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**SO ORDERED.**

*Puno (Chairman), Austria-Martinez, Callejo, Sr.*, and *Chico-Nazario, JJ.*, concur.

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**SECOND DIVISION**

[G.R. No. 131394. March 28, 2005]

**JESUS V. LANUZA, MAGADYA REYES, BAYANI REYES and ARIEL REYES,** *petitioners, vs.* **COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, DOLORES ONRUBIA, ELENITA NOLASCO, JUAN O. NOLASCO III, ESTATE OF FAUSTINA M. ONRUBIA, PHILIPPINE MERCHANT MARINE SCHOOL, INC.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; *RES JUDICATA;* CONSTRUED; ELEMENTS.** — *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The elements of *res judicata* are (a) identity of parties or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

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2. **ID.; ID.; ID.; ID.; ID.; IDENTICAL CAUSES OF ACTION; HOW DETERMINED.** — The test often used in determining whether causes of action are identical is to ascertain whether the same facts or evidence would support and establish the former and present causes of action. More significantly, there is identity of causes of action when the judgment sought will be inconsistent with the prior judgment.

3. **ID.; ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; ELUCIDATED.** — Absolute identity of parties is not a condition *sine qua non* for *res judicata* to apply—a shared identity of interest is sufficient to invoke the coverage of the principle.

4. **COMMERCIAL LAW; CORPORATION LAW; ARTICLES OF INCORPORATION.** — The articles of incorporation has been described as one that defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders.

5. **ID.; ID.; STOCK AND TRANSFER BOOK; ELUCIDATED.** — 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.

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**6. ID.; ID.; QUORUM IN MEETINGS.**— In 1980, *Batas Pambansa Blg. 68*, otherwise known as "The Corporation Code of the Philippines" supplanted Act No. 1459. BP Blg. 68 provides: Sec. 24. Election of directors or trustees.—At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. . . . Sec. 52. Quorum in meetings. — Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or majority of the members in the case of non-stock corporation. Outstanding capital stock, on the other hand, is defined by the Code as: Sec. 137. Outstanding capital stock defined.— The term "outstanding capital stock" as used in this code, means the total shares of stock issued to subscribers or stockholders whether or not fully or partially paid (as long as there is binding subscription agreement) except treasury shares. Thus, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares.

**7. ID.; ID.; ID.; DETERMINATION WHERE STOCK AND TRANSFER BOOK CONFLICTS WITH THE ARTICLES OF INCORPORATION, CASE AT BAR.** — In the instant case, two figures are being pitted against each other— those contained in the articles of incorporation, and those listed in the stock and transfer book. To base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares. This case is one instance where resort to documents other than the stock and transfer books is necessary. The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book. One who is actually a stockholder cannot be denied his right to vote by the corporation merely because the corporate officers failed to keep its records accurately. A corporation's records are not the only evidence

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of the ownership of stock in a corporation. In an American case, persons claiming shareholders status in a professional corporation were listed as stockholders in the amendment to the articles of incorporation. On that basis, they were in all respects treated as shareholders. In fact, the acts and conduct of the parties may even constitute sufficient evidence of one's status as a shareholder or member. In the instant case, no less than the articles of incorporation declare the incorporators to have in their name the founders and several common shares. Thus, to disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist and accordingly to allow great injustice to be caused to the incorporators and their heirs.

## APPEARANCES OF COUNSEL

*Kho Bustos Malcontento Argosino Law Offices* for petitioner Lanuza.

*Villamin P. Lam* for petitioners Reyeses.

*Ponce Enrile Reyes & Manalastas* for respondents.

## D E C I S I O N

**TINGA, *J.*:**

Presented in the case at bar is the apparently straight-forward but complicated question: What should be the basis of quorum for a stockholders' meeting — the outstanding capital stock as indicated in the articles of incorporation or that contained in the company's stock and transfer book?

Petitioners seek to nullify the Court of Appeals' *Decision* in CA-G.R. SP No. 41473[1] promulgated on 18 August 1997, affirming the SEC *Order* dated 20 June 1996, and the Resolution[2]

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[1] Promulgated by the Special Third Division, Justice Gloria C. Paras, Presiding Justice, JJ. Eduardo G. Montenegro and Omar U. Amin, concurring; *Rollo*, pp. 102-110.

