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FIRST DIVISION

[G.R. No. 59114. March 18, 1991]

JOSE G. RICAFORT, CONRADO T. CALALANG, NATIONWIDE DEVELOPMENT CORPORATION and AGUINALDO DEVELOPMENT CORPORATION, *petitioners*, *vs*. **HON. FELIX L. MOYA, Judge, CFI, Davao, Br. II, BLACK MOUNTAIN, INC., TETRA MANAGEMENT CORPORATION and the ENERGY CORPORATION,** *respondents*.

SYLLABUS

MERCANTILE LAW; PRIVATE CORPORATIONS; OPERATING AGREEMENT ENTERED INTO IN DEFIANCE OF VALID ORDER OF A COURT AND WHICH WAS NEVER RATIFIED BUT REJECTED BY THE STOCKHOLDERS, NULL AND VOID. — The Operating Agreement with the Black Mountain Consortium of March 25, 1981 executed on March 25, 1981 was entered into in defiance of valid orders of a court of competent jurisdiction and was in fact subsequently nullified by it; it was entered into against the wishes of the majority of the stockholders and directors and in truth, was not only *not ratified* by the majority of said stockholders as required by the Corporation Code, but explicitly rejected and disowned by them at a meeting duly convoked, said stockholders thereafter approving an operating agreement with Benguet Corporation; the agreement was sought to be vindicated and enforced by individuals who no longer represented the majority of the stockholders of NADECOR, over the objection and against the wishes of the legitimate majority; the authority granted to the consortium (Black Mountain, Inc., Energy Corporation, and Tetra Management Corporation) to implement the agreement of March 25, 1981 was rescinded and revoked by the Office of the President of the Philippines; and one of the companies in said consortium is now, admittedly, no longer capable on account of bankruptcy of complying with its contractual commitments — it is impossible to accord the agreement any validity or effect whatsoever. It thus clearly

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appears, not only that upon purely legal considerations, the operating agreement of March 25, 1981 is, if not outrightly void, unenforceable for want of requisite valid ratification and conferred upon private respondents no actionable, vindicable rights, but also that, from a practical standpoint, any issue about said respondents' rights under the agreement has been mooted by supervening events effectively precluding their exercise in any case.

APPEARANCES OF COUNSEL

Sycip, Salazar, Hernandez & Gatmaitan for petitioners.

Reymundo P.G. Villarica and Siguion Reyna, Montecillo & Ongsiako for private respondents.

D E C I S I O N

NARVASA, *J.*:

With this judgment, the Court writes *finis* to a controversy principally involving two (2) groups of individuals, which has given rise to no less than eleven (11) actions and proceedings: three (3) in the Court of First Instance, two (2) in the Securities and Exchange Commission, and six (6) in this Court.

The roots of the controversy go as far back as 1978, to a deed of sale executed on April 18 of that year by Daniel R. Aguinaldo and D.R. Aguinaldo Corporation (DRACOR), as vendors, and Jose Ricafort and Conrado Calalang, as vendees. By that deed:

1) Aguinaldo and DRACOR sold to Jose Ricafort and Conrado Calalang all their shares of stock and subscriptions in three (3) corporations, namely:

a) ADECOR (Aguinaldo Development Corporation),
b) MARBLECORP (Philippine Marble Corporation), and
c) NADECOR (Nationwide Development Corporation);

2) Aguinaldo bound himself to convey nine (9) parcels of rice land in Saug, Davao del Norte, held in trust by him, to the real or beneficial owner, ADECOR;

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3) As security for payment of the balance of the price (a down payment having been made on execution of the deed of sale) Ricafort and Calalang bound themselves:

1) To pledge to Aguinaldo all the shares of stock in the three (3) corporations, subject of the sale; and

2) To mortgage to Aguinaldo the nine (9) "Saug lots."

The pledge of the stock certificates was effected on the same day, April 18, 1978.

On August 18, 1980, at the stockholders' meeting of NADECOR, Daniel R. Aguinaldo, Dominador Aytona, Conrado Calalang, Jose G. Ricafort, and five (5) others were elected directors. These directors later elected Aytona, Aguinaldo, and Romeo H. Borsoto as, respectively, Chairman, President and Secretary.

A month later, or on September 26, 1980, Aguinaldo executed the Deed of Reconveyance of the nine "Saug lots" in favor of ADECOR, as called for by the Deed of Sale of April 18, 1978, *supra*. But the related stipulation - that Ricafort and Calalang caused the mortgage of those lots in Aguinaldo's favor as security for the payment of the balance of the price fixed in the sale of April 18, 1978 — was not complied with. Ricafort and Calalang refused to fulfill that prestation because, according to them, the deed of reconveyance of the "Saug lots" executed by Aguinaldo in favor of ADECOR dated September 26, 1980, was fatally defective as it did not bear the signature of Aguinaldo's wife, Helen Leontovich. For some undisclosed reason, the latter never saw fit to remedy the omission until very, very much later, after the controversy between the parties had worsened and spawned bitter litigation in various courts, as will now be briefly narrated.

