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SECOND DIVISION

[G.R. No. L-34192. June 30, 1988]

NATIONAL INVESTMENT AND DEVELOPMENT CORPORATION, EUSEBIO VILLATUYA, MARIO Y. CONSING and ROBERTO S. BENEDICTO, *petitioners, vs.* **HON. BENJAMIN AQUINO, in his official capacity as Presiding Judge of Branch VIII of the Court of First Instance of Rizal, BATJAK, INC., GRACIANO A. GARCIA and MARCELINO CALINAWAN, JR.,** *respondents.*

[G.R. No. L-34213. June 30, 1988]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **HON. BENJAMIN H. AQUINO, in his capacity as Presiding Judge of the Court of First Instance of Rizal, Branch VIII and BATJAK, INCORPORATED,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERLOCUTORY ORDER; AN ORDER DENYING A MOTION TO QUASH OR TO DISMISS IS INTERLOCUTORY; REMEDIES OF THE AGGRIEVED PARTY.—** As a general rule, an order denying a motion to quash or to dismiss is interlocutory and cannot be the subject of a petition for *certiorari*. The remedy of the aggrieved party in a denied motion to dismiss is to file an answer and interpose, as defense or defenses, the objection or objections raised by him in said motion to dismiss, then proceed to trial and, in case of adverse decision, to elevate the entire case by appeal in due course. However, under certain situations, recourse to the extraordinary legal remedies of *certiorari*, prohibition and *mandamus* to question the denial of a motion to dismiss or quash is considered proper, in the interest of more enlightened and substantial justice.

2. **ID.; COURTS; COURT OF FIRST INSTANCE; JURISDICTION TO ISSUE WRIT OF INJUNCTION; RULE.—** Anent the first ground, it is a well-settled rule that the jurisdiction of a Court

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of First Instance to issue a writ of preliminary or permanent injunction is confined within the boundaries of the province where the land in controversy is situated. The petition for *mandamus* of Batjak prayed that NIDC and PNB be ordered to surrender, relinquish and turnover to Batjak the assets, management and operation of Batjak particularly the three (3) oil mills located in Sasa, Davao City, Jimenez, Misamis Occidental and Tanauan, Leyte. Clearly, what Batjak asked of respondent court was the exercise of power or authority outside its jurisdiction.

3. ID.; CIVIL PROCEDURE; VENUE; RULE.— On the matter of proper venue, Batjak's complaint should have been filed in the provinces where said oil mills are located. Under Rule 4, Sec. 2, paragraph A of the Rules of Court, "actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies."

4. ID.; ID.;PARTIES IN CIVIL ACTIONS; REAL PARTY-IN-INTEREST; RULE IN CASE OF A VOTING TRUST AGREEMENT IN A CORPORATION.— In support of the third ground of their motion to dismiss, PNB and NIDC contend that Batjak's complaint for mandamus is based on its claim or right to recovery of possession of the three (3) oil mills, on the ground of an alleged breach of fiduciary relationship. Noteworthy is the fact that, in the Voting Trust Agreement, the parties thereto were NIDC and certain stockholders of Batjak. Batjak itself was not a signatory thereto. Under Sec. 2, Rule 3 of the Rules of Court, every action must be prosecuted and defended in the name of the real party-in-interest. Applying the rule in the present case, the action should have been filed by the stockholders of Batjak, who executed the Voting Trust Agreement with NIDC, and not by Batjak itself which is not a party to said agreement, and therefore, not the real party- in-interest in the suit to enforce the same. In addition, PNB claims that Batjak has no cause of action and prays that the petition for *mandamus* be dismissed. A careful reading of the Voting Trust Agreement shows that PNB was really not a party thereto. Hence, *mandamus* will not lie against PNB.

5. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; NATURE.— The action instituted by Batjak before the respondent court

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was a special civil action for *mandamus* with prayer for preliminary mandatory injunction. Generally, *mandamus* is not a writ of right and its allowance or refusal is a matter of discretion to be exercised on equitable principles and in accordance with well-settled rules of law, and that it should never be used to effectuate an injustice, but only to prevent a failure of justice. The writ does not issue as a matter of course. It will issue only where there is a clear legal right sought to be enforced. It will not issue to enforce a doubtful right. A clear legal right within the meaning of Sec. 3, Rule 65 of the Rules of Court means a right clearly founded in or granted by law, a right which is enforceable as a matter of law.

6. **ID.; ID.; ID.; CLEAR LEGAL RIGHT, ABSENCE OF.**— Applying the above-cited principles of law in the present case, the Court finds no clear right in Batjak to be entitled to the writ prayed for. It should be noted that the petition for *mandamus* filed by it prayed that NIDC and PNB be ordered to surrender, relinquish and turn-over to Batjak the assets, management, and operation of Batjak particularly the three (3) oil mills and to make the order permanent, after trial, and ordering NIDC and PNB to submit a complete accounting of the assets, management and operation of Batjak from 1965. In effect, what Batjak seeks to recover is title to, or possession of, real property (the three (3) oil mills which really made up the assets of Batjak) but which the records show already belong to NIDC. It is not disputed that the mortgages on the three (3) oil mills were foreclosed by PNB and NIDC and acquired by them as the highest bidder in the appropriate foreclosure sales. Ownership thereto was subsequently consolidated by PNB and NIDC, after Batjak failed to exercise its right of redemption. The three (3) oil mills are now titled in the name of NIDC. From the foregoing, it is evident that Batjak had no clear right to be entitled to the writ prayed for.

