by Mrs. Leticia P. Ligon. The Decision, dated June 1, 1995, denied the Ligon petition and affirmed the October 28, 1992 Decision of the Court of Appeals in CA-G.R. No. SP-27973 which sustained the Order of Judge Reyes compelling mortgagee Ligon to surrender the owner's duplicate copies of TCT Nos. RT-26521 (170567) and RT-26520 (176616) to the Register of Deeds of Quezon City so that the Deed of Absolute Sale in INC's favor may be properly registered.

Before we rule upon the main issue posited in this petition, we would like to point out that our disposition in G.R. No. 107751 entitled, "*Ligon v. Court of Appeals*," promulgated on June 1, 1995, in no wise constitutes *res judicata* such that the petition under consideration would be barred if it were the case. Quite the contrary, the requisites of *res judicata* do not obtain in the case at bench.

Section 49, Rule 39 of the Revised Rules of Court lays down the dual aspects of *res judicata* in actions in *personam*, to wit:

"Effect of judgment. — The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x x x x x x x

(b)In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have

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[26] Petition p. 14; *Rollo*, p. 22.

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been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Section 49(b) enunciates the first concept of *res judicata* known as "bar by prior judgment," whereas, Section 49(c) is referred to as "conclusiveness of judgment."

There is "bar by former judgment" when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. But where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is only identity of parties but there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed "conclusiveness of judgment."[27]

Neither of these concepts of *res judicata* find relevant application in the case at bench. While there may be identity of subject matter (IDP property) in both cases, there is no identity of parties. The principal parties in G.R. No. 107751 were mortgagee Leticia P. Ligon, as petitioner, and the Iglesia Ni Cristo, as private respondent. The IDP, as represented by the 1971 Board of Trustees or the Tamano Group was only made an ancillary party in G.R. No. 107751 as intervenor.[28] It was never originally a principal party thereto. It must be noted that intervention is not an independent action, but is merely collateral, accessory, or

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[27] *Nabus v. Court of Appeals*, 193 SCRA 732, 739-740 [1991].

[28] *Rollo* of G.R. No. 107751, p. 561.

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ancillary to the principal action. It is just an interlocutory proceeding dependent on or subsidiary to the case between the original parties.[29] Indeed, the IDP-Tamano Group cannot be considered a principal party in G.R. No. 107751 for purposes of applying the principle of *res judicata* since the contrary goes against the true import of the action of intervention as a mere subsidiary proceeding without an independent life apart from the principal action as well as the intrinsic character of the intervenor as a mere subordinate party in the main case whose right may be said to be only in aid of the right of the original party.[30] It is only the present case, actually, where the IDP-Tamano Group became a principal party, as petitioner, with the Iglesia Ni Cristo, as private respondent. Clearly, there is no identity of parties in both cases.

In this connection, although it is true that Civil Case No. Q-90-6937, which gave rise to G.R. No. 107751, was entitled, "*Iglesia Ni Kristo, Plaintiff v. Islamic Directorate of the Philippines, Defendant*,"[31] the IDP can not be considered essentially a formal party thereto for the simple reason that it was not duly represented by a legitimate Board of Trustees in that case. As a necessary consequence, Civil Case No. Q-90-6937, a case for Specific Performance with Damages, a mere action *in personam*, did not become final and executory insofar as the true IDP is concerned since petitioner corporation, for want of legitimate representation, was effectively deprived of its day in court in said case. *Res inter alios judicatae nullum aliis praejudicium faciunt*. Matters adjudged in a cause do not prejudice those who were not parties to it.[32] Elsewise put, no person (natural or juridical) shall be affected by a proceeding to which he is a stranger.[33]

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[29] *Big Country Ranch Corp. vs. Court of Appeals*, 227 SCRA 161, 167 [1993]; *Carino v. Ofilada*, 217 SCRA 206, 215 [1993]; *Ordonez v. Gustilo*, 192 SCRA 469 [1990]; *Chavez v. Ongpin*, 186 SCRA 331, 338 [1990]; *Republic v. Sandiganbayan*, 182 SCRA 911, 918 [1990].