CIVIL CASE No. 38117, CFI, Rizal

The first case was commenced on October 6, 1980. On that day Civil Case No. 38117 was instituted by Ricafort and Calalang in the then Court of First Instance of Rizal. The stated cause:

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breach of the contract of sale of April 18, 1978 by Aguinaldo's failure to make a valid transfer of the nine "Saug lots;" the prayer: that Aguinaldo's obligation to make the conveyance be deemed waived and correspondingly, that Ricafort and Calalang, as vendees, be deemed discharged from their own obligation to pay the balance of the price, and the pledge of the stock purchased by them be considered discharged and released.

Aguinaldo reacted by instructing a Notary Public, Wilfred Neis, to conduct the auction sale of the pledged stock (of DRACOR, ADECOR and NADECOR, *supra*). Atty. Neis scheduled the sale on October 10, 1980. This gave rise to the second litigation between the parties.

CIVIL CASE No. 135262, Manila

On October 8, 1980, Ricafort and Calalang brought suit against Aguinaldo and Notary Public Neis in the Court of First Instance of Manila, which was docketed as Civil Case No. 135262. They asked that the latter be stopped from proceeding with the auction sale of the stock in question on October 10, 1980, or at any other time thereafter. They also applied for a preliminary injunction pending determination of the merits of the action.

Ricafort and Calalang later amended the complaint to incorporate their cause of action in Civil Case No. 38117 of the Court of First Instance at Pasig, *supra*. Case No. 38117 thus became *functus officio*. Consequently, Ricafort and Calalang caused its dismissal by filing with the Pasig Court a notice to that effect dated November 6, 1980, in accordance with Section 1, Rule 17 of the Rules of Court.[1]

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[1] Said Section pertinently provides that an action "may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment," said dismissal being without prejudice unless "otherwise stated in the notice" or "when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim."

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Temporary Restraining Order

On October 8, 1980, a temporary restraining order was issued by Judge Tomas Maddela, to whose sala Civil Case No. 135262 had been raffled, enjoining the auction sale of the pledged stock subject of the contract of sale of April 18, 1978.

Three more amendments of the complaint were thereafter sought by Ricafort and Calalang through separate motions.

The first amendment sought to add a plea:

a) for reformation of the contract of sale of April 18, 1978 to include all of the shares of stock in NADECOR of Aguinaldo, DRACOR and all their nominees (totaling 67% of the outstanding stock in NADECOR); and

b) for a preliminary injunction against Aguinaldo to prohibit him from representing himself as the controlling stockholder of NADECOR and attempting to sell that corporation's so-called "*Kingking Mining Claims*" in Pantukan, Davao del Norte.

The amendment was allowed by Order dated April 20, 1981.

The second amendment impleaded NADECOR as additional defendant, and prayed that it also be enjoined from offering the *Kingking Mining Claims* for sale. The amendment was admitted by Order issued on June 25, 1981.

These mining claims, by the way, are embraced in nine (9) Lode Lease Contracts docketed as LLC-V-908 to V-910; V-935, V-948, V-949, V-966, V-1074 and V-1075;[2] and there is evidence on record that said claims constitute practically all the assets of NADECOR.

The third amendment added averments of fraud relative to the transfer by Aguinaldo to himself of ADECOR shares in a foreign company, Sawyer-Adecor International, Inc. (SAICOR). This amendment was approved by Order dated February 5, 1982.

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[2] Per Certification dated February 7, 1990 of the Chief, Records Section (signing For the Acting Director, Mines & Geosciences Bureau) (*Rollo*, G.R. No. 59114, Vol. II, p. 819).

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Preliminary Injunctions by Manila CFI (CC 135262) Re Kingking Mining Claims, etc.

Several injunctive orders were thereafter issued against Aguinaldo and his group by the Trial Court mainly as regards the *Kingking Mining Claims* in Davao del Norte. These resulted mainly from an Operating Agreement involving said *Kingking Claims* executed on March 25, 1981 between Aguinaldo, in representation of NADECOR, on the one hand, and a consortium made up of Black Mountain, Inc., Tetra Management Corporation, and Energy Corporation, on the other. On March 30, 1981 the Court enjoined the NADECOR Board from ratifying that Operating Agreement of March 25, 1981.

On April 20, 1981, the Court stopped (a) the auction sale of the pledged shares of stock which had been re-scheduled by Notary Public Wilfred Neis at Aguinaldo's instance, and (b) Aguinaldo from representing himself as the controlling stockholder of NADECOR and offering its *Kingking Claims* for sale.