[2] *Id.* at 123.

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of the Court of Appeals dated 31 October 1997 which denied petitioners' motion for reconsideration.

The antecedents are not disputed.

In 1952, the Philippine Merchant Marine School, Inc. (PMMSI) was incorporated, with seven hundred (700) founders' shares and seventy-six (76) common shares as its initial capital stock subscription reflected in the articles of incorporation. However, private respondents and their predecessors who were in control of PMMSI registered the company's stock and transfer book for the first time in 1978, recording thirty-three (33) common shares as the only issued and outstanding shares of PMMSI. Sometime in 1979, a special stockholders' meeting was called and held on the basis of what was considered as a quorum of twenty-seven (27) common shares, representing more than two-thirds (2/3) of the common shares issued and outstanding.

In 1982, the heirs of one of the original incorporators, Juan Acayan, filed a petition with the Securities and Exchange Commission (SEC) for the registration of their property rights over one hundred (120) founders' shares and twelve (12) common shares owned by their father. The SEC hearing officer held that the heirs of Acayan were entitled to the claimed shares and called for a special stockholders' meeting to elect a new set of officers.[3] The SEC *En Banc* affirmed the decision. As a result, the shares of Acayan were recorded in the stock and transfer book.

On 06 May 1992, a special stockholders' meeting was held to elect a new set of directors. Private respondents thereafter filed a petition with the SEC questioning the validity of the 06 May 1992 stockholders' meeting, alleging that the quorum for the said meeting should not be based on the 165 issued and outstanding shares as per the stock and transfer book, but on the initial subscribed capital stock of seven hundred seventy-six (776) shares, as reflected in the 1952 Articles of Incorporation. The petition was dismissed.[4] Appeal was made to the SEC *En Banc*, which granted said appeal, holding that the shares of the

[3] *Id.* at 67-77.

[4] *Id.* at 78-84.

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deceased incorporators should be duly represented by their respective administrators or heirs concerned. The SEC directed the parties to call for a stockholders meeting on the basis of the stockholdings reflected in the articles of incorporation for the purpose of electing a new set of officers for the corporation.[5]

Petitioners, who are PMMSI stockholders, filed a petition for review with the Court of Appeals.[6] Rebecca Acayan, Jayne O. Abuid, Willie O. Abuid and Renato Cervantes, stockholders and directors of PMMSI, earlier filed another petition for review of the same SEC *En Banc's* orders. The petitions were thereafter consolidated.[7] The consolidated petitions essentially raised the following issues, *viz*: (a) whether on the basis of the outstanding capital stock and accordingly also for determining the quorum at stockholders' meetings it should be the 1978 stock and transfer book or it should be the 1952 articles of incorporation; and (b) whether the Court of Appeals "gravely erred in applying the Espejo Decision to the benefit of respondents."[8] The "Espejo Decision" is the decision of the SEC *en banc* in SEC Case No. 2289 which ordered the recording of the shares of Jose Acayan in the stock and transfer book.

The Court of Appeals held that for purposes of transacting business, the quorum should be based on the outstanding capital stock as found in the articles of incorporation.[9] As to the second issue, the Court of Appeals held that the ruling in the *Acayan* case would *ipso facto* benefit the private respondents, since to require a separate judicial declaration to recognize the shares of the original incorporators would entail unnecessary delay and expense. Besides, the Court of Appeals added, the incorporators have already proved their stockholdings through the provisions of the articles of incorporation.[10]

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[5] *Id.* at 84-92.

[6] *Id.* at 15.

[7] Court of Appeals' Decision. *Id.* at 102.

[8] *Id.* at 18.

[9] *Id.* at 109.

[10] *Id.* at 109-110.

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In the instant petition, petitioners claim that the 1992 stockholders' meeting was valid and legal. They submit that reliance on the 1952 articles of incorporation for determining the quorum negates the existence and validity of the stock and transfer book which private respondents themselves prepared. In addition, they posit that private respondents cannot avail of the benefits secured by the heirs of Acayan, as private respondents must show and prove entitlement to the founders and common shares in a separate and independent action/proceeding.