7. **ID.; PROVISIONAL REMEDIES; RECEIVERSHIP; RULE IN THE APPOINTMENT OF A RECEIVER.**— A receiver of real or personal property, which is the subject of the action, may be appointed by the court when it appears from the pleadings that the party applying for the appointment of receiver has an interest in said property. The right, interest, or claim in property, to entitle one to a receiver over it, must be present and existing.

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8. ID.; ID.; ID.; REQUISITE BEFORE THE APPOINTMENT OF A RECEIVER MAY BE GRANTED.— *The prevention* of imminent danger to property is the guiding principle that governs courts in the matter of appointing receivers. Under *Sec. 1 (b), Rule 59* of the Rules of Court, it is necessary in granting the relief of receivership that the property or fund be in danger of loss, removal or material injury. In the case at bar, Batjak in its petition for receivership, or in its amended petition therefor, failed to present any evidence to establish the requisite condition that the property is in danger of being lost, removed or materially injured unless a receiver is appointed to guard and preserve it.

APPEARANCES OF COUNSEL

Cruz, Palafox, Alfonso & Associates for petitioner NIDC in G.R. No. 34192.

The Chief Legal Counsel for petitioner PNB in G.R. No. 34213.

Reyes and *Sundiam Law Office* for respondent Batjak, Inc.

Duran, Chuanico, Oebanda, Benemerito & Associates for private respondents in G.R. Nos. 34192 & 34213.

Tolentino, Garcia, Cruz & Reyes for movant in G.R. No. L-34192.

D E C I S I O N

PADILLA, *J.*:

These two (2) separate petitions for *certiorari* and prohibition, with preliminary injunction, seek to annul and set aside the orders of respondent judge, dated 16 August 1971 and 30 September 1971, in Civil Case No. 14452 of the Court of First Instance of Rizal, entitled "*Batjak, Inc. vs. NIDC, et al.*" The order of 16 August 1971[1] granted the alternative petition of private respondent Batjak, Inc. (Batjak, for short) for the appointment of receiver and denied petitioners' motion to dismiss the complaint of said private respondent. The order dated 30

[1] Annex B, p. 114, *Rollo* of G.R. No. 34192.

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September 1971[2] denied petitioners' motion for reconsideration of the order dated 16 August 1971.

The herein petitions likewise seek to prohibit the respondent judge from hearing and/or conducting any further proceedings in Civil Case No. 14452 of said court.

Batjak, (Basic Agricultural Traders Jointly Administered Kasamahan) is a Filipino-American corporation organized under the laws of the Philippines, primarily engaged in the manufacture of coconut oil and copra cake for export. In 1965, Batjak's financial condition deteriorated to the point of bankruptcy. As of that year, Batjak's indebtedness to some private banks and to the Philippine National Bank (PNB) amounted to ₱11,915,000.00, shown as follows:

Republic Bank	₱2,324,000.00
Philippine Commercial and Industrial Bank	1,346,000.00
Manila Banking Corporation	2,000,000.00
Manufacturers Bank	440,000.00
Hongkong and Shanghai Banking Corporation	250,000.00
Foreign Export Advances (against immediate shipment)	555,000.00
PNB export advance line (against immediate shipment)	5,000,000.00
TOTAL	₱11,915,000.00

As security for the payment of its obligations and advances against shipments, Batjak mortgaged its three (3) coco-processing oil mills in Sasa, Davao City, Jimenez, Misamis Occidental and Tanauan, Leyte to Manila Banking Corporation (Manilabank), Republic Bank (RB), and Philippine Commercial and Industrial Bank (PCIB), respectively. In need for additional operating capital to place the three (3) coco-processing mills at their optimum

[2] Annex C, p. 136, *Rollo* of G.R. No. 34192.

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capacity and maximum efficiency and to settle, pay or otherwise liquidate pending financial obligations with the different private banks, Batjak applied to PNB for additional financial assistance. On 5 October 1965, a Financial Agreement was submitted by PNB to Batjak for acceptance. The Financial Agreement reads:

"PHILIPPINE NATIONAL BANK
Manila, Philippines
International Department

October 5, 1965

BATJAK, INCORPORATED
3rd Floor, G. Puyat Bldg.
Escolta, Manila

Attn.: Mr. CIRIACO B. MENDOZA
Vice-President & General Manager

Gentlemen:

We are pleased to advise that our Board of Directors approved for you the following:

1) That NIDC shall invest ₱6,722,500.00 in the form of preferred shares of stocks at 9% cumulative, participating and convertible within 5 years at par into common stocks to liquidate your accounts with the Republic Bank, Manufacturers Bank & Trust Company and the PCIB which, however, shall be applied to the latter three (3) banks accounts with the Loans & Discounts Dept. NIDC shall match your ₱10 million subscription by an additional investment of ₱3,277,500 within a period of one to two years at NIDC's option;

