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SECOND DIVISION

[G.R. No. 141510. August 13, 2004]

MANUEL L. MORATO, ANTONIO L. TAN, JR., JOSE THOMAS D. BELDIA, TRUMAN E. BECKER and T.F. VENTURES, INC., *petitioners, vs.* **HON. COURT OF APPEALS, HON. SIMEON P. BADILLO, JR., and YOSHITSUGU MATSUURA,** *respondents.*

SYNOPSIS

Petitioners filed a petition with the Securities and Exchange Commission (SEC) against respondent Matsuura and others for the declaration of nullity of the stockholders, and directors' meetings held on September 22, 1997 on the ground that the same was in violation of the Corporation Code and the By-Laws of the petitioner corporation. The same was docketed as SEC Case No. 10-97-5778 and referred to the Securities Investigation and Clearing Department (SICD) of the SEC for investigation and resolution. Later, the respondent filed a letter-petition to the SEC which was referred to the Prosecution and Enforcement Department (PED), docketed as PED Case No. 98-2231. Allegedly, the petitioners were engaged in fraudulent schemes in violation of the law, and the SEC rules and regulations. Respondent asked the PED to investigate the complaint and file the corresponding cases.

As to whether the filing of the letter-petition constituted forum shopping, the Court ruled in the negative. There was neither identity of causes of action nor identity of rights asserted by the parties in both cases. Nonetheless, with the effectivity of RA No. 8799, the Securities Regulation Code, transferring some of the powers and functions of the SEC to the Regional Trial Court (RTC), the Court ruled that the case should be transferred to the RTC. Further, though the PED also had ceased to exist under RA No. 8799, the Court ruled that the SEC retains jurisdiction to continue with its investigation of the letter-petition.

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SYLLABUS

1. **REMEDIAL LAW;CIVIL PROCEDURE; APPEAL UNDER RULE 45 NOT INTERCHANGEABLE WITH *CERTIORARI* UNDER RULE 65.**— We note that the petitioners designated their recourse to this Court as an "appeal by way of petition for review under *Rule 45 and/or Rule 65 of the 1997 Rules of Civil Procedure, as amended.*" We find the same to be highly irregular. The petitioners are mandated to state categorically in their petition the Rule under which the same is filed, and not merely leave the matter for the Court's determination. It must be borne in mind that the remedies under Rules 45 and 65 of the Rules of Court cannot be interchanged.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FINAL DISPOSITION OF THE COURT OF APPEALS REVIEWABLE BY PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45.**— For as we ruled in *National Irrigation Administration v. Court of Appeals*: The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.

3. **ID.; ID.; FORUM SHOPPING, WHEN PRESENT.**— There is forum shopping where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. There is *litis pendentia* if the following requisites are present: (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of the rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration. The requisites of *res judicata,* on the other hand, are as follows: (a) there must be a final judgment

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or order; (b) the court rendering the same must have jurisdiction over the subject matter and the parties; (c) the judgment or order must be on the merits; and, (d) there must be, between the two cases, identity of parties, identity of subject matter and identity of causes of action. The test of identity of causes of action lies not in the form of action but on whether the same facts or evidence would support and establish the former and present causes of action. Causes of action which are separate and independent of each other, although arising from the same contract, transaction or state of facts, may be sued separately or at one time, being no bar to subsequent actions on others.

4. **ID.; ID.; ID.; ID.; *LITIS PENDENTIA*; IDENTITY OF CAUSES OF ACTION; NOT PRESENT IN CASE AT BAR.** — We agree that when the respondent filed his letter-petition in PED Case No. 98-2231, the SICD had already acquired jurisdiction over the complaint of the petitioners in SEC Case No. 10-97-5778. However, the respondent's act of filing such letter-petition did not constitute forum shopping. We find no identity of causes of action or identity of rights asserted by the parties in both cases. The petitioners, in SEC Case No. 10-97-5778, sought the nullification of the Notice for the Annual Stockholders' Meeting, the stockholders' meeting and organizational meeting held on September 22, 1997, on their claim that the holding of the same was in violation of the Corporation Code and the By-Laws of the petitioner corporation. In his answer to the petition, the respondent asserted the validity of the said meeting and prayed, by way of counterclaim, for the nullification of the October 20, 1997 meeting of the petitioners, and for damages. In contrast, the respondent alleged in his letter-petition in PED Case No. 98-2231 that the petitioners were engaged in fraudulent schemes, devices or misrepresentations in violation of the law, and SEC rules and regulations. The complainant Matsuura asked the PED to investigate the complaint and file the corresponding administrative, civil or criminal cases before the SEC, the proper court or body, for violation of the laws, rules or regulations administered and enforced by the SEC. The fact that the SICD has not yet resolved SEC Case No. 10-97-5778 does not constitute a bar to the resolution of PED Case No. 98-2231. *The proceedings in the said cases are*

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independent and separate of each other and may thus proceed separately.

5. **COMMERCIAL LAW; CORPORATION LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); POWER EXERCISED THROUGH PROSECUTION AND ENFORCEMENT DEPARTMENT (PED).**— Under Section 8 of PD No. 902-A, as amended, the SEC, through the PED, is vested with authority to investigate, either *motu proprio* or upon complaint, any act or omission, fraudulent schemes, devices or misrepresentations in violation of any law, rules or regulations, administered and enforced by the SEC, and to file and prosecute appropriate civil or criminal cases upon a *prima facie* finding of violation of such laws, rules or regulations. However, Section 8 of P.D. No. 902-A, as amended, has already been repealed, as provided for in Section 76 of Rep. Act No. 8799. Thus, under the new law, the PED ceased to exist. However, the SEC retains jurisdiction to continue with its investigation of the letter-petition of respondent Matsuura.

