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FIRST DIVISION

[G.R. No. 123553. July 13, 1998]

(CA-G.R. No. 33291)

NORA A. BITONG, *petitioner, vs.* **COURT OF APPEALS (FIFTH DIVISION), EUGENIA D. APOSTOL, JOSE A. APOSTOL, MR. & MS. PUBLISHING CO., LETTY J. MAGSANOC, AND ADORACION G. NUYDA,** *respondents.*

(CA-G.R. No. 33873)

NORA A. BITONG, *petitioner, vs.* **COURT OF APPEALS (FIFTH DIVISION) and EDGARDO B. ESPIRITU,** *respondents.*

SYNOPSIS

Petitioner Nora A. Bitong filed a derivative suit before the Securities and Exchange Commission allegedly for the benefit of the private respondent *Mr. & Ms.* Publishing Co., Inc. (*Mr. & Ms.* hereafter), among others, to hold respondent spouses Eugenia D. Apostol and Jose A. Apostol liable for fraud, misrepresentation, disloyalty, evident bad faith, conflict of interest and mismanagement in directing the affairs of *Mr. & Ms.* to the damage and prejudice of *Mr. & Ms.* and its stockholders, including petitioner. Petitioner testified at the trial that she became the registered and beneficial owner of 997 shares of stock of *Mr. & Ms.* out of the 4,088 total outstanding shares after she acquired them from JAKA through a deed of sale executed on 25 July 1983 and recorded in the Stock and Transfer Book of *Mr. & Ms.* under Certificate of Shares of Stock No. 008. After trial on the merits, the SEC Hearing Panel dismissed the derivative suit filed by petitioner. The Hearing Panel ruled that there was no serious mismanagement of *Mr. & Ms.* which would warrant drastic corrective measures. Petitioner appealed to the SEC *En Banc.* The SEC *En Banc* reversed the decision of the Hearing Panel. Consequently,

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respondent Apostol spouses, Magsanoc, Nuyda, and *Mr.& Ms.* filed a petition for review before respondent Court of Appeals. The appellate court rendered a decision reversing the SEC *En Banc* and held that from the evidence on record petitioner was not the owner of any share of stock in *Mr. & Ms.* and therefore not the real party-in-interest to prosecute the complaint she had instituted against private respondents. Hence, the present petition.

The Supreme Court affirmed the decision of the Court of Appeals. The Court ruled that while there is no doubt that petitioner was an employee of JAKA as its managing officer, however, in the absence of a special authority from the board of directors of JAKA to institute a derivative suit for and in its behalf, petitioner is disqualified by law to sue in her own name. The basis of a stockholder's suit is always one in equity. It cannot prosper without first complying with the legal requisites for its institution. The most important of these is the *bona fide* ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation. Petitioner failed to establish said legal requisites.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIONS; STATEMENTS OF PRIVATE RESPONDENTS IN THEIR ANSWER CANNOT BE CONSTRUED AS JUDICIAL ADMISSIONS.**— A party whose pleading is admitted as an admission against interest is entitled to overcome by evidence the apparent inconsistency, and it is competent for the party against whom the pleading is offered to show that the statements were inadvertently made or were made under a mistake of fact. In addition, a party against whom a single clause or paragraph of a pleading is offered may have the right to introduce other paragraphs which tend to destroy the admission in the paragraph offered by the adversary. The answer of private respondents shows that there was no judicial admission that petitioner was a stockholder of *Mr. & Ms.* to entitle her to file a derivative suit on behalf of the corporation. Where the statements of the private respondents were qualified with phrases such as, "insofar as they are limited, qualified and/or expanded by," "the truth being as stated in

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the *Affirmative Allegations/Defenses of this Answer"* they cannot be considered definite and certain enough, cannot be construed as judicial admissions.

2. **ID.; ID.; ID.; EVERY ALLEGED ADMISSION IS TAKEN AS AN ENTIRETY OF THE FACT WHICH MAKES IT FOR THE ONE SIDE WITH THE QUALIFICATIONS WHICH LIMIT, MODIFY OR DESTROY ITS EFFECT ON THE OTHER SIDE; REASON.**— When taken in its totality, the *Amended Answer to the Amended Petition*, or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest. In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit. Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.

3. **ID.; CIVIL PROCEDURE.; APPEAL; PRIVATE RESPONDENTS NOT ESTOPPED FROM QUESTIONING PETITIONER'S PERSONALITY; THE 06 DECEMBER 1990 ORDER CLEARLY AN INTERLOCUTORY ORDER AND AS SUCH, NOT APPEALABLE.** — Petitioner also argues that since private respondents failed to appeal the 6 December 1990 Order and the 3 August 1993 Decision of the *SEC* Hearing Panel declaring that she was the real party-in-interest and had legal personality to sue, they are now estopped from questioning her personality. Not quite. The 6 December 1990 Order is clearly an interlocutory order which cannot be considered as having finally resolved on the merits the issue of legal capacity of petitioner. The *SEC* Hearing Panel discussed the issue of legal capacity solely for the purpose of ruling on the application for writ of preliminary

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injunction as an incident to the main issues raised in the complaint. Being a mere interlocutory order, it is not appealable. For, an interlocutory order refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision of the whole controversy. Thus, even though the 6 December 1990 Order was adverse to private respondents, they had the legal right and option not to elevate the same to the *SEC En Banc* but rather to await the decision which resolves all the issues raised by the parties and to appeal therefrom by assigning all errors that might have been committed by the Hearing Panel.

4. COMMERCIAL LAW; CORPORATION CODE; SECTION 63 THEREOF; CERTIFICATE OF STOCK AND TRANSFER OF SHARES CONSTRUED. — Section 63 of the Corporation Code envisions a formal certificate of stock which can be issued only upon compliance with certain requisites. *First,* the certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock. *Second,* delivery of the certificate is an essential element of its issuance. Hence, there is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company. *Third,* the par value as to par value shares, or the full subscription as to no par value shares, must first be fully paid. *Fourth,* the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder. The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is at least *prima facie* evidence that it was legally issued in the absence of evidence to the contrary. However, this presumption may be rebutted. Similarly, books and records of a corporation which include even the stock and transfer book are generally admissible in evidence in favor of or against the corporation and its members to prove the corporate acts, its financial status and other matters including one's status as a stockholder. They are ordinarily the best evidence of corporate acts and proceedings. However, the books and

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records of a corporation are not conclusive even against the corporation but are *prima facie* evidence only. Parol evidence may be admitted to supply omissions in the records, explain ambiguities, or show what transpired where no records were kept, or in some cases where such records were contradicted. The effect of entries in the books of the corporation which purport to be regular records of the proceedings of its board of directors or stockholders can be destroyed by testimony of a more conclusive character than mere suspicion that there was an irregularity in the manner in which the books were kept. The foregoing considerations are founded on the basic principle that stock issued without authority and in violation of law is void and confers no rights on the person to whom it is issued and subjects him to no liabilities. Where there is an inherent lack of power in the corporation to issue the stock, neither the corporation nor the person to whom the stock is issued is estopped to question its validity since an estoppel cannot operate to create stock which under the law cannot have existence.