2) That NIDC will guaranty for five (5) years your account with the Manila Banking Corporation;

3) That the above banks (Republic Bank, PCIB, MBTC and Manila Banking Corp.) shall release in favor of PNB the first and any mortgage they hold on your properties;

4) That you shall exercise (execute) a first mortgage on all your properties located at Sasa, Davao City; Jimenez, Misamis Occidental; and Tanauan, Leyte and assign leasehold

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rights on the property on which your plant at Sasa, Davao City is erected in favor of PNB;

5) That a voting trust agreement for five (5) years over 60% of the outstanding paid up and subscribed shares shall be executed by your stockholders in favor of NIDC;

6) That this accommodation shall be secured by the joint and several signatures of officers and directors;

7) That the number of the Board of Directors shall be increased to seven (7), three (3) from your firm and the other four (4) from the PNB-NIDC;

8) That a comptroller, at your expense, shall be appointed by PNB-NIDC to supervise the financial management of your firm;

9) That the past due accounts of ₱5 million with the International Department of the PNB shall be transferred to the Loans & Discount Department and to be treated as a Demand Loan;

10) That any excess of NIDC investment as required in Condition *1 after payment of the obligations to three (3) Banks (RB,* MBTC, & PCIB) shall be applied to reduce the above Demand Loan of ₱5 million;

11) That we shall grant you an export advance of ₱3 million to be used for copra purchases, subject to the following conditions:

a) That the line shall expire on September 30, 1966 but revocable at the Bank(s) option;

b) That drawings against the line shall be allowed only when an irrevocable export L/C for coconut products has been established or assigned in your favor and you shall assign to us all proceeds of negotiations to be received from your export letters of credit;

c) That drawings against the line shall be limited to 50% of the peso value of the export letters of credit computed at ₱3.50 per $1.00 but total drawings shall not in any event exceed ₱3,000,000.00;

d) That release or releases against the line shall be covered by promissory note or notes for 90 days but not beyond

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the expiry dates of the covering L/C and proceeds of said L/C shall first be applied to the correspondent drawings on the line;

e) That drawings against the line shall be charged interest at the rate of 9% per annum and subject to ½ % penalty charge on all drawings not paid or extended on maturity date; and

f) That within 90 days from date of release against the line, you shall negotiate with us on equivalent amount in export bills, otherwise, the line shall be temporarily suspended until the outstanding export advance is fully liquidated.

We are writing the National Investment & Development Corporation, the Republic Bank, the Philippine Commercial & Industrial Bank and the Manufacturers Bank & Trust Company and the Manila Banking Corporation regarding the above.

In connection with the above, kindly submit to us two (2) copies of your board resolution certified to under oath by your corporate secretary accepting the conditions enumerated above authorizing the above transactions and the officer or officers to sign on behalf of the corporation.

Thank you.

Very truly yours,

(SGD.) JOSE B. SAMSON"[3]

The terms and conditions of the Financial Agreement were duly accepted by Batjak. Under said Agreement, NIDC would, as it actually did, invest ₱6,722,500.00 in Batjak in the form of preferred shares of stock convertible within five (5) years at par into common stock, to liquidate Batjak's obligations to Republic Bank (RB), Manufacturers Bank and Trust Company (MBTC) and Philippine Commercial & Industrial Bank (PCIB), and the balance of the investment was to be applied to Batjak's past due account of ₱5 million with the PNB.

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[3] Annex E, p. 152, *Rollo* of G.R. No. 34192.

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Upon receiving payment, RB, PCIB, and MBTC released in favor of PNB the first and any mortgages they held on the properties of Batjak.

As agreed, PNB also granted Batjak an export-advance line of ₱3 million, later increased to ₱5 million, and a standby letter of credit facility in the amount of ₱5,850,000.00. As of 29 September 1966, the financial accommodation that had been extended by PNB to Batjak amounted to a total of ₱14,207,859.51.

As likewise agreed, Batjak executed a first mortgage in favor of PNB on all its properties located at Jimenez, Misamis Occidental and Tanauan, Leyte. Batjak's plant in Sasa, Davao City was mortgaged to the Manila Bank which, in 1967, instituted foreclosure proceedings against the same but which were aborted by the payment by Batjak of the sum of ₱2,400,000.00 to Manila Bank, and which amount was advanced to Batjak by NIDC, a wholly-owned subsidiary of PNB. To secure the advance, Batjak mortgaged the oil mill in Sasa, Davao City to NIDC.[4]

Next, a Voting Trust Agreement was executed on 26 October 1965 in favor of NIDC by the stockholders representing 60% of the outstanding paid-up and subscribed shares of Batjak. This agreement was for a period of five (5) years and, upon its expiration, was to be subject to negotiation between the parties. The Voting Trust Agreement reads:

"VOTING TRUST AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT made and executed by the undersigned stockholders of BATJAK, INC., a corporation duly organized and existing under the laws of the Philippines, whose names are hereinbelow subscribed hereinafter called the SUBSCRIBERS, and the NATIONAL INVESTMENT AND DEVELOPMENT CORPORATION, hereinafter referred to as the TRUSTEE.

