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Costs against petitioner.

SO ORDERED.

Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

Quisumbing, J. (Chairperson), on official leave.

THIRD DIVISION

[G.R. No. 153420. April 16, 2008]

PARAISO INTERNATIONAL PROPERTIES, INC., *petitioner, vs.* **COURT OF APPEALS and PEOPLE'S HOUSING LAND CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WRIT OF *CERTIORARI*, WHEN ISSUED.— For a writ of *certiorari* to issue, the applicant must show that the court or tribunal acted with grave abuse of discretion in issuing the challenged order. Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; DEFINED.— A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.

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APPEARANCES OF COUNSEL

George L. Howard for petitioner.

Espiritu and Associates Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed before the Court via a petition for *certiorari* under Rule 65 of the Rules of Court are the November 12, 2001[1] and the March 7, 2002[2] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 71311.

The records reveal that on April 2, 1998 the parties submitted to the appellate court a 6-page undated Compromise Agreement[3]

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr. concurring; *rollo*, p. 38.

[2] *Id.* at 46-47.

[3] *Id.* at 20-25. The pertinent portions of the Compromise Agreement are as follows:

xxx xxx xxx

"**Compromise Agreement**

"COME NOW the plaintiff-[a]ppellant PARAISO INTERNATIONAL PROPERTIES, INC. (PARAISO for brevity) and defendant-appellee PEOPLE'S HOUSING LAND CORPORATION (PEOPLE'S for brevity), duly assisted by their respective counsels, unto this Honorable Court of Appeals, most respectfully submit;

"1. Plaintiff-[a]ppellant and [d]efendant-[a]ppellee have mutually agreed that it is to their best interests to enter into an amicable settlement of all their cases, and to direct their efforts towards the development of a 'golf and mountain resort', which will redound to the benefit of the parties, the Province of Batangas, and its constituents; That this COMPROMISE AGREEMENT shall likewise apply to the other cases pending between the parties, especially Civil Case No. P-962 (RTC-Balayan, Batangas), C.A.-G.R. SP No. 38197 (Court of Appeals).

"2. Plaintiff-appellant's present management represented by Mr. Hisahide Saito (Saito for brevity) has agreed to assign all their shares of stocks, paid-up and subscription rights and interest therein (including the right to represent [p]laintiff corporation in the instant action) in favor of Messrs. Ryuji Nonoda

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amicably settling all their pending cases — CA-G.R. CV No. 71311, CA-G.R. SP No. 38197 (both pending with the Court of Appeals), and Civil Case No. P-962 (lodged with the Regional Trial Court of Balayan, Batangas).

The parties also submitted to the appellate court, as "Annex A" of the Compromise Agreement, a 2-page undated

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and Ferdinand Belgica (NONODA and BELGICA for brevity) as evidenced by a duly executed Deed of Assignment, a copy of which is hereto attached as Annex "A" hereof. As represented by Saito, it is understood that the total authorized capital of [p]laintiff corporation has been fully subscribed to and totally paid up by all the stockholders and that no such Certificate of Stock is delinquent. It is further represented by Saito and understood by defendant that plaintiff corporation does not have any indebtedness with any person or entity whomsoever except the mortgage and promissory note mentioned herein. Defendant recognizes that this deed of assignment is for valuable consideration.

"3. For and in consideration of this Compromise Agreement, Paraiso, now represented by Nonoda and Belgica, shall pay People's, represented by J. Antonio Leviste, the following:

"a. ₱5 [m]illion upon signing of this Compromise Agreement;

"b. ₱30 [m]illion within a period of six months from execution hereof, the same to be paid by plaintiff from the proceeds of the sale of the [p]roprietary shares, to be sold by the corporation upon licensing thereof, by allocating 65% thereof for the purpose and 35% for development. Otherwise, the same shall be raised by the plaintiff thru other means. It is understood that the processing for SEC approval thereof maybe the abovesaid period of six months after which the sale of proprietary share may commence. However, if the same is delayed for reasons not attributable to plaintiff, the defendant agrees to extend the period for a reasonable length of time. Pending full compliance by NONODA and BELGICA of the same, they shall tender unto defendant J. Antonio Leviste physically and by way of mortgage to serve as guarantee for their performance of said obligation, 50% of their shares within the corporation.

"c. 400 proprietary shares out of the proposed 2,000 proprietary shares at a value of 400,000 pesos per share to be issued by Paraiso after the registration and licensing thereof by the Securities and Exchange Commission. From the remainder of these two thousand proprietary shares, the proceeds of one thousand one hundred shares out of the 2,000 shares shall be utilized for development of the project while the remaining balance of five hundred shares shall belong to the corporation to be shared between plaintiff and defendant on a 80:20 basis, provided however, that 200 shares thereof shall be mortgaged in favor of Saito to secure Nonoda and Belgica's indebtedness to him, the same to be received, lifted upon full payment thereof.

