Supreme Court E-Library

FIRST DIVISION

[G.R. Nos. 163356-57. July 1, 2015]

JOSE A. BERNAS, CECILE H. CHENG, VICTOR AFRICA, JESUS B. MARAMARA, JOSE T. FRONDOSO, IGNACIO T. MACROHON, JR., AND PAULINO T. LIM, ACTING IN THEIR CAPACITY AS INDIVIDUAL DIRECTORS OF MAKATI SPORTS CLUB, INC., and ON BEHALF OF THE BOARD OF DIRECTORS OF MAKATI SPORTS CLUB, *petitioners, vs.* **JOVENCIO F. CINCO, VICENTE R. AYLLON, RICARDO G. LIBREA, SAMUEL L. ESGUERRA, ROLANDO P. DELA CUESTA, RUBEN L. TORRES, ALEX Y. PARDO, MA. CRISTINA SIM, ROGER T. AGUILING, JOSE B. QUIMSON, CELESTINO L. ANG, ELISEO V. VILLAMOR, FELIPE L. GOZON, CLAUDIO B. ALTURA, ROGELIO G. VILLAROSA, MANUEL R. SANTIAGO, BENJAMIN A. CARANDANG, REGINA DE LEON-HERLIHY, CARLOS Y. RAMOS, JR., ALEJANDRO Z. BARIN, EFRENILO M. CAYANGA and JOHN DOES,** *respondents.*

[G.R. Nos. 163368-69. July 1, 2015]

JOVENCIO F. CINCO, RICARDO G. LIBREA and ALEX Y. PARDO, *petitioners, vs.* **JOSE A. BERNAS, CECILE H. CHENG and IGNACIO A. MACROHON,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; POWERS AND CREATION; THE UNDERLYING POLICY OF THE CORPORATION CODE IS THAT THE BUSINESS AND AFFAIRS OF A CORPORATION MUST BE GOVERNED BY A BOARD

OF DIRECTORS WHOSE MEMBERS HAVE STOOD FOR ELECTION, AND WHO HAVE ACTUALLY BEEN ELECTED BY THE STOCKHOLDERS, ON AN ANNUAL BASIS, ELUCIDATED.— The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to itself the power of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of the corporate affairs. The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over the properties that they do not own. Even the Corporation Code is categorical in stating that a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts: SEC. 23. *The Board of Directors or Trustees*. x x x A corporation's board of directors is understood to be that body which exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all the property of the corporation. Its members have been characterized as trustees or directors clothed with fiduciary character.

2. **ID.; ID.; ID.; REMOVAL OF DIRECTORS; SHOULD THE BOARD FAIL TO PERFORM ITS FIDUCIARY DUTY TO SAFEGUARD THE INTEREST OF THE STOCKHOLDERS OR COMMIT ACTS PREJUDICIAL TO THEIR INTEREST, THE LAW AND THE BY-LAWS PROVIDE MECHANISMS TO REMOVE AND REPLACE ERRING DIRECTORS; APPLICATION IN CASE AT BAR.—** It is ineluctably clear that the fiduciary relation is

Supreme Court E-Library

between the stockholders and the board of directors and who are vested with the power to manage the affairs of the corporation. The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof. Should the board fail to perform its fiduciary duty to safeguard the interest of the stockholders or commit acts prejudicial to their interest, the law and the by-laws provide mechanisms to remove and replace the erring director. x x x The Corporation Code laid down the rules on the removal of the Directors of the corporation by providing, *inter alia,* the persons authorized to call the meeting and the number of votes required for the purpose of removal, thus: **Sec. 28.** *Removal of directors or trustees.* x x x Corollarily, the pertinent provisions of MSC by-laws which govern the manner of calling and sending of notices of the annual stockholders' meeting and the special stockholders' meeting x x x Textually, only the President and the Board of Directors are authorized by the by-laws to call a special meeting. In cases where the person authorized to call a meeting refuses, fails or neglects to call a meeting, then the stockholders representing at least 100 shares, upon written request, may file a petition to call a special stockholder's meeting. In the instant case, there is no dispute that the 17 December 1997 Special Stockholders' Meeting was called neither by the President nor by the Board of Directors but by the MSC Oversight Committee. While the MSCOC, as its name suggests, is created for the purpose of overseeing the affairs of the corporation, nowhere in the by-laws does it state that it is authorized to exercise corporate powers, such as the power to call a special meeting, solely vested by law and the MSC by-laws on the President or the Board of Directors. Where there is an officer authorized to call a meeting and that officer refuses, fails, or neglects to call a meeting, the SEC can assume jurisdiction and issue an order to the petitioning stockholder to call a meeting pursuant to its regulatory and administrative powers to implement the Corporation· Code. This is clearly provided for by Section 50 of the Corporation Code.

3. ID.; ID.; ID.; ILLEGAL ACTS OF A CORPORATION WHICH CONTEMPLATE THE DOING OF AN ACT WHICH IS CONTRARY TO LAW, MORALS OR PUBLIC ORDERS, OR CONTRAVENES SOME RULES OF PUBLIC POLICY OR PUBLIC DUTY, ARE, LIKE SIMILAR TRANSACTIONS BETWEEN INDIVIDUALS, VOID; PRESENT IN CASE AT BAR.— [T]he MSC Oversight Committee is neither empowered by law nor the MSC by-laws to ·call a meeting and the subsequent ratification made by the stockholders did not cure the substantive infirmity, the defect having set in at the time the void act was done. The defect goes into the very authority of the persons who made the call for the meeting. It is apt to recall that illegal acts of a corporation which contemplate the doing of an act which is contrary to law, morals or public order, or contravenes some rules of public policy or public duty, are, like similar transactions between individuals, void. They cannot serve as basis for a court action, nor acquire validity by performance, ratification or estoppel. The same principle can apply in the present case. The void election of 17 December 1997 cannot be ratified by the subsequent Annual Stockholders' Meeting.

4. ID.; ID.; ID.; ILLEGAL ACTS DISTINGUISHED FROM *ULTRA VIRES* ACTS.— A distinction should be made between corporate acts or contracts which are illegal and those which are merely *ultra vires.* The former contemplates the doing of an act which are contrary to law, morals or public policy or public duty, and are, like similar transactions between individuals, void: They cannot serve as basis of a court action nor acquire validity by performance, ratification or estoppel. Mere *ultra vires* acts, on the other hand, or those which are not illegal or void *ab initio,* but are not merely within· the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders.

5. ID.; ID.; BY-LAWS; THE BY-LAWS OF A CORPORATION ARE ITS OWN PRIVATE LAWS WHICH SUBSTANTIALLY HAVE THE SAME EFFECT AS THE LAWS OF THE CORPORATION; EXPLAINED.— Every corporation has the inherent power to adopt by-laws for its

Supreme Court E-Library

internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs. The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect written into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply. The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed in its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by the objecting director or shareholder. Certainly, the rules set in the by-laws are mandatory for every member of the corporation to respect. They are the fundamental law of the corporation with which the corporation and its officers and members must comply.

6. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; IT IS FUNDAMENTAL RULE THAT THE FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES LIKE THE SECURITIES AND EXCHANGE COMMISSION (SEC), IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE GENERALLY ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY, AND ARE BINDING UPON THE SUPREME COURT; EXCEPTION, JUSTIFIED.— Moreover, it is fundamental rule that factual findings of quasi-judicial agencies like the SEC, if supported by substantial evidence, are generally accorded not only great respect but even finality, and are binding upon this Court unless it was shown that the quasi-judicial agencies had arbitrarily disregarded evidence before it had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated. It is not the function of this Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal, or office, as we are not trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's finding of facts being conclusive and not reviewable by this Court. However, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to

compel a contrary conclusion, the Court will not hesitate to reverse its factual findings. In the case at bar, the incongruent findings of the SEC on the one hand, and the Court of Appeals on the other, constrained the Court to review the records to ascertain which body correctly appreciated the facts *vis-a-vis* the standing statutory and jurisprudential principles.

PERLAS-BERNABE, *J.*, *separate concurring opinion*:

1. MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; REMOVAL OF DIRECTORS; FOLLOWING THE DOCTRINE THAT SPECIFIC PROVISIONS MUST PREVAIL OVER GENERAL ONES, THE PROCEDURE AS PRESCRIBED IN SECTION 28 OF THE CORPORATION CODE SHOULD GOVERN THE INTENTION TO REMOVE MEMBERS OF THE BOARD OF DIRECTORS; APPLICATION IN CASE AT BAR.— The correct provisions to be applied is Section 28 of the Corporation Code as it specifically governs the procedure for removing directors or trustees. x x x Following the doctrine that specific provision must prevail over general ones, the procedure, as prescribed in Section 28 of the Corporation Code, should have therefore governed the conduct of the December 17, 1997 Meeting which was particularly intended for the removal of the Bernas Group from the MSC's Board of Directors, *viz.: (a)*the special meeting must have been called by the secretary: and *(b)* the same should have been made upon the order of the president or on written demand of the stockholders representing at least a majority or the outstanding capital stock: and (c) in case the secretary failed or refused to give such notice, or if there was no secretary, the call may have been be made directly by any stockholder signing the demand. Alternatively, an MSC stockholder could have filed a petition before the Securities and Exchange Commission (SEC) to compel either the president or a majority of the stockholders of the corporation to order the call, or the corporate secretary to make such call, for good cause shown, in view of the SEC's broad regulatory powers under Presidential Decree No. (PD) 902-A. In these cases, the procedure outlined in Section 28 of the Corporation Code was not complied with. Neither was a petition to the SEC, as above- mentioned, filed by an MSC stockholder. The records show that certain MSC stockholders

Supreme Court E-Library

– who were not shown to constitute a majority of the outstanding capital stock of the corporation at that - unduly caused the MSCOC to make the call for the December 17, 1997. Meeting despite the latter's lack of authority to do so under the Corporation Code and/or the MSC by-laws. Thus, the December 17, 1997 Meeting, which suffers from a substantive and not a mere formal defect given that its improper call goes against the mandated statutory authority to effectuate such corporate action, is contrary to law and, therefore, void *ab initio*.

2. **ID.; ID.; ID.; CORPORATE ACTS WHICH ARE ILLEGAL FOR BEING CONTRARY TO LAW ARE INCAPABLE OF RATIFICATION; PRESENT IN CASE AT BAR.—** In *Pirovano v. De la Rama Steamship Co. (Pirovano),* the Court held that corporate acts which are illegal for being contrary to law are incapable of ratification, as opposed to acts which are merely *ultra vires, i.e.,* acts which are not within the powers of the corporation. x x x As earlier mentioned, the December 17, 1997 Meeting is void *ab initio* for contravening Section 28 of the Corporation Code. Hence, while I agree with the *ponencia* that the April 20, 1998 and April 19, 1999 Meetings were called in compliance with the MSC by-laws, I differ in that the removal of the Bernas Group and election of the Cinco Group which are mere incidents resulting from the void December 17, 1997 Meeting could not have been ratified, notwithstanding the fact that the latter April 19, 1999 Meeting was held under the supervision of the SEC. The SEC, being a mere regulatory body, cannot lend validity to otherwise invalid acts. Further, the presumption of regularity cannot apply for the purpose of validating an internal action of a private corporation.

3. **ID.; ID.; ID.; SECTION 51 OF THE CORPORATION CODE STATES THAT A MEETING SHALL BE VALID EVEN IF IMPROPERLY CALLED IF ALL THE STOCKHOLDERS ARE PRESENT OR DULY REPRESENTED AT THE MEETING; NOT PROPERLY SATISFIED IN CASE AT BAR.—** While Section 51 of the Corporation Code states that a meeting shall be valid even if improperly called if all the stockholders are present or duly represented at the meeting, it has not been shown that this is the case here. Neither can the ratifications done during the

Supreme Court E-Library

April 20, 1998 and April 19, 1999 Meetings be equated to the valid election of the Cinco Group, enough to accord them with *de jure* status. Clearly, these meetings were specifically called for the ratification of acts taken during the void December 17, 1997 Meeting, and not for the actual election of directors anew; to reiterate, the ratification of void acts is strictly prohibited under the doctrine enunciated in *Pirovano*. Besides, the procedure in ratifying acts approved or taken during prior meetings is different from the procedure in electing directors, which was not shown to have been complied with in any of those meetings.

4. ID.; ID.; ID.; *DE FACTO* OFFICER; A *DE FACTO* OFFICER IS ONE WHO ACTS AS SUCH UNDER COLOR OF AN ELECTION OR APPOINTMENT, BUT FAILS BEING A *DE JURE* OFFICER BY SOME IRREGULARITY OR FAILURE TO QUALIFY AS REQUIRED BY LAW; NOT PRESENT IN CASE AT BAR.— As aptly observed by the *ponencia,* the Cinco Group cannot invoke the *de facto* officership doctrine to justify its actions after their invalid election in the December 17, 1997 Meeting, particularly, the expulsion of Bernas from MSC and the sale of his shares. A *de facto* officer is one who acts as such under color of an election or appointment, but fails being a *de jure* officer by some irregularity or failure to qualify as required by law. Having ruled out the validity of their election either through the December 17, 1997 Meeting or through the ratifications in the April 20, 1998 and April 19, 1999 Meetings, the Cinco Group cannot be considered as *de facto* directors of MSC. As such, they could not have validly expelled Bernas from MSC and sold his shares of stock. More significantly, since the *de facto* doctrine rests on public policy and justice, the official dealings of directors *de facto* with third persons being sustained as rightful and valid on the ground of the corporation's continuous acquiescence to the officers holding themselves out as having such authority, it is only available to third persons dealing with corporations.

APPEARANCES OF COUNSEL

Bernas Law Office for Jose A. Bernas.

Platon Martinez Flores San Pedro & Leaño for Cecille Cheng & Ignacio A. Macrohon.

De Mesa Zaballero & Partners for Jovencio F. Cinco, *et al*.