6. **ID.; ID.; ID.; RULES OF PROCEDURE; MATTERS NOT PLEADED IN ANSWER DEEMED WAIVED.**— If the respondent failed to raise some matters in his answer to the amended petition of the petitioners, he would have waived the said defenses. As provided for in Section 13, Rule IV of the 1993 SEC Revised Rules of Procedure, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

7. **ID.; ID.; SECURITIES REGULATION CODE; POWERS AND FUNCTIONS OF THE SEC TRANSFERRED TO THE REGIONAL TRIAL COURT (RTC).**— While this case was pending in this Court, Republic Act No. 8799, otherwise known as the Securities Regulation Code, took effect on August 8, 2000. Among the powers and functions of the SEC which were transferred to the RTC under Section 5.2 thereof include the following: (a) jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; (b) the approval, rejection, suspension, revocation or requirement for registration statements, and registration

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and licensing applications; (c) the regulation, investigation or supervision of the activities of persons to ensure compliance; (d) the supervision, monitoring, suspension or take over the activities of exchanges, clearing agencies and other SROs; (e) the imposition of sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto; (f) the issuance of cease-and-desist orders to prevent fraud or injury to the investing public; (g) the compulsion of the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; and, (h) the exercise of such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

8. **ID.; ID.; ID.; INTERIM RULES; ON INTRA-CORPORATE CONTROVERSIES; MATTERS ON CIVIL CASES THE RTC IS EMPOWERED TO HEAR.—** Under Section 1, Rule 1, of the *Interim* Rules of Procedure Governing Intra-Corporate Controversies under Rep. Act No. 8799, the RTC is empowered to hear civil cases involving the following: (1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association; (2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; (3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations; (4) Derivative suits; and (5) Inspection of corporate books. (b) *Prohibition against nuisance and harassment suits.*– Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following: (1) The extent of the shareholding or interest of the initiating stockholder

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or member; (2) Subject matter of the suit; (3) Legal and factual basis of the complaint; (4) Availability of appraisal rights for the act or acts complained of; and (5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought. In case of nuisance or harassment suits, the court may, *motuproprio* or upon motion, forthwith dismiss the case.

APPEARANCES OF COUNSEL

Del Prado Diaz & Associates Law Offices for petitioners.
Carolina Tanjutco for private respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition filed "under Rule 45 and/or Rule 65 of the 1997 Revised Rules of Civil Procedure" of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 49930 and the Resolution denying the motion for reconsideration thereon.

The Antecedents

On October 1, 1997, herein petitioners, Manuel L. Morato, Antonio L. Tan, Jr., Jose Thomas D. Beldia, Truman E. Becker, T.F. Ventures, Inc., and Atty. Dennis G. Manicad filed a petition with the Securities and Exchange Commission (SEC) against Alexander Poblador, Romeo F. Gaza, Yusuke Fukuzumi, Florence R. Valmonte, Virgilio R. Lazaga, Reza M. Arabpour, Ruben P. Jacinto and herein private respondent Yoshitsugu Matsuura, for declaration of nullity of stockholders' and directors' meetings and damages. The petition was docketed as SEC Case No. 10-97-5778 and referred to the Securities Investigation and Clearing

[1] Penned by Associate Justice (now Presiding Justice) Cancio C. Garcia, with Associate Justices Bernardo Ll. Salas (retired) and Candido V. Rivera (retired), concurring.

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Department (SICD) of the SEC for investigation and resolution. The petition was later amended to include a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.[2]

The petitioners alleged therein, *inter alia*, that when petitioner T.F. Ventures, Inc. was organized and registered on April 25, 1984, the following were the stockholders and the amount of their respective subscriptions:

Name	Number of Shares	Amount of Subscription
MANUEL MORATO	23,500	2,350,000.00
ANTONIO L. TAN, JR.	26,500	2,650,000.00
JOSE THOMAS BELDIA	5,000	500,000.00
ALEXANDER POBLADOR	5,000	500,000.00
TRUMAN BECKER	5,000	500,000.00
YOSHITSUGU MATSUURA	20,000	2,000,000.00
MASAO OGURA	15,000	1,500,000.00
Total	100,000	PHP10,000,000.00[3]

Petitioner Atty. Manicad was the corporate secretary of T.F. Ventures, Inc., having been appointed to the said office by the members of the board of directors of the said corporation on August 7, 1996. On October 8, 1996, the SEC approved the amended Articles of Incorporation of T.F. Ventures, Inc. increasing the authorized capitalization from ₱10,000,000 to ₱100,000,000, as well as the subscription of Hiroshi Tanaka to ₱10,000,000 worth of shares. As of the said date, the total number of shares issued and outstanding was 500,000, at ₱100.00/per share, totaling ₱50,000,000. The stockholders on record and the number of shares subscribed by them, respectively, were as follows:

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[2] *Rollo*, pp. 52-70.

[3] *Id.* at 55.