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"d. 20% of NONODA [and] BELGICA's total outstanding capital stock of Paraiso shall be assigned unto defendant, or its representative, Mr. J. Antonio Leviste.

"e. In addition to the foregoing, Mr. J. Antonio Leviste or the defendant shall be allowed to designate two members of the [b]oard of [d]irectors of the [c]orporation out of a total membership of five notwithstanding defendant's twenty percent ownership of outstanding capital of the corporation, one of which shall be the [c]hairman and the other the [s]ecretary. Said members of the [b]oard of [d]irectors shall have full, irrevocable and indispensable signing authority over all actions of the [c]orporation including signing and issuance of checks and other similar financial instruments.

"4. Upon execution of this compromise agreement, the real estate mortgage and promissory note subject matter of the auction sale on 20 June 1994, in favor of People's shall be cancelled, waived and extinguished, and all entries or liens and encumbrances thereon, including but not limited to the real estate mortgage, promissory note, certificate of sale, final certificate of sale, on TCT's Nos. 63107, 63108, 63109, 63116 (sic), 63111, 63112, 63113, 63114, 63115, 63116, 63117, 63118 and 63119, or any derivative titles thereof issued by the Register of Deeds of Balayan, Batangas covering thirteen (13) parcels of land situated at Barangay Paraiso, Calatagan, Batangas shall be CANCELLED, and the said parcels of land shall be free from any and all liens and encumbrances. However, a one-hectare portion of the property encompassing and embracing the natural spring, as may be separately surveyed hereinafter, shall be excluded from this agreement and shall belong to defendant by virtue hereof provided the same remains and is used as a mini-forest. In the event defendant desires to sell this portion later, in addition to the consideration agreed herein, plaintiff shall be given the right of first refusal to buy the same at its fair market value.

"5. On the other hand, should [p]laintiff or its new representatives fail to pay in full to the [d]efendant the sum of 30 million pesos as mentioned in paragraph 3-b hereof, or to perform any of its obligations under and by virtue of this agreement within the applicable periods and under appropriate conditions and circumstances, plaintiff including NONODA, BELGICA and their nominees shall lose in favor of the defendants or J. Antonio Leviste their 62% share in the corporation. All payments already made to defendant shall be forfeited. Further, NONODA and BELGICA's stock ownership of 80% shall be liquidated as follows:

"a. 40% in favor of defendant J. Antonio Leviste,

"b. 18% in favor of Saito; and

"c. 22% held in trust to Saito shall be released in favor of defendant and/or J. Antonio Leviste.

The release of 18% and 22% to Saito and defendant and/or J. Antonio Leviste respectively, shall automatically release NONODA and BELGICA from their

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respective obligation to Saito and defendant and/or J. Antonio Leviste. It is understood that the 18% belonging to Saito shall continue to remain under his name for any project that the plaintiff corporation may choose to engage. The release of 18% to Saito shall automatically cancel NONODA and BELGICA's obligation to Saito. Pending full compliance by NONODA and BELGICA of their obligations under this agreement, they shall not be allowed to alienate or otherwise encumber any portion of their 80% share of the corporation to any person or entity except the 40% held in trust by SAITO pending the performance of NONODA and BELGICA of their obligation to the same. It is understood that upon full payment and satisfaction of all the considerations agreed hereunder, the mortgage constituted on the shares of stock held by NONODA and BELGICA in favor of defendant J. Antonio Leviste shall be automatically cancelled and nullified and correspondingly released to them free from all liens and encumbrances.

"6. It is mutually agreed that the development of the project shall commence after the issuance of the SEC permit and other licenses and permits from the appropriate government agencies as decided by virtue of a company board resolution. The development shall be completed within a period of three (3) years from its commencement provided that a 33% partial accomplishment of the project shall be completed after one year and 66% after 2 years and 100% by the third year. The 3 accomplishment periods may be extended if the delay is not attributable to the plaintiff.

"7. That the parties agree to execute and sign any additional document/ paper that may be required to carry into effect this Agreement.

"8. That the [p]laintiff-[a]ppellant and [d]efendant-[a]ppellee hereby waive any and all claims and counterclaims against each other subject to and except those set forth herein.

"9. That this "Compromise Agreement" bears the conformity of all the parties and their representative whose authorities are shown in the corresponding Special Powers of Attorney, copies of which are hereto attached as Annexes B and C hereof duly assisted by their respective counsels and the parties further certify, that the same is not contrary to law, morals, public (sic) and public order.