Supreme Court E-Library

D E C I S I O N

PEREZ, *J.*:

Before us are two consolidated Petitions for Review on *Certiorari*[1] assailing the 28 April 2003 Decision and the 27 April 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 62683,[2] which declared the 17 December 1997 Special Stockholders' Meeting of the Makati Sports Club invalid for having been improperly called but affirmed the actions taken during the Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000. The dispositive portion of the assailed decision reads:

WHEREFORE, foregoing considered, the instant petition for review is hereby **GRANTED**. The appealed Decision dated December 12, 2000 of the SEC en banc is **SET ASIDE** and the Decision dated April 20, 1998 of the Hearing Officer is **REINSTATED** and **AMENDED** as follows:

1. The supposed Special Stockholders' Meeting of December 17, 1997 was prematurely or invalidly called by the [Cinco Group]. It therefore failed to produce any legal effects and did not effectively remove [the Bernas Group] as directors of the Makati Sports Club, Inc.;

2. The expulsion of petitioner Jose A. Bernas as well as the public auction of his share[s] is hereby declared void and without legal effect;

3. The ratification of the removal of [the Bernas Group] as directors, the expulsion of petitioner Bernas and the sale of his share by the defendants and by the stockholders held in their Regular Stockholders' Meeting held in April

---

[1] *Rollo* (G.R. Nos. 163368-69), pp. 38-78. *Rollo* (G.R. Nos. 163356-57), pp. 44-99.

[2] *Id*. at 10-35 (G.R. Nos. 163368-69; Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

Supreme Court E-Library

of 1998, 1999 and 2000, is void and produces no effects as they were not the proper party to cause the ratification;

4. All other actions of the [Cinco Group] and stockholders taken during the Regular Stockholders' Meetings held in April 1998, 1999 and 2000, including the election of the [Cinco Group] as directors after the expiration of the term of office of petitioners as directors, are hereby declared valid;

5. No awards for damages and attorney's fees.[3]

The Facts

Makati Sports Club (MSC) is a domestic corporation duly organized and existing under Philippine laws for the primary purpose of establishing, maintaining, and providing social, cultural, recreational and athletic activities among its members.

Petitioners in G.R. Nos. 163356-57, Jose A. Bernas (Bernas), Cecile H. Cheng, Victor Africa, Jesus Maramara, Jose T. Frondoso, Ignacio T. Macrohon and Paulino T. Lim (Bernas Group) were among the Members of the Board of Directors and Officers of the corporation whose terms were to expire either in 1998 or 1999.

Petitioners in G.R. Nos. 163368-69 Jovencio Cinco, Ricardo Librea and Alex Y. Pardo (Cinco Group) are the members and stockholders of the corporation who were elected Members of the Board of Directors and Officers of the club during the 17 December 1997 Special Stockholders Meeting.

The antecedent events of the meeting and its results, follow:

Alarmed with the rumored anomalies in handling the corporate funds, the MSC Oversight Committee (MSCOC), composed of the past presidents of the club, demanded from the Bernas Group, who were then incumbent officers of the corporation, to resign from their respective positions to pave the way for the election

[3] *Id*. at 23-24.

Supreme Court E-Library

of new set of officers.[4] Resonating this clamor were the stockholders of the corporation representing at least 100 shares who sought the assistance of the MSCOC to call for a special stockholders meeting for the purpose of removing the sitting officers and electing new ones.[5] Pursuant to such request, the MSCOC called a Special Stockholders' Meeting and sent out notices[6] to all stockhold rs and members stating therein the time, place and purpose of the meeting. For failure of the Bernas Group to secure an injunction before the Securities Commission (SEC), the meeting proceeded wherein Jose A. Bernas, Cecile H. Cheng, Victor Africa, Jesus Maramara, Jose T. Frondoso, Ignacio T. Macrohon, Jr. and Paulino T. Lim were removed from office and, in their place and stead, Jovencio F. Cinco, Ricardo G. Librea, Alex Y. Pardo, Roger T. Aguiling, Rogelio G. Villarosa, Armando David, Norberto Maronilla, Regina de Leon-Herlihy and Claudio B. Altura, were elected.[7]

Aggrieved by the tum of events, the Bernas Group initiated an action before the Securities Investigation and Clearing Department (SICD) of the SEC docketed as SEC Case No. 5840 seeking for the nullification of the 17 December 1997 Special Stockholders Meeting on the ground that it was improperly called. Citing Section 28 of the Corporation Code, the Bernas Group argued that the authority to call a meeting lies with the Corporate Secretary and not with the MSCOC which functions merely as an oversight body and is not vested with the power to call corporate meetings. For being called by the persons not authorized to do so, the Bernas Group urged the SEC to declare the 17 December 1997 Special Stockholders' Meeting, including the removal of the sitting officers and the election of new ones, be nullified.

---

[4] *Id*. at 129-130.

[5] *Id*. at 120-127.

[6] *Id*. at 150.

[7] *Id*. at 175-179.

Supreme Court E-Library

For their part, the Cinco Group insisted that the 17 December 1997 Special Stockholders' Meeting is sanctioned by the Corporation Code and the MSC by-laws. In justifying the call effected by the MSCOC, they reasoned that Section 25[8] of the MSC by-laws merely authorized the Corporate Secretary to issue notices of meetings and nowhere does it state that such authority solely belongs to him. It was further asseverated by the Cinco Group that it would be useless to course the request to call a meeting thru the Corporate Secretary because he repeatedly refused to call a special stockholders' meeting despite demands and even filed a suit to restrain the holding of a special meeting.[9]

Meanwhile, the newly elected directors initiated an investigation on the alleged anomalies in administering the corporate affairs and after finding Bernas guilty of irregularities,[10] the Board resolved to expel him from the club by selling his shares at public auction.[11] After the notice[12] requirement was complied with, Bernas' shares was accordingly sold for ₱902,000.00 to the highest bidder:

---

[8] *Id*. at 115; Amended By-Laws of the MSC.

SEC. 25. Secretary. The Secretary shall keep the stock and transfer book and the corporate seal, which he shall stamp on all documents requiring such seal; fill and sign together with the President, all the certificates of stocks issued, give or caused to be given all notices required by law of these By-laws as well as notices of all meeting of the Board and of the stockholders; shall certify as to quorum at meetings; shall approve and sign all correspondence pertaining to the Office of the Secretary; shall keep the minutes of all meetings of the stockholders, the Board of Directors and of all committees in a book or books kept for that purpose; and shall be acting President in the absence of the President and Vice-President. The Secretary must be a citizen and a resident of the Philippines. The Secretary shall keep a record of all the addresses and telephone numbers of all stockholders.

[9] *Id*. at 245-310.

[10] *Id*. at 185-200.

[11] *Id*. at 201-203.

[12] *Id*. at 204.

Supreme Court E-Library

Prior to the resolution of SEC Case No. 5840, an Annual Stockholders' Meeting was held on 20 April 1998 pursuant to Section 8 of the MSC bylaws.[13] During the said meeting, which was attended by 1,017 stockholders representing 2/3 of the outstanding shares, the majority resolved to approve, confirm and ratify, among others, the calling and holding of 17 December 1997 Special Stockholders' Meeting, the acts and resolutions adopted therein including the removal of Bernas Group from the Board and the election of their replacements.[14]

Due to the filing of several petitions for and against the removal of the Bernas Group from the Board pending before the SEC resulting in the piling up of legal controversies involving MSC, the SEC *En Banc,* in its Decision[15] dated 30 March 1999, resolved to supervise the holding of the 1999 Annual. Stockholders' Meeting. During the said meeting, the stockholders once again approved, ratified and confirmed the holding of the 17 December 1997 Special Stockholders' Meeting.