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Name	Number of Shares	Worth
MANUEL MORATO	100,000	10,000,000.00
ANTONIO L. TAN, JR.	150,000	15,000,000.00
JOSE THOMAS BELDIA	25,000	2,500,000.00
ALEXANDER POBLADOR	25,000	2,500,000.00
TRUMAN BECKER	25,000	2,500,000.00
YOSHITSUGU MATSUURA	50,000	5,000,000.00
MASAO OGURA	25,000	2,500,000.00
HIROSHI TANAKA	100,000	10,000,000.00
Total	500,000	PHP50,000,000.00[4]

Following a dispute by and between the herein petitioners, who constituted the majority of the stockholders and directors of the petitioner corporation and respondent Matsuura, the latter had all the corporate records carted away from Suite 2112 Makati Prime Citadel Building, P. Burgos Street, Makati City, then the principal office of the corporation, to an unknown location. The said office was then padlocked and abandoned. The petitioners, thereafter, secured a search warrant against respondent Matsuura, his wife, and Jacinto, and were able to recover a substantial bulk of the petitioner corporation's records. Thereafter, in a Board Resolution dated April 30, 1997, respondent Matsuura and Jacinto were charged with qualified theft. The Board of Directors of the petitioner corporation then transferred the principal office address to its Project Site, the Delta Sunrise Hotel, at 7835 Makati Ave., corner Eduque St., Makati City.

In September 1997, petitioners Morato, Becker and Beldia received a notice of stockholders' meeting from respondent Atty. Poblador, set at 10:00 a.m. on September 22, 1997. Atty. Poblador had apparently illegally assumed and maliciously represented himself as corporate secretary without proper authority from the Board of Directors.

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[4] *Id.* at 54.

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Stockholders, petitioners Tan[5] and Ogura,[6] who each owned a substantial number of shares of stock, were not formally notified of the said meeting.

Petitioners Becker and Beldia then wrote Atty. Poblador, directing him to desist and refrain from proceeding with his intended actions. The meetings of stockholders and directors were nevertheless conducted on September 22, 1997 at 10:00 a.m. and 2:00 p.m., respectively.

According to the petitioners, Atty. Poblador's act of calling such stockholders' meeting was illegal and unauthorized for the following reasons: (a) the Board of Directors of T.F. Ventures, Inc., by virtue of a Board Resolution dated August 7, 1996, had already appointed Atty. Manicad as the new corporate secretary effective on the said date; (b) respondent Matsuura, even if he was Chairman of the Board of the Directors, could not, on his own, call for a stockholders' meeting, as the authority to do so was vested in the president, petitioner Morato, or, in the event that no annual stockholders' meeting would be held on the 1st Tuesday of March, the Board of Directors as stated in the by-laws;[7] and, (c) the absence of the petitioner corporation's legitimate and existing stockholders on record negated the existence of a *quorum*.

According to the petitioners, the increase in the subscribed capital stock and issuance of the outstanding number of shares therefor without proper authority from the SEC was made by the petitioner corporation in violation of the Corporation Code and the Articles of Incorporation. The election of the Board of Directors during the said meeting was illegal, considering that, except for respondent Matsuura, the rest of the members of the Board of Directors elected in the said meeting were not even shareholders as appearing in the books of the corporation, and as certified by petitioner Atty. Manicad, the corporate secretary.

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[5] The holder of 150,000 shares worth ₱15,000,000.00.

[6] The holder of 25,000 shares worth ₱2,500,000.00.

[7] Sections 2 and 3, Article III, By-Laws of the petitioner T.F. Ventures, Inc.

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The petitioners prayed that, after due proceedings, judgment be rendered in their favor, *viz*:

A. Declaring the alleged NOTICE FOR ANNUAL STOCKHOLDERS' MEETING as well as the alleged "ANNUAL STOCKHOLDERS' MEETING" conducted by the Respondents on 22 September 1997 [at] 10:00 a.m. as NULL and VOID from the very beginning, including the proceedings made therein, to include but not limited to the sham ELECTION of the alleged Members of the Board of Directors and the appointment of the EXTERNAL AUDITOR;

B. Declaring the alleged "ORGANIZATIONAL MEETING" of the renegade Board of Directors conducted by the Respondents on 22 September 1997 at 2:00 p.m. as NULL and VOID from the very beginning, including all proceedings made therein, to include but not limited to the sham ELECTION of the alleged Officers of T.F. VENTURES, INC.;

C. Declaring any or all acts of the Respondents conducted or made at or proceeding from the alleged "ANNUAL STOCKHOLDERS' MEETING" conducted by the Respondents on 22 September 1997 at 10:00 [a.m.] and "ORGANIZATIONAL MEETING" of the renegade Board of Directors conducted by the Respondents on 22 September 1997 at 2:00 p.m. as NULL and VOID.[8]

The petitioners also prayed that the respondents be held, jointly and severally, liable to pay damages and attorney's fees, as follows:

a) the sum of ₱25,000,000.00 representing the consequential damages suffered by Petitioners;

b) the sum of ₱5,000,000.00 representing moral damages and the sum of ₱2,000,000.00 as and for exemplary damages;

c) attorney's fees in the amount of ₱200,000.00 and expenses of suit in an amount of not less than ₱100,000.00 plus interest thereof from the date of the judgment;

d) cost of suit; and

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[8] *Id.* at 67-68.