"WHEREFORE, in view of the foregoing, it is most respectfully prayed of this Honorable Court of Appeals, that the Decision dated 15 April 1997 be *ANNULLED AND SET ASIDE*, and in lieu thereof, a *NEW DECISION be ISSUED* based on the "Compromise Agreement", and the parties *be ENJOINED* to strictly comply with the same.

"PLAINTIFF-APPELLANT and DEFENDANT-APPELLEE, further pray for such other reliefs as may be deemed just and equitable in the premises.

"Makati City, _____ November 1997.

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Deed of Assignment[4] executed by petitioner, represented by Hisahide Saito, transferring to Ryuji Nonoda and Ferdinand Belgica all the shares of stocks, paid-up, subscription rights and interests therein, including the right to represent the corporation in the pending cases. Hisahide Saito signed the deed as the representative of the outgoing management of petitioner, while Nonoda and Belgica, affixed their signatures as the assignees and as the representatives of petitioner's new management. Significantly, the acknowledgement portion of the deed had been crossed out.

Further submitted to the CA as "Annexes B and C" of the Compromise Agreement were, respectively, the Secretary's Certificate[5] confirming that the petitioner's board of directors authorized Hisahide Saito to negotiate, sign, endorse and deliver the Compromise Agreement to the respondent; and the Secretary's Certificate[6] proving that respondent's board of directors authorized J. Antonio Leviste and Atty. Cirilo A. Avila to enter into and execute a compromise agreement with petitioner.

Perceptive of the apparent formal defects in the agreement and the deed, the CA, on September 25, 1998, resolved to

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"PARAISO INTERNATIONAL PROPERTIES INC.
"(Plaintiff-Appellant)
"by:
"Representing the New Management:
(SGD.) RYUJI NONODA (1998 [unintelligible] 3 [unintelligible] 9)
"and
"(SGD.) FERDINAND BELGICA 1998/3/9
"and
"(SGD.) HISAHIDE SAITO 1998/3/12
"Representing the Outgoing Management

"PEOPLE'S HOUSING AND LAND CORPORATION
"(Defendant-Appellee)
"by:
"(SGD.) J. ANTONIO LEVISTE
"Authorized Representative

"Assisted by:
"(SGD.) GEORGE L. HOWARD
"Counsel for Plaintiff-Appellant"
"xxx"

"(SGD.) CIRILO A. AVILA
"Counsel for Defendant-Appellee
"xxx"

[4] *Rollo*, pp. 26-27.

[5] *Id.* at 28-29.

[6] *Id.* at 30-31.

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direct respondent to inform the court why the Compromise Agreement and the Deed of Assignment were undated; why there was no signature of the authorized representative of the new management; whether the signature/initial of the one representing respondent was that of J. Antonio Leviste; and why the acknowledgement in the Deed of Assignment was crossed out.[7]

As two years passed without any compliance with the said directive, the CA, on August 8, 2000, resolved to require respondent's counsel to show cause why he should not be held in contempt for failing to comply, with the order, and reiterated the directive for him to comply with the said resolution.[8]

On November 12, 2001, the appellate court, in the first assailed resolution, disapproved the compromise agreement for respondent's failure to comply with the CA's resolutions.[9]

Petitioner subsequently filed its December 6, 2001 Manifestation/Motion[10] and its December 21, 2001 Supplemental Argument[11] explaining that the failure of respondent's counsel to comply with the resolutions of the court should neither prejudice nor defeat the duly executed compromise agreement of the parties; that, being a consensual contract, it was perfected upon the parties' meeting of the minds; and that judicial approval was not required for its perfection.

On March 7, 2002, the CA, in the second assailed resolution, denied petitioner's manifestation/motion on the ground that the compromise agreement was not exempt from the rules and principles of a contract, and for the parties' repeated refusal to explain to the appellate court the apparent flaws in the said agreement.[12]

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[7] *Id*. at 32.

[8] *Id*. at 35-36.

[9] *Supra* note 1.

[10] *Rollo*, pp. 40-42.

[11] *Id*. at 43-45.

[12] *Supra* note 2.