The conduct of the 17 December 1997 Special Stockholders' Meeting was likewise ratified by the stockholders during the 2000 Annual Stockholders' Meeting which was held on 17 April 2000.[16]

On 9 May 2000, the SICD rendered a Decision[17] in SEC Case No. 12-97-5840 finding, among others, that the 17 December 1997 Special Stockholders' Meeting and the Annual

---

[13] *Id*. at 112; Amended By-Laws of the MSC

> SEC. 8. Annual Meetings. The annual meeting of stockholders shall be held at the Clubhouse on the third Monday of April of every year unless such day be a holiday in which case the annual meeting shall be held on the next succeeding business day. At such meeting, the President shall render a report to the stockholders of the clubs.

[14] *Id*. at 83-84.

[15] *Rollo* (G.R. Nos. 163356-57), pp. 114-146.

[16] *Rollo* (G.R. Nos. 163368-69), pp. 233-239.

[17] *Id*. at 311-322.

Supreme Court E-Library

Stockholders' Meeting conducted on 20 April 1998 and 19 April 1999 are invalid. The SICD likewise nullified the expulsion of Bernas from the corporation and the sale of his share at the public auction. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing considerations this Office, through the undersigned Hearing Officer, hereby declares as follows:

(1) The supposed Special Stockholders' Meeting of December 17, 1997 was prematurely or invalidly called by the [the Cinco Group]. It therefore failed to produce any legal effects and did not effectively remove [the Bernas Group] as directors of the Makati Sports Club, Inc.

(2) The April 20, 1998 meeting was not attended by a sufficient number of valid proxies. No quorum could have been present at the said meeting. No corporate business could have been validly completed and/or transacted during the said meeting. Further, it was not called by the validly elected Corporate Secretary Victor Africa nor presided over by the validly elected president Jose A. Bernas. Even if the April 20, 1998 meeting was valid, it could not ratify the December 17, 1997 meeting because being a void meeting, the December 17, 1997 meeting may not be ratified.

(3) The April 1998 meeting was null and void and therefore produced no legal effect.

(4) The April 1999 meeting has not been raised as a defense in the Answer nor assailed in a supplemental complaint. However, it has been raised by [the Cinco Group] in a manifestation dated April 21, 1999 and in their position paper dated April 8, 2000. Its legal effects must be the subject of this Decision in order to put an end to the controversy at hand. In the first place, by [the Cinco Group's] own admission, the alleged attendance at the April 1999 meeting amounted to less than 2/3 of the stockholders entitled to vote, the minimum number required to effect a removal. No removal or ratification of a removal may be effected by less than 2/3 vote of the stockholders. Further, it cannot ratify the December 1997 meeting for failure to adhere to the requirement of the By-laws on notice as explained in paragraph (2) above, even if it was accompanied by valid proxies, which it was not.

Supreme Court E-Library

(5) The [the Cinco Group], their agents, representatives and all persons acting for and conspiring on their behalf, are hereby permanently enjoined from carrying into effect the resolutions and actions adopted during the 17 December 1997 and April 20, 1998 meetings and of the Board of Directors and/or other stockholders' meetings resulting therefrom, and from performing acts of control and management of the club.

(6) The expulsion of complainant Jose A. Bernas as well as the public auction of his share is hereby declared void and without legal effect, as prayed for. While it is true that [the Cinco Group] were not restrained from acting as directors during the pendency of this case, their tenure as directors prior to this Decision is in the nature of de facto directors of a de facto Board.· Only the ordinary acts of administration which [the Cinco Group] carried out de facto in good faith are valid. Other acts, such as political acts and the expulsion or other disciplinary acts imposed on the [the Bernas Group] may not be appropriately taken by de facto officers because the legality of their tenure as directors is not complete and subject to the outcome of this case.

(7) No awards for damages and attorney's fees.[18]

On appeal, the SEC *En Banc,* in its 12 December 2000 Decision[19] reversed the findings of the SICD and validated the holding of the 17 December 1997 Special Stockholders' Meeting as well as the Annual Stockholders' Meeting held on 20 April 1998 and 19 April 1999.

On 28 April 2003, the Court of Appeals rendered a Decision[20] declaring the 17 December 1997 Special Stockholders' Meeting invalid for being improperly called but affirmed the actions taken during the Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000.

---

[18] *Id*. at 321-322.

[19] *Id*. at 323-345.

[20] *Id*. at 10-26.

Supreme Court E-Library

In a Resolution[21] dated 27 April 2004, the appellate court refused to reconsider its earlier decision.

Aggrieved by the disquisition of the Court of Appeals, both parties elevated the case before this Court by filing their respective Petitions for Review on *Certiorari.* While the Bernas Group agrees with the disquisition of the appellate court that the Special Stockholders' Meeting is invalid for being called by the persons not authorized to do so, they urge the Court to likewise invalidate the holding of the subsequent Annual Stockholders' Meetings invoking the application of the holdover principle. The Cinco Group, for its part, insists that the holding of 17 December 1997 Special Stockholders' Meeting is valid and binding underscoring the overwhelming ratification made by the stockholders during the subsequent annual stockholders' meetings and the previous refusal of the Corporate Secretary to call a special stockholders' meeting despite demand. For the resolution of the Court are the following issues:

The Issues

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE 17 DECEMBER 1997 SPECIAL STOCKHOLDERS' MEETING IS INVALID; AND

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO NULLIFY THE HOLDING OF THE ANNUAL STOCKHOLDERS' MEETING ON 20 APRIL 1998, 19 APRIL 1999 AND 17 APRIL 2000.

The Court's Ruling

The Corporation Code laid down the rules on the removal of the Directors of the corporation by providing, *inter alia,* the persons authorized to call the meeting and the number of votes required for the purpose of removal, thus:

---

[21] *Id*. at 27-35.

Supreme Court E-Library

Sec. 28. *Removal of directors or trustees.*– Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: Provided, That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A **special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees, or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock,** or, if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. Should the secretary fail or refuse to call the special meeting upon such demand or fail or refuse to give the notice, or if there is no secretary, the call for the meeting may be addressed directly to the stockholders or members by any stockholder or member of the corporation signing the demand. Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice prescribed in this Code. Removal may be with or without cause: Provided, That removal without cause may not be used to deprive minority stockholders or members of the right of representation to which they may be entitled under Section 24 of this Code. (Emphasis supplied)

Corollarily, the pertinent provisions of MSC by-laws which govern the manner of calling and sending of notices of the annual stockholders' meeting and the special stockholders' meeting provide:

SEC. 8. Annual Meetings. The annual meeting of stockholders shall be held at the Clubhouse on the third Monday of April of every year unless such day be a holiday in which case the annual meeting shall be held on the next succeeding business day. At such meeting, the President shall render a report to the stockholders of the clubs.

x x x x x x x x x

SEC. 10. Special Meetings. Special meetings of stockholders shall be held at the Clubhouse when called by the President or by the