On June 29, 1981, the Court issued another Order (a) declaring Aguinaldo and the NADECOR directors guilty of contempt of court for having, despite the injunction of March 30, 1981, approved and confirmed the Operating Agreement involving the *Kingking Claims* entered into by NADECOR with Black Mountain, etc., administering an admonition on them, and (b) NULLIFYING said Operating Agreement.

And on September 15, 1981 yet another Order was rendered by the Trial Court, prohibiting Aguinaldo from voting or selling the ADECOR shares in Sawyer-Adecor International Corporation (SAICOR), which he had caused to be transferred to his name.

At about this time, Ricafort and Calalang perceived what they believed to be a plot by the Aguinaldo-Aytona group to exclude them and SAICOR from the management of NADECOR. It appears that Aguinaldo and his group had refused to convoke the stockholders of NADECOR for the annual meeting for the year 1981 which, under the by-laws[3] should have been

[3] Sec. 1, ART. 1.

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called on the third Monday of August. So on August 17, 1981, the Ricafort Group, and the President of SAICOR, Carol Garvice, who was in the country at the time, went to the main offices of NADECOR, and proceeded to hold a meeting for the declared purpose of electing the directors for the incoming year, and otherwise transacting corporate business. Dominador Aytona, Daniel Aguinaldo's colleague and counsel, moved to postpone the meeting, drawing attention to a temporary restraining order supposedly issued by the Superior Court of California dated August 14, 1981. The majority of the stockholders then present however voted against the postponement, opining *inter alia* that the restraining order of the California Court was not enforceable in the Philippines. Aytona then questioned Garvice's qualification to take part in the stockholders' meeting. He was reminded that as early as May, 1981, he already knew Garvice to be the President of SAICOR. When the majority of the stockholders expressed their firm wish to continue with the meeting, Aguinaldo and Aytona walked out.

The stockholders then elected as directors, Conrado Calalang, Jose Ricafort and five (5) others. The stockholders also rejected the aforesaid operating agreement of March 25, 1981 between NADECOR, represented by the Aguinaldo-Aytona Group, and the consortium of Black Mountain, Inc., Energy Corporation, and Tetra Management Corporation. The stockholders instead approved the proposed operating agreement with Benguet Corporation. The directors-elect then organized the NADECOR Board: they elected the corporate officers headed by Calalang as chairman and president. The Secretary's Certificate attesting to these events was in due course filed with the Securities and Exchange Commission.

On that day, too, NADECOR, represented by the new officers, entered into an Operating Agreement with Benguet Corporation for the operation by the latter of the company's *KINGKING MINES*. This was the second such agreement involving the Kingking Mines.[4]

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[4] As already stated, an earlier Operating Agreement involving the same *Kingking Mining Claims* was executed on March 25, 1981 between

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Litigation in Securities & Exchange Commission

The area of conflict now widened, to include litigation in the Securities and Exchange Commission. Two (2) cases were instituted in that quasi-judicial agency: SEC Case No. 2143, in 1981 and SEC Case No. 2878, in 1984.

SEC Case No. 2143

SEC Case No. 2143 was commenced by complaint dated September 24, 1981 of NADECOR, represented by its newly elected directors and officers (the Ricafort-Calalang Group), against Aguinaldo, Aytona and a certain Romeo H. Borsoto. The complaint alleged that despite the election of the new officers at the stockholders' meeting of August 17, 1981, the defendants continued to fraudulently represent themselves as the legitimate officers of NADECOR and to exclude said officers-elect from the exercise of their rights. The complaint also adverted to the defendants' allegedly malicious refusal to perform their ministerial duty to issue notices of the annual stockholders' meeting, *supra*.

Acting on the application for preliminary injunction contained in the complaint, an order was issued on September 28, 1981 by SEC Director and Hearing Officer Sixto Villanueva (a) prohibiting the defendants "from acting and representing themselves as officers of NADECOR until further orders," and (b) setting the hearing on the preliminary injunction on October 7, 1981.

On October 7, 1981 and various dates thereafter, the complainants presented evidence in substantiation of their plea for a preliminary injunction. Defendants refused to adduce proof of their own. They contented themselves with presenting their

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NADECOR [represented by the Aguinaldo-Aytona Group], on the one hand, and on the other, a consortium composed of Black Mountain, Inc., Tetra Management Corporation, and Energy Corporation. Ratification of that agreement was however enjoined by Order dated March 30, 1981; and the agreement itself was nullified by a later Order of the Trial Court dated June 29, 1981.

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Answer to the Complaint, and an opposition to the application for preliminary injunction. And instead of submitting countervailing evidence, they filed various motions to lift the temporary restraining order of September 28, 1981. They also attempted to present Calalang and Ricafort as hostile witnesses at the injunction hearing and caused issuance of *subpoenae* towards this end. Those processes were however quashed by the Hearing Officer who ordered said defendants instead to submit a proposal for a stipulation or a request for admission of the facts as to which examination of Calalang and Ricafort was being sought. The defendants ignored the order and renewed their attempts to have Calalang and Ricafort testify as their hostile witnesses.