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e) interest on items (a) and (b) above from the date of filing of the Complaint until full payment thereof.[9]

Traversing the material allegations of the amended petition, respondent Matsuura maintained in his answer to the petition that the meeting of the stockholders on September 22, 1997 and the election of the members of the Board of Directors on the said date were valid. He alleged that the petitioners held their own renegade stockholders' meeting on October 20, 1997 without notifying him as Chairman of the Board. He further alleged that petitioner Tan, whose outstanding shares had been assigned and transferred in his favor as early as January 20, 1997, was present and participated in the said meeting. Respondent Matsuura also alleged that petitioner Tan, then acting as the treasurer, falsely certified in the Treasurer's Affidavit dated September 29, 1993 that of the increase of ₱90,000,000 in the authorized capital stock, ₱40,000,000 was fully paid by the stockholders. He alleged that the original treasurer's affidavit notarized on September 29, 1997 was replaced under the same Doc. No. 457 in order to reach the required minimum deposit and change the mode of payment of paid-in capital, from "cash" to "offset of liability," to enable the petitioners to gain control of the corporation at practically zero cash outlay. Thereafter, the "renegade board" headed by petitioner Morato and former stockholder and ex-treasurer petitioner Tan concocted another Board Resolution on April 24, 1997, authorizing the opening of a new and secret account, with petitioner Morato as the sole signatory for the purpose of cashing in loan proceeds from another bank. Previous to that, the respondent further contends that petitioner Tan had already committed several misappropriations of both money and property belonging to the petitioner corporation.

Respondent Matsuura, thus, interposed the following affirmative defenses:

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[9] *Id.* at 68.

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THE STOCKHOLDERS' MEETING HELD AT THE PRINCIPAL OFFICE ON SEPTEMBER 22, 1997 IS VALID, LEGAL AND MUST SUBSIST, THE SAME HAVING BEEN CONDUCTED WITH DUE NOTICE TO ALL PARTIES CONCERNED INCLUDING PAID AND UNPAID STOCKHOLDERS OF RECORD.

IN COMPARISON, THE STOCKHOLDERS' MEETING OF OCTOBER 20, 1997 SPEARHEADED BY COMPLAINANTS, WHO DID NOT PAY THEIR SUBSCRIPTION, AND WITHOUT NOTICE TO THE CHAIRMAN AND THE PAID-UP SUBSCRIBERS, IS PATENTLY ILLEGAL, VOID AND WITHOUT EFFECT.

COROLLARILY, ALL BOARD RESOLUTIONS PASSED BY THE UNPAID SUBSCRIBERS AMONG THEMSELVES, WITHOUT NOTICE TO THE CHAIRMAN AND THE OFFICIAL CORPORATE SECRETARY ON RECORD, ARE VOID AND UNENFORCEABLE. THEREFORE, THE SAME MUST BE STRICKEN OUT.

MOST IMPORTANTLY, THE APPROVAL FOR THE APPLICATION FOR INCREASED CAPITALIZATION IN THE AMOUNT OF P100,000,000.00 MUST BE RECALLED FOR FAILURE OF CONSIDERATION (OF STOCKHOLDERS TO PAY THEIR SUBSCRIPTIONS).[10]

The respondent prayed that, after due proceedings, judgment in his favor be rendered as follows:

a) To UPHOLD the VALIDITY of the stockholders' meeting held on September 22, 1997 at the principal office of T.F. VENTURES, INC., and, consequently, lift the temporary restraining order initially granted to complainants.

b) To DECLARE the stockholders' meeting subsequently held by complainants on October 20, 1997 as NULL AND VOID, as well as all Board Resolutions certified by one Dennis Manicad as "Corporate Secretary" for being false, sham and consisting of *ultra vires* acts.

c) To RECALL and NULLIFY the approval of application for increased capitalization in the amount of ₱100,000,000.00 due to failure of consideration.

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[10] *Id.* at 84.

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d) To ISSUE a TEMPORARY RESTRAINING ORDER against the private complainants from further issuing board resolutions and any alleged corporate acts in behalf of T.F. VENTURES, INC. and, thereafter, to issue a permanent WRIT OF PRELIMINARY INJUNCTION against complainants.

e) To order complainants to pay MORAL DAMAGES in an amount not less than ONE MILLION PESOS, Actual or Compensatory and Exemplary Damages as may be determined by the Honorable Investigator, plus interests.

f) To order private complainants/petitioners to pay ATTORNEY'S FEES amounting to ₱200,000.00 and LITIGATION EXPENSES amounting to ₱100,000.00, plus interest.[11]

On October 14, 1997, Hearing Officer Manolito S. Soller issued an Order granting a temporary restraining order prayed for by the petitioner.[12] On November 12, 1997, an Order was issued granting the writ of preliminary injunction prayed for by the petitioners on a bond of ₱400,000.[13]

In the meantime, respondent Matsuura wrote Director Otillo C. San Diego of the Examiners and Appraisers Department of the SEC, requesting for an examination of the basis for the capital increase of T.F. Ventures, Inc. from ₱10,000,000 to ₱100,000,000, alleging the commission of devices, schemes and criminal acts. Thus:

The undersigned Chairman of the Board of T.F. VENTURES, INC., in his capacity as such and as a stockholder, with the assistance of Counsel, most respectfully requests that a reexamination of the basis for capital increase of T.F. VENTURES, INC. be conducted in view of several anomalous transactions and spurious documents that were unearthed only recently. The planned increase of the authorized shares to ₱100 Million was approved in principle sometime in 1993, however, since only the undersigned and Mr. Masao Ogura paid their increased shares, the plan was aborted.

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[11] *Id.* at 85-86.

[12] Annex "C", Petition.

