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SECOND DIVISION

[G.R. No. 206038. January 25, 2017]

MARY E. LIM, represented by her attorney-in-fact, REYNALDO V. LIM, *petitioner, vs.* **MOLDEX LAND, INC., 1322 ROXAS BOULEVARD CONDOMINIUM CORPORATION, and JEFFREY JAMINOLA, EDGARDO MACALINTAL, JOJI MILANES, and CLOTHILDA ANNE ROMAN, in their capacity as purported members of the board of directors of 1322 Golden Empire Corporation,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PETITION FOR REVIEW ON *CERTIORARI* IS AN APPEAL FROM THE RULING OF A LOWER TRIBUNAL ON PURE QUESTIONS OF LAW, AND ONLY IN EXCEPTIONAL CIRCUMSTANCES THAT THE COURT ADMIT AND REVIEW QUESTIONS OF FACT.—** It has been consistently held that only pure questions of law can be entertained in a petition for review under Rule 45 of the Rules of Court. In *Century Iron Works, Inc. v. Banas*, the Court held: A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.

2. **ID.; ID.; ID.; PURSUANT TO A.M. NO. 04-9-07-SC, ALL DECISIONS AND FINAL ORDERS IN CASES FALLING UNDER THE INTERIM RULES OF CORPORATE REHABILITATION AND INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES SHALL BE APPEALABLE TO THE COURT OF APPEALS.—** Pursuant to A.M. No. 04-9-07-SC, all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies shall be appealable to the CA through a petition for review under Rule 43 of the

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Rules of Court. Such petition shall be taken within fifteen (15) days from notice of the decision or final order of the RTC. In turn, Rule 43 governs the procedure for appeals from judgments or final orders of quasi-judicial agencies to the CA, whether it involves questions of fact, of law, or mixed questions of fact and law. Nevertheless, a party may directly file a petition for review on *certiorari* before the Court to question the judgment of a lower court, especially when the issue raised is purely of law and is one of novelty.

3. MERCANTILE LAW; CORPORATION CODE; MEMBERSHIP IN A NON-STOCK CORPORATION AND ALL RIGHTS ARISING THEREFROM ARE PERSONAL AND NON-TRANSFERABLE, UNLESS THE ARTICLES OF INCORPORATION OR THE BY-LAWS OTHERWISE PROVIDES; CASE AT BAR.— Section 90 of the Corporation Code states that membership in a non-stock corporation and all rights arising therefrom are personal and non-transferable, unless the articles of incorporation or the by-laws otherwise provide. x x x Nothing in the records showed that the alleged transfer made by Lim was registered with the Register of Deeds of the City of Manila or was reported to the corporation. Logically, until and unless the registration is effected, Lim remains to be the registered owner of the condominium unit and thus, continues to be a member of Condocor. Moreover, even assuming that there was a transfer by virtue of the Deed of Assignment, the Confirmatory Special Power of Attorney executed later by Lim, wherein she reiterated her membership in Condocor and constituted Reynaldo V. Lim as her true and lawful Attorney-in-Fact, strengthened the fact that she still owns the condominium unit and that there has been no transfer of ownership over the said property to her nephew, but only a mere assignment of rights to the latter. As held by the Court in *Casabuena v. CA*, at most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise. Had it been otherwise, Reynaldo V. Lim himself would have questioned and objected to the granting of the special power of attorney, and would have insisted that he was really the owner of the condominium unit.

4. ID.; ID.; STOCKHOLDERS' OR MEMBERS' MEETING; REQUIREMENTS; ANY ACT OR TRANSACTION MADE DURING A MEETING WITHOUT QUORUM IS RENDERED

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OF NO FORCE AND EFFECT, THUS, NOT BINDING ON THE CORPORATION OR PARTIES CONCERNED.— In corporate parlance, the term "meeting" applies to every duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose, or the transaction of business of a common interest. Under Philippine corporate laws, meetings may either be regular or special. A stockholders' or members' meeting must comply with the following requisites to be valid: 1. The meeting must be held on the date fixed in the By-Laws or in accordance with law; 2. Prior written notice of such meeting must be sent to all stockholders/members of record; 3. It must be called by the proper party; 4. It must be held at the proper place; and 5. Quorum and voting requirements must be met. Of these five (5) requirements, the existence of a quorum is crucial. Any act or transaction made during a meeting without quorum is rendered of no force and effect, thus, not binding on the corporation or parties concerned.