Supreme Court E-Library

Board of Directors or upon written request of the stockholders representing not less than one hundred (100) shares. Only matters specified in the notice and call will be taken up at special meetings.

x x x x x x x x x

SEC. 25. Secretary. The Secretary shall keep the stock and transfer book and the corporate seal, which he shall stamp on all documents requiring such seal, fill and sign together with the President, all the certificates of stocks issued, give or caused to be given all notices required by law of these By-laws as well as notices of all meeting of the Board and of the stockholders; shall certify as to quorum at meetings; shall approve and sign all correspondence pertaining to the Office of the Secretary; shall keep the minutes of all meetings of the stockholders, the Board of Directors and of all committees in a book or books kept for that purpose; and shall be acting President in the absence of the President and Vice-President. The Secretary must be a citizen and a resident of the Philippines. The Secretary shall keep a record of all the addresses and telephone numbers of all stockholders.[22]

Textually, only the President and the Board of Directors are authorized by the by-laws to call a special meeting. In cases where the person authorized to call a meeting refuses, fails or neglects to call a meeting, then the stockholders representing at least 100 shares, upon written request, may file a petition to call a special stockholder's meeting.

In the instant case, there is no dispute that the 17 December 1997 Special Stockholders' Meeting was called neither by the President nor by the Board of Directors but by the MSCOC. While the MSCOC, as its name suggests, is created for the purpose of overseeing the affairs of the corporation, nowhere in the by-laws does it state that it is authorized to exercise corporate powers, such as the power to call a special meeting, solely vested by law and the MSC by-laws on the President or the Board of Directors.

---

[22] *Rollo* (G.R. Nos. 163368-69, pp. 112 and 115; Amended By-laws of the Makati Sports Club.

Supreme Court E-Library

The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to itself the power of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of the corporate affairs.[23]

The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over the properties that they do not own.[24]

Even the Corporation Code is categorical in stating that a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts:

> SEC. 23. *The Board of Directors or Trustees.*– Unless otherwise provided in this Code, the corporate powers of all the corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors and trustees x x x.

A corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code; (2) conducts all business of the corporation; and (3) controls and holds all the property of the corporation.

---

[23] *Valle Verde Country Club, Inc., et al. v. Africa,* 614 Phil. 391, 399-400 (2009).

[24] *Id*. at 400.

Supreme Court E-Library

Its members have been characterized as trustees or directors clothed with fiduciary character.[25]

It is ineluctably clear that the fiduciary relation is between the stockholders and the board of directors and who are vested with the power to manage the affairs of the corporation. The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law.[26] It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders.[27] Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof.[28] Should the board fail to perform its fiduciary duty to safeguard the interest of the stockholders or commit acts prejudicial to their interest, the law and the by-laws provide mechanisms to remove and replace the erring director.[29]

Relative to the powers of the Board of Directors, nowhere in the Corporation Code or in the MSC by-laws can it be gathered that the Oversight Committee is authorized to step in wherever there is breach of fiduciary duty and call a special meeting for the purpose of removing the existing officers and electing their replacements even if such call was made upon the request of shareholders. Needless to say, the MSCOC is neither empowered by law nor the MSC by-laws to call a meeting and the subsequent ratification made by the stockholders did not cure the substantive infirmity, the defect having set in at the time the void act was done. The defect goes into the very authority of the persons who made the call for the meeting. It is apt to recall that illegal acts of a corporation which contemplate the doing

---

[25] *Raniel v. Jochico,* 546 Phil. 54, 60 (2007).

[26] *Gokongwei, Jr. v. Securities and Exchange Commission,* 178 Phil. 266, 299 (1979).

[27] *Id*.

[28] *Id*.

[29] *Id*.

Supreme Court E-Library

of an act which is contrary to law, morals or public order, or contravenes some rules of public policy or public duty, are, like similar transactions between individuals, void.[30] They cannot serve as basis for a court action, nor acquire validity by performance, ratification or estoppel.[31] The same principle can apply in the present case. The void election of 17 December 1997 cannot be ratified by the subsequent Annual Stockholders' Meeting.

A distinction should be made between corporate acts or contracts which are illegal and those which are merely *ultra vires*. The former contemplates the doing of an act which are contrary to law, morals or public policy or public duty, and are, like similar transactions between individuals, void. They cannot serve as basis of a court action nor acquire validity by performance, ratification or estoppel. Mere *ultra vires* acts, on the other hand, or those which are not illegal or void *ab initio,* but are not merely within the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders.[32] The 17 December 1997 Meeting belongs to the category of the latter, that is, it is void *ab initio* and cannot be validated.

Consequently, such Special Stockholders' Meeting called by the Oversight Committee cannot have any legal effect. The removal of the Bernas Group, as well as the election of the Cinco Group, effected by the assembly in that improperly called meeting is void, and since the Cinco Group has no legal right to sit in the board, their subsequent acts of expelling Bernas from the club and the selling of his shares at the public auction, are likewise invalid.

The Cinco Group cannot invoke the application of *de facto* officership doctrine to justify the actions taken after the invalid

---

[30] *Pirovano, et al. v. De la Rama Steamship Co.,* 96 Phil. 335, 360 (1954).

[31] *Id*.

[32] *Id*.

Supreme Court E-Library

election since the operation of the principle is limited to third persons who were originally not part of the corporation but became such by reason of voting of government-sequestered shares.[33] In *Cojuangco v. Roxas,*[34] the Court deemed the directors who were elected through the voting of government of sequestered shares who assumed office in good faith as de facto officers, *viz*:

> In the light of the foregoing discussion, the Court finds and so holds that **the PCGG has no right to vote the sequestered shares of petitioners including the sequestered corporat shares**. Only their owners, duly authorized representatives or proxies may vote the said shares. Consequently, the election of private respondents Adolfo Azcuna, Edison Coseteng and Patricio Pineda as members of the board of directors of SMC for 1990-1991 should be set aside.
>
> However, petitioners cannot be declared as duly elected members of the board of directors thereby. An election for the purpose should be held where the questioned shares may be voted by their owners and/or their proxies. Such election may be held at the next shareholders' meeting in April 1991 or at such date as may be set under the by-laws of SMC.
>
> Private respondents in both cases **are hereby declared to be *de facto* officers who in good faith assumed their duties and responsibilities as duly elected members of the board** of directors of the SMC. They are thereby legally entitled to emoluments of the office including salary, fees and other compensation attached to the office until they vacate the same. (Emphasis supplied)

Apparently, the assumption of office of the Cinco Group did not bear parallelism with the factual milieu in *Cojuangco* and as such they cannot be considered as *de facto* officers and thus, they are without colorable authority to authorize the removal of Bernas and the sale of his shares at the public auction. They cannot bind the corporation to third persons who acquired the

---

[33] *Cojuangco, Jr. v. Roxas,* 273 Phil. 168 (1991).

[34] *Id*. at 187.