W I T N E S S E T H:

WHEREAS, the SUBSCRIBERS are owners respectively of the capital stock of the BATJAK, INC. (hereinafter called the

[4] Annex G, p. 155, *Rollo* of G.R. No. 34192.

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CORPORATION) in the amounts represented by the numbers of shares set forth opposite their respective names hereunder;

AND WHEREAS, with a view of establishing a safe and competent management to operate the corporation for the best interest of all the stockholders thereof, and as mutually agreed between the SUBSCRIBERS and the TRUSTEE, this Voting Trust Agreement has been executed under the following terms and conditions.

NOW THEREFORE, the undersigned stockholders, in consideration of the *premises* and of the mutual covenants and agreements herein contained and to carry out the foregoing purposes in order to vest in the TRUSTEE the voting rights of the shares of stock held by the undersigned in the CORPORATION as hereinafter stated it is mutually agreed as follows:

1. PERIOD OF DESIGNATION — For a period of five (5) years from and after date hereof, without power of revocation on the part of the SUBSCRIBERS, the TRUSTEE designated in the manner herein provided is hereby made, constituted and appointed as a VOTING TRUSTEE to act for and in the name of the SUBSCRIBERS, it being understood, however, that this Voting Trust Agreement shall, upon its expiration be subject to a re-negotiation between the parties, as may be warranted by the balance and attending circumstance of the loan investment of the TRUSTEE or otherwise in the CORPORATION.

2. ASSIGNMENT OF STOCK CERTIFICATES UPON ISSUANCE — The undersigned stockholders hereby transfer and assign their common shares to the capital stock of the CORPORATION to the extent shown hereunder:

JAMES A. KEISTER	—	21,500 shares
JOHNNY LIEUSON	—	20,300 shares
CBM FINANCE & INVESTMENT CORP. (C.B. Mendoza, Pres.)	—	5,000 shares
ALEJANDRO G. BELTRAN	—	4,000 shares
ESPERANZA A. ZAMORA	—	3,000 shares
CIRIACO B. MENDOZA	—	2,000 shares
FIDELA DE GUZMAN	—	2,000 shares
LLOYD D. COMBS	—	2,000 shares
RENATO B. BEJAR	—	200 shares
	TOTAL	60,000 shares

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to the TRUSTEE by virtue of the provisions hereof and do hereby authorize the Secretary of the CORPORATION to issue the corresponding certificate directly in the name of the TRUSTEE and on which certificates it shall appear that they have been issued pursuant to this Voting Trust Agreement and the said TRUSTEE shall hold in escrow all such certificates during the term of the Agreement. In turn, the TRUSTEE shall deliver to the undersigned stockholders the corresponding Voting Trust certificates provided for in Sec. 36 of Act No. 1459.

3. VOTING POWER OF TRUSTEE — The TRUSTEE and its successors in trust, if any, shall have the power and it shall be its duty to vote the shares of the undersigned subject hereof and covered by this Agreement at all annual, adjourned and special meetings of the CORPORATION on all questions, motions, resolutions and matters including the election of directors and such matters on which the stockholders, by virtue of the by-laws of the CORPORATION and of the existing legislations are entitled to vote, which may be voted upon at any and all said meetings and shall also have the power to execute and acknowledge any agreements or documents that may be necessary in its opinion to express the consent or assent of all or any of the stockholders of the CORPORATION with respect to any matter or thing to which any consent or assent of the stockholders may be necessary, proper or convenient.

4. FILING OF AGREEMENT — An executed copy of this Agreement shall be filed with the CORPORATION at its office in the City of Manila wherever it may be transferred therefrom and shall constitute irrevocable authority and absolute direction to the Officers of the CORPORATION whose duty is to sign and deliver stock certificates to make delivery only to said voting trustee of the shares and certificates of stock subject to the provisions of this Agreement as aforesaid. Such copy of this Agreement shall at all times be open to inspection by any stockholder, as provided by law.

5. DIVIDEND — The full and absolute beneficial interest in the shares subject of this Agreement shall remain with the stockholders executing the same and any and all dividends which may be declared by the CORPORATION shall belong and be paid to them exclusively in accordance with their stockholdings after deducting therefrom or applying the same to whatever liabilities the stockholders may have in favor of the TRUSTEE by virtue of any Agreement or Contract that may have been or will be executed

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by and between the TRUSTEE and the CORPORATION or between the former and the undersigned stockholders.

6. COMPENSATION; IMMUNITY — The TRUSTEE or its successor in trust shall not receive any compensation for its service except perhaps that which the CORPORATION may grant to the TRUSTEE's authorized representative, if any. Expenses, costs, charges, and other liabilities incurred in the carrying out of the trust herein established or by reason thereof, shall be paid for with the funds of the CORPORATION. The TRUSTEE or any of its duly authorized representative shall incur no liability by reason of any error of law or of any matter or thing done or omitted under this Agreement, except for his own individual malfeasance.

7. REPRESENTATION — The TRUSTEE, being a corporation and a juridical person shall accomplish the foregoing objectives and perform its functions under this Agreement as well as enjoy and exercise the powers, privileges, rights and interests herein established through its duly authorized and accredited representative/s with full authority under the specific appointment or designation or Proxy.