5. **ID.; ID.; ID.; QUORUM; FOR STOCK CORPORATIONS, THE QUORUM IS BASED ON THE NUMBER OF OUTSTANDING VOTING STOCKS WHILE FOR NON-STOCK CORPORATIONS, ONLY THOSE WHO ARE ACTUAL, LIVING MEMBERS WITH VOTING RIGHTS SHALL BE COUNTED IN DETERMINING THE EXISTENCE OF QUORUM.—** Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks* while for non-stock corporations, only those who are *actual, living members with voting rights* shall be counted in determining the existence of a quorum. To be clear, the basis in determining the presence of quorum in non-stock corporations is the numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation. The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members. To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein.

6. **ID.; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); CONDOMINIUM CORPORATION; THE CONDOMINIUM CORPORATION SHALL CONSTITUTE THE**

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MANAGEMENT BODY OF THE CONDOMINIUM PROJECT.— Matters involving a condominium are governed by Republic Act No. 4726 (*Condominium Act*). Said law sanctions the creation of a condominium corporation which is especially formed for the purpose of holding title to the common areas, including the land, or the appurtenant interests in such areas, in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. In relation thereto, Section 10 of the same law clearly provides that the condominium corporation shall constitute the management body of the project. Membership in a condominium corporation is limited only to the unit owners of the condominium project. This is provided in Section 10 of the Condominium Act x x x Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, a corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are not inconsistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project.

7. **ID.; ID.; ID.; LAW AND JURISPRUDENCE DICTATE THAT OWNERSHIP OF A UNIT ENTITLES ONE TO BECOME A MEMBER OF A CONDOMINIUM CORPORATION; CASE AT BAR.—** There is no provision in P.D. No. 957 which states that an owner-developer of a condominium project cannot be a member of a condominium corporation. Section 30 of P.D. No. 957 determines the purposes of a homeowners association — to promote and protect the mutual interest of the buyers and residents, and to assist in their community development. A condominium corporation, however, is not just a management body of the condominium project. It also holds title to the common areas, including the land, or the appurtenant interests in such areas. Hence, it is especially governed by the Condominium Act. Clearly, a homeowners association is different from a condominium corporation. P.D. No. 957 does not regulate condominium corporations and, thus, cannot be applied in this case. *Sunset View* merely delineated the difference between a "purchaser" and an "owner," whereby the former could be considered an owner only upon full payment of the purchase price. The case merely clarified that not every purchaser of a

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condominium unit could be a shareholder of the condominium corporation. x x x In *Sunset View*, the Court elucidated on what constitutes "separate interest," in relation to membership, as mentioned in the Condominium Act, x x x Thus, law and jurisprudence dictate that **ownership of a unit** entitles one to become a member of a condominium corporation. The Condominium Act does not provide a specific mode of acquiring ownership. Thus, whether one becomes an owner of a condominium unit by virtue of sale or donation is of no moment. It is erroneous to argue that the ownership must result from a sale transaction between the owner-developer and the purchaser. Such interpretation would mean that persons who inherited a unit, or have been donated one, and properly transferred title in their names cannot become members of a condominium corporation.

8. ID.; CORPORATION CODE; PROXIES; A CORPORATION CAN ACT ONLY THROUGH NATURAL PERSONS DULY AUTHORIZED FOR THE PURPOSE OR BY A SPECIFIC ACT OF ITS BOARD OF DIRECTORS; CASE AT BAR.— A corporation can act only through natural persons duly authorized for the purpose or by a specific act of its board of directors. Thus, in order for Moldex to exercise its membership rights and privileges, it necessarily has to appoint its representatives. Section 58 of the Corporation Code mandates: Section 58. Proxies. — Stockholders and **members may vote in person or by proxy in all meetings of** stockholders or **members.** x x x Relative to the above provision is Section 1, Article II of Condocor's By-Laws, which grants registered owners the right to designate any person or entity to represent them in Condocor, subject to the submission of a written notification to the Secretary of such designation. Further, the owner's representative is entitled to enjoy and avail himself of all the rights and privileges, and perform all the duties and responsibilities of a member of the corporation. The law and Condocor's By-Laws evidently allow proxies in members' meeting. While Moldex may rightfully designate proxies or representatives, the latter, however, cannot be elected as directors or trustees of Condocor. *First,* the Corporation Code clearly provides that a director or trustee must be a member of record of the corporation. *Further,* the power of the proxy is merely to vote. If said proxy is not a member in his own right, he cannot be elected as a director or proxy.