Supreme Court E-Library

shares of Bernas and such third persons cannot be deemed as buyer in good faith.[35]

The case would have been different if the petitioning stockholders went directly to the SEC and sought its assistance to call a special stockholders' meeting citing the previous refusal of the Corporate Secretary to call a meeting. Where there is an officer authorized to call a meeting and that officer refuses, fails, or neglects to call a meeting, the SEC can assume jurisdiction and issue an order to the petitioning stockholder to call a meeting pursuant to its regulatory and administrative powers to implement the Corporation Code.[36] This is clearly provided for by Section 50 of the Corporation Code which we quote:

> Sec. 50. *Regular and special meetings of stockholders or members.* – x x x
>
> x x x x x x x x x
>
> Whenever, for any cause, there is no person authorized to call a meeting, the Securities and Exchange Commission, upon petition of a stockholder or member, and on a showing of good cause therefore, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least majority of the stockholders or members present have chosen one of their member[s] as presiding officer.

---

[35] A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in it, and who pays therefor a full and fair price at the time of the purchase or before receiving such notice. *(Potenciano v. Reynoso,* 449 Phil. 396, 410 [2003])

[36] Section 6 of Presidential Decree No. 902-A provides:

> SECTION 6. In order to effectively exercise such jurisdiction [referring to Section 5], the Commission shall possess the following powers:
>
> x x x x x x x x x
>
> (c) To compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision;

Supreme Court E-Library

As early as *Ponce v. Encarnacion, etc. and Gapol,*[37] the Court of First Instance (now the SEC)[38] is empowered to call a meeting upon petition of the stockholder or member and upon showing of good cause, thus:

On the showing of good cause therefore, the court may authorize a stockholder to call a meeting and to preside thereat until the majority stockholders representing a majority of the stock present and permitted to be voted shall have chosen one among them to preside it. And this showing of good cause therefor exists when the court is apprised of the fact that the by-laws of the corporation require the calling of a general meeting of the stockholders to elect the board of directors but the call for such meeting has not been done.[39]

---

[37] 94 Phil. 81 (1953).

[38] Under the provisions of Republic Act No. 296 (Judiciary Act of 1948) which took effect on 17 June 1948, the court of first Instance have original jurisdiction to entertain "all cases which the demand, exclusive of interests, or the value of the property in controversy amounts to more than ₱2,000.00." Likewise they have the power to issue writs of injunction, *certiorari*, *mandamus*, prohibition, *quo warranto* and *habeas corpus* in their respective provinces and districts in the manner provided for in the Rules of Court.

On the other hand, Presidential Decree No. 902-A (SEC Reorganization Act) on 11 March 1976, confers upon the SEC, "in addition to (its) regulatory and administrative functions, original and exclusive jurisdiction to hear and decide cases involving fraudulent devices or schemes, intra-corporate or partnership disputes, and controversies in elections and appointments of directors and officers. Thus, in *Philex Mining Corporation v. Reyes,* (No. 57707, 19 November 1982, 118 SCRA 602, 607), the Court held "the controversy between the parties being clearly an intra-corporate one, it is the SEC, as held by it and not respondent Court of First Instance, that has original exclusive jurisdiction, by express mandate of law."

Pursuant to Republic Act No. 8799 (Securities Regulation Code of 2001) which took effect on 8 August 2000, the jurisdiction of the SEC to decide cases involving intra-corporate dispute was transferred to the courts of general jurisdiction and, in accordance therewith, all cases of this nature, with the exception only of those submitted for decision, were transferred to the regular courts. See *Pascual v. Court of Appeals,* 393 Phil. 497 (2000).

[39] *Ponce v. Encarnacion, etc. and Gapol, supra* note 37 at 85.

Supreme Court E-Library

The same jurisprudential rule resonates in *Philippine National Construction Corporation v. Pabion,*[40] where the Court validated the order of the SEC to compel the corporation to conduct a stockholders' meeting in the exercise of its regulatory and administrative powers to implement the Corporation Code:

> SEC's assumption of jurisdiction over this case is proper, as the controversy involves the election of PNCC's directors. Petitioner does not really contradict the nature of the question presented and agrees that there is an intra-corporate question involved.
>
> x x x x x x x x x
>
> Prescinding from the above premises, it necessarily follows that SEC can compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors.
>
> x x x x x x x x x
>
> As respondents point out, the SEC's action is also justified by its regulatory and administrative powers to implement the Corporation Code, specifically to compel the PNCC to hold a stockholders' meeting for e1ection purposes.[41]

Given the broad administrative and regulatory powers of the SEC outlined under Section 50 of the Corporation Code and Section 6 of Presidential Decree (PD) No. 902-A, the Cinco Group cannot claim that if was left without recourse after the Corporate Secretary previously refused to heed its demand to call a special stockholders' meeting. If it be true that the Corporate Secretary refused to call a meeting despite fervent demand from the MSCOC, the remedy of the stockholders would have been to file a petition to the SEC to direct him to call a meeting by giving proper notice required under the Code. To rule otherwise would open the floodgates to abuse where any stockholder, who consider himself aggrieved by certain corporate actions, could call a special stockholders' meeting for the purpose of removing the sitting officers in direct violation of the rules pertaining to the call of meeting laid down in the by-laws.

---

[40] 377 Phil. 1019 (1999).

[41] *Id*. at 1040-1041.

Supreme Court E-Library

Every corporation has the inherent power to adopt by-laws for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.[42] The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect written into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.[43] The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed in its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by the objecting director or shareholder.[44]

Certainly, the rules set in the by-laws are mandatory for every member of the corporation to respect. They are the fundamental law of the corporation with which the corporation and its officers and members must comply. It is on this score that we cannot upon the other hand sustain the Bernas Group's stance that the subsequent annual stockholders' meetings were invalid.

First, the 20 April 1998 Annual Stockholders Meeting was valid because it was sanctioned by Section 8[45] of the MSC bylaws. Unlike in Special Stockholders Meeting[46] wherein the bylaws

---

[42] *Gokongwei, Jr. v. Securities and Exchange Commission, supra* note 26 at 296.

[43] *Pena v. Court of Appeals,* 271 Phil. 751, 765 (1991).

[44] *Lopez Realty, Inc. v. Fontecha,* 317 Phil. 216, 226 (1995).

[45] SEC. 8. Annual Meetings. The annual meeting of stockholders shall be held at the Clubhouse on the third Monday of April of every year unless such day be a holiday in which case the annual meeting shall be held on the next succeeding business day. At such meeting, the President shall render a report to the stockholders of the clubs. *(Rollo* (G.R. Nos. 1663368-69), p. 112).

[46] SEC. 10. Special Meetings. Special meetings of stockholders shall be held at the clubhouse when called by the President pr by the Board of

Supreme Court E-Library

mandated that such meeting shall be called by specific persons only, no such specific requirement can be obtained under Section 8.

Second, the 19 April 1999 Annual Stockholders Meeting is likewise valid because in addition to the fact that it was conducted in accordance to Section 8 of the MSC bylaws, such meeting was supervised by the SEC in the exercise of its regulatory and administrative powers to implement the Corporation Code.[47]

Needless to say, the conduct of SEC supervised Annual Stockholders Meeting gave rise to the presumption that the corporate officers who won the election were duly elected to their positions and therefore can be rightfully considered as *de jure* officers. As *de jure* officials, they can lawfully exercise functions and legally perform such acts that are within the scope of the business of the corporation except ratification of actions that are deemed void from the beginning.