Then, without awaiting resolution of the application for preliminary injunction by the Hearing Officer (who was still waiting for the defendants to submit their evidence), said defendants brought the matter up to the Securities and Exchange Commission *en banc* (by filing with that body a petition for *certiorari* and *mandamus*, with application for preliminary injunction). The Hearing Officer, Director Villanueva, thereafter denied the defendants' motions to lift the restraining order of September 28, 1981. The defendants thereupon filed a supplemental petition with the Commission *en banc*, asking that the Hearing Officer's own restraining order of September 28, 1981 be itself restrained. They later moved to be allowed to continue exercising functions as officers of NADECOR.

CIVIL CASE NO. 143, CFI, DAVAO

Still another action was begun at about this time. On November 6, 1981, the consortium of Black Mountain, Inc., Energy Corporation and Tetra Management Corporation filed a complaint in the Court of First Instance of Davao, which was docketed as Civil Case No. 143. Named defendants were Benguet Corporation, NADECOR, and the directors of NADECOR, including Ricafort and Calalang. The complaint sought to enjoin them from interfering with Black Mountain's possession of NADECOR's *Kingking mines* and recover damages. The Trial Court issued a temporary restraining Order to this effect on November 11, 1981.

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Ricafort and his co-defendants moved to dismiss the complaint for failure to state a cause of action. They argued that the complaint contained no averment — in any case, it was an uncontroverted fact — that NADECOR's agreement with Black Mountain, Inc., *et al*. for the operation of the *Kingking Mining Claims* had never been approved by the NADECOR stockholders owning the majority of the capital stock, although such approval was required by Section 44 of the Corporation Code for any contract, such as the one in question, "whereby a corporation undertakes to manage or operate all or substantially all of the business of another corporation, whether such contracts are called service contracts, operating agreements or otherwise * * *," and it appearing that the agreement with Black Mountain embraced 93.5% of the total number and area of NADECOR's mining claims and NADECOR had no other mining properties or business.

The Trial Court denied the motion to dismiss in an Order dated December 15, 1981.

All the foregoing actions in turn generated proceedings in the Supreme Court.

PROCEEDINGS INSTITUTED IN SUPREME COURT

G.R. No. 60376 *(Aguinaldo, et al. v. Hon. T .P. Maddela, et al. [RTC No. 135262])*

On November 20, 1981, Aguinaldo, Neis and NADECOR filed with this Court a petition for *certiorari* and prohibition with application for preliminary injunction, assailing Manila CFI Judge Maddela's alleged failure to act on Civil Case No. 135262. This was docketed as G.R. No. 60376.

Petitioners Aguinaldo, *et al*, later filed on June 15, 1982, a supplemental petition:

(1) to annul and enjoin enforcement of Judge Maddela's temporary restraining order dated March 30, 1981 — stopping the NADECOR Board (then controlled by the Aguinaldo-Aytona

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Group) from approving the Operating Agreement with Black Mountain, Inc. involving the Kingking Mines; and

(2) to nullify and set aside other adverse orders, dated April 20, 1981, June 25, 1981, June 26, 1981, and Sept. 15, 1981.

G.R. No. 59114 *(Ricafort, et al. v. Hon. Felix Moya, et al. [Davao RTC CC 143])*

For their part, Ricafort and Calalang, together with NADECOR and ADECOR, filed with this Court on December 17, 1981 a petition for *certiorari*, against Judge Felix L. Moya of the Davao CFI (Branch II), Black Mountain, Inc., Tetra Management Corporation and Energy Corporation. The petition was later amended on January 26, 1982. The petitioners sought annulment of three orders of Judge Moya, to wit:

(1) the temporary restraining order issued on November 11, 1981;

(2) the order of December 15, 1981, denying the petitioners' motion to dismiss the action (on the ground that the Operating Agreement of Black Mountain, Inc., *et al*. with NADECOR had not been approved by stockholders holding the majority of the capital stock as required by the Corporation Code, *supra*); and

(3) the order of January 20, 1982, denying their motion to quash the contempt charges against them.

Due Course to G.R. Nos. 60376 & 59114

Both petitions in G.R. Nos. 60376 and 59114 were given due course in virtue of a Resolution of this Court dated August 23, 1982.

After Black Mountain, Inc., filed on September 9, 1982, a motion alleging chiefly that G.R. No. 59114 had been rendered moot by Letter of Instructions No. 1349 issued by former President Marcos on August 1, 1983, both "*Kingking Claims Cases*," G.R. No. 59114 and G.R. No. 60376, lay fallow for some three years.