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APPEARANCES OF COUNSEL

Bodegon Estorninos Guerzon Borjie & Gojos for petitioner.
Quial Ginez Beltran & Yu for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 4, 2013 Decision[1] of the Regional Trial Court of Manila, Branch 24, *(RTC)* in Civil Case No. 12-128478, which dismissed the complaint against the respondents for 1] annulment of the July 21, 2012 general membership meeting of 1322 Roxas Boulevard Condominium Corporation *(Condocor)*; 2] annulment of election of Jeffrey Jaminola *(Jaminola)*, Edgardo Macalintal *(Macalintal)*, Joji Milanes *(Milanes)*, and Clothilda Anne Roman *(Roman)* (collectively referred to as "individual respondents") as members of the Board of Directors; and 3] accounting.

The primordial issue presented before the RTC, acting as a special commercial court, was the validity, legality and effectivity of the July 21, 2012 Annual General Membership Meeting and Organizational Meeting of Condocor's Board of Directors.[2]

Initially, the Court, in its Resolution[3] dated April 1, 2013, denied the petition for having availed of the wrong mode of appeal because Lim raised mixed questions of fact and law, which should have been filed before the Court of Appeals *(CA)*.[4] Upon motion for reconsideration, however, the Court granted it. Thereafter, the respondents filed their Comment[5] and Lim filed a Reply[6] thereto.

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[1] Penned by Judge Lyliha L. Abella-Aquino, *rollo*, pp. 32-35.

[2] *Id*. at 32.

[3] *Id*. at 84.

[4] *Id*.

[5] *Id*. at 112-156.

[6] *Id*. at 283-299.

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The Antecedents

Lim is a registered unit owner of 1322 Golden Empire Tower *(Golden Empire Tower)*, a condominium project of Moldex Land, Inc. *(Moldex)*, a real estate company engaged in the construction and development of high-end condominium projects and in the marketing and sale of the units thereof to the general public. Condocor, a non-stock, non-profit corporation, is the registered condominium corporation for the Golden Empire Tower. Lim, as a unit owner of Golden Empire Tower, is a member of Condocor.

Lim claimed that the individual respondents are *non-unit buyers*, but all are members of the Board of Directors of Condocor, having been elected during its organizational meeting in 2008. They were again elected during the July 21, 2012 general membership meeting.[7]

Moldex became a member of Condocor on the basis of its ownership of the 220 unsold units in the Golden Empire Tower. The individual respondents acted as its representatives.

On July 21, 2012, Condocor held its annual general membership meeting. Its Corporate secretary certified, and Jaminola, as Chairman, declared the existence of a quorum even though only 29 of the 108[8] unit buyers were present. The declaration of quorum was based on the presence of the majority of the voting rights, including those pertaining to the 220 unsold units held by Moldex through its representatives. Lim, through her attorney-in-fact, objected to the validity of the meeting. The objection was denied. Thus, Lim and all the other unit owners present, except for one, walked out and left the meeting.

Despite the walkout, the individual respondents and the other unit owner proceeded with the annual general membership meeting and elected the new members of the Board of Directors for 2012-2013. All four (4) individual respondents were voted as members of the board, together with three (3) others whose

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[7] *Id*. at 7.

[8] *Id.* at 55-58.

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election was conditioned on their subsequent confirmation.[9] Thereafter, the newly elected members of the board conducted an organizational meeting and proceeded with the election of its officers. The individual respondents were elected as follows:

1.	**Atty. Jeffrey Jaminola**	**- Chairman of the Board and President**
2.	**Ms. Joji Milanes**	**- Vice-President**
3.	**Ms. Clothilda Ann Roman**	**- Treasurer**
4.	**Mr. Edgardo Macalintal**	**- Corporate Secretary**
5.	Atty. Ma. Rosario Bernardo	- Asst. Corporate Secretary
6.	Atty. Mary Rose Pascual	- Asst. Corporate Secretary
7.	Atty. Jasmin Cuizon	- Asst. Corporate Secretary[10]

Consequently, Lim filed an election protest before the RTC. Said court, however, dismissed the complaint holding that there was a quorum during the July 21, 2012 annual membership meeting; that Moldex is a member of Condocor, being the registered owner of the unsold/unused condominium units, parking lots and storage areas; and that the individual respondents, as Moldex's representatives, were entitled to exercise all membership rights, including the right to vote and to be voted.[11] In so ruling, the trial court explained that the presence or absence of a quorum in the subject meeting was determined on the basis of the voting rights of all the units owned by the members in good standing.[12] The total voting rights of unit owners in good standing was 73,376 and, as certified by the corporate secretary, 83.33% of the voting rights in good standing were present in the said meeting, inclusive of the 58,504 voting rights of Moldex.[13]

Not in conformity, Lim filed the subject petition raising the following

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[9] *Id.* at 119.