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Aggrieved, petitioner filed the instant Petition for *Certiorari*[13] raising the following errors:

1. COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DISAPPROVING THE COMPROMISE AGREEMENT, DESPITE THE FACT, THAT NONE OF THE PARTIES, PETITIONER OR PRIVATE RESPONDENT RAISED ANY QUESTION ON ITS VALIDITY OR AUTHENTICITY, NOR OBJECTED THERETO;

2. COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN FAILING TO APPROVE THE COMPROMISE AGREEMENT, DESPITE THE FACT THAT THE INFORMATION REQUIRED IN ITS QUERIES DIRECTED AGAINST PRIVATE RESPONDENT PEOPLE'S HOUSING LAND CORPORATION'S COUNSEL ARE ALL IN FACT AVAILABLE, PRESENT OR EXTANT IN THE COMPROMISE AGREEMENT IT HAD DISAPPROVED.[14]

In its May 3, 2004 Memorandum,[15] petitioner explicated that the compromise agreement, indeed, has a date—November 1997, although it was signed by the parties on different dates, as indicated by the numerical notations beside their respective signatures; that the representatives of petitioner's new management, Nonoda and Belgica, also signed the agreement; that, the signature or the initial of Leviste, representing the respondent, is not questioned by the parties, thus, the same is a non-issue in the case; and that respondent's counsel even signed the agreement. Further, petitioner pointed out that the board of director's authorized both Leviste and the corporation's counsel to represent respondent in the negotiation and signing of the agreement. As to the deed of assignment, the petitioner certified that the crossing out of the acknowledgement should not affect the deed because in the sale or assignment of shares of stocks, acknowledgement or

[13] *Rollo*, pp. 5-18.

[14] *Id*. at 12.

[15] *Id*. at 140-151.

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notarization is not a requirement for the contract's validity. Likewise, the deed contains a date, 1998. In addition, petitioner stated that, the deed's authenticity or validity is confirmed by the Secretary's Certificate attesting to the fact that petitioner's board of directors authorized Saito to sign the compromise agreement with Nonoda and Belgica relative to the management and control of the corporation's affairs or activities.

Respondent, in its July 13, 2004 Memorandum,[16] manifested that it is adopting petitioner's memorandum.

The sole issue for the resolution of the Court is whether the appellate court gravely abused its discretion in when it disapproved the compromise agreement.

The petition is granted.

For a writ of *certiorari* to issue, the applicant must show that the court or tribunal acted with grave abuse of discretion in issuing the challenged order. Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[17]

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[16] *Id*. at 169.

[17] *Yuchengco v. Court of Appeals*, G.R. No. 165793, October 27, 2006, 505 SCRA 716; *see Estate of Salud Jimenez v. Philippine Export Processing Zone*, G.R. No. 137285, January 16, 2001, 349 SCRA 240 where the Court further explained that, as a general rule, a petition for *certiorari* will not lie if an appeal is the proper remedy thereto such as when an error of judgment as well as of procedure are involved. As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of *certiorari*. However, in certain exceptional cases, where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed. *Certiorari* has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously

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In the instant case, the appellate court gravely abused its discretion in disapproving the compromise agreement for the simple reason that respondent did not comply with the CA's resolutions requiring it to explain the apparent formal defects in the agreement. The Court notes that the appellate court unnecessarily focused its attention on the defects in the form of the compromise agreement when these flaws in formality do not go into the validity of the parties' contract, and, more importantly, when none of the parties assails its due execution.

To elucidate, the absence of a specific date does not adversely affect the agreement considering that the date of execution is not an essential element of a contract.[18] A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[19] The CA should have allowed greater laxity in scrutinizing the compromise agreement, not only because the absence of a specific date is a mere formal defect, but also because the signatories to the compromise indicated the date when they signed the agreement beside their signatures. These signatories are also sufficiently authorized to enter into a compromise by the respective board of directors of the petitioner and the respondent.[20] It is not amiss to state at this point that

and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of.

[18] *See* Article 2028 of the Civil Code, which states that a compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced; *see also Clark Development Corp. v. Mondragon Leisure*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, where the Court ruled that a compromise is an agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their respective positions by mutual consent in the way they feel they can live with; and that reciprocal concessions are the very heart and life of every compromise, where each party approximates and concedes in the hope of gaining balance by the danger of losing.

[19] *Mactan-Cebu International Airport Authority v. Court of Appeals and Chiongbian*, G.R. No. 139495, November 27, 2000, 346 SCRA 126.

[20] *See* Article 2033 of the Civil Code, which states that juridical persons may compromise only in the form and with the requisites which may be necessary

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in *National Commercial Bank of Saudi Arabia v. Court of Appeals*,[21] we approved an undated compromise agreement.

The Court also finds as glaringly erroneous the CA's inquiry as to whether the new management of petitioner has signed the said compromise agreement. As aforesaid, the one authorized by petitioner's board of directors to sign the agreement is Saito, who indeed signed the same. Additionally, the representatives of the new management, Nonoda and Belgica, also affixed their respective signatures in the agreement.

As to whether the signature/initial of respondent's representative is truly that of Leviste, suffice it to state that none of the parties assails the due execution of the compromise agreement and that the signature of Avila, the other representative authorized by the respondent's board of directors to enter into a compromise, is affixed in the agreement.