In private respondents' *Memorandum*[11] dated 08 March 2000, they point out that the instant petition raises the same facts and issues as those raised in G.R. No. 131315,[12] which was denied by the First Division of this Court on 18 January 1999 for failure to show that the Court of Appeals committed any reversible error. They add that as a logical consequence, the instant petition should be dismissed on the ground of *res judicata.* Furthermore, private respondents claim that in view of the applicability of the rule on *res judicata*, petitioners' counsel should be cited for contempt for violating the rule against forum-shopping.[13]

For their part, petitioners claim that the principle of *res judicata* does not apply to the instant case. They argue that the instant petition is separate and distinct from G.R. No. 131315, there being no identity of parties, and more importantly, the parties in the two petitions have their own distinct rights and interests in relation to the subject matter in litigation. For the same reasons, they claim that counsel for petitioners cannot be found guilty of forum-shopping.[14]

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[11] *Id.* at 221-259.

[12] *Rebecca Acayan, Jayne O. Abuid, Willie O. Abuid and Renato Cervantes v. Court of Appeals, Securities and Exchange Commission, Dolores O. Onrubia, Elenita O. Nolasco, Juan O. Nolasco III, Estate of Faustina M. Onrubia and Philippine Merchant Marine School, Inc.*, filed on 24 December 1997.

[13] *Rollo*, p. 241.

[14] *Id.* at 355-358.

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In their *Manifestation and Motion*[15] dated 22 September 2004, private respondents moved for the dismissal of the instant petition in view of the dismissal of G.R. No. 131315. Attached to the said manifestation is a copy of the *Entry of Judgment*[16] issued by the First Division dated 01 December 1999.

The petition must be denied, not on *res judicata*, but on the ground that like the petition in G.R. No. 131315 it fails to impute reversible error to the challenged Court of Appeals' *Decision*.

*Res judicata does not apply in the case at bar.*

*Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment.[17] The doctrine of *res judicata* provides that a final judgment, on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[18] The elements of *res judicata* are (a) identity of parties or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[19]

There is no dispute as to the identity of subject matter since the crucial point in both cases is the propriety of including the still unproven shares of respondents for purposes of determining the quorum. Petitioners, however, deny that there is identity of parties and causes of actions between the two petitions.

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[15] *Id.* at 383-385.

[16] *Id.* at 387.

[17] *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 78 (2002), citing 46 Am Jur. §514.

[18] *Republic v. Court of Appeals*, 381 Phil. 558, 564 (2000).

[19] *Cruz v. Court of Appeals*, 388 Phil. 550, 556 (2000).

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The test often used in determining whether causes of action are identical is to ascertain whether the same facts or evidence would support and establish the former and present causes of action.[20] More significantly, there is identity of causes of action when the judgment sought will be inconsistent with the prior judgment.[21] In both petitions, petitioners assert that the Court of Appeals' *Decision* effectively negates the existence and validity of the stock and transfer book, as well as automatically grants private respondents' shares of stocks which they do not own, or the ownership of which remains to be unproved. Petitioners in the two petitions rely on the entries in the stock and transfer book as the proper basis for computing the quorum, and consequently determine the degree of control one has over the company. Essentially, the affirmance of the SEC *Order* had the effect of diminishing their control and interests in the company, as it allowed the participation of the individual private respondents in the election of officers of the corporation.

Absolute identity of parties is not a condition *sine qua non* for *res judicata* to apply — a shared identity of interest is sufficient to invoke the coverage of the principle.[22] However, there is no identity of parties between the two cases. The parties in the two petitions have their own rights and interests in relation to the subject matter in litigation. As stated by petitioners in their *Reply to Respondents' Memorandum*,[23] there are no two separate actions filed, but rather, two separate petitions for review on *certiorari* filed by two distinct parties with the Court and represented by their own counsels, arising from an adverse consolidated decision promulgated by the Court of Appeals in one action or proceeding.[24] As such, *res judicata* is not present in the instant case.