[13] Annex "D", *Id.*

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Whatever advances were given by the Japanese investors, including Mr. Tanaka later on, were agreed to be treated as credit of T.F. VENTURES, INC. It was discovered lately that a recommendation for approval by Mr. Remigio Santiago was issued on August 3, 1996, a copy is attached hereto as ANNEX "A", used as basis in approving the ₱100 Million capital increase.

Relative to [the] above recommendation, your attention is invited to verify the following documents and bank certifications, to wit:

1. TREASURER'S AFFIDAVIT dated September 29, 1993 signed by Antonio Tan, Jr. who originally attested that out of the increased capital stock of ₱90 Million, ₱40 Million has been subscribed and fully paid "*by way of cash,*" a copy is attached hereto as ANNEX "A-1". Undersigned was led to believe that all stockholders subscribing to additional shares would, indeed, pay in cash, at the time the Memorandum of Agreement was drawn. However, Mr. Tan erased and substituted the same Affidavit later on to reflect that said increase in capital stock "*has been actually paid-in by way of offset of liabilities,*" the latter words having been *superimposed,* a copy is attached hereto as ANNEX "A-2", under the same notarial register.

2. In the second paragraph of ANNEX "A," on Verification and Comments, it was stated therein that "*cash received from the said subscribers were deposited on various dates with the corporation's accounts with China Banking Corporation under SA # 103-07033-1-8 and (Dollar) $ account # 103311-1; and United Coconut Planters bank under SAQ # 103-123370-5, $ account # 01-103-300364-0 and Unified Trust Placement.*" Upon verification with China Bank, however, said Dollar Acct # 103311-1 is non-existent, *the only dollar account is #103-703171-1,* as shown in the attached letter of the undersigned, ANNEX "A-3" and the Certification of China Bank as ANNEX "A-4".

3. Moreover, in the same verification, the mention of "*Unified (sic) Trust Placement*" pertained to ₱20 Million proceeds of loan from Masao Ogura for use in company operations/construction, as shown in UCPB bank certification attached hereto as ANNEX "A-5". The rights of Masao Ogura having been transferred to Yusuke Fukuzumi, the latter filed a criminal complaint for ESTAFA against the stockholders who claimed aforesaid

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proceeds as their "*paid in capital.*" A copy of the demand letter of Mr. Fukuzumi and the memorandum of criminal investigation is (*sic*) attached hereto as ANNEXES "A-6" and "A-7".

4. In furtherance of their interest, then Treasurer Antonio Tan, Jr. coerced a newly hired accountant to switch records, reclassify account names from "*Buyers Deposit*" to "*Deposit for Future Subscriptions*" and sign spurious certificate to make it appear that the unpaid subscribers have paid their subscriptions out of "*Advances from Stockholders*" for the purpose of getting SEC approval. However, knowing the criminal consequence of his acts, said Accountant Mr. Nestor Pangan, swore under oath that he executed the false certificate under threat and intimidation, a copy of which is attached hereto as ANNEX "B" and the admittedly false certificate submitted to this Office as ANNEX "B-1". And finally, the approval by SEC on October 8, 1996 of the capital increase based on the admittedly spurious documents, is attached hereto as ANNEX "B-2", described in paragraph 17 of said Accountant's Affidavit.

5. Verily, then Treasurer Antonio Tan [Jr.] filed a G.I.S. "*as of September 1996*" declaring ₱10 Million authorized capital stock, adopting the same stand as the last G.I.S. filed on March 1, 1994, except that he falsely claimed full payment of subscribed capital stock and he miscomputed the shares of Alexander Poblador by placing ₱500,000, instead of only ₱300,000. Notably, the 1996 G.I.S. was notarized on September 22, 1997 and filed only on September 23, 1997, together with the 1997 G.I.S. declaring ₱100 Million authorized capital, purposely to defeat the general stockholders' meeting called on September 22, 1997 by the Corporate Secretary Alexander Poblador with due notice to all stockholders concerned. A copy of the March 1, 1994 G.I.S. is attached hereto as ANNEX "C", the September 1996 G.I.S. as ANNEX "C-1", and the 1997 G.I.S. as ANNEX "C-2".

6. Stressworthy is the fact that as of January 1997, then Treasurer Antonio Tan [Jr.] had already transferred *all* his shares to the undersigned, a copy of the Deed of Trust is attached hereto as ANNEX "D". Effectively therefore, he had no longer any personality to act as a Director of the corporation and the 1997 G.I.S. reflecting ₱100 Million capitalization is sham, illegal and void for lack of consideration; the same must be cancelled.

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WHEREFORE, after verification of the foregoing, it is most respectfully requested of this Honorable Office to SET ASIDE the approval of the ₱100 Million capital increase for failure of consideration, and REVERT to the *status quo*, which has an undisputed ₱10 Million authorized capital stock.[14]

The matter was docketed as *CSI Case No. 97-11-31*. The letter was later forwarded by the SEC to the Prosecution and Enforcement Department (PED) which redocketed the matter as *PED Case No. 98-2231*.

In a Letter[15] dated February 27, 1998 to then SEC Chairman Perfecto R. Yasay, Jr., petitioners Morato, Tan and Beldia, disclosed that they were not served any notice of the proceedings conducted in PED Case No. 98-2231. They stated that the issue of the sufficiency of the consideration of the increase in capital stock of the petitioner corporation had already been put in issue in SEC Case No. 10-97-5778. They contended that when respondent Matsuura raised the matter in his answer, he thereby resorted to forum shopping. The petitioners requested that the proceedings in PED Case No. 98-2231 be held in abeyance, considering that the SICD had acquired jurisdiction over their amended petition in SEC Case No. 10-97-5778 ahead of respondent Matsuura's letter-complaint.