8. IRREVOCABILITY — This Agreement shall during its 5-year term or any extension thereof be binding upon and inure to the benefit of the undersigned stockholders and their respective legal representatives, pledges, transferees, and/or assigns and shall be irrevocable during the said terms and/or its extension pursuant to the provisions of paragraph 1 hereof. It is hereby understood and the undersigned stockholders have bound as they hereby bind themselves to make a condition of every pledge, transfer of assignment of their interests in the CORPORATION that the interests and participation so pledged, transferred or assigned is evidenced by annotations in the certificates of stocks or in the books of the corporation, shall be subject to this Agreement and the same shall be binding upon the pledgees, transferees and assigns while the trust herein created still subsists.

9. TERMINATION — Upon termination of this Agreement as heretofore provided, the certificates delivered to the TRUSTEE by virtue hereof shall be returned and delivered to the undersigned stockholders as the absolute owners thereof, upon surrender of their respective voting trust certificates, and the duties of the TRUSTEE shall cease and terminate.

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10. ACCEPTANCE OF TRUST — The TRUSTEE hereby accepts the trust created by this Agreement under the signature of its duly authorized representative affixed hereinbelow and agrees to perform the same in accordance with the term/s hereof.

IN WITNESS HEREOF, the undersigned stockholders and the TRUSTEE by its representatives, have hereunto affixed their signatures this 26 day of October, 1965 in the City of Manila, Philippines.

(SGD) JAMES A. KEISER *(SGD) JOHNNY LIEUSON*
Stockholder Stockholder

CBM FINANCE & INVESTMENT CORPORATION
By: (SGD) C.B. MENDOZA
President

ESPERANZA A. ZAMORA (SGD) ALEJANDRO G. BELTRAN
By: (SGD) MARIANO ZAMORA Stockholder
ESPERANZA A. ZAMORA

(SGD) FIDELA DE GUZMAN (SGD) CIRIACO B. MENDOZA
Stockholder Stockholder

(SGD) RENATO B. BEJAR (SGD) LLOYD D. COMBS
Stockholder Stockholder

NATIONAL INVESTMENT AND
DEVELOPMENT CORPORATION
By:

(SGD) IGNACIO DEBUQUE, JR.
Vice-President"[5]

In July 1967, forced by the insolvency of Batjak, PNB instituted extrajudicial foreclosure proceedings against the oil mills of Batjak located in Tanauan, Leyte and Jimenez, Misamis Occidental. The properties were sold to PNB as the highest bidder. One year thereafter, or in September 1968, final Certificates of Sale were issued by the provincial sheriffs of Leyte[6] and Misamis Occidental[7] for the two (2) oil mills in Tanauan and Jimenez in

[5] Annex 2, p. 469, *Rollo* of G.R. No. 34213.

[6] Annex M, p. 177, *Rollo* of G.R. No. 34192.

[7] Annex N, p. 195, *Rollo* of G.R. No. 34192.

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favor of PNB, after Batjak failed to exercise its right to redeem the foreclosed properties within the allowable one year period of redemption. Subsequently, PNB transferred the ownership of the two (2) oil mills to NIDC which, as aforestated, was a wholly-owned PNB subsidiary.

As regards the oil mill located at Sasa, Davao City, the same was similarly foreclosed extrajudicially by NIDC. It was sold to NIDC as the highest bidder. After Batjak failed to redeem the property, NIDC consolidated its ownership of the oil mill.[8]

Three (3) years thereafter, or on 31 August 1970, Batjak represented by majority stockholders, through Atty. Amado Duran, legal counsel of private respondent Batjak, wrote a letter to NIDC inquiring if the latter was still interested in negotiating the renewal of the Voting Trust Agreement.[9] On 22 September 1970, legal counsel of Batjak wrote another letter to NIDC informing the latter that Batjak would now safely assume that NIDC was no longer interested in the renewal of said Voting Trust Agreement and, in view thereof, requested for the turn-over and transfer of all Batjak assets, properties, management and operations.[10]

On 23 September 1970, legal counsel of Batjak sent still another letter to NIDC, this time asking for a complete accounting of the assets, properties, management and operation of Batjak, preparatory to their turn-over and transfer to the stockholders of Batjak.[11]

NIDC replied, confirming the fact that it had no intention whatsoever to comply with the demands of Batjak.[12]

On 24 February 1971, Batjak filed before the Court of First Instance of Rizal a special civil action for *mandamus* with

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[8] Annex O, p. 265, *Rollo* of G.R. No. 34192.

[9] Annex Q, p. 226, *Rollo* of G.R. No. 34192.

[10] Annex R, p. 228, *Rollo* of G.R. No. 34192.

[11] Annex S, p. 230, *Rollo* of G.R. No. 34192.

[12] Annex T, p. 232, *Rollo* of G.R. No. 34192.