[10] *Id*.

[11] *Id*. at 35.

[12] *Id.* at 33.

[13] *Id*. at 34.

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ISSUES

A. THE LOWER COURT GRAVELY ERRED IN RULING THAT IN DETERMINING THE PRESENCE OR ABSENCE OF QUORUM AT GENERAL OR ANNUAL MEMBERSHIP MEETINGS OF RESPONDENT CONDOCOR, EVEN NON-UNIT BUYERS SHOULD BE INCLUDED DESPITE THE EXPRESS PROVISION OF ITS BY-LAWS, THE LAW AND SETTLED JURISPRUDENCE;

B. THE LOWER COURT ERRED IN RULING THAT RESPONDENT MOLDEX IS A MEMBER OF RESPONDENT CONDOCOR AND THAT IT MAY APPOINT INDIVIDUAL RESPONDENTS TO REPRESENT IT THEREIN;

C. EVEN ASSUMING THAT RESPONDENT MOLDEX MAY BE A MEMBER OF RESPONDENT CONDOCOR, THERE IS STILL NO BASIS FOR IT TO BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR BECAUSE IT IS A JURIDICAL PERSON;

D. ASSUMING FURTHER THAT DESPITE BEING A JURIDICAL PERSON, IT MAY BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR, THERE IS NO LEGAL BASIS FOR THE LOWER COURT TO HOLD THAT RESPONDENT MOLDEX HAS AUTOMATICALLY RESERVED FOUR SEATS THEREIN; AND,

E. THE LOWER COURT GRAVELY ERRED IN RULING TO RECOGNIZE RESPONDENT MOLDEX AS OWNER-DEVELOPER HAVING FOUR RESERVED SEATS IN RESPONDENT CONDOCOR BOARD, AS SUCH RULING EFFECTIVELY ALLOWED THE VERY EVIL THAT PD 957 SOUGHT TO PREVENT FROM DOMINATING THE CONTROL AND MANAGEMENT OF RESPONDENT CONDOCOR TO THE GRAVE AND IRREPARABLE DAMAGE AND INJURY OF PETITIONER AND THE OTHER UNIT BUYERS, WHO ARE THE BONA FIDE MEMBERS OF RESPONDENT CONDOCOR.

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In sum, the primordial issues to be resolved are: 1) whether the July 21, 2012 membership meeting was valid; 2) whether Moldex can be deemed a member of Condocor; and 3) whether a non-unit owner can be elected as a member of the Board of Directors of Condocor.

Procedural Issues

The issues raised being purely legal, the Court may properly entertain the subject petition.

The subject case was initially denied because it appeared that Lim raised mixed questions of fact and law which should have been filed before the CA. After judicious perusal of Lim's arguments, however, the Court ascertained that a reconsideration of its April 1, 2013 Resolution[14] was in order.

It has been consistently held that only pure questions of law can be entertained in a petition for review under Rule 45 of the Rules of Court. In *Century Iron Works, Inc. v. Banas*,[15] the Court held:

> A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.
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> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> Thus, **the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine**

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[14] *Id*. at 84.

[15] 711 Phil. 576 (2013).

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the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[16] [Emphasis supplied]

Respondents argued that the initial denial of the petition was correct because Lim availed of the wrong mode of appeal. As the assailed judgment involved an intra-corporate dispute cognizable by the RTC, the appeal should have been filed before the CA, and not before this Court.

Doubtless, this case involves intra-corporate controversies and, thus, jurisdiction lies with the RTC, acting as a special commercial court. Section 5.2 of Republic Act No. 8799 *(R.A. No. 8799)*[17] effectively transferred to the appropriate RTCs jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A *(P.D. No. 902-A)*, to wit:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) **Controversies arising out of intra-corporate** or partnership **relations, between and among** stockholders, **members**, or associates; **between any or all of them and the corporation**, partnership or association **of which they are** stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

c) **Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations**. [Emphases supplied]

Pursuant to A.M. No. 04-9-07-SC, all decisions and final orders in cases falling under the Interim Rules of Corporate

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[16] *Id*. at 585-586.

[17] The Securities Regulation Code.

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Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies shall be appealable to the CA through a petition for review under Rule 43 of the Rules of Court. Such petition shall be taken within fifteen (15) days from notice of the decision or final order of the RTC. [18]

In turn, Rule 43 governs the procedure for appeals from judgments or final orders of quasi-judicial agencies to the CA, whether it involves questions of fact, of law, or mixed questions of fact and law. Nevertheless, a party may directly file a petition for review on *certiorari* before the Court to question the judgment of a lower court, especially when the issue raised is purely of law and is one of novelty.