5. ID.; ID.; ID.; FORMAL CERTIFICATE OF STOCK COULD NOT BE CONSIDERED ISSUED IN CONTEMPLATION OF LAW UNLESS SIGNED BY THE PRESIDENT AND COUNTERSIGNED BY THE SECRETARY OR ASSISTANT SECRETARY; CASE AT BAR. — Based on the admission of petitioner, there is no truth to the statement written in Certificate of Stock No. 008 that the same was issued and signed on 25 July 1983 by its duly authorized officers specifically the President and Corporate Secretary because the actual date of signing thereof was 17 March 1989. Verily, a formal certificate of stock could not be considered issued in contemplation of law unless signed by the president or vice-president and countersigned by the secretary or assistant secretary. In this case, contrary to petitioner's submission, the Certificate of Stock No. 008 was only legally issued on 17 March 1989 when it was actually signed by the President of the corporation, and not before that date. While a certificate of stock is not necessary to make one a stockholder, e.g., where he is an incorporator and listed as stockholder in the articles of incorporation although no certificate of stock has yet been issued, it is supposed to serve as paper representative of the stock itself and of the owner's interest therein. Hence, when Certificate of

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Stock No. 008 was admittedly signed and issued only on 17 March 1989 and not on 25 July 1983, even as it indicates that petitioner owns 997 shares of stock of Mr. & Ms., the certificate has no evidentiary value for the purpose of proving that petitioner was a stockholder since 1983 up to 1989.

6. **ID.; ID.; ID.; REQUIREMENTS FOR A VALID TRANSFER OF STOCKS, NOT SATISFIED IN CASE AT BAR.** — The rule is that the endorsement of the certificate of stock by the owner or his attorney-in-fact or any other person legally authorized to make the transfer shall be sufficient to effect the transfer of shares only if the same is coupled with delivery. The delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the new transferee. Thus, for a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation. At most, in the instant case, petitioner has satified only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown.

7. **ID.; ID.; ID.; RULE ON PRESUMPTION OF REGULARITY CANNOT BE APPLIED IN CASE AT BAR.** — Considering that the requirements provided under Sec. 63 of *The Corporation Code* should be mandatorily complied with, the rule on presumption of regularity cannot apply. The regularity and validity of the transfer must be proved. As it is, even the credibility of the stock and transfer book and the entries thereon relied upon by petitioner to show compliance with the third requisite to prove that she was a stockholder since 1983 is highly doubtful.

8. **ID.; ID.; BASIS OF STOCKHOLDER'S RIGHT TO INSTITUTE A DERIVATIVE SUIT IS ONE IN EQUITY; LEGAL REQUISITES FOR ITS INSTITUTION MUST BE STRICTLY COMPLIED WITH.** — It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust, not of mere error of judgment or abuse of discretion, and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and

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for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders. The stockholder's right to institute a derivative suit is not based on any express provision of *The Corporation Code* but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for which he is otherwise without redress. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the *bona fide* ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.

APPEARANCES OF COUNSEL

Castillo Zamora & Poblador for petitioner.

D E C I S I O N

BELLOSILLO, *J.*:

These twin cases originated from a derivative suit[1] filed by petitioner Nora A. Bitong before the *Securities and Exchange Commission* (*SEC* hereafter) allegedly for the benefit of private respondent *Mr. & Ms. Publishing Co., Inc.* (*Mr. & Ms.* hereafter), among others, to hold respondent spouses Eugenia

[1] The derivative suit, docketed as SEC Case No. 03604, was commenced on 5 July 1989 through a petition for injunction, accounting and damages with prayer for the appointment of a management committee and for a writ of preliminary injunction and a temporary restraining order.

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D. Apostol and Jose A. Apostol[2] liable for fraud, misrepresentation, disloyalty, evident bad faith, conflict of interest and mismanagement in directing the affairs of *Mr. & Ms.* to the damage and prejudice of *Mr. & Ms.* and its stockholders, including petitioner.

Alleging before the *SEC* that she had been the Treasurer and a Member of the Board of Directors of *Mr. & Ms.* from the time it was incorporated on 29 October 1976 to 11 April 1989, and was the registered owner of 1,000 shares of stock out of the 4,088 total outstanding shares, petitioner complained of irregularities committed from 1983 to 1987 by Eugenia D. Apostol, President and Chairperson of the Board of Directors. Petitioner claimed that except for the sale of the name *Philippine Inquirer* to *Philippine Daily Inquirer* (*PDI* hereafter) all other transactions and agreements entered into by *Mr. & Ms.* with *PDI* were not supported by any bond and/or stockholders' resolution. And, upon instructions of Eugenia D. Apostol, *Mr. & Ms.* made several cash advances to *PDI* on various occasions amounting to ₱3.276 million. On some of these borrowings *PDI* paid no interest whatsoever. Despite the fact that the advances made by *Mr. & Ms.* to *PDI* were booked as advances to an affiliate, there existed no board or stockholders' resolution, contract nor any other document which could legally authorize the creation of and support to an affiliate.

Petitioner further alleged that respondents Eugenia and Jose Apostol were stockholders, directors and officers in both *Mr. & Ms.* and *PDI.* In fact on 2 May 1986 respondents Eugenia D. Apostol, Leticia J. Magsanoc and Adoracion G. Nuyda subscribed to *PDI* shares of stock at ₱50,000.00 each or a total of ₱150,000.00. The stock subscriptions were paid for by *Mr. & Ms.* and initially treated as receivables from officers and employees. But, no payments were ever received from respondents, Magsanoc and Nuyda.

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[2] The name of respondent Jose Apostol has been interchangeably designated in the records as "Jose A. Apostol" and as "Jose Z. Apostol." For uniformity, "Jose A. Apostol" or simply "Jose Apostol" is used in this Decision.