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A word about said Letter of Instructions No. 1349. It advised the consortium of Black Mountain, Inc., Energy Corporation, and Tetra Management Corporation to implement the operating agreement involving the NADECOR's Kingking mining property in Pantukan, Davao. It superseded Letter of Instructions Nos. 1210, dated March 9, 1982, directing that said property be immediately put into production and that a company called "North Davao Mining Corporation" undertake the development of said Kingking mining property.[5]

G.R. No. 61377 (*Aguinaldo, Aytona, Borsoto v. SEC, Ricafort, et al*. [RE SEC Case No. 2143]).

A third *certiorari* action involving substantially the same parties was commenced in this Court on August 13, 1982. That action, docketed as G.R. No. 61377, concerned SEC Case No. 2143 in which, it will be recalled, the Aguinaldo-Aytona Group had presented to the Commission *en banc* a petition and supplemental petition impugning certain actuations of the Hearing Officer including the latter's temporary restraining Order. In this Court the Aguinaldo-Aytona Group complained of the alleged inaction of the Securities and Exchange Commission en banc on their petition to nullify the same which had resulted to their disadvantage, and prayed for invalidation of said Hearing Officer's restraining order.

G.R. Nos. 88895 and 88095

Still another proceeding in connection with SEC Case No. 2143 was instituted in this Court by the Aytona Group, although much, much later, in 1988. That stemmed from a motion submitted by the Aytona Group in said SEC Case No. 2143 for a preliminary injunction to stop the Ricafort-Calalang Group from calling and holding the annual stockholders' meeting of NADECOR on August 15, 1988 pursuant to the By-Laws. When that motion was denied, Aytona went to the Court of Appeals which, however, sustained the SEC's denial of the preliminary injunction. Aytona then appealed to this Court, his petitions being docketed

[5] *Infra*, p. 13.

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here as G.R. Nos. 88895 and 88095. Later, Aytona moved to withdraw and dismiss that appeal, but the appeal was instead denied by this Court for failure to comply with the requisites of the Rules of Court.

G.R. Nos. 77274-75 *(Dominador R. Aytona, as Executor of the Estate of Deceased Daniel R. Aguinaldo vs. Conrado T Calalang, et al. [RE CC Q-45704])*

One more proceeding on appeal involving the same parties was added to this Court's docket sometime in 1987. This was G.R. Nos. 77274-75. It had its origin in yet another action filed by Aytona, this time with the Regional Trial Court at Quezon City, on August 15, 1985. He filed the case as a stockholder of NADECOR and as executor of the estate of Daniel R. Aguinaldo, who had died in the meantime. Named as defendants were Conrado T. Calalang, Jose G. Ricafort, Salvador O. Rivera, Benjamin V. Aritao, Edgar de Castro, (as officers of NADECOR), and Sawyer-Adecor International, Inc. (SAICOR) and Benguet Corporation. The suit was chiefly grounded on an order of preliminary injunction of the Superior Court of California enjoining several specified stockholders of NADECOR from voting a large bloc of NADECOR shares owned by SAICOR, pending judicial determination of ownership of 1.2 million SAICOR shares of stock, registered in the name of the late D.R. Aguinaldo. The Quezon City Court issued a temporary restraining order on August 16, 1985 enjoining defendants from voting the SAICOR shares at the annual stockholders' meeting set on August 19, 1985, and all other meetings.

The defendants, the Ricafort-Calalang Group, promptly moved to dismiss the action on the ground of (1) lack of jurisdiction of the Court over of the subject-matter; (2) non-enforceability of the foreign order of injunction, hence, failure of the complaint founded thereon to state a cause of action; and (3) failure of plaintiffs' counsel to indicate his IBP number. The motion was denied by Order dated October 25, 1985; and a writ of preliminary injunction subsequently issued against the defendants on

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November 5, 1975. Ricafort and his co-defendants challenged that order of denial before the Court of Appeals by way of a petition for *certiorari* and prohibition. SAICO filed a separate petition for *certiorari* and prohibition against the same order also before the Court of Appeals. The cases were consolidated; and judgment was rendered thereon in due course on November 28, 1986, annulling and setting aside the Order of the Court *a quo* of October 25, 1985 and the order for a preliminary injunction of November 5, 1985. Aytona's motion for reconsideration was later denied by the Court of Appeals, in a Resolution dated January 23, 1987.

Aytona appealed to this Court. His appeal was docketed as G.R. Nos. 77274-75 (*Dominador R. Aytona, as Executor of the Estate of Deceased Daniel R. Aguinaldo vs. Conrado T. Calalang, Jose G. Ricafort, Salvador O. Rivera, Benjamin V. Aritao, Edgar de Castro, and Sawyer-Adecor International, Inc.*)

G.R. No. 75098 *(Ricafort, et al. v. Hon. T . Maddela, et al. [Case No. 135262])*

One more proceeding in this Court has to be mentioned: G.R. No. 75098, which was an appeal by *certiorari* by Ricafort and Calalang against the Order of Judge Maddela of June 10, 1986 in Civil Case No. 135262. Said order was issued by Judge Maddela in connection with hearings that this Court instructed him to conduct, on a motion of the Aytona Group that the auction sale of the pledged stock should proceed in view of certain recent developments. The instruction was contained in a Resolution dated July 8, 1985 in G.R. No. 60376.