Substantive Issues

Lim is still a member of Condocor

Respondents argued that Lim had no cause of action to file the subject action because she was no longer the owner of a condominium unit by virtue of a Deed of Assignment[19] she executed in favor of Reynaldo Valera Lim and Dianna Mendoza Lim, her nephew and niece.

Section 90 of the Corporation Code states that membership in a non-stock corporation and all rights arising therefrom are personal and non- transferable, unless the articles of incorporation or the by-laws otherwise provide. A perusal of Condocor's By-Laws as regards membership and transfer of rights or ownership over the unit reveal that:

> Membership in the CORPORATION is a mere appurtenance of the ownership of any unit in the CONDOMINIUM and may not therefore be sold, transferred or otherwise encumbered separately from the said unit. **Any member who sells or transfer his/her/its unit/s in the CONDOMINIUM shall automatically cease to be a**

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[18] A.M. No. 04-9-07-SC, Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission, September 14, 2004.

[19] *Rollo*, p. 274.

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member of the CORPORATION, the membership being automatically assumed by the buyer or transferee upon registration of the sale or transfer and ownership of the latter over the unit with the Register of Deeds for the City of Manila.[20] [Emphasis supplied.]

Likewise, the Master Deed of Condocor provides:

Section 11 : MORTGAGES, LIENS, LEASES, TRANSFERS OF RIGHTS AND SALE OF UNITS : All transactions involving the transfer of the ownership or occupancy of any UNIT, such as sale, transfer of rights or leases, as well as encumbrances involving said UNIT, such as mortgages, liens and the like, **shall be reported to the CORPORATION within five (5) days after the effectivity of said transactions**.[21]

Nothing in the records showed that the alleged transfer made by Lim was registered with the Register of Deeds of the City of Manila or was reported to the corporation. Logically, until and unless the registration is effected, Lim remains to be the registered owner of the condominium unit and thus, continues to be a member of Condocor.

Moreover, even assuming that there was a transfer by virtue of the Deed of Assignment, the Confirmatory Special Power of Attorney[22] executed later by Lim, wherein she reiterated her membership in Condocor and constituted Reynaldo V. Lim as her true and lawful Attorney-in-Fact, strengthened the fact that she still owns the condominium unit and that there has been no transfer of ownership over the said property to her nephew, but only a mere assignment of rights to the latter. As held by the Court in *Casabuena v. CA*,[23] at most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise.[24] Had it been otherwise, Reynaldo V. Lim

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[20] *Id*. at 225.

[21] *Id*. at 176.

[22] *Id*. at 43.

[23] 350 Phil. 237 (1998).

[24] *Id*. at 244.

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himself would have questioned and objected to the granting of the special power of attorney, and would have insisted that he was really the owner of the condominium unit.

In non-stock corporations, quorum is determined by the majority of its actual members

In corporate parlance, the term "meeting" applies to every duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose, or the transaction of business of a common interest.[25] Under Philippine corporate laws, meetings may either be regular or special. A stockholders' or members' meeting must comply with the following requisites to be valid:

1. The meeting must be held on the date fixed in the By-Laws or in accordance with law;[26]
2. Prior written notice of such meeting must be sent to all stockholders/members of record;[27]
3. It must be called by the proper party;[28]
4. It must be held at the proper place;[29] and
5. Quorum and voting requirements must be met.[30]

Of these five (5) requirements, the existence of a quorum is crucial. Any act or transaction made during a meeting without quorum is rendered of no force and effect, thus, not binding on the corporation or parties concerned.

In relation thereto, Section 52 of the Corporation Code of the Philippines *(Corporation Code)* provides:

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[25] Ladia, Ruben C., *The Corporation Code of the Philippines (Annotated),* Revised Edition (2007), p. 316.

[26] Section 50, Corporation Code.

[27] Sections 50 and 51, Corporation Code.

[28] Sections 50 and 54, Corporation Code.

[29] Section 51, Corporation Code.

[30] Section 52, Corporation Code.

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Section 52. *Quorum in meetings*. -—Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations.

Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks* while for non-stock corporations, only those who are *actual, living members with voting rights* shall be counted in determining the existence of a quorum.[31]

To be clear, the basis in determining the presence of quorum in non-stock corporations is the numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation. The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members.[32] To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein.