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The petition principally sought to (a) enjoin respondents Eugenia D. Apostol and Jose A. Apostol from further acting as president-director and director, respectively, of *Mr. & Ms.* and disbursing any money or funds except for the payment of salaries and similar expenses in the ordinary course of business, and from disposing of their *Mr. & Ms.* shares; (b) enjoin respondents Apostol spouses, Magsanoc and Nuyda from disposing of the *PDI* shares of stock registered in their names; (c) compel respondents Eugenia and Jose Apostol to account for and reconvey all profits and benefits accruing to them as a result of their improper and fraudulent acts; (d) compel respondents Magsanoc and Nuyda to account for and reconvey to *Mr. & Ms.* all shares of stock paid from cash advances from it and all accessions or fruits thereof; (e) hold respondents Eugenia and Jose Apostol liable for damages suffered by *Mr. & Ms.* and the other stockholders, including petitioner, by reason of their improper and fraudulent acts; (f) appoint a management committee for *Mr. & Ms.* during the pendency of the suit to prevent further dissipation and loss of its assets and funds as well as paralyzation of business operations; and, (g) direct the management committee for *Mr. & Ms.* to file the necessary action to enforce its rights against *PDI* and other third parties.

Private respondents Apostol spouses, Magsanoc, Nuyda, and *Mr. & Ms.*, on the other hand, refuted the allegations of petitioner by starting with a narration of the beginnings of *Mr. & Ms.* They recounted that on 9 March 1976 *Ex Libris Publishing Co., Inc.* (*Ex Libris* hereafter) was incorporated for the purpose of publishing a weekly magazine. Its original principal stockholders were spouses Senator Juan Ponce Enrile (then Minister of National Defense) and Cristina Ponce Enrile through *Jaka Investments Corporation* (*JAKA* hereafter), and respondents Eugenia and Jose Apostol. When *Ex Libris* suffered financial difficulties, *JAKA* and the Apostols, together with new investors Luis Villafuerte and Ramon Siy, restructured *Ex Libris* by organizing a new corporation known as *Mr. & Ms.*

The original stockholders of *Mr. & Ms., i.e., JAKA,* Luis Villafuerte, Ramon Siy, the Apostols and *Ex Libris* continued to be virtually the same up to 1989. Thereafter it was agreed

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among them that, they being close friends, *Mr. & Ms.* would be operated as a partnership or a close corporation; respondent Eugenia D. Apostol would manage the affairs of *Mr. & Ms.;* and, no shares of stock would be sold to third parties without first offering the shares to the other stockholders so that transfers would be limited to and only among the original stockholders.

Private respondents also asserted that respondent Eugenia D. Apostol had been informing her business partners of her actions as manager, and obtaining their advice and consent. Consequently the other stockholders consented, either expressly or impliedly, to her management. They offered no objections. As a result, the business prospered. Thus, as shown in a statement prepared by the accounting firm *Punongbayan and Araullo,* there were increases from 1976 to 1988 in the total assets of *Mr. & Ms.* from ₱457,569.00 to ₱10,143,046.00; in the total stockholders' equity from ₱203,378.00 to ₱2,324,954.00; and, in the net sales, from ₱301,489.00 to ₱16,325,610.00. Likewise, cash dividends were distributed and received by the stockholders.

Private respondents further contended that petitioner, being merely a holder-in-trust of *JAKA* shares, only represented and continued to represent *JAKA* in the board. In the beginning, petitioner cooperated with and assisted the management until mid-1986 when relations between her and her principals on one hand, and respondent Eugenia D. Apostol on the other, became strained due to political differences. Hence from mid-1986 to mid-1988 petitioner refused to speak with respondent Eugenia D. Apostol, and in 1988 the former became openly critical of the management of the latter. Nevertheless, respondent Eugenia D. Apostol always made available to petitioner and her representatives all the books of the corporation.

Private respondents averred that all the *PDI* shares owned by respondents Eugenia and Jose Apostol were acquired through their own private funds and that the loan of ₱750,000.00 by *PDI* from *Mr. & Ms.* had been fully paid with 20% interest per annum. And, it was *PDI,* not *Mr. & Ms.,* which loaned off ₱250,000.00 each to respondents Magsanoc and Nuyda. Private respondents further argued that petitioner was not the

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true party to this case, the real party being *JAKA* which continued to be the true stockholder of *Mr. & Ms.;* hence, petitioner did not have the personality to initiate and prosecute the derivative suit which, consequently, must be dismissed.

On 6 December 1990, the *SEC* Hearing Panel[3] issued a writ of preliminary injunction enjoining private respondents from disbursing any money except for the payment of salaries and other similar expenses in the regular course of business. The Hearing Panel also enjoined respondent Apostol spouses, Nuyda and Magsanoc from disposing of their *PDI* shares, and further ruled —

> x x x respondents' contention that petitioner is not entitled to the provisional reliefs prayed for because she is not the real party-in-interest x x x is bereft of any merit. No less than respondents' Amended Answer, specifically paragraph V, No. 8 on Affirmative Allegations/Defenses states that 'The petitioner being herself a minor stockholder and holder-in-trust of JAKA shares represented and continues to represent JAKA in the Board.' This statement refers to petitioner sitting in the board of directors of Mr. & Ms. in two capacities, one as a minor stockholder and the other as the holder in trust of the shares of JAKA in Mr. & Ms. Such reference alluded to by the respondents indicates an admission on respondents' part of the petitioner's legal personality to file a derivative suit for the benefit of the respondent Mr. & Ms. Publishing Co., Inc.

The Hearing Panel however denied petitioner's prayer for the constitution of a management committee.

On 25 March 1991 private respondents filed a *Motion to Amend Pleadings to Conform to Evidence* alleging that the issue of whether petitioner is the real party-in-interest had been tried by express or implied consent of the parties through the admission of documentary exhibits presented by private respondents proving that the real party-in-interest was *JAKA,* not petitioner Bitong. As such, No. 8, par. V *(Affirmative Allegations/Defenses), Answer to the Amended Petition,* was

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[3] The SEC Hearing Panel was composed of Hearing Officers Josefina L. Pasay-Paz, Antonio M. Esteves and Manuel P. Perea.

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stipulated due to inadvertence and excusable mistake and should be amended. On 10 October 1991 the Hearing Panel denied the motion for amendment.

Petitioner testified at the trial that she became the registered and beneficial owner of 997 shares of stock of *Mr. & Ms.* out of the 4,088 total outstanding shares after she acquired them from *JAKA* through a deed of sale executed on 25 July 1983 and recorded in the Stock and Transfer Book of *Mr. & Ms.* under Certificate of Shares of Stock No. 008. She pointed out that Senator Enrile decided that *JAKA* should completely divest itself of its holdings in *Mr. & Ms.* and this resulted in the sale to her of *JAKA's* interest and holdings in that publishing firm.