G.R. No. 75098 was later consolidated with G.R. No. 60376 by this Court's Resolution of November 5, 1986.

Intervention by the Office of the President

It appears that the Office of the President of the Philippines took some interest in the Kingking mining property of NADECOR and issued two letters of instructions concerning it. The first,

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LOI No. 1210, dated March 9, 1982, directed that the mining property be immediately put into production and that a firm known as "North Davao Mining Corporation" undertake its development. The second, LOI No. 1349, dated August 1, 1983, advised Black Mountain, Inc., the Energy Corporation, and the Tetra Management Corporation to implement their operating agreement involving said Kingking mining property in Pantukan, Davao.[6]

FINAL DISPOSITION OF SUPREME COURT AND SEC CASES

G.R. NOS. 60376 AND 75058 (Judgment on Compromise)

A compromise was arrived at by the parties in G.R. Nos. 60376 and 75098. It was embodied and approved in a Resolution dated March 16, 1988, dictated at a hearing presided over by the Chairman of the First Division, in the presence of the parties and their counsel. Basically the compromise provided for the consummation of the deed of sale of April 18, 1978 through the compliance by the parties with their yet unfulfilled prestations as well as the obligations thereto related. The Resolution approving said compromise declared that those contractual and related commitments should be fulfilled on March 21, 1988, and that thereupon, "G.R. Nos. 60376 and 75098, as well as the case thereto related, Civil Case No. 135262 of the Regional Trial Court of Manila, shall be ordered dismissed, closed, and terminated."

On March 23, 1988, this Court promulgated another Resolution declaring the compromise approved by the Resolution of March 16, 1988 to have been fully executed to all the parties' satisfaction. It also ordered the Register of Deeds of Davao to cancel the transfer certificates of title covering the nine (9) "Saug lots" still in the name of Daniel R. Aguinaldo and to issue new ones in the name of ADECOR. Finally, the Resolution

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[6] These Letters of Instructions were however revoked and rescinded by President Aquino, as will shortly be recounted.

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declared "G.R. No. 75098 DISMISSED, CLOSED AND TERMINATED, and G.R. No. 60376 and Civil Case No. 135262 DISMISSED only insofar as they involve the subject matter of this compromise agreement. Later, however, the parties having reached a complete settlement, the case was ordered dismissed by this Court, by Resolution of August 14, 1989. (*Rollo*, G.R. Nos. 60376 and 75098, p. 2298)

G.R. Nos. 77274-75

Decision was rendered in G.R. Nos. 77274-75 (*Dominador R. Aytona, as Executor of the Estate of Deceased Daniel R. Aguinaldo vs. Conrado T. Calalang, Jose G. Ricafort, Salvador O. Rivera, Benjamin V. Aritao, Edgar de Castro, and Sawyer-Adecor International, Inc.*) on June 20, 1988.[7] This Court ruled that QC RTC Case Q-45704 involved a controversy arising out of intra-corporate relations between and among stockholders and thus fell within the original and exclusive jurisdiction of the Securities and Exchange Commission; moreover, there was as yet no foreign judgment to be enforced by Philippine Courts, the petitioners' action in the Regional Trial Court being founded on a mere interlocutory order.

G.R. No. 61377

Decision was also promulgated by the Court in G.R. No. 61377 on June 30, 1988, dismissing the petition.[8] It held that the challenged temporary restraining order of the Hearing Officer in SEC Case No. 2143, like those issued by Regional Trial Courts, lapsed after twenty (20) days; that the Securities and Exchange Commission still had jurisdiction and indeed the obligation to proceed with the hearing on the merits of Case No. 2143 and issue appropriate orders pursuant thereto, subject to review by the Court of Appeals and the Supreme Court; and that since petitioners (defendants) had not yet finished presenting evidence on such matters affecting the corporate affairs of

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[7] 162 SCRA 336 (Third Division, per Gutierrez, Jr., *J.*).

[8] 163 SCRA 262 (Court *En Banc*, per Gutierrez, Jr., *J.*).

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NADECOR as the validity of proxy votes, alleged usurpation of corporate powers, claims of majority status, issuance of notices — evidentiary issues the resolution of which is primarily lodged with the Securities and Exchange Commission, the latter ought to continue to hear and then decide the respective rights of parties in NADECOR.