Similarly, Section 6 of Condocor's By-Laws reads: "The attendance of a simple majority of the members who are in good standing shall constitute a quorum...x x x." The phrase, "members in good standing," is a mere qualification as to which members will be counted for purposes of quorum. As can be gleaned from Condocor's By-Laws, there are two (2) kinds of members: 1) members in good standing; and 2) delinquent members. Section 6 merely stresses that delinquent members are not to be taken into consideration in determining quorum. In relation thereto, Section 7[33] of the By-Laws, referring to

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[31] *Tan v. Sycip*, 530 Phil. 609, 623 (2006).

[32] Section 89, Corporation Code of the Philippines.

[33] Section 7: Voting Rights —Every member shall be entitled to one (1) vote for every square meter and any fraction thereof in excess of one-half (½) square meter of the unit that he/she/it owns; provided, however that only members in good standing shall be entitled to exercise their right to vote. A member in good standing is one who does not have any outstanding

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voting rights, also qualified that only those members in good standing are entitled to vote. Delinquent members are stripped off their right to vote. Clearly, contrary to the ruling of the RTC, Sections 6 and 7 of Condocor's By-Laws do not provide that majority of the total voting rights, without qualification, will constitute a quorum.

It must be emphasized that insofar as Condocor is concerned, quorum is different from voting rights. Applying the law and Condocor's By-Laws, if there are 100 members in a non-stock corporation, 60 of which are members in good standing, then the presence of 50% plus 1 of those members in good standing will constitute a quorum. Thus, 31 members in good standing will suffice in order to consider a meeting valid as regards the presence of quorum. The 31 members will naturally have to exercise their voting rights. It is in this instance when the number of voting rights each member is entitled to becomes significant. If 29 out of the 31 members are entitled to 1 vote each, another member (known as A) is entitled to 20 votes and the remaining member (known as B) is entitled to 15 votes, then the total number of voting rights of all 31 members is 64. Thus, majority of the 64 total voting rights, which is 33 (50% plus 1), is necessary to pass a valid act. Assuming that only A and B concurred in approving a specific undertaking, then their 35 combined votes are more than sufficient to authorize such act.

The By-Laws of Condocor has no rule different from that provided in the Corporation Code with respect the determination of the existence of a quorum. The quorum during the July 21, 2012 meeting should have been majority of Condocor's members in good standing. Accordingly, there was no quorum during the July 21,2012 meeting considering that only 29 of the 108 unit buyers were present.

As there was no quorum, any resolution passed during the July 21, 2012 annual membership meeting was null and void and, therefore, not binding upon the corporation or its members. The meeting being null and void, the resolution and disposition

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obligation to the CORPORATION and who is not currently subject to sanctions or penalties by the CORPORATION.

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of other legal issues emanating from the null and void July 21, 2012 membership meeting has been rendered unnecessary.

To serve as a guide for the bench and the bar, however, the Court opts to discuss and resolve the same.

Moldex is a member of Condocor

Matters involving a condominium are governed by Republic Act No. 4726 (*Condominium Act*). Said law sanctions the creation of a condominium corporation which is especially formed for the purpose of holding title to the common areas, including the land, or the appurtenant interests in such areas, in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.[34] In relation thereto, Section 10 of the same law clearly provides that the condominium corporation shall constitute the management body of the project.

Membership in a condominium corporation is limited only to the unit owners of the condominium project. This is provided in Section 10 of the Condominium Act which reads:

> Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. **When a member** or stockholder **ceases to own a unit in the project** in which the condominium corporation owns or holds the common areas, **he shall automatically cease to be a member** or stockholder **of the condominium corporation**.[35] [Emphases supplied]

Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, a corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are not inconsistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project.

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[34] Sec. 2, RA 4726; *Medical Plaza Makati Condominium Corporation v. Cullen*, 720 Phil. 732, 749 (2013).

[35] Sec. 10, The Condominium Act (RA 4726).

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In this case, Lim argued that Moldex cannot be a member of Condocor. She insisted that a condominium corporation is an association of homeowners for the purpose of managing the condominium project, among others. Thus, it must be composed of actual unit buyers or residents of the condominium project.[36] Lim further averred that the ownership contemplated by law must result from a sale transaction between the owner-developer and the purchaser. She advanced the view that the ownership of Moldex was only in the nature of an owner-developer and only for the sole purpose of selling the units.[37] In justifying her arguments, Lim cited Section 30 of Presidential Decreee No. 957, known as The Subdivision and Condominium Buyers' Protective Decree (*P.D. No. 957*), to wit:

> Section 30. *Organization of Homeowners Association*. The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association **among the buyers and residents of the projects** for the purpose of promoting and protecting their mutual interest and assist in their community development. [Emphasis in the original.]