Considering that a new set of officers were already duly elected in 1998 and 1999 Annual Stockholders Meetings, the Bernas Group cannot be permitted to use the holdover principle as a shield to perpetuate in office. Members of the group had no right to continue as directors of the corporation unless reelected by the stockholders in a meeting called for that purpose every year.[48] They had no right to hold-over brought about by the failure to perform the duty incumbent upon them.[49] If they were

---

Directors or upon written request of the stockholders representing not less than one hundred (100) shares. Only matters specified in the notice and call will be taken up at special meetings. (*Id*.).

[47] Sec. 50. *Regular and special meetings of stockholders or members*.– x x x Whenever, for any cause, there is no person authorized to call a meeting, the Securities and Exchange Commission, upon petition of a stockholder or member, and on showing of good cause therefore, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least majority of the stockholders or members present have chosen one of their member[s] as presiding officer.

[48] *Ponce v. Encarnacion, etc. and Gapol, supra* note 37 at 87.

[49] *Id*.

Supreme Court E-Library

sure to be reelected, why did they fail, neglect, or refuse to call the meeting to elect the members of the board?[50]

Moreover, it is fundamental rule that factual findings of quasi-judicial agencies like the SEC, if supported by substantial evidence, are generally accorded not only great respect but even finality, and are binding upon this Court unless it was shown that the quasi-judicial agencies had arbitrarily disregarded evidence before it had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[51] It is not the function of this Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal, or office, as we are not trier of facts.[52] Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's finding of facts being conclusive and not reviewable by this Court.[53] However, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse its factual findings.[54] In the case at bar, the incongruent findings of the SEC on the one hand, and the Court of Appeals on the other, constrained the Court to review the records to ascertain which body correctly appreciated the facts *vis-a-vis* the standing statutory and jurisprudential principles.

After finding that the ruling of the appellate court was in accordance with the existing laws and jurisprudence as exhaustively discussed above, we hereby quote with approval its disquisition:

---

[50] *Id*.

[51] *Batangas Laguna Tayabas Bus Co., Inc. v. Bitanga,* 415 Phil. 43, 59 (2001).

[52] *Cuenca v. Atas,* 561 Phil. 186, 220 (2007).

[53] *Id*.

[54] *Fujitsu Computer Products, Corp. v. Court ofAppeals,* 494 Phil. 697, 716 (2005).

Supreme Court E-Library

(1) The supposed Special Stockholders' Meeting of 17 December 1997 was prematurely or invalidly called by the [Cinco Group]. It therefore failed to produce any legal effects and did not effectively remove [the Bernas Group] as directors of the Makati Sports Club, Inc.;

(2) The expulsion of [Bernas] as well as the public auction of hisshares is hereby declared void and without legal effect;

(3) The ratification of the removal of [the Bernas Group] as directors, the expulsion of Bernas and the sale of his share by the [Cinco Group] and by the stockholders held in their Regular Stockholders'Meeting held in April of 1998, 1999 and 2000, is void and produces no effects as they were not the proper party to cause the ratification;

(4) All other actions of the [Cinco Group] and stockholders taken during the Regular Stockholders' Meetings held in April 1998, 1999 and 2000, including the election of the [Cinco Group] as directors after the expiration of the term of office of [Bernas Group] as directors, are hereby declared valid.[55]

In fine, we hold that 17 December 1997 Special Stockholders' Meeting is null and void and produces no effect; the resolution expelling the Bernas Group from the corporation and authorizing the sale of Bernas' shares at the public auction is likewise null and void. The subsequent Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000 are valid and binding except the ratification of the removal of the Bernas Group and the sale of Bernas' shares at the public auction effected by the body during the said meetings. The expulsion of the Bernas Group and the subsequent auction of Bernas' shares are void from the very beginning and therefore the ratifications effected during the subsequent meetings cannot be sustained. A void act cannot be the subject of ratification.[56]

WHEREFORE, premises considered, the petitions of Jose A. Bernas, Cecile. H. Cheng, Victor Africa, Jesus B. Maramara,

---

[55] *Rollo* (G.R. Nos. 163368-69), p. 24.

[56] *Pirovano v. De la Rama Steamship Co., supra* note 30 at 361.

Supreme Court E-Library

Jose T. Frondoso, Ignacio A. Macrohon and Paulino T. Lim in G.R. Nos. 163356-57 and of Jovencio Cinco, Ricardo Librea and Alex Y. Pardo in G.R. Nos. 163368-69 are hereby **DENIED.** The assailed Decision dated 28 April 2003 and Resolution dated 27 April 2004 of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Bersamin*, *JJ.*, concur.

Perlas-Bernabe, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I.

I agree with the *ponencia* that the December 17, 1997 Special Stockholders' Meeting is void because it was improperly called. However, I find that a reliance[1] on Section 50 of the Corporation Code[2] or Section 10 of the by-laws is misplaced.

To recount, the December 17, 1997 Special Stockholders' Meeting was called by the Makati Sports Club, Inc. (MSC) Oversight Committee (MSCOC), at the instance of certain stockholders, to remove the members of the Bernas Group who were sitting as directors at that time. During the said meeting, the Bernas Group was removed from office and the Cinco Group was elected as directors of MSC.

The correct provision to be applied is Section 28 of the Corporation Code as it specifically governs the procedure for removing directors or trustees, to wit:

SEC. 28. *Removal of directors or trustees.* – Any director or trustee of a corporation may be removed from office by a vote of the

---

[1] See *Ponencia*, pp. 13-15 and 9-10. respectively.

[2] Batas Pambansa Bilang 68.

Supreme Court E-Library

stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock corporation by a vote of at least two-thirds (2/3) of the members entitled to vote: *Provided*. That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. **A special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees, or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock,** or, if it be a non-stock corporation, on the written demand of a of the members entitled to vote. **Should the secretary fail or refuse to call the special meeting upon such demand or fail or refuse to give the notice, or if there is no secretary, the call for the meeting may be addressed directly to the stockholders or members by any stockholder or member of the corporation signing the demand.** Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice prescribed in this Code. Removal may be with or without cause: *Provided*, That removal without cause may not be used to deprive minority stockholders or members of the right or representation to which they may be entitled under Section 24 of this Code. (Emphases supplied)

Section 50 of the Corporation Code is inapplicable since it governs the conduct of special stockholders' meetings in general:

SEC. 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.

x x x x x x x x x

Whenever, for any cause, there is **no person authorized to call a meeting,** the Securities and Exchange Commission, upon petition

of a stockholder or member on a showing of good cause therefor, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen one of their number as presiding officer. (Emphasis supplied)

Neither would Section 10 of MSC's by-laws apply since, similar to Section 50 of the Corporation Code, it applies to special stockholders' meetings in general:

SEC. 10. Special Meetings. Special meetings of stockholders shall be held at the Clubhouse when called by the President or by the Board of Directors or upon written request of stockholders representing not less than one hundred (100) shares. Only matters specified in the notice and call will be taken up at special meetings.[3]

Following the doctrine that specific provisions must revail over general ones,[4] the procedure, as prescribed in Section 28 of the Corporation Code, should have therefore governed the conduct of the December 17, 1997 Meeting which was particularly intended for the removal of the Bernas Group from the MSC's Board of Directors, *viz*.:

(a) the special meeting must have been called by the secretary; and
(b) the same should have been madeupon the order of the president or on written demand of the stockholders representing at least a majority or the outstanding capital stock; and
(c) in case the secretary failed or refused to give such notice, or if there was no secretary, the call may have been be made directly by any stockholder signing the demand.