SEC Case No. 2143

On July 31, 1989, a Joint Manifestation was presented by the Ricafort Group and the Aytona Group in SEC Case No. 2143, briefly to the following effect:

1) the Aytona Group will no longer question the 1989 NADECOR annual stockholders' meeting and the election of directors on that occasion, as well as the organizational meeting of the board of directors;

2) both groups waive any and all claims for damages they may have against each other in the case;

3) the Aytona Group will not move for reconsideration, appeal, or in any way question the decision which may be rendered in the case pursuant to the joint manifestation.

Acting thereon, Hearing Officer Alberto P. Atas rendered an Order on August 9, 1989, ruling that

"1. (The Commission had decided to) * * * recognize and affirm the validity of the annual stockholders' meeting of Nationwide Development Corporation held on August 17, 1981, the election of petitioners as directors of the Corporation in that meeting, and the validity of the organizational meeting of such board electing the officers of the corporation; * * *

2. * * * all claims for damages of the parties against each other related to this action are hereby considered waived," and

3. Case No. 2143 was "considered CLOSED."

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SEC Case No. 2878

To complete the picture, mention must be made of one other action in the Securities and Exchange Commission between the same parties, SEC. Case No. 2878. That case was filed by the Ricafort-Calalang Group to enjoin the Aytona Group from continuing to act and represent themselves as Directors and/or officers of NADECOR. The Ricafort Group alleged that they were duly elected as directors of NADECOR at the annual stockholders' meeting on August 20, 1984, and later, elected as officers of the firm by the directors; that the meeting was adjourned by Calalang, as Chairman, in view of the objections by Aytona (presenting TRO by RTC, QC) to the voting of SAICO's 7,000 shares at the election of directors; that after adjournment, however, Aytona and his group elected themselves officers of NADECOR. A temporary restraining order was issued by Hearing Officer Emmanuel Sison, followed, after presentation of evidence, by a preliminary injunction, against the Aytona Group. Aytona moved for reconsideration of the Order of injunction, dated October 14, 1985, but his motion was denied by order dated January 17, 1986.

On May 25, 1989, the decision in said SEC Case No. 2878 was handed down by Hearing Officer Felipe S. Tongco. Tongco ruled that the only issue concerned the validity of the adjournment of the meeting of August 20, 1984 by Calalang; that as to the question regarding the election of Aytona, *et al.* as directors after said adjournment, the same had been mooted by the subsequent and indisputably valid election of Calalang and his group in 1986 and 1987; that the validity of the acts of the Aytona Group as pseudo directors and officers had to be determined; that the evidence sufficiently established that the annual stockholders' meeting of August 20, 1984 had been validly adjourned by Calalang; that the election of the Aytona Group as directors following the adjournment was therefore void *ab initio*; and that group's acts as directors and officers of NADECOR were also null and void.

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Remaining Proceedings a
nd Resolution Thereof

Thus, the only proceedings left undecided are *Civil Case* No. 143 of the Regional Trial Court of Davao, and G.R. No. 59114, related to Case No. 143.

The main issue in these two (2) cases is the validity of the Operating Agreement relative to the *Kingking Mines* entered into on March 25, 1981 between NADECOR, then represented by the Aguinaldo-Aytona Group, and the consortium composed of Black Mountain, Inc., Tetra Management Corporation, and Energy Corporation.

The facts and considerations hereunder summarized, developed beyond dispute in the various legal proceedings above surveyed, dictate a declaration of the invalidity of said Agreement of March 25, 1981.

1. On March 30, 1981, in Civil Case No. 135262, the Manila Trial Court enjoined the NADECOR Board (controlled by the Aguinaldo-Aytona Group) from ratifying this Operating Agreement.

2. On April 20, 1981, the same Court *inter alia* stopped Aguinaldo from representing himself as the controlling stockholder of NADECOR and offering its *Kingking Claims* for sale.

3. On June 29, 1981, the Court issued another Order (a) declaring Aguinaldo and the NADECOR directors guilty of contempt of court for having, despite the injunction of March 30, 1981, approved and confirmed the Operating Agreement involving the *Kingking Claims* entered into by NADECOR with Black Mountain, *etc*., administering an admonition on them, and (b) NULLIFYING said Operating Agreement.

4. The Ricafort-Calalang Group validly elected directors at the annual stockholders meeting of NADECOR on August 17, 1981; and said directors thereafter validly elected the officers of the corporation at the organizational meeting of the board.

5. The same group (Ricafort-Calalang) had been validly re-elected since then, in 1985, 1986, 1987. An attempt of the

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Aguinaldo-Aytona group to have its members elected as directors at the stockholders' meeting of August 19, 1985 was declared null and void.

6. At the annual meeting of August 17, 1981, too, the NADECOR stockholders rejected the operating agreement executed on March 25, 1981 by NADECOR, then acting through the Aguinaldo-Aytona Group, and the Black Mountain Consortium, *supra*. The stockholders also approved the proposed Agreement with Benguet Corporation for the operation by the latter of the company's *KINGKING MINES*. The agreement with Benguet Corporation was subsequently signed and executed.