Furthermore, in distinguishing between a unit buyer and an owner- developer of a project, Lim cited Section 25 of P.D. No. 957, which provides:

> Section 25. *Issuance of Title*. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. xxx

Likewise, Lim relied on *Sunset View Condominium Corp. v. Hon. Campos, Jr.*,[38] where the Court wrote:

> The share of stock appurtenant to the unit will be **transferred accordingly to the purchaser of the unit only upon full payment of the purchase price at which time he will also become the owner of the unit**. Consequently, even under the contract, it is only the

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[36] *Rollo*, p. 292.

[37] *Id*. at 293.

[38] 191 Phil. 606, 614 (1981).

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owner of a unit who is a shareholder of the Condominium Corporation. **Inasmuch as owners is conveyed only upon full payment of the purchase price, it necessarily follows that a purchaser of a unit who has not paid the full purchase price thereof is not the owner of the unit and consequently is not a shareholder of the Condominium Corporation**. [Emphasis in the original]

On these grounds, Lim asserted that only unit buyers are entitled to become members of Condocor.[39]

The Court finds itself unable to agree.

Lim's reliance of P.D. No. 957 is misplaced. There is no provision in P.D. No. 957 which states that an owner-developer of a condominium project cannot be a member of a condominium corporation. Section 30 of P.D. No. 957 determines the purposes of a homeowners association — to promote and protect the mutual interest of the buyers and residents, and to assist in their community development. A condominium corporation, however, is not just a management body of the condominium project. It also holds title to the common areas, including the land, or the appurtenant interests in such areas. Hence, it is especially governed by the Condominium Act. Clearly, a homeowners association is different from a condominium corporation. P.D. No. 957 does not regulate condominium corporations and, thus, cannot be applied in this case.

Sunset View merely delineated the difference between a "purchaser" and an "owner," whereby the former could be considered an owner only upon full payment of the purchase price. The case merely clarified that not every purchaser of a condominium unit could be a shareholder of the condominium corporation.

Respondents, for their part, countered that a *registered owner* of a unit in a condominium project or the holders of duly issued condominium certificate of title *(CCT)*,[40] automatically becomes a member of the condominium corporation,[41] relying on Sections

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[39] *Rollo*, p. 292.

[40] *Rollo*, p. 137.

[41] *Id*. at 134.

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2 and 10 of the Condominium Act, the Master Deed and Declaration of Restrictions, as well as the By-Laws of Condocor. For said reason, respondents averred that as Moldex is the owner of 220 unsold units and the parking slots and storage areas attached thereto, it automatically became a member of Condocor upon the latter's creation.[42]

On this point, respondents are correct.

Section 2 of the Condominium Act states:

> Sec. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. **Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the *holders of separate interest shall automatically be members or shareholders*, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas**. [Emphasis supplied]

In Sunset View,[43] the Court elucidated on what constitutes "separate interest," in relation to membership, as mentioned in the Condominium Act, to wit:

> **By necessary implication, the "separate interest" in a condominium, which entitles the holder to become automatically a shareholder in the condominium corporation, as provided in Section 2 of the Condominium Act, can be no other than *ownership of a unit*.** This is so because nobody can be a shareholder unless he is the owner of a unit and when he ceases to be the owner, he also ceases automatically to be a shareholder.[44] [Emphasis supplied.]

Thus, law and jurisprudence dictate that **ownership of a unit** entitles one to become a member of a condominium corporation.

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[42] *Id*. at 140.

[43] 191 Phil. 606, 615 (1981).

[44] *Id*. at 615.

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The Condominium Act does not provide a specific mode of acquiring ownership. Thus, whether one becomes an owner of a condominium unit by virtue of sale or donation is of no moment.

It is erroneous to argue that the ownership must result from a sale transaction between the owner-developer and the purchaser. Such interpretation would mean that persons who inherited a unit, or have been donated one, and properly transferred title in their names cannot become members of a condominium corporation.

The next issue is — may Moldex appoint duly authorized representatives who will exercise its membership rights, specifically the right to be voted as corporate directors/officers?

Moldex may appoint a duly authorized representative

A corporation can act only through natural persons duly authorized for the purpose or by a specific act of its board of directors.[45] Thus, in order for Moldex to exercise its membership rights and privileges, it necessarily has to appoint its representatives.