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[20] *Cagayan de Oro Coliseum Inc. v. Court of Appeals*, 378 Phil. 498, 520 (1999).

[21] *Supra* note 19 at 559.

[22] *Id.* at 557.

[23] *Rollo*, pp. 355-364.

[24] *Id.* at 357.

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Likewise, there is no basis for declaring petitioners or their counsel guilty of violating the rules against forum-shopping. In the *Verification/Certification*[25] portion of the petition, petitioners clearly stated that there was then a pending motion for reconsideration of the 18 August 1997 *Decision* of the Court of Appeals in the consolidated cases (CA-G.R. SP No. 41473 and CA-G.R. SP No. 41403) filed by the Abuids, as well as a motion for clarification. Moreover, the records indicate that petitioners filed their *Manifestation*[26] dated 20 January 1998, informing the Court of their receipt of the petition in G.R. No. 131315 in compliance with their duty to inform the Court of the pendency of another similar petition. The Court finds that petitioners substantially complied with the rules against forum-shopping.

*The Decision of the Court of Appeals must be upheld.*

The petition in this case involves the same facts and substantially the same issues and arguments as those in G.R. No. 131315 which the First Division has long denied with finality. The First Division found the petition before it inadequate in failing to raise any reversible error on the part of the Court of Appeals. We reach a similar conclusion as regards the present petition.

The crucial issue in this case is whether it is the company's stock and transfer book, or its 1952 Articles of Incorporation, which determines stockholders' shareholdings, and provides the basis for computing the quorum.

We agree with the Court of Appeals.

The articles of incorporation has been described as one that defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders.[27] When PMMSI was incorporated, the prevailing

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[25] *Id.* at 35.

[26] *Id.* at 130.

[27] *Government of the Philippine Islands v. Manila Railroad Co.*, 52 Phil. 699, 763-764 (1929).

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law was Act No. 1459, otherwise known as "The Corporation Law." Section 6 thereof states:

Sec. 6. Five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes by filing with the Securities and Exchange Commission articles of incorporation duly executed and acknowledged before a notary public, setting forth:

x x x x x x x x x

(7) If it be a stock corporation, the amount of its capital stock, in lawful money of the Philippines, and the number of shares into which it is divided, and if such stock be in whole or in part without par value then such fact shall be stated; *Provided, however,* That as to stock without par value the articles of incorporation need only state the number of shares into which said capital stock is divided.

(8) If it be a stock corporation, the amount of capital stock or number of shares of no-par stock actually subscribed, the amount or number of shares of no-par stock subscribed by each and the sum paid by each on his subscription. . . .[28]

A review of PMMSI's articles of incorporation[29] shows that the corporation complied with the requirements laid down by Act No. 1459. It provides in part:

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[28] The corresponding provision in B.P. Blg. 68, otherwise known as "The Corporation Code of the Philippines," reads:

Sec. 14. Contents of articles of incorporation. — All corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

x x x x x x x x x

8. If it be a stock corporation, the amount of its authorized capital stock in lawful money of the Philippines, the number of shares into which it is divided, and in case the shares are par value shares, the par value of each, the names, nationalities and residences of the original subscribers, and the amount subscribed and paid by each on his subscription, and if some or all of the shares are without par value, such fact must be stated; . . . .

[29] *Rollo*, pp. 37-43.

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7. That the capital stock of the said corporation is NINETY THOUSAND PESOS (₱90,000.00) divided into two classes, namely:

FOUNDERS' STOCK –1,000 shares at ₱20 par value – ₱20,000.00
COMMON STOCK – 700 shares at ₱100 par value – ₱70,000.00