Chairman Yasay thereafter sent a Reply Letter[16] dated March 13, 1998 to petitioners Morato, Tan and Beldia, informing them that both cases, SEC Case No. 10-97-5778 and PED Case No. 98-2231, could proceed independently of each other. Yasay reasoned that the issue in the former case involved the validity of the notice and stockholders' meeting of T.F. Ventures, Inc. and the organizational meeting of the members of the Board of Directors, while the latter case involved the alleged anomalous transactions

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[14] Annex "G", *Rollo*, pp. 103-105.

[15] Annex "1", Comment.

[16] Annex "1-A", *Id.*

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and spurious documents used in the increase of the corporation's capital stock. He added that under Section 8 of Presidential Decree (PD) No. 902-A, the PED had the exclusive authority to investigate the matter before it for purposes of filing and prosecuting the corresponding cases for violation of the Corporate Code, the Revised Penal Code, and the rules and regulations enforced by the SEC.[17]

Petitioners Morato, Tan and Beldia filed a Motion to Suspend Proceedings and/or Consolidation of Cases[18] in PED Case No. 98-2231. They prayed that the PED suspend its investigation in the said case until after the proceedings in the SICD in SEC Case No. 10-97-5778 shall have been finally resolved; or, in the alternative, that the PED case be consolidated with SEC Case No. 10-97-5778 pending in the SICD. They alleged that the issue in SEC Case No. 10-97-5778 was a prejudicial question in PED Case No. 98-2231.

On April 27, 1998, Hearing Officer Atty. Simeon Badillo, Jr., issued an Order[19] denying the motion for lack of merit, ruling that the issue on prejudicial question had already been resolved by the SEC Chairman.

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[17] The third paragraph of Section 8 of Presidential Decree No. 902-A, as amended, reads:

The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the exclusive authority to investigate, on complaint or *motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules or regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission.

[18] Annex "H", Petition.

[19] Annex "I", Id.

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Petitioners Morato, Tan and Beldia then filed a petition for review on *certiorari* with the SEC *En Banc*, pursuant to Rule XV of the 1993 SEC Revised Rules of Procedure. The petition was denied in an Order dated September 11, 1998, where the following matters were declared by the SEC *En Banc*: (a) a petition for review on *certiorari* of an interlocutory order is a prohibited pleading under Section 5, Rule I of the Rules of Practice and Procedure before the PED; (b) the Hearing Officer did not commit any grave abuse of discretion amounting to excess or lack of jurisdiction in denying the motion of the petitioners to suspend the proceedings in PED Case No. 98-2231; and, (c) respondent Matsuura was not guilty of forum shopping as there was no identity of the issues or causes of action involved in the two cases pending before the SICD and PED, respectively. The motion for reconsideration thereafter filed was, likewise, denied for lack of merit in a Resolution dated November 24, 1998.

The petitioners elevated the matter to the CA by way of a petition for review under Rule 43 of the Rules of Court, on the ground that the SEC erred in (a) disregarding the rules on counterclaim and jurisdiction relative to the issue of increase in capitalization; (b) not finding the respondent guilty of forum shopping; and, (c) denying their motion for suspension and/or consolidation.

On October 13, 1999, the CA rendered a Decision[20] dismissing the petition for lack of merit. The CA ratiocinated that, in the first place, the petition for *certiorari* filed before the SEC *En Banc* is a prohibited pleading under the 1993 SEC Revised Rules on Procedure. Secondly, the main prayer in SEC Case No. 10-97-5778 was the annulment of the notice of annual stockholders' meeting, the resulting stockholders' meeting pursuant to the said notice, and all corporate acts thereafter taken by the respondent Matsuura and the officers elected in the said meeting. On the other hand, the main prayer of respondent

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[20] Annex "A", Petition.

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Matsuura in PED Case No. 98-2231 was the recall and nullification, for failure of consideration, of the approval of the petitioners' application for increased capitalization from ₱10,000,000 to ₱100,000,000. The appellate court held that as the two pending cases are poles apart, the resolution of one case would not affect the proceedings and outcome of the other.

The petitioners' motion for reconsideration of the said decision was denied by the appellate court in its Resolution dated January 11, 2000.[21]

Hence, this petition.

The petitioners assail the decision and resolution of the CA, contending as follows:

I

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT DECLARING THAT PRIVATE RESPONDENT IS GUILTY OF FORUM SHOPPING.

II

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED AND ABUSED (*SIC*) DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISREGARDING THE SETTLED RULE ON COUNTERCLAIM *VIS A VIS* THE QUESTION OF JURISDICTION IN A GIVEN CASE.

III

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE MOTION FOR SUSPENSION AND/OR CONSOLIDATION FILED BEFORE THE PUBLIC RESPONDENT IS PROPER AND PROCEDURALLY SANCTIONED.[22]

We note that the petitioners designated their recourse to this Court as an "appeal by way of petition for review under

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[21] *Rollo*, p. 51.

[22] *Id.* at 21-22.