[30] Carino, *supra* citing *Clareza v. Rosales*, 2 SCRA 455, 457 [1961].

[31] *Rollo*, p. 80.

[32] *Tan v. Barrios*, 190 SCRA 686, 698 [1990], citing 54 C.J. 719.

[33] *Filamer Christian Institute v. Court of Appeals*, 190 SCRA 485, 492 [1990], citing *Church Assistance Program v. Sibulo*, G.R. No. 76552, March 21, 1989.

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Granting *arguendo*, that IDP may be considered a principal party in *Ligon*, *res judicata* as a "bar by former judgment" will still not set in on the ground that the cause of action in the two cases are different. The cause of action in G.R. No. 107751 is the surrender of the owner's duplicate copy of the transfer certificates of title to the rightful possessor thereof, whereas the cause of action in the present case is the validity of the Carpizo Group-INC Deed of Absolute Sale.

Res Judicata in the form of "conclusiveness of judgment" cannot likewise apply for the reason that any mention at all in *Ligon* as to the validity of the disputed Carpizo Board-INC sale may only be deemed incidental to the resolution of the primary issue posed in said case which is: Who between Ligon and INC has the better right of possession over the owner's duplicate copy of the TCTs covering the IDP property? G.R. No. 107751 cannot be considered determinative and conclusive on the matter of the validity of the sale for this particular issue was not the principal thrust of *Ligon*. To rule otherwise would be to cause grave and irreparable injustice to IDP which never gave its consent to the sale, thru a legitimate Board of Trustees.

In any case, while it is true that the principle of *res judicata* is a fundamental component of our judicial system, it should be disregarded if its rigid application would involve the sacrifice of justice to technicality.[34]

The main question though in this petition is: Did the Court of Appeals commit reversible error in setting aside that portion of the SEC's Decision in SEC Case No. 4012 which declared the sale of two (2) parcels of land in Quezon City between the IDP-Carpizo Group and private respondent INC null and void?

We rule in the affirmative.

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[34] *Zaldarriaga v. Court of Appeals*, 255 SCRA 254, 268 [1996], citing *Ronguillo v. Marasigan*, L-11621, May 31, 1962, 5 SCRA 304, 312, cited in *Republic v. De los Santos*, L-30240, March 25, 1988, 159 SCRA 264, 285 and in the concurring opinion of Justice Florenz D. Regalado in *Sumaoang v. Judge*, RTC, Br. XXXI, Guimba, Nueva Ecija, G.R. No. 78173, October 26, 1992, 215 SCRA 136, 150-151; *Suarez v. Court of Appeals*, 193 SCRA 183, 189 [1991].

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There can be no question as to the authority of the SEC to pass upon the issue as to who among the different contending groups is the legitimate Board of Trustees of the IDP since this is a matter properly falling within the original and exclusive jurisdiction of the SEC by virtue of Section 3 and 5(c) of Presidential Decree No. 902-A:

"Section 3. *The Commission shall have absolute jurisdiction, supervision and control over all corporations*, partnerships or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines x x x."

x x x x x x x x x

Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, *it shall have original and exclusive jurisdiction to hear and decide cases involving*:

x x x x x x x x x

c) *Controversies in the selection or appointment of directors, trustees, officers, or managers of such corporations, partnerships or associations*. x x x."

If the SEC can declare who is the legitimate IDP Board, then by parity of reasoning, it can also declare who is not the legitimate IDP Board. This is precisely what the SEC did in SEC Case No. 4012 when it adjudged the election of the Carpizo Group to the IDP Board of Trustees to be null and void.[35] By this ruling, the SEC in effect made the unequivocal finding that the IDP-Carpizo Group is a bogus Board of Trustees. Consequently, the Carpizo Group is bereft of any authority whatsoever to bind IDP in any kind of transaction including the sale or disposition of IDP property.

It must be noted that SEC Case No. 4012 is not the first case wherein the SEC had the opportunity to pass upon the status of the Carpizo Group. As far back as October 3, 1986, the SEC, in

[35] *Supra*, note 24.