TOTAL ---------- 1,700 shares ---------- ₱90,000.00

x x x x x x x x x

8. That the amount of the entire capital stock which has been actually subscribed is TWENTY ONE THOUSAND SIX HUNDRED PESOS (₱21,600.00) and the following persons have subscribed for the number of shares and amount of capital stock set out after their respective names:

| SUBSCRIBER | SUBSCRIBED No. of Shares | AMOUNT SUBSCRIBED Par Value |
|---|---|---|
| Crispulo J. Onrubia | 120 Founders | ₱ 2,400.00 |
| Juan H. Acayan | 120 " | 2,400.00 |
| Martin P. Sagarbarria | 100 " | 2,000.00 |
| Mauricio G. Gallaga | 50 " | 1,000.00 |
| Luis Renteria | 50 " | 1,000.00 |
| Faustina M. de Onrubia | 40 " | 2,800.00 |
| Mrs. Ramon Araneta | 40 " | 800.00 |
| Carlos M. Onrubia | 80 " | 1,600.00 |
| | 700 | ₱14,000.00 |

| SUBSCRIBER | SUBSCRIBED No. of Shares | AMOUNT SUBSCRIBED Par Value |
|---|---|---|
| Crispulo J. Onrubia | 12 Common | ₱ 1,200.00 |
| Juan H. Acayan | 12 " | 1,200.00 |
| Martin P. Sagarbarria | 8 " | 800.00 |
| Mauricio G. Gallaga | 8 " | 800.00 |
| Luis Renteria | 8 " | 800.00 |
| Faustina M. de Onrubia | 12 " | 1,200.00 |
| Mrs. Ramon Araneta | 8 " | 800.00 |

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| | | | |
|---|---|---|---|
| Carlos M. Onrubia | 8 | " | 800.00 |
| | 76 | | ₱ 7,600.00[30] |

There is no gainsaying that the contents of the articles of incorporation are binding, not only on the corporation, but also on its shareholders. In the instant case, the articles of incorporation indicate that at the time of incorporation, the incorporators were *bona fide* stockholders of seven hundred (700) founders' shares and seventy-six (76) common shares. Hence, at that time, the corporation had 776 issued and outstanding shares.

On the other hand, 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.[31] 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.[32] 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.[33] 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,[34] and may

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[30] *Id.* at 40. Attached to the articles of incorporation was the Treasurer's Affidavit, which stated the shares actually subscribed and the amount actually paid, and that at least 20 percent of the entire capital stock has been subscribed and 25 percent thereof had been actually paid.

[31] Sec. 74, B.P. Blg. 68.

[32] HECTOR S. DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES ANNOTATED*, 1999 Edition, p. 606, citing SEC Opinion, 19 February 1975, citing 5 Fletcher, p. 509.

[33] 18A AM JUR 2d §338.

[34] *Bitong v. Court of Appeals*, 354 Phil. 516, 536 (1998).

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be impeached or even contradicted by other competent evidence.[35] Thus, parol evidence may be admitted to supply omissions in the records or explain ambiguities, or to contradict such records.[36]

In 1980, *Batas Pambansa Blg. 68,* otherwise known as "The Corporation Code of the Philippines" supplanted Act No. 1459. BP Blg. 68 provides:

> Sec. 24. Election of directors or trustees. — At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. . . .
>
> Sec. 52. Quorum in meetings. — Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or majority of the members in the case of non-stock corporation.

Outstanding capital stock, on the other hand, is defined by the Code as:

> Sec. 137. Outstanding capital stock defined. — The term "outstanding capital stock" as used in this code, means the total shares of stock issued to subscribers or stockholders whether or not fully or partially paid (as long as there is binding subscription agreement) except treasury shares.

Thus, quorum is based on the totality of the shares which have been subscribed and issued, whether it be founders' shares or common shares.[37] In the instant case, two figures are being pitted against each other — those contained in the articles of incorporation, and those listed in the stock and transfer book.

To base the computation of quorum solely on the obviously deficient, if not inaccurate stock and transfer book, and completely disregarding the issued and outstanding shares as indicated in

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[35] 5 Fletcher Cyc. Corp. §2202, p. 661.

[36] 18A Am Jur 2d §338.

[37] Under Sec. 31 of the old Code, quorum for the election of directors was described as the majority of the subscribed capital stock entitled to vote.