Private respondents refuted the statement of petitioner that she was a stockholder of *Mr. & Ms.* since 25 July 1983 as respondent Eugenia D. Apostol signed Certificate of Stock No. 008 only on 17 March 1989, and not on 25 July 1983. Respondent Eugenia D. Apostol explained that she stopped using her long signature (Eugenia D. Apostol) in 1987 and changed it to E.D. Apostol, the signature which appeared on the face of Certificate of Stock No. 008 bearing the date 25 July 1983. And, since the Stock and Transfer Book which petitioner presented in evidence was not registered with the *SEC,* the entries therein including Certificate of Stock No. 008 were fraudulent. Respondent Eugenia D. Apostol claimed that she had not seen the Stock and Transfer Book at any time until 21 March 1989 when it was delivered by petitioner herself to the office of *Mr. & Ms.,* and that petitioner repeatedly referred to Senator Enrile as "my principal" during the *Mr. & Ms.* board meeting of 22 September 1988, seven (7) times no less.

On 3 August 1993, after trial on the merits, the *SEC* Hearing Panel dismissed the derivative suit filed by petitioner and dissolved the writ of preliminary injunction barring private respondents from disposing of their *PDI* shares and any of *Mr. & Ms.* assets. The Hearing Panel ruled that there was no serious mismanagement of *Mr. & Ms.* which would warrant drastic corrective measures. It gave credence to the assertion of respondent Eugenia D. Apostol that *Mr. & Ms.* was operated

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like a close corporation where important matters were discussed and approved through informal consultations at breakfast conferences. The Hearing Panel also concluded that while the evidence presented tended to show that the real party-in-interest indeed was *JAKA* and/or Senator Enrile, it viewed the real issue to be the alleged mismanagement, fraud and conflict of interest on the part of respondent Eugenia D. Apostol, and allowed petitioner to prosecute the derivative suit if only to resolve the real issues. Hence, for this purpose, the Hearing Panel considered petitioner to be the real party-in-interest.

On 19 August 1993 respondent Apostol spouses sold the *PDI* shares registered in the name of their holding company, JAED Management Corporation, to Edgardo B. Espiritu. On 25 August 1993 petitioner Bitong appealed to the *SEC En Banc.*

On 24 January 1994 the *SEC En Banc*[4] reversed the decision of the Hearing Panel and, among others, ordered private respondents to account for, return and deliver to *Mr. & Ms.* any and all funds and assets that they disbursed from the coffers of the corporation including shares of stock, profits, dividends and/or fruits that they might have received as a result of their investment in *PDI,* including those arising from the ₱150,000.00 advanced to respondents Eugenia D. Apostol, Leticia J. Magsanoc and Adoracion G. Nuyda; account for and return any profits and fruits of all amounts irregularly or unlawfully advanced to *PDI* and other third persons; and, cease and desist from managing the affairs of *Mr. & Ms.* for reasons of fraud, mismanagement, disloyalty and conflict of interest.

The *SEC En Banc* also declared the 19 August 1993 sale of the *PDI* shares of *JAED Management Corporation* to Edgardo B. Espiritu to be tainted with fraud, hence, null and void, and considered *Mr. & Ms.* as the true and lawful owner of all the *PDI* shares acquired by respondents Eugenia D. Apostol, Magsanoc and Nuyda. It also declared all subsequent transferees

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[4] Associate Commissioners Rodolfo L. Samarista, Merle O. Manuel, Fe Eloisa C. Gloria and Perfecto R. Yasay, Jr., concurred in the Order, while Chairman Rosario N. Lopez did not participate.

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of such shares as trustees for the benefit of *Mr. & Ms.* and ordered them to forthwith deliver said shares to *Mr. & Ms.*

Consequently, respondent Apostol spouses, Magsanoc, Nuyda, and *Mr. & Ms.* filed a petition for review before respondent Court of Appeals, docketed as CA-GR No. SP 33291, while respondent Edgardo B. Espiritu filed a petition for *certiorari* and prohibition also before respondent Court of Appeals, docketed as CA-GR No. SP 33873. On 8 December 1994 the two (2) petitions were consolidated.

On 31 August 1995 respondent appellate court rendered a decision reversing the *SEC En Banc* and held that from the evidence on record petitioner was not the owner of any share of stock in *Mr. & Ms.* and therefore not the real party-in-interest to prosecute the complaint she had instituted against private respondents. Accordingly, petitioner alone and by herself as an agent could not file a derivative suit in behalf of her principal. For not being the real party-in-interest, petitioner's complaint did not state a cause of action, a defense which was never waived; hence, her petition should have been dismissed. Respondent appellate court ruled that the assailed orders of the *SEC* were issued in excess of jurisdiction, or want of it, and thus were null and void.[5] On 18 January 1996, petitioner's motion for reconsideration was denied for lack of merit.

Before this Court, petitioner submits that in paragraph 1 under the caption *"I. The Parties"* of her *Amended Petition* before the *SEC,* she stated that she was a stockholder and director of *Mr. & Ms.* In par. 1 under the caption *"II. The Facts"* she declared that she "is the registered owner of 1,000 shares of stock of *Mr. & Ms.* out of the latter's 4,088 total outstanding shares" and that she was a member of the Board of Directors of *Mr. & Ms.* and treasurer from its inception until 11 April 1989. Petitioner contends that private respondents did not deny

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[5] CA Decision penned by Associate Justice Pedro A. Ramirez, Chairman of the Eight Division (Division of Five), with Associate Justices Jaime M. Lantin and Cancio C. Garcia concurring, and Associate Justices Lourdes K. Tayao-Jaguros and Eugenio S. Labitoria dissenting.