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Case No. 2687,[36] in a suit between the Carpizo Group and the Abbas Group, already declared the election of the Carpizo Group (as well as the Abbas Group) to the IDP Board as null and void for being violative of the Articles of Incorporation.[37] Nothing thus becomes more settled than that the IDP-Carpizo Group with whom private respondent INC contracted is a fake Board.

Premises considered, all acts carried out by the Carpizo Board, particularly the sale of the Tandang Sora property, allegedly in the name of the IDP, have to be struck down for having been done without the consent of the IDP thru a legitimate Board of Trustees. Article 1318 of the New Civil Code lays down the essential requisites of contracts:

"There is *no contract* unless the following requisites concur:

(1) *Consent of the contracting parties*;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established."

All these elements must be present to constitute a valid contract. For, where even one is absent, the contract is void. As succinctly put by Tolentino, consent is essential for the existence of a contract, and where it is wanting, the contract is non-existent.[38] In this case, the IDP, owner of the subject parcels of land, never gave its consent, thru a legitimate Board of Trustees, to the disputed Deed of Absolute Sale executed in favor of INC. This is, therefore, a case not only of vitiated consent, but one where consent on the part of one of the supposed contracting parties is totally wanting. Ineluctably, the subject sale is void and produces no effect whatsoever.

The Carpizo Group-INC sale is further deemed null and void *ab initio* because of the Carpizo Group's failure to comply with Section 40 of the Corporation Code pertaining to the disposition of all or substantially all assets of the corporation:

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[36] Annex "D"; *Rollo*, p. 41.

[37] *Id.*, p 45.

[38] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, 1991 ed., p. 445.

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"Sec. 40. *Sale or other disposition of assets.* — Subject to the provisions of existing laws on illegal combinations and monopolies, *a corporation may, by a majority vote of its board of directors or trustees, sell*, lease, exchange, mortgage, pledge *or otherwise dispose of all or substantially all of its property and assets,* including its goodwill, upon terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, *when authorized by the vote of the stockholders representing at least two-third (2/3) of the outstanding capital stock; or in case of non-stock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose.* Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: *Provided*, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

x x x x x x x x x."

The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling squarely within the contemplation of the foregoing section. For the sale to be valid, the majority vote of the legitimate Board of Trustees, concurred in by the vote of at least 2/3 of the *bona fide* members of the corporation should have been obtained. These twin requirements were not met as the Carpizo Group which voted to sell the Tandang Sora property was a fake Board of Trustees, and those whose names and signatures were affixed by the Carpizo Group together with the sham Board Resolution authorizing the negotiation for the sale were, from all indications, not *bona fide* members of the IDP as they were made to appear to be. Apparently, there are only fifteen (15) official members of the petitioner corporation including the eight (8) members of the

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Board of Trustees.[39]

All told, the disputed Deed of Absolute Sale executed by the fake Carpizo Board and private respondent INC was intrinsically void *ab initio*.

Private respondent INC nevertheless questions the authority of the SEC to nullify the sale for being made outside of its jurisdiction, the same not being an intra-corporate dispute.

The resolution of the question as to whether or not the SEC had jurisdiction to declare the subject sale null and void is rendered moot and academic by the inherent nullity of the highly dubious sale due to lack of consent of the IDP, owner of the subject property. No end of substantial justice will be served if we reverse the SEC's conclusion on the matter, and remand the case to the regular courts for further litigation over an issue which is already determinable based on what we have in the records.