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the articles of incorporation would work injustice to the owners and/or successors in interest of the said shares. This case is one instance where resort to documents other than the stock and transfer books is necessary. The stock and transfer book of PMMSI cannot be used as the sole basis for determining the quorum as it does not reflect the totality of shares which have been subscribed, more so when the articles of incorporation show a significantly larger amount of shares issued and outstanding as compared to that listed in the stock and transfer book. As aptly stated by the SEC in its *Order* dated 15 July 1996:[38]

> It is to be explained, that if at the onset of incorporation a corporation has 771 shares subscribed, the Stock and Transfer Book should likewise reflect 771 shares. Any sale, disposition or even reacquisition of the company of its own shares, in which it becomes treasury shares, would not affect the total number of shares in the Stock and Transfer Book. All that will change are the entries as to the owners of the shares but not as to the amount of shares already subscribed.
>
> This is precisely the reason why the Stock and Transfer Book was not given probative value. Did the shares, which were not recorded in the Stock and Transfer Book, but were recorded in the Articles of Incorporation just vanish into thin air? . . . .[39]

As shown above, at the time the corporation was set-up, there were already seven hundred seventy-six (776) issued and outstanding shares as reflected in the articles of incorporation. No proof was adduced as to any transaction effected on these shares from the time PMMSI was incorporated up to the time the instant petition was filed, except for the thirty-three (33) shares which were recorded in the stock and transfer book in 1978, and the additional one hundred thirty-two (132) in 1982. But obviously, the shares so ordered recorded in the stock and transfer book are among the shares reflected in the articles of incorporation as the shares subscribed to by the incorporators named therein.

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[38] *Rollo*, pp. 94-100.

[39] *Id.* at 98.

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One who is actually a stockholder cannot be denied his right to vote by the corporation merely because the corporate officers failed to keep its records accurately.[40] A corporation's records are not the only evidence of the ownership of stock in a corporation.[41] In an American case,[42] persons claiming shareholders status in a professional corporation were listed as stockholders in the amendment to the articles of incorporation. On that basis, they were in all respects treated as shareholders. In fact, the acts and conduct of the parties may even constitute sufficient evidence of one's status as a shareholder or member.[43] In the instant case, no less than the articles of incorporation declare the incorporators to have in their name the founders and several common shares. Thus, to disregard the contents of the articles of incorporation would be to pretend that the basic document which legally triggered the creation of the corporation does not exist and accordingly to allow great injustice to be caused to the incorporators and their heirs.

Petitioners argue that the Court of Appeals "gravely erred in applying the Espejo decision to the benefit of respondents." The Court believes that the more precise statement of the issue is whether in its assailed *Decision*, the Court of Appeals can declare private respondents as the heirs of the incorporators, and consequently register the founders shares in their name. However, this issue as recast is not actually determinative of the present controversy as explained below.

Petitioners claim that the *Decision* of the Court of Appeals unilaterally divested them of their shares in PMMSI as recorded in the stock and transfer book and instantly created inexistent shares in favor of private respondents. We do not agree.

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[40] 18A AM JUR 2d §1032, p. 871.

[41] 18A AM JUR 2d §738, p. 607.

[42] *Krosnar v. Schmidt Krosnar McNaughton Garett Co.*, 282 Pa Super 526, 423 A2d 370, cited in 18 A Am Jur 2d §738, p. 608.

[43] 18A AM JUR 2d §738, p. 608.

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The assailed *Decision* merely declared that a separate judicial declaration to recognize the shares of the original incorporators would entail unnecessary delay and expense on the part of the litigants, considering that the incorporators had already proved ownership of such shares as shown in the articles of incorporation.[44] There was no declaration of who the individual owners of these shares were on the date of the promulgation of the *Decision*. As properly stated by the SEC in its *Order* dated 20 June 1996, to which the appellate court's *Decision* should be related, "if at all, the ownership of these shares should only be subjected to the proper judicial (probate) or extrajudicial proceedings in order to determine the respective shares of the legal heirs of the deceased incorporators."[45]

**WHEREFORE**, the petition is *DENIED* and the assailed *Decision* is *AFFIRMED*. Costs against petitioners.

**SO ORDERED.**

*Puno (Chairman), Austria-Martinez, Callejo, Sr.,* and *Chico-Nazario, JJ.,* concur.

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[44] *Rollo*, pp. 109-110.

[45] *Id.* at 92.