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the above allegations in their answer and therefore they are conclusively bound by this judicial admission. Consequently, private respondents' admission that petitioner has 1,000 shares of stock registered in her name in the books of *Mr. & Ms.* forecloses any question on her status and right to bring a derivative suit on behalf of *Mr. & Ms.*

Not necessarily. A party whose pleading is admitted as an admission against interest is entitled to overcome by evidence the apparent inconsistency, and it is competent for the party against whom the pleading is offered to show that the statements were inadvertently made or were made under a mistake of fact. In addition, a party against whom a single clause or paragraph of a pleading is offered may have the right to introduce other paragraphs which tend to destroy the admission in the paragraph offered by the adversary.[6]

The *Amended Petition* before the *SEC* alleges —

I. THE PARTIES

1. Petitioner is a stockholder and director of Mr. & Ms. x x x

II. THE FACTS

1. Petitioner is the registered owner of 1,000 shares of stock of Mr. & Ms. out of the latter's 4,088 total outstanding shares. Petitioner, at all times material to this petition, is a member of the Board of Directors of Mr. & Ms. and from the inception of Mr. & Ms. until 11 April 1989 was its treasurer x x x

On the other hand, the *Amended Answer* to the *Amended Petition* states —

I. PARTIES

1. Respondents admit the allegations contained in Caption I, pars. 1 to 4 of the Petition referring to the personality, addresses and capacity of the parties to the petition except x x x but qualify said admission insofar as they are limited, qualified and/or expanded by allegations in the Affirmative Allegations/Defenses x x x

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[6] 29A AmJur 2d, p. 143.

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II. THE FACTS

1. Respondents admit paragraph 1 of the Petition, but qualify said admission as to the beneficial ownership of the shares of stock registered in the name of the petitioner, the truth being as stated in the Affirmative Allegations/Defenses of this Answer x x x

V. AFFIRMATIVE ALLEGATIONS/DEFENSES

Respondents respectfully allege by way of Affirmative Allegations/Defenses, that x x x

3. Fortunately, respondent Apostol was able to convince Mr. Luis Villafuerte to take interest in the business and he, together with the original investors, restructured the Ex Libris Publishing Company by organizing a new corporation known as Mr. & Ms. Publishing Co., Inc. x x x Mr. Luis Villafuerte contributed his own ₱100,000.00. JAKA and respondent Jose Z. Apostol, original investors of Ex Libris contributed ₱100,000.00 each; Ex Libris Publishing Company was paid 800 shares for the name of Mr. & Ms. magazine and goodwill. Thus, the original stockholders of respondent Mr. & Ms. were:

Cert./No./Date	Name of Stockholder	No. of Shares	%
001-9-15-76	JAKA Investments Corp.	1,000	21%
002-9-15-76	Luis Villafuerte	1,000	21%
003-9-15-76	Ramon L. Siy	1,000	21%
004-9-15-76	Jose Z. Apostol	1,000	21%
005-9-15-76	Ex Libris Publishing Co.	800	16%
		4,800	96%

4. The above-named original stockholders of respondent Mr. & Ms. continue to be virtually the same stockholders up to this date xxx

8. The petitioner being herself a minor stockholder and holder-in-trust of JAKA shares, represented and continues to represent JAKA in the Board x x x

21. Petitioner Nora A. Bitong is not the true party to this case, the true party being JAKA Investments Corporation which continues to be the true stockholder of respondent Mr. & Ms. Publishing Co., Inc., consequently, she does not have the personality to initiate and prosecute this derivative suit, and should therefore be dismissed x x x

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The answer of private respondents shows that there was no judicial admission that petitioner was a stockholder of *Mr. & Ms.* to entitle her to file a derivative suit on behalf of the corporation. Where the statements of the private respondents were qualified with phrases such as, "insofar as they are limited, qualified and/or expanded by," "the truth being as stated in the *Affirmative Allegations/Defenses of this Answer"* they cannot be considered definite and certain enough, cannot be construed as judicial admissions.[7]

More so, the affirmative defenses of private respondents directly refute the representation of petitioner that she is a true and genuine stockholder of *Mr. & Ms.* by stating unequivocally that petitioner is not the true party to the case but *JAKA* which continues to be the true stockholder of *Mr. & Ms.* In fact, one of the reliefs which private respondents prayed for was the dismissal of the petition on the ground that petitioner did not have the legal interest to initiate and prosecute the same.

When taken in its totality, the *Amended Answer to the Amended Petition*, or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.

In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit. Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through

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[7] *Almer v. Hobart Corp.* (Mo App) 849 SW2d 135, CCH Prod Liab Rep 13550 cited in 29A AmJur 2d, p. 137.

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palpable mistake.[8] The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.[9]

Petitioner also argues that since private respondents failed to appeal the 6 December 1990 Order and the 3 August 1993 Decision of the *SEC* Hearing Panel declaring that she was the real party-in-interest and had legal personality to sue, they are now estopped from questioning her personality.

Not quite. The 6 December 1990 Order is clearly an interlocutory order which cannot be considered as having finally resolved on the merits the issue of legal capacity of petitioner. The *SEC* Hearing Panel discussed the issue of legal capacity solely for the purpose of ruling on the application for writ of preliminary injunction as an incident to the main issues raised in the complaint. Being a mere interlocutory order, it is not appealable.

For, an interlocutory order refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision of the whole controversy.[10] Thus, even though the 6 December 1990 Order was adverse to private respondents, they had the legal right and option not to elevate the same to the *SEC En Banc* but rather to await the decision which resolves all the issues raised by the parties and to appeal therefrom by assigning all errors that might have been committed by the Hearing Panel.

On the other hand, the 3 August 1993 Decision of the Hearing Panel dismissing the derivative suit for failure to prove the charges of mismanagement, fraud, disloyalty and conflict of interest and dissolving the writ of preliminary injunction, was favorable to private respondents. Hence, they were not expected to appeal therefrom.

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[8] *Granada v. PNB*, No. L-20745, 2 September 1966, 18 SCRA 1.

[9] *Gaspar v. Dorado*, No. L-17884, 29 November 1965, 15 SCRA 331.

[10] Black's Law Dictionary, Fifth Edition, p. 731.

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In fact, in the 3 August 1993 Decision, the Hearing Panel categorically stated that the evidence presented showed that the real party-in-interest was not petitioner Bitong but *JAKA* and/or Senator Enrile. Petitioner was merely allowed to prosecute her complaint so as not to sidetrack "the real issue to be resolved (which) was the allegation of mismanagement, fraud and conflict of interest allegedly committed by respondent Eugenia D. Apostol." It was only for this reason that petitioner was considered to be capacitated and competent to file the petition.

Accordingly, with the dismissal of the complaint of petitioner against private respondents, there was no compelling reason for the latter to appeal to the *SEC En Banc.* It was in fact petitioner's turn as the aggrieved party to exercise her right to appeal from the decision. It is worthy to note that even during the appeal of petitioner before the *SEC En Banc* private respondents maintained their vigorous objection to the appeal and reiterated petitioner's lack of legal capacity to sue before the *SEC.*

Petitioner then contends that she was a holder of the proper certificates of shares of stock and that the transfer was recorded in the Stock and Transfer Book of *Mr. & Ms.* She invokes Sec. 63 of *The Corporation Code* which provides that no transfer shall be valid except as between the parties until the transfer is recorded in the books of the corporation, and upon its recording the corporation is bound by it and is estopped to deny the fact of transfer of said shares. Petitioner alleges that even in the absence of a stock certificate, a stockholder solely on the strength of the recording in the stock and transfer book can exercise all the rights as stockholder, including the right to file a derivative suit in the name of the corporation. And, she need not present a separate deed of sale or transfer in her favor to prove ownership of stock.