It is unfortunate that private respondent INC opposed the motion for intervention filed by the 1971 Board of Trustees in Civil Case No. Q-90-6937, a case for Specific Performance with Damages between INC and the Carpizo Group on the subject Deed of Absolute Sale. The legitimate IDP Board could have been granted ample opportunity before the regional trial court to shed light on the true status of the Carpizo Board and settled the matter as to the validity of the sale then and there. But INC, wanting to acquire the property at all costs and threatened by the participation of the legitimate IDP Board in the civil suit, argued for the denial of the motion averring, *inter alia*, that the issue sought to be litigated by the movant is intra-corporate in nature and outside the jurisdiction of the regional trial court. [40] As a result, the motion for intervention was denied. When the Decision in SEC Case No. 4012 came out nullifying the sale, INC came forward, this time, quibbling over the issue that it is the regional trial court, and not the SEC, which has jurisdiction to rule on the validity of the sale. INC is here trifling with the courts. We cannot put a premium on this clever legal maneuverings of private respondent which, if

[39] *Rollo*, p. 200.

[40] *Supra*, note 14.

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countenanced, would result in a failure of justice.

Furthermore, the Court observes that the INC bought the questioned property from the Carpizo Group without even seeing the owner's duplicate copy of the titles covering the property. This is very strange considering that the subject lot is a large piece of real property in Quezon City worth millions, and that under the Torrens System of Registration, the minimum requirement for one to be a good faith buyer for value is that the vendee at least sees the owner's duplicate copy of the title and relies upon the same.[41] The private respondent, presumably knowledgeable on the aforesaid workings of the Torren System, did not take heed of this and nevertheless went through with the sale with undue haste. The unexplained eagerness of INC to buy this valuable piece of land in Quezon City without even being presented with the owner's copy of the titles casts very serious doubt on the rightfulness of its position as vendee in the transaction.

WHEREFORE, the petition is GRANTED. The Decision of the public respondent Court of Appeals dated October 28, 1994 in CA-G.R. SP No. 33295 is SET ASIDE. The Decision of the Securities and Exchange Commission dated July 5, 1993 in SEC Case No. 4012 is REINSTATED. The Register of Deeds of Quezon City is hereby ordered to cancel the registration of the Deed of Absolute Sale in the name of respondent Iglesia Ni Cristo, if one has already been made. If new titles have been issued in the name of Iglesia Ni Cristo, the Register of Deeds is hereby ordered to cancel the same, and issue new ones in the name of petitioner Islamic Directorate of the Philippines. Petitioner corporation is ordered to return to private respondent whatever amount has been initially paid by INC as consideration for the property with legal interest, if the same was actually received by IDP. Otherwise, INC may run after Engineer Farouk Carpizo and his group for the amount of money paid.

SO ORDERED.

Kapunan, J., concurs.

Vitug, J., concurs in the result.

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[41] See Realty Sales Enterprise, Inc. v. IAC, 154 SCRA 328 [1987].

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Bellosillo, J., took no part. I dispel any doubt in my judicial objectivity.

Padilla, J. (Chairman), on leave.

FIRST DIVISION

[G.R. No. 118408. May 14, 1997]

THE ABACA CORPORATION OF THE PHILIPPINES represented by the Board of Liquidators, *petitioner, vs.* **MARTIN O. GARCIA and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; MORTGAGE; FAILURE TO PAY MORTGAGE DEBT; TYPES OF SALE ARISING THEREFROM; ART. 3135 ON EXTRAJUDICIAL FORECLOSURE SALE, MADE APPLICABLE IN CASE AT BAR.** — There are three (3) types of sales arising from failure to pay a mortgage debt, namely, the extrajudicial foreclosure sale, the judicial foreclosure sale and the ordinary execution sale. These in turn are governed by three (3) different laws. Act No. 3135 governs extrajudicial foreclosure sale, Rule 68 of the Rules of Court deals with judicial foreclosure sale, while Rule 39 covers ordinary execution sale. Act No. 3135 or *An Act to Regulate the Sale Property under Special Powers Inserted in or Annexed to Real Estate Mortgage* applies to the case at bar. In the Real Estate Mortgage executed by respondent Garcia, it was provided that Act No. 3135 was to be applied and ABACORP was particularly designated as attorney-in-fact. It was therefore an error to invoke Rule 39 which applies only to ordinary execution sale. From the very beginning, what was involved was an extrajudicial foreclosure sale, and Act No. 3135 is the specific legislative enactment particularly applicable to the present case.