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preliminary injunction against herein petitioners docketed as Civil Case No. 14452.[13]

On 14 April 1971, in said Civil Case No. 14452, Batjak filed an urgent *ex parte* motion for the issuance of a writ of preliminary prohibitory and mandatory injunction.[14] On the same day, respondent judge issued a restraining order "prohibiting defendants (herein petitioners) from removing any record, books, commercial papers or cash, and leasing, renting out, disposing of or otherwise transferring any or all of the properties, machineries, raw materials and finished products and/or by-products thereof now in the factory sites of the three (3) modern coco milling plants situated in Jimenez, Misamis Occidental, Sasa, Davao City, and Tanauan, Leyte."[15]

The order of 14 April 1971 was subsequently amended by respondent judge upon an *ex parte* motion of private respondent Batjak so as to include the premises of NIDC in Makati and those of PNB in Manila, as among the premises which private respondent Batjak was authorized to enter in order to conduct an inventory.

On 24 April 1971, NIDC and PNB filed an opposition to the *ex parte* application for the issuance of a writ of preliminary prohibitory and mandatory injunction and a motion to set aside restraining order.

Before the court could act on the said motion, private respondent Batjak filed on 3 May 1971 a petition for receivership as alternative to writ of preliminary prohibitory and mandatory injunction.[16] This was opposed by PNB and NIDC.[17]

On 8 May 1971, NIDC and PNB filed a motion to dismiss Batjak's complaint.[18]

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[13] Annex P, p. 206, *Rollo* of G.R. No. 34192.

[14] Annex Z, p. 264, *Rollo* of G.R. No. 34192.

[15] Annex AA, p. 273, *Rollo* of G.R. No. 34192.

[16] Annex H, p. 138, *Rollo* of G.R. No. 34213.

[17] Annex FF, p. 323, *Rollo* of G.R. No. 34192 for PNB.

[18] Annex GG, p. 331, *Rollo* of G.R. No. 34192 for NIDC; Annex J, p. 178, *Rollo* of G.R. No. 34213 for PNB.

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On 16 August 1971, respondent judge issued the now assailed order denying petitioners' motion to dismiss and appointing a set of three (3) receivers.[19] NIDC moved for reconsideration of the aforesaid order.[20] On 30 September 1971, respondent judge denied the motion for reconsideration.[21]

Hence, these two (2) petitions, which have been consolidated, as they involve a resolution of the same issues.

In their manifestation with motion for early decision, dated 25 August 1986, private respondent, Batjak contends that the NIDC has already been abolished or scrapped by its parent company, the PNB.

After a careful study and examination of the records of the case, the Court finds and holds for the petitioners.

1. *On the denial of petitioners' motion to dismiss.*

As a general rule, an order denying a motion to quash or to dismiss is interlocutory and cannot be the subject of a petition for *certiorari*. The remedy of the aggrieved party in a denied motion to dismiss is to file an answer and interpose, as defense or defenses, the objection or objections raised by him in said motion to dismiss, then proceed to trial and, in case of adverse decision, to elevate the entire case by appeal in due course. However, under certain situations, recourse to the extraordinary legal remedies of *certiorari*, prohibition and *mandamus* to question the denial of a motion to dismiss or quash is considered proper, in the interest of more enlightened and substantial justice. As the Court said in *Pineda and Ampil Manufacturing Co. vs. Bartolome*, 95 Phil. 930, 938:

"For analogous reasons it may be said that the petition for *certiorari* interposed by the accused against the order of the court *a quo* denying the motion to quash may be entertained, not only because it was

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[19] Annex B, p. 114, *Rollo* of G.R. No. 34192.

[20] Annex LL, p. 416, *Rollo* of G.R. No. 34192.

[21] Annex C, p. 136, *Rollo* of G.R. No. 34192.

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rendered in a criminal case, but because it was rendered, as claimed, with grave abuse of discretion, as found by the Court of Appeals.xxx."

and reiterated in *Mead v. Argel*[22] citing *Yap v. Lutero* (105 Phil. 1307):

"However, were we to require adherence to this pretense, the case at bar would have to be dismissed and petitioner required to go through the inconvenience, not to say the mental agony and torture, of submitting himself to trial on the merits in Case No. 166443, apart from the expenses incidental thereto, despite the fact that his trial and conviction therein would violate one of this [*sic*] constitutional rights, and that, an appeal to this Court, we would, therefore, have to set aside the judgment of conviction of the lower court. This would, obviously, be most unfair and unjust. Under the circumstances obtaining in the present case, the flaw in the procedure followed by petitioner herein may be overlooked, in the interest of a more enlightened and substantial justice."

Thus, where there is patent grave abuse of discretion, in denying the motion to dismiss, as in the present case, this Court may entertain the petition for *certiorari* interposed by the party against whom the said order is issued.

In their motion to dismiss Batjak's complaint, in Civil Case No. 14452, NIDC and PNB raised common grounds for its allowance, to wit:

1. This Honorable Court (the trial court) has no jurisdiction over the subject of the action or suit;
2. The venue is improperly laid; and
3. Plaintiff has no legal capacity to sue.

In addition, PNB contended that the complaint states no cause of action (Rule 16, Sec. 1, Par. a, c, d & g, Rules of Court).

Anent the first ground, it is a well-settled rule that the jurisdiction of a Court of First Instance to issue a writ of preliminary or permanent injunction is confined within the boundaries of the

[22] G.R. No. L-41958, July 20, 1982, 115 SCRA 256, 262.

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province where the land in controversy is situated.[23] The petition for *mandamus* of Batjak prayed that NIDC and PNB be ordered to surrender, relinquish and turnover to Batjak the assets, management and operation of Batjak particularly the three (3) oil mills located in Sasa, Davao City, Jimenez, Misamis Occidental and Tanauan, Leyte.

Clearly, what Batjak asked of respondent court was the exercise of power or authority outside its jurisdiction.

On the matter of proper venue, Batjak's complaint should have been filed in the provinces where said oil mills are located. Under Rule 4, Sec. 2, paragraph A of the Rules of Court, "actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies."

In support of the third ground of their motion to dismiss, PNB and NIDC contend that Batjak's complaint for *mandamus* is based on its claim or right to recovery of possession of the three (3) oil mills, on the ground of an alleged breach of fiduciary relationship. Noteworthy is the fact that, in the Voting Trust Agreement, the parties thereto were NIDC and certain stockholders of Batjak. Batjak itself was not a signatory thereto. Under Sec. 2, Rule 3 of the Rules of Court, every action must be prosecuted and defended in the name of the real party-in-interest. Applying the rule in the present case, the action should have been filed by the stockholders of Batjak, who executed the Voting Trust Agreement with NIDC, and not by Batjak itself which is not a party to said agreement, and therefore, not the real party-in-interest in the suit to enforce the same.

In addition, PNB claims that Batjak has no cause of action and prays that the petition for *mandamus* be dismissed. A careful

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[23] *Acosta vs. Alvendia*, G.R. No. L-14598, Oct. 31, 1960; *Central Bank of the Philippines vs. Cajigal*, G.R. No. L-19278, Dec. 29, 1962, 6 SCRA 1072, 1076.

[23-a] (NOTE: *Dagupan Electric vs. Pano*, 95 SCRA 693, cannot be applied since the principal offices of PNB and NIDC are in Manila).

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reading of the Voting Trust Agreement shows that PNB was really not a party thereto. Hence, *mandamus* will not lie against PNB.

Moreover, the action instituted by Batjak before the respondent court was a special civil action for *mandamus* with prayer for preliminary mandatory injunction. Generally, *mandamus* is not a writ of right and its allowance or refusal is a matter of discretion to be exercised on equitable principles and in accordance with well-settled rules of law, and that it should never be used to effectuate an injustice, but only to prevent a failure of justice.[24] The writ does not issue as a matter of course. It will issue only where there is a clear legal right sought to be enforced. It will not issue to enforce a doubtful right. A clear legal right within the meaning of Sec. 3, Rule 65 of the Rules of Court means a right clearly founded in or granted by law, a right which is enforceable as a matter of law.

Applying the above-cited principles of law in the present case, the Court finds no clear right in Batjak to be entitled to the writ prayed for. It should be noted that the petition for *mandamus* filed by it prayed that NIDC and PNB be ordered to surrender, relinquish and turn-over to Batjak the assets, management, and operation of Batjak particularly the three (3) oil mills and to make the order permanent, after trial, and ordering NIDC and PNB to submit a complete accounting of the assets, management and operation of Batjak from 1965. In effect, what Batjak seeks to recover is title to, or possession of, real property (the three (3) oil mills which really made up the assets of Batjak) but which the records show already belong to NIDC. It is not disputed that the mortgages on the three (3) oil mills were foreclosed by PNB and NIDC and acquired by them as the highest bidder in the appropriate foreclosure sales. Ownership thereto was subsequently consolidated by PNB and NIDC, after Batjak failed to exercise its right of redemption. The three (3) oil mills are now titled in the name of NIDC. From the foregoing, it is evident that Batjak had no clear right to be entitled to the writ prayed for. In *Lamb vs. Philippines* (22 Phil. 456) citing the case of

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[24] *Marcelo Steel Corporation vs. Import Central Board*, 87 Phil. 375.

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Gonzales V. Salazar vs. The Board of Pharmacy, 20 Phil. 367, the Court said that the writ of *mandamus* will not issue to give to the applicant anything to which he is not entitled by law.

2. *On the appointment of receiver.*

A receiver of real or personal property, which is the subject of the action, may be appointed by the court when it appears from the pleadings that the party applying for the appointment of receiver has an interest in said property.[25] The right, interest, or claim in property, to entitle one to a receiver over it, must be present and existing.

As borne out by the records of the case, PNB acquired ownership of two (2) of the three (3) oil mills by virtue of mortgage foreclosure sales. NIDC acquired ownership of the third oil mill also under a mortgage foreclosure sale. Certificates of title were issued to PNB and NIDC after the lapse of the one (1) year redemption period. Subsequently, PNB transferred the ownership of the two (2) oil mills to NIDC. There can be no doubt, therefore, that NIDC not only has possession of, but also title to the three (3) oil mills formerly owned by Batjak. The interest of Batjak over the three (3) oil mills ceased upon the issuance of the certificates of title to PNB and NIDC confirming their ownership over the said properties. More so, where Batjak does not impugn the validity of the foreclosure proceedings. Neither Batjak nor its stockholders have instituted any legal proceedings to annul the mortgage foreclosure sales aforementioned.

Batjak premises its right to the possession of the three (3) oil mills on the Voting Trust Agreement, claiming that under said agreement, NIDC was constituted as trustee of the assets, management and operations of Batjak, that due to the expiration of the Voting Trust Agreement, on 26 October 1970, NIDC should turn over the assets of the three (3) oil mills to Batjak.

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[25] Sec. 1(b), Rule 59 of the Rules of Court.

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The relevant provisions of the Voting Trust Agreement, particularly paragraph 4 & No. 1 thereof, are hereby reproduced:

"NOW THEREFORE, the undersigned stockholders, in consideration of the premises and of the mutual covenants and agreements herein contained and to carry out the foregoing purposes in order to vest in the TRUSTEE the voting rights of the shares of stock held by the undersigned in the CORPORATION as hereinafter stated it is mutually agreed as follows:

"1. PERIOD OF DESIGNATION — For a period of five (5) years from and after date hereof, without power of revocation on the part of the SUBSCRIBERS, the TRUSTEE designated in the manner herein provided is hereby made, constituted and appointed as a VOTING TRUSTEE to act for and in the name of the SUBSCRIBERS, it being understood, however, that this Voting Trust Agreement shall, upon its expiration be subject to a re-negotiation between the parties, as may be warranted by the balance and attending circumstance of the loan investment of the TRUSTEE or otherwise in the CORPORATION.

and No. 3 thereof reads:

"3. VOTING POWER OF TRUSTEE — The TRUSTEE and its successors in trust, if any, shall have the power and it shall be its duty to vote the shares of the undersigned subject hereof and covered by this Agreement at all annual, adjourned and special meetings of the CORPORATION on all questions, motions, resolutions and matters including the election of directors and all such matters on which the stockholders, by virtue of the by-laws of the CORPORATION and of the existing legislations are entitled to vote, which may be voted upon at any and all said meetings and shall also have the power to execute and acknowledge any agreements or documents that may be necessary in its opinion to express the consent or assent of all or any of the stockholders of the CORPORATION with respect to any matter or thing to which any consent or assent of the stockholders may be necessary, proper or convenient."

From the foregoing provisions, it is clear that what was assigned to NIDC was the power to vote the shares of stock of the stockholders of Batjak, representing 60% of Batjak's outstanding shares, and who are the signatories to the agreement. The power

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entrusted to NIDC also included the authority to execute any agreement or document that may be necessary to express the consent or assent to any matter, by the stockholders. Nowhere in the said provisions or in any other part of the Voting Trust Agreement is mention made of any transfer or assignment to NIDC of Batjak's assets, operations, and management. NIDC was constituted as trustee only of the voting rights of 60% of the paid-up and outstanding shares of stock in Batjak. This is confirmed by paragraph No. 9 of the same Voting Trust Agreement, thus:

"9. TERMINATION — Upon termination of this Agreement as heretofore provided, the certificates delivered to the TRUSTEE by virtue hereof shall be returned and delivered to the undersigned stockholders as the absolute owners thereof, upon surrender of their respective voting trust certificates, and the duties of the TRUSTEE shall ceased and terminate."

Under the aforecited provision, what was to be returned by NIDC as trustee to Batjak's stockholders, upon the termination of the agreement, are the certificates of shares of stock belonging to Batjak's stockholders, not the properties or assets of Batjak itself which were never delivered, in the first place to NIDC, under the terms of said Voting Trust Agreement.

In any event, a voting trust transfers only voting or other rights pertaining to the shares subject of the agreement, or control over the stock. The law on the matter is Section 59, paragraph 1 of the Corporation Code (BP 68) which provides:

"Sec. 59. Voting Trusts — One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trusties the right to vote and other rights pertaining to the shares for a period not exceeding five (5) years at any one time: x x x"[26]

The acquisition by PNB-NIDC of the properties in question was not made or effected under the capacity of a trustee but as

[26] Formerly Sec. 36 of the Corporation Law or Act No. 1459.

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a foreclosing creditor for the purpose of recovering on a just and valid obligation of Batjak.

Moreover, the prevention of imminent danger to property is the guiding principle that governs courts in the matter of appointing receivers. Under Sec. 1 (b), Rule 59 of the Rules of Court, it is necessary in granting the relief of receivership that the property or fund be in danger of loss, removal or material injury.

In the case at bar, Batjak in its petition for receivership, or in its amended petition therefor, failed to present any evidence to establish the requisite condition that the property is in danger of being lost, removed or materially injured unless a receiver is appointed to guard and preserve it.

WHEREFORE, the petitions are *GRANTED*. The orders of the respondent judge, dated 16 August 1971 and 30 September 1971, are hereby *ANNULLED* and *SET ASIDE*. The respondent judge and/or his successors are ordered to desist from hearing and/or conducting any further proceedings in Civil Case No. 14452, except to dismiss the same. With costs against private respondents.

SO ORDERED.

Yap, C. J., Melencio-Herrera, Paras, and *Sarmiento, JJ.*, concur.