Section 63 of *The Corporation Code* expressly provides —

Sec. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned

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by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer however shall be valid except as between the parties until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred x x x

This provision above quoted envisions a formal certificate of stock which can be issued only upon compliance with certain requisites. *First,* the certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. A mere typewritten statement advising a stockholder of the extent of his ownership in a corporation without qualification and/or authentication cannot be considered as a formal certificate of stock.[11] *Second*, delivery of the certificate is an essential element of its issuance. Hence, there is no issuance of a stock certificate where it is never detached from the stock books although blanks therein are properly filled up if the person whose name is inserted therein has no control over the books of the company.[12] *Third,* the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. *Fourth,* the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.

The certificate of stock itself once issued is a continuing affirmation or representation that the stock described therein is valid and genuine and is at least *prima facie* evidence that it was legally issued in the absence of evidence to the contrary.

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[11] SEC Opinion, 20 October 1970 in Sehwani Investment & Management Co., cited in Lopez, R., *The Corporation Code of the Philippines*, Vol. 2, 1994 Ed.

[12] *Tuason v. La Previsora Filipina*, 67 Phil. 36 [1938].

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However, this presumption may be rebutted.[13] Similarly, books and records of a corporation which include even the stock and transfer book are generally admissible in evidence in favor of or against the corporation and its members to prove the corporate acts, its financial status and other matters including one's status as a stockholder. They are ordinarily the best evidence of corporate acts and proceedings.

However, the books and records of a corporation are not conclusive even against the corporation but are *prima facie* evidence only. Parol evidence may be admitted to supply omissions in the records, explain ambiguities, or show what transpired where no records were kept, or in some cases where such records were contradicted.[14] The effect of entries in the books of the corporation which purport to be regular records of the proceedings of its board of directors or stockholders can be destroyed by testimony of a more conclusive character than mere suspicion that there was an irregularity in the manner in which the books were kept.[15]

The foregoing considerations are founded on the basic principle that stock issued without authority and in violation of law is void and confers no rights on the person to whom it is issued and subjects him to no liabilities.[16] Where there is an inherent lack of power in the corporation to issue the stock, neither the corporation nor the person to whom the stock is issued is estopped to question its validity since an estoppel cannot operate to create stock which under the law cannot have existence.[17]

As found by the Hearing Panel and affirmed by respondent Court of Appeals, there is overwhelming evidence that despite

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[13] Fletcher, William Meade, *Encyclopedia of the Law of Private Corporations*, Vol. V, p. 5768.

[14] 18 AmJur 2d 706.

[15] *Id.*, p. 707.

[16] See Note 13, p. 5765.

[17] *Id.*, p. 5774.

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what appears on the certificate of stock and stock and transfer book, petitioner was not a *bona fide* stockholder of *Mr. & Ms.* before March 1989 or at the time the complained acts were committed to qualify her to institute a stockholder's derivative suit against private respondents. Aside from petitioner's own admissions, several corporate documents disclose that the true party-in-interest is not petitioner but *JAKA*.

Thus, while petitioner asserts in her petition that Certificate of Stock No. 008 dated 25 July 1983 was issued in her name, private respondents argue that this certificate was signed by respondent Eugenia D. Apostol as President only in 1989 and was fraudulently antedated by petitioner who had possession of the Certificate Book and the Stock and Transfer Book. Private respondents stress that petitioner's counsel entered into a stipulation on record before the Hearing Panel that the certificate was indeed signed by respondent Apostol only in 1989 and not in 1983.

In her reply, petitioner admits that while respondent Eugenia D. Apostol signed the Certificate of Stock No. 008 in petitioner's name only in 1989, it was issued by the corporate secretary in 1983 and that the other certificates covering shares in *Mr. & Ms.* had not yet been signed by respondent Eugenia D. Apostol at the time of the filing of the complaint with the *SEC* although they were issued years before.

Based on the foregoing admission of petitioner, there is no truth to the statement written in Certificate of Stock No. 008 that the same was issued and signed on 25 July 1983 by its duly authorized officers specifically the President and Corporate Secretary because the actual date of signing thereof was 17 March 1989. Verily, a formal certificate of stock could not be considered issued in contemplation of law unless signed by the president or vice-president and countersigned by the secretary or assistant secretary.

In this case, contrary to petitioner's submission, the Certificate of Stock No. 008 was only legally issued on 17 March 1989 when it was actually signed by the President of the corporation, and not before that date. While a certificate of stock is not

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necessary to make one a stockholder, e.g., where he is an incorporator and listed as stockholder in the articles of incorporation although no certificate of stock has yet been issued, it is supposed to serve as paper representative of the stock itself and of the owner's interest therein. Hence, when Certificate of Stock No. 008 was admittedly signed and issued only on 17 March 1989 and not on 25 July 1983, even as it indicates that petitioner owns 997 shares of stock of *Mr. & Ms.*, the certificate has no evidentiary value for the purpose of proving that petitioner was a stockholder since 1983 up to 1989.

And even the factual antecedents of the alleged ownership by petitioner in 1983 of shares of stock of *Mr. & Ms.* are indistinctive if not enshrouded in inconsistencies. In her testimony before the Hearing Panel, petitioner said that early in 1983, to relieve *Mr. & Ms.* from political pressure, Senator Enrile decided to divest the family holdings in *Mr. & Ms.* as he was then part of the government and *Mr. & Ms.* was evolving to be an opposition newspaper. The *JAKA* shares numbering 1,000 covered by Certificate of Stock No. 001 were thus transferred to respondent Eugenia D. Apostol in trust or in blank.[18]

Petitioner now claims that a few days after *JAKA's* shares were transferred to respondent Eugenia D. Apostol, Senator Enrile sold to petitioner 997 shares of *JAKA*. For this purpose, a deed of sale was executed and antedated to 10 May 1983.[19] This submission of petitioner is however contradicted by the records which show that a deed of sale was executed by *JAKA* transferring 1,000 shares of *Mr. & Ms.* to respondent Apostol on 10 May 1983 and not to petitioner.[20]

Then Senator Enrile testified that in May or June 1983 he was asked at a media interview if his family owned shares of

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[18] TSN, 24 August 1989, pp. 38-39; 6 April 1990, pp. 10-11.