7. On January 22, 1987, President Corazon C. Aquino issued Memorandum Order No. 69, entitled "RESCINDING LETTER OF INSTRUCTION NOS. 1210 AND 1349, DATED MARCH 9, 1982 AND AUGUST 1, 1983," treating directly of the "approved operating agreement involving the Kingking mining property in Pantukan, Davao" of the consortium composed of Black Mountain, Inc., Energy Corporation, and Tetra Management Corporation.[9] The memorandum reads as follows:

"Letter of Instructions Nos. 1210, dated March 9, 1982, directing that the Kingking mining property in Pantukan, Davao, covered by mining lease contracts issued in the name of the Nationwide Development Corporation be immediately put into production and that the North Davao Mining Corporation undertake the development of the Kingking mining property; and Letter of Instructions No. 1349, dated August 1, 1983, advising the Black Mountain, Inc., the Energy Corporation, and the Tetra Management Corporation to implement the approved operating agreement involving the Kingking mining property in Pantukan, Davao, are hereby rescinded and revoked.

This Memorandum Order takes effect immediately."

This memorandum Order was sent on February 18, 1987, by Presidential Staff Director Melquiades T. de la Cruz to Director Benjamin Gonzales of the Bureau of Mines and Geo-Sciences, and Carlos G. Dominguez, Secretary of Natural Resources,

[9] SEE footnote 6, *supra*.

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evidently for implementation. These acts, according to Ricafort and Calalang,[10] "rectified the 'great prejudice' caused to * * * (them) by the 'unjust awards by then President Marcos of the operation of the Kingking mines to 'crony' North Davao Mining Corporation which had no operating agreement from the claim owners and then to 'cronies' Black Mountain, Inc., *et al*. which had a spurious operating agreement from Aguinaldo with a court-cancelled board of directors' ratification and no stockholders' approval * * *'"

It was evidently on account of Memorandum Order No. 69 of President Aquino that NADECOR (the Ricafort-Calalang Group) finally succeeded in getting possession of the mines; this, sometime in December, 1989, NADECOR was granted authority by the Secretary of Natural Resources "to enter the area" and "proceed with exploration and development activities" subject to certain specified conditions, one of which was that NADECOR itself shall conduct said exploration and development activities and not contract said activities to an operator * * *."

8. As admitted by the respondents, Black Mountain, Inc. ceased operations and became bankrupt years before Marcos was booted out of office.

9. The Operating Agreement with the Black Mountain Consortium of March 25, 1981 was never ratified by the NADECOR stockholders; indeed, it was explicitly rejected by said stockholders. Considering that the Kingking Mines comprise all or substantially all the assets of NADECOR, the operating agreement of March 25, 1981 had to be ratified by the stockholders in order to be valid and effective. This, in accordance with Section 44 of the Corporation Code.[11] That no such ratification was ever given constitutes yet another reason to invalidate the same.

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[10] SEE Opposition, July 24, 1987, Reply to Comment on Consignation, Oct. 30, 1987, *Rollo*, G.R. No. 75098, pp. 275, 463: Compliance, October 23, 1987, *Rollo* G.R. No. 60376: p. 420.

[11] *Supra*, p. 6.

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Under these circumstances — the agreement executed on March 25, 1981 was entered into in defiance of valid orders of a court of competent jurisdiction and was in fact subsequently nullified by it; it was entered into against the wishes of the majority of the stockholders and directors and in truth, was not only not *ratified* by the majority of said stockholders as required by the Corporation Code, but explicitly rejected and disowned by them at a meeting duly convoked, said stockholders thereafter approving an operating agreement with Benguet Corporation; the agreement was sought to be vindicated and enforced by individuals who no longer represented the majority of the stockholders of NADECOR, over the objection and against the wishes of the legitimate majority; the authority granted to the consortium (Black Mountain, Inc., Energy Corporation, and Tetra Management Corporation) to implement the agreement of March 25, 1981 was rescinded and revoked by the Office of the President of the Philippines; and one of the companies in said consortium is now, admittedly, no longer capable on account of bankruptcy of complying with its contractual commitments — it is impossible to accord the agreement any validity or effect whatsoever.

It thus clearly appears, not only that upon purely legal considerations, the operating agreement of March 25, 1981 is, if not outrightly void, unenforceable for want of requisite valid ratification and conferred upon private respondents no actionable, vindicable rights, but also that, from a practical standpoint, any issue about said respondents' rights under the agreement has been mooted by supervening events effectively precluding their exercise in any case.

Wherefore, the petition is GRANTED. Civil Case No. 143 of the Regional Trial Court of Davao is DISMISSED, and the restraining order of November 11, 1981 issued therein, if still extant, is DISSOLVED. Costs against private respondents.

SO ORDERED.

Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

Cruz, *J.*, no part. Related to one of the counsels.