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Rule 45 and/or Rule 65 of the 1997 Rules of Civil Procedure, as amended."[23] We find the same to be highly irregular. The petitioners are mandated to state categorically in their petition the Rule under which the same is filed, and not merely leave the matter for the Court's determination. It must be borne in mind that the remedies under Rules 45 and 65 of the Rules of Court cannot be interchanged, for as we ruled in *National Irrigation Administration v. Court of Appeals*:[24]

> The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure. Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[25]

Prescinding from the petitioners' procedural lapse, we shall treat the petition as one filed under Rule 45 of the Rules of Court.

The petitioners posit that in filing a letter-petition in PED Case No. 98-2231 and raising the issue of sufficiency of consideration for the petitioner corporation's increase in capital stock despite the pendency of SEC Case No. 10-97-5778 before the SICD, respondent Matsuura thereby engaged in forum shopping. The petitioners point out that the respondent raised the same issue in his answer to their complaint and, in so doing, submitted the issue to the SICD for resolution, to the exclusion of the PED in PED Case No. 98-2231 which was filed much later with the SEC. The petitioners further contend that the SICD had already acquired jurisdiction over SEC Case No. 10-97-5778 when the respondent filed his letter-petition

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[23] *Id.* at 17.

[24] 318 SCRA 255 (1999).

[25] *Id.* at 264.

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in PED Case No. 98-2231. Hence, the petitioners conclude that the proceedings in the latter case should be suspended, pending the resolution of the SICD case.

We rule against the petitioners.

We agree that when the respondent filed his letter-petition in PED Case No. 98-2231, the SICD had already acquired jurisdiction over the complaint of the petitioners in SEC Case No. 10-97-5778. However, the respondent's act of filing such letter-petition did not constitute forum shopping. There is forum shopping where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. There is *litis pendentia* if the following requisites are present: (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of the rights asserted and relief prayed for, the relief being founded on the same facts; and, (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration. The requisites of *res judicata*, on the other hand, are as follows: (a) there must be a final judgment or order; (b) the court rendering the same must have jurisdiction over the subject matter and the parties; (c) the judgment or order must be on the merits; and, (d) there must be, between the two cases, identity of parties, identity of subject matter and identity of causes of action.[26] The test of identity of causes of action lies not in the form of action but on whether the same facts or evidence would support and establish the former and present causes of action.[27] Causes of action which are separate and independent of each other, although arising from the same contract, transaction or state of facts, may be sued separately or at one time, being no bar to subsequent actions on others.[28]

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[26] *Gallardo-Corro v. Gallardo*, 350 SCRA 568 (2001).

[27] *Cagayan de Oro Coliseum, Inc. v. Court of Appeals*, 320 SCRA 731 (1999).

[28] *Nabus v. Court of Appeals*, 193 SCRA 732 (1991).

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In this case, SEC Case No. 10-97-5778 is pending before the SICD, which has exclusive jurisdiction to investigate and resolve intra-corporate disputes. The respondent's letter-petition, on the other hand, was referred by the SEC to the PED, docketed as PED Case No. 98-2231,[29] and is pending before the Prosecution and Enforcement Department of the SEC. We find no identity of causes of action or identity of rights asserted by the parties in both cases.

Section 8 of P.D. No. 902-A, as amended, provides:

SECTION 6. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the exclusive authority to investigate, on complaint or *motu propio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission.

Prosecution under this Decree or any Act, Law, Rules and Regulations enforced and administered by the Commission shall be without prejudice to any liability for violation of any provision of the Revised Penal Code.

Under the said provision, the SEC, through the PED, is vested with authority to investigate, either *motu proprio* or upon complaint, any act or omission, fraudulent schemes, devices or misrepresentations in violation of any law, rules or regulations, administered and enforced by the SEC, and to file and prosecute appropriate civil or criminal cases upon a *prima facie* finding of violation of such laws, rules or

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[29] Formerly CSI Case No. 97-11-3.

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regulations. The petitioners, in SEC Case No. 10-97-5778, sought the nullification of the Notice for the Annual Stockholders' Meeting, the stockholders' meeting and organizational meeting held on September 22, 1997, on their claim that the holding of the same was in violation of the Corporation Code and the By-Laws of the petitioner corporation. In his answer to the petition, the respondent asserted the validity of the said meeting and prayed, by way of counterclaim, for the nullification of the October 20, 1997 meeting of the petitioners, and for damages. In contrast, the respondent alleged in his letter-petition in PED Case No. 98-2231 that the petitioners were engaged in fraudulent schemes, devices or misrepresentations in violation of the law, and SEC rules and regulations.[30] The complainant Matsuura asked the PED to investigate the complaint and file the corresponding administrative, civil or criminal cases before the SEC, the proper court or body, for violation of the laws, rules or regulations administered and enforced by the SEC. The fact that the SICD has not yet resolved SEC Case No. 10-97-5778 does not constitute a bar to the resolution of PED Case No. 98-2231. *The proceedings in the said cases are independent and separate of each other and may thus proceed separately.* As correctly ruled by the SEC *En Banc*:

Clearly, the PED had jurisdiction to investigate said increase in capitalization allegedly with failure of consideration and to determine whether or not the corporation and its responsible officers are liable, criminally and administratively, for violating the Corporation Code. The investigation conducted by the PED

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[30] The respondent raised the following matters in his letter-petition:

(a) the deceitful affidavit of respondent Tan; (b) China Bank Account No. 103311-1 in which the cash received from such cashier is non-existent; (c) the execution of spurious certificates by respondent Tan and the coercion by the said respondent of a newly-hired accountant to switch records and reclassify account names; (d) the capital increase is based on spurious documents; and, (e) the 1997 G.I.S. reflecting the ₱100,000,000 capitalized, *i.e.*, sham, illegal and void.