[19] Petition for Review on *Certiorari* before this Court, p. 10; *Rollo*, p. 87.

[20] Exh. "21" for petitioner.

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stock in *Mr. & Ms.* Although he and his family were stockholders at that time he denied it so as not to embarrass the magazine. He called up petitioner and instructed her to work out the documentation of the transfer of shares from *JAKA* to respondent Apostol to be covered by a declaration of trust. His instruction was to transfer the shares of *JAKA* in *Mr. & Ms.* and *Ex Libris* to respondent Apostol as a nominal holder. He then finally decided to transfer the shareholdings to petitioner.[21]

When asked if there was any document or any written evidence of that divestment in favor of petitioner, Senator Enrile answered that there was an endorsement of the shares of stock. He said that there was no other document evidencing the assignment to petitioner because the stocks were personal property that could be transferred even orally.[22] Contrary to Senator Enrile's testimony, however, petitioner maintains that Senator Enrile executed a deed of sale in her favor.

A careful perusal of the records shows that neither the alleged endorsement of Certificate of Stock No. 001 in the name of *JAKA* nor the alleged deed of sale executed by Senator Enrile directly in favor of petitioner could have legally transferred or assigned on 25 July 1983 the shares of stock in favor of petitioner because as of 10 May 1983 Certificate of Stock No. 001 in the name of *JAKA* was already cancelled and a new one, Certificate of Stock No. 007, issued in favor of respondent Apostol by virtue of a Declaration of Trust and Deed of Sale.[23]

It should be emphasized that on 10 May 1983 *JAKA* executed a deed of sale over 1,000 *Mr. & Ms.* shares in favor of respondent Eugenia D. Apostol. On the same day, respondent Apostol signed a declaration of trust stating that she was the registered owner of 1,000 *Mr. & Ms.* shares covered by Certificate of Stock No. 007.

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[21] TSN, 20 August 1990, pp. 5-18.

[22] *Id.*, p. 40.

[23] Exhs. 21 and 21-A for Private Respondents.

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The declaration of trust further showed that although respondent Apostol was the registered owner, she held the shares of stock and dividends which might be paid in connection therewith solely in trust for the benefit of *JAKA,* her principal. It was also stated therein that being a trustee, respondent Apostol agreed, on written request of the principal, to assign and transfer the shares of stock and any and all such distributions or dividends unto the principal or such other person as the principal would nominate or appoint.

Petitioner was well aware of this trust, being the person in charge of this documentation and being one of the witnesses to the execution of this document.[24] Hence, the mere alleged endorsement of Certificate of Stock No. 001 by Senator Enrile or by a duly authorized officer of *JAKA* to effect the transfer of shares of *JAKA* to petitioner could not have been legally feasible because Certificate of Stock No. 001 was already canceled by virtue of the deed of sale to respondent Apostol.

And, there is nothing in the records which shows that *JAKA* had revoked the trust it reposed on respondent Eugenia D. Apostol. Neither was there any evidence that the principal had requested her to assign and transfer the shares of stock to petitioner. If it was true that the shares of stock covered by Certificate of Stock No. 007 had been transferred to petitioner, the person who could legally endorse the certificate was private respondent Eugenia D. Apostol, she being the registered owner and trustee of the shares of stock covered by Certificate of Stock No. 007. It is a settled rule that the trustee should endorse the stock certificate to validate the cancellation of her share and to have the transfer recorded in the books of the corporation.[25]

In fine, the records are unclear on how petitioner allegedly acquired the shares of stock of *JAKA.* Petitioner being the

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[24] *Rollo*, p. 201.

[25] Lopez, Rosario, *The Corporation Code of the Philippines*, Vol. II, 1994 ed., p. 824.

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chief executive officer of *JAKA* and the sole person in charge of all business and financial transactions and affairs of *JAKA*[26] was supposed to be in the best position to show convincing evidence on the alleged transfer of shares to her, if indeed there was a transfer. Considering that petitioner's status is being questioned and several factual circumstances have been presented by private respondents disproving petitioner's claim, it was incumbent upon her to submit rebuttal evidence on the manner by which she allegedly became a stockholder. Her failure to do so taken in the light of several substantial inconsistencies in her evidence is fatal to her case.

The rule is that the endorsement of the certificate of stock by the owner or his attorney-in-fact or any other person legally authorized to make the transfer shall be sufficient to effect the transfer of shares only if the same is coupled with delivery. The delivery of the stock certificate duly endorsed by the owner is the operative act of transfer of shares from the lawful owner to the new transferee.

Thus, for a valid transfer of stocks, the requirements are as follows: (a) There must be delivery of the stock certificate; (b) The certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and, (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.[27] At most, in the instant case, petitioner has satisfied only the third requirement. Compliance with the first two requisites has not been clearly and sufficiently shown.

Considering that the requirements provided under Sec. 63 of *The Corporation Code* should be mandatorily complied with, the rule on presumption of regularity cannot apply. The regularity and validity of the transfer must be proved. As it is, even the credibility of the stock and transfer book and the entries thereon relied upon by petitioner to show compliance with the third

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[26] TSN, 20 August 1990, pp. 31-34.

[27] See Note 25, pp. 803-807.

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requisite to prove that she was a stockholder since 1983 is highly doubtful.

The records show that the original stock and transfer book and the stock certificate book of *Mr. & Ms.* were in the possession of petitioner before their custody was transferred to the Corporate Secretary, Atty. Augusto San Pedro.[28] On 25 May 1988, Assistant Corporate Secretary Renato Jose Unson wrote *Mr. & Ms.* about the lost stock and transfer book which was also noted by the corporation's external auditors, *Punongbayan and Araullo,* in their audit. Atty. Unson even informed respondent Eugenia D. Apostol as President of *Mr. & Ms.* that steps would be undertaken to prepare and register a new Stock and Transfer Book with the *SEC.* Incidentally, perhaps strangely, upon verification with the *SEC,* it was discovered that the general file of the corporation with the *SEC* was missing. Hence, it was even possible that the original Stock and Transfer Book might not have been registered at all.