Alternatively, an MSC stockholder could have filed a petition before the Securities and Exchange Commission (SEC) to compel

---

[3] *Rollo* (G.R. Nos. 163368-69). p. 112.

[4] *Metropolitan Bank & Trust Company v. Absolute Management Corporation*, G.R. No. 170498, January 9, 2013, 638 SCRA 225, 232.

Supreme Court E-Library

either the president or a majority of the stockholders of the corporation to order the call, or the corporate secretary to make such call, for good cause shown, in view of the SEC's broad regulatory powers[5] under Presidential Decree No. (PD) 902-A.[6]

In these cases, the procedure outlined in Section 28 of the Corporation Code was not complied with. Neither was a petition to the SEC, as above-mentioned, filed by an MSC stockholder. The records show that certain MSC stockholders — who were not shown to constitute a majority of the outstanding capital stock of the corporation at that — unduly caused the MSCOC to make the call for the December 17, 1997 Meeting despite the latter's lack of authority to do so under the Corporation Code and/or the MSC by-laws. Thus, the December 17, 1997 Meeting, which suffers from a substantive and not a mere formal defect given that its improper call goes against the mandated statutory authority to effectuate such corporate action, is contrary to law and, therefore, void *ab initio*.

II.

In *Pirovano v. De la Rama Steamship Co*. (*Pirovano*),[7] the Court held that corporate acts which are illegal for being contrary to law are incapable of ratification, as opposed to acts which are merely *ultra vires*, *i.e*., acts which are not within the powers of the corporation, to wit:

> x x x [A] distinction should be made between corporate acts or contracts which are illegal and those which are merely *ultra vires*. The former contemplates the doing of an act which is contrary to law, morals, or public policy or public duty, and are, like similar transactions between public order or contravene some rules of

[5] See Section 6 of PD 902-A.

[6] Entitled "REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWER AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT" March 11, 1976).

[7] 96 Phil. 335 (1954).

Supreme Court E-Library

individuals, void. They cannot serve as basis of a court action, nor acquire validity by performance ratitication or *estoppel*. Mere *ultra vires* acts, on the other hand, or those which are not illegal and void *ab initio*, but are not merely within the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders.[8]

As earlier mentioned, the December 17, 1997 Meeting is void *ab initio* for contravening Section 28 of the Corporation Code. Hence, while I agree with the *ponencia* that the April 20, 1998 and April 19, 1999 Meetings were called in compliance with the MSC by-laws,[9] I differ in that the removal of the Bernas Group and election of the Cinco Group — which are mere incidents resulting from the void December 17, 1997 Meeting — could not have been ratified, notwithstanding the fact that the latter April 19, 1999 Meeting was held under the supervision of the SEC. The SEC, being a mere regulatory body, cannot lend validity to otherwise invalid acts. Further, the presumption of regularity[10] cannot apply for the purpose of validating an internal action of a private corporation.

While Section 5 I of the Corporation Code states that a meeting shall be valid even if improperly called if all the stockholders are present or duly represented at the meeting, it has not been shown that this is the case here.

Neither can the ratifications done during the April 20, 1998 and April 19, 1999 Meetingsbe equated to the valid election of the Cinco Group, enough to accord them with *de jure* status.[11] Clearly, these meetings were specifically called for the ratification of acts taken during the void December 17, 1997 Meeting, and not for the actual election of directors anew; to reiterate, the ratitication of void acts is strictly prohibited under the doctrine

---

[8] *Id*. at 360.

[9] *Rollo* (G.R Nos. 163368-69). pp. 111-119.

[10] As argued in the *ponencia*, p. 17.

[11] *Id*.

Supreme Court E-Library

enunciated in *Pirovano*. Besides, the procedure in ratifying acts approved or taken during prior meetings is different from the procedure in electing directors,[12] which was not shown to have been complied with in any of those meetings.

Ultimately, however, it should be pointed out that the issue of directorship has been rendered moot and academic by the lapse of the three (3)-year staggered term prescribed by the MSC's by-laws.[13] In fact, the MSC's own website[14] states that the corporation has a new set of directors which does not include any of the herein parties. Thus, the only actual issue left to be resolved is the validity of the expulsion of Bernas from MSC and the subsequent sale of his shares, all effected in the February 27, 1998 Meeting. On this score, I join the *ponencia* in ruling that both actions are void and without legal effect.[15]

III.

Under the MSC by-laws,[16] a member may be suspended or expelled with the two-thirds (2/3) vote of the Board of Directors.

As aptly observed by the *ponencia*, the Cinco Group cannot invoke the *de facto* officership doctrine to justify its actions after their invalid election in the December 17, 1997 Meeting, particularly, the expulsion of Bernas from MSC and the sale of his shares. A *de facto* officer is one who acts as such under color of an election or appointment, but fails being a de Jure officer by some irregularity or failure to qualify as required by

---

[12] See Section 24 of the Corporation Code.

[13] MSCs directors each have a term of three (3) years only, expiring on a staggered basis. See Section 14 of the MSC by-laws: *rollo*, (G.R. Nos. 163368-69), p. 113.

[14] Makati Sports Club, Inc. Board of Directors, 2015 <www.makatisports club.com/AboutUs/BOD.html>(visited June 25, 2015).

[15] See *Ponencia*, p. 18.

[16] See Section 34 (a) of the MSC by-laws: *rollo* (G.R. Nos. 163368-69), p. 118.

Supreme Court E-Library

law.[17] Having ruled out the validity of their election either through the December 17, 1997 Meeting or through the ratifications in the April 20, 1998 and April 19, 1999 Meetings, the Cinco Group cannot be considered as *de facto* directors of MSC. As such, they could not have validly expelled Bernas from MSC and sold his shares of stock. More significantly, since the *de facto* doctrine rests on public policy and justice, the official dealings of directors *de facto* with third persons being sustained as rightful and valid on the ground of the corporation's continuous acquiescence to the officers holding themselves out as having such authority, it is only available to third persons dealing with corporations.[18] No such third person invoked the doctrine here.

ACCORDINGLY, subject to the qualifications herein made, I vote to **DENY** the consolidated petitions.

FIRST DIVISION

[G.R. No. 169158. July 1, 2015]

PENTAGON INTERNATIONAL SHIPPING SERVICES, INC., *petitioner, vs.* **THE COURT OF APPEALS, FILOMENO V. MADRIO, LUISITO G. RUBIANO, JDA INTER-PHIL. MARITIME SERVICES CORPORATION,** *respondents.*

---

[17] Villanueva, *Philippine Corporate Law*, 2010 Edition, p. 316. See also *The General Manager*, *Phil. Ports Authority v. Monserate*, 430 Phil. 832, 846 (2002).

[18] *Id*.