Section 58 of the Corporation Code mandates:

> Section 58. *Proxies*. — Stockholders and **members may vote in person or by proxy in all meetings of** stockholders or **members**. Proxies shall in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. [Emphasis supplied]

Relative to the above provision is Section 1, Article II of Condocor's By-Laws,[46] which grants registered owners the right to designate any person or entity to represent them in Condocor, subject to the submission of a written notification to the Secretary of such designation. Further, the owner's representative is entitled to enjoy and avail himself of all the

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[45] *Spouses Lim v. Court of Appeals,* 702 Phil. 634, 641 (2013).

[46] *Rollo*, pp. 224-232.

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rights and privileges, and perform all the duties and responsibilities of a member of the corporation. The law and Condocor's By-Laws evidently allow proxies in members' meeting.

Prescinding therefrom, Moldex had the right to send duly authorized representatives to represent it during the questioned general membership meeting. Records showed that, pursuant to a Board Resolution, as certified[47] by Sandy T. Uy, corporate secretary of Moldex, the individual respondents were instituted as Moldex's representatives. This was attested to by Mary Rose V. Pascual, Assistant Corporate Secretary of Condocor, in a sworn statement[48] she executed on August 31, 2012.

Next question is — can the individual respondents be elected as directors of Condocor?

Individual respondents who are non-members cannot be elected as directors and officers of the condominium corporation

The governance and management of corporate affairs in a corporation lies with its board of directors in case of stock corporations, or board of trustees in case of non-stock corporations. As the board exercises all corporate powers and authority expressly vested upon it by law and by the corporations' by-laws, there are minimum requirements set in order to be a director or trustee, one of which is ownership of a share in one's name or membership in a non-stock corporation. Section 23 of the Corporation Code provides:

> Section 23. *The Board of Directors or Trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or **where there is no stock, from among the members of the corporation**, who shall hold office for one (1) year until their successors are elected and qualified.

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[47] Secretary's Certificate, *id*. at 253-254.

[48] *Id*. at 235-237.

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Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. **Trustees of non-stock corporations must be members thereof**. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines. [Emphases supplied]

This rule was reiterated in Section 92 of the Corporation Code, which states:

Section 92. *Election and term of trustees*.— x x x No person shall be elected as trustee unless he is a member of the corporation. x x x

While Moldex may rightfully designate proxies or representatives, the latter, however, cannot be elected as directors or trustees of Condocor. *First*, the Corporation Code clearly provides that a director or trustee must be a member of record of the corporation. *Further*, the power of the proxy is merely to vote. If said proxy is not a member in his own right, he cannot be elected as a director or proxy.

Respondents cannot rely on the Securities and Exchange Commission *(SEC)* Opinions they cited to justify the individual respondents' election as directors. In *Heirs of Gamboa v. Teves*,[49] the Court *En Banc* held that opinions issued by SEC legal officers do not have the force and effect of SEC rules and regulations because only the SEC *en banc* can adopt rules and regulations.

Following Section 25 of the Corporation Code, the election of individual respondents, as corporate officers, was likewise invalid.

Section 25 of the Corporation Code mandates that the President shall be a director. As previously discussed, Jaminola could not be elected as a director. Consequently, Jaminola's election as President was null and void.

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[49] 696 Phil. 276, 316 (2012).

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The same provision allows the election of such other officers as may be provided for in the by-laws. Condocor's By-Laws, however, require that the Vice-President shall be *elected* by the Board from among its member-directors in good standing, and the Secretary may be *appointed* by the Board under the same circumstance. Like Jaminola, Milanes and Macalintal were not directors and, thus, could not be elected and appointed as Vice-President and Secretary, respectively.

Insofar as Roman's election as Treasurer is concerned, the same would have been valid, as a corporate treasurer may or may not be a director of the corporation's board. The general membership meeting of Condocor, however, was null and void. As a consequence, Roman's election had no legal force and effect.

In fine, the July 21, 2012 annual general membership meeting of Condocor being null and void, all acts and resolutions emanating therefrom are likewise null and void.

WHEREFORE, the petition is **GRANTED**. The March 4, 2013 Decision of the Regional Trial Court, Branch 24, Manila, in Civil Case No. 12-128478 is hereby **REVERSED** and **SET ASIDE.** The Court declares that:

a) The July 21, 2012 Annual General Membership Meeting of Condocor is null and void;

b) The election of members of the Board of Directors in the annual general membership meeting is likewise null and void; and

c) The succeeding Organizational Meeting of Condocor's Board of Directors as well as the election of its corporate officers are of no force and effect.

Costs against respondents.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Leonen, JJ.,* concur.

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[*] Per Special Order No. 2416-B dated January 4, 2017.