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Hearing Officer Badillo in PED Case No. 98-2231 can proceed independently from the SICD case SEC Case No. 10-97-5778 as the issues to be resolved are different. Whatever findings that may result from said investigation may or may not result to the filing of the appropriate civil and criminal action before the proper courts or tribunal; and may, likewise, result to the suspension or revocation of the corporation's certificate of registration if the allegations of failure of consideration in the increase in capitalization is found to be true. These are all within the exclusive jurisdiction of the PED.[31]

The ruling of the SEC *En Banc* is an affirmation of the following reply of Chairman Yasay:

In this regard, please be informed that the issue under SICD Case No. 10-97-5778 which calls for the declaration of the alleged Notice for Annual Stockholders' Meeting and the Annual Stockholders' Meeting and Organizational Meeting of the Board of Directors conducted on September 22, 1997 as NULL and VOID, is an intra-corporate dispute which falls under the jurisdiction of the SICD, while the investigation being conducted by the PED is the alleged anomalous transaction and spurious documents used in the increase in capital of T.F. Ventures, Inc., which is separate and distinct from each other.

Be advised further that under PD 902-A, as amended, "the Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the *exclusive authority to investigate, on complaint or motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their partnerships or of other associations, (*sic*) or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission, to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate case, file the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules regulations (*sic*) administered and enforced by the Commission;

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[31] *Rollo*, pp. 118-119.

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and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission."

In view thereof, the PED, pursuant to the mandate of the law, can proceed with the investigation, considering that the issues are different from the ones raised in the SICD case.[32]

It is true that in his answer with counterclaim in SEC Case No. 10-97-5778, the respondent raised the matter of the sufficiency of consideration for the increase in the petitioner corporation's capitalization. He even alleged that the petitioners were engaged in schemes and devices, and were guilty of culpable acts and omissions in violation of pertinent rules and laws. However, such allegation was made only for the purpose of defending the legality of the September 22, 1997 stockholders' meeting and the election of the Board of Directors, as well as the nullity of the October 20, 1997 meeting spearheaded by the petitioners. By so doing, the respondent did not thereby submit the matters complained of in his letter-petition in PED Case No. 98-2231 to the SICD for resolution, since the latter has no jurisdiction to investigate and resolve the same, or prosecute those guilty of such violations. In any event, if the respondent failed to raise such matters in his answer to the amended petition of the petitioners, he would have waived the said defenses. As provided for in Section 13, Rule IV of the 1993 SEC Revised Rules of Procedure, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.[33]

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[32] *Id.* at 239.

[33] Section 13. *Defenses and Objections Not Pleaded Deemed Waived.*- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the (1) failure to state the cause of action which may be alleged in a later pleading, if one is permitted by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of in accordance with the provisions of Section 20 of this Rule in the light of any evidence which may have been received. Whenever it appears that the Commission has no jurisdiction over the subject matter, the Hearing Officer shall dismiss the action.

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We note that while this case was pending in this Court, Republic Act No. 8799, otherwise known as the Securities Regulation Code, took effect on August 8, 2000. Section 5.2 of the law provides:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

Among the powers and functions of the SEC which were transferred to the RTC include the following: (a) jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; (b) the approval, rejection, suspension, revocation or requirement for registration statements, and registration and licensing applications; (c) the regulation, investigation or supervision of the activities of persons to ensure compliance; (d) the supervision, monitoring, suspension or take over the activities of exchanges, clearing agencies and other SROs; (e) the imposition of sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto; (f) the issuance of cease-and-desist orders to prevent fraud or injury to the investing public; (g) the compulsion of the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; and, (h) the exercise of such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

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Under Section 1, Rule 1, of the *Interim* Rules of Procedure Governing Intra-Corporate Controversies under Rep. Act No. 8799, the RTC is empowered to hear civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

(b) *Prohibition against nuisance and harassment suits.*- Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;

(2) Subject matter of the suit;

(3) Legal and factual basis of the complaint;

(4) Availability of appraisal rights for the act or acts complained of; and

(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

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However, Section 8 of P.D. No. 902-A, as amended, has already been repealed, as provided for in Section 76 of Rep. Act No. 8799:

> SEC. 76. *Repealing Clause*.- The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A, as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof, inconsistent with any provision of this Code are hereby repealed or modified accordingly.

Thus, under the new law, the PED ceased to exist. However, the SEC retains jurisdiction to continue with its investigation of the letter-petition of respondent Matsuura.

When Rep. Act No. 8799 took effect, SEC Case No. 10-97-5778 had not yet been submitted for decision by the SEC. Hence, the said case should be transferred to the RTC of Makati City, to be raffled to the appropriate branch thereof assigned to try such cases. Despite the repeal of Section 8 of P.D. No. 902-A and the abolition of the PED, the SEC may continue with its investigation of the letter-petition of respondent Matsuura.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED*. The Decision of the Court of Appeals dated October 13, 1999 and the Resolution dated January 11, 2000 are *AFFIRMED* with *MODIFICATIONS*. Pursuant to Section 5.2 of Republic Act No. 8799, the Securities and Exchange Commission is hereby *DIRECTED* to transfer SEC Case No. 10-97-5778 to the Regional Trial Court of Makati City. The SEC may continue with its investigation of the letter-petition of respondent Matsuura formerly docketed as PED Case No. 98-2231.

SO ORDERED.

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