On 20 October 1988 respondent Eugenia D. Apostol wrote Atty. Augusto San Pedro noting the changes he had made in the Stock and Transfer Book without prior notice to the corporate officers.[29] In the 27 October 1988 directors' meeting, respondent Eugenia D. Apostol asked about the documentation to support the changes in the Stock and Transfer Book with regard to the *JAKA* shares. Petitioner answered that Atty. San Pedro made the changes upon her instructions conformably with established practice.[30]

This simply shows that as of 1988 there still existed certain issues affecting the ownership of the *JAKA* shares, thus raising doubts whether the alleged transactions recorded in the Stock and Transfer Book were proper, regular and authorized. Then, as if to magnify and compound the uncertainties in the ownership

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[28] Exh. "35" for private respondents.

[29] Exh. "30" for private respondents.

[30] Exh. "31" for private respondents.

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of the shares of stock in question, when the corporate secretary resigned, the Stock and Transfer Book was delivered not to the corporate office where the book should be kept but to petitioner.[31]

That *JAKA* retained its ownership of its *Mr. & Ms.* shares was clearly shown by its receipt of the dividends issued in December 1986.[32] This only means, very obviously, that *Mr. & Ms.* shares in question still belonged to *JAKA* and not to petitioner. For, dividends are distributed to stockholders pursuant to their right to share in corporate profits. When a dividend is declared, it belongs to the person who is the substantial and beneficial owner of the stock at the time regardless of when the distribution profit was earned.[33]

Finally, this Court takes notice of the glaring and open admissions of petitioner made, not just seven (7) but nine (9) times, during the 22 September 1988 meeting of the board of directors that the Enriles were her principals or shareholders, as shown by the minutes thereof which she duly signed[34]—

> 5. Mrs. E. Apostol explained to the Directors that through her efforts, the asset base of the Company has improved and profits were realized. It is for this reason that the Company has declared a 100% cash dividend in 1986. She said that it is up for the Board to decide based on this performance whether she should continue to act as Board Chairman or not. In this regard, Ms. N.A. Bitong expressed her recollection of how Ex-Libris/Mr. & Ms. were organized and her participation for and on behalf of *her principals*, as follows: She recalled that *her principals* were invited by Mrs. E. Apostol to invest in Ex-Libris and eventually Mr. & Ms. The relationship between *her principals* and Mrs. E. Apostol made it possible for the latter to have access to several information concerning certain political events

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[31] Exh. "36" for private respondents.

[32] Exh. "26-B" for private respondents.

[33] Agbayani, Aguedo F., *Commercial Laws of the Philippines,* Vol. III, 1988 Ed., p. 409.

[34] Exh. "F" for petitioner.

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and issues. In many instances, *her principals* supplied first hand and newsworthy information that made Mr. & Ms. a popular paper x x x

6. According to Ms. Bitong, *her principals* were instrumental in helping Mr. & Ms. survive during those years that it was cash strapped x x x Ms. N.A. Bitong pointed out that the practice of using the former Minister's influence and stature in the government is one thing which *her principals* themselves are strongly against x x x

7. x x x At this point, Ms. N. Bitong again expressed her recollection of the subject matter as follows: (a) Mrs. E. Apostol, she remembers, brought up the concept of a cooperative-ran newspaper company in one of her breakfast session with *her principals* sometime during the end of 1985. *Her principals* when asked for an opinion, said that they recognized the concept as something very noble and visible x x x Then Ms. Bitong asked a very specific question - "When you conceptualized Ex-Libris and Mr. & Ms., did you not think of *my shareholders the Ponce Enriles* as liabilities? How come you associated yourself with them then and not now? What is the difference?" Mrs. Apostol did not answer the question.

The admissions of a party against his interest inscribed upon the record books of a corporation are competent and persuasive evidence against him.[35] These admissions render nugatory any argument that petitioner is a *bona fide* stockholder of *Mr. & Ms.* at any time before 1988 or at the time the acts complained of were committed. There is no doubt that petitioner was an employee of *JAKA* as its managing officer, as testified to by Senator Enrile himself.[36] However, in the absence of a special authority from the board of directors of *JAKA* to institute a derivative suit for and in its behalf, petitioner is disqualified by law to sue in her own name. The power to sue and be sued in any court by a corporation even as a stockholder is lodged in the board of directors that exercises its corporate powers and not in the president or officer thereof.[37]

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[35] See Note 25.

[36] See Note 26.

[37] See Note 33, citing *RP v. Phil. Resources Development Corp.*, G.R. No. 10141, 31 January 1958.

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It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust, not of mere error of judgment or abuse of discretion, and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.[38] The stockholder's right to institute a derivative suit is not based on any express provision of *The Corporation Code* but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.

Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for which he is otherwise without redress.[39] In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection.[40]

The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. The most important of these is the *bona fide* ownership by a stockholder of a stock in his own right at the time of the transaction complained of which invests him with standing to institute a derivative action for the benefit of the corporation.[41]

WHEREFORE, the petition is *DENIED*. The 31 August 1995 Decision of the Court of Appeals dismissing the complaint

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[38] *Pascual v. Del Sanz Orozeo*, 19 Phil. 82 (1911).

[39] See Note 11, p. 853, citing *Mimnaugh v. Atlantic City Electric Co.*, 7 NJ Super 310, Super 310, 70A (2d) 904.

[40] *Ashwander v. Tennessee Valley Authority*, 297 US 728, 80 L Ed 1011, 56 Sup Ct 588.

[41] SMC, represented by *Eduardo de los Angeles v. Kahn*, G.R. No. 85339, 11 August 1989, 176 SCRA 461.

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of petitioner Nora A. Bitong in CA-G.R. No. SP 33291, and granting the petition for *certiorari* and prohibition filed by respondent Edgardo B. Espiritu as well as annulling the 5 November 1993, 24 January 1994 and 18 February 1994 Orders of the *SEC En Banc* in CA-G.R. No. SP 33873, is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Davide, Jr. (Chairman), Vitug, and *Quisumbing, JJ.,* concur.

Panganiban, J., no part. Participated, as a former practicing lawyer, in negotiations to buy subject shares.

THIRD DIVISION

[G.R. No. 125044. July 13, 1998]

IMELDA DARVIN, *petitioner, vs.* **HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

Accused-appellant used to be connected with Dale Travel Agency. In 1992, she was introduced to Macaria Toledo by a friend. Toledo sought her help to secure a passport, U.S. Visa and airline tickets to the States. She did not promise any employment in the U.S. to Toledo. She, however, admitted having received the amount of ₱150,000.00 from Toledo and contends that it was used for necessary expenses of an intended trip to the U.S. of Toledo and her friend, Florencio Rivera. After receiving the money, she told Toledo that the papers will be released within 45 days. Appellant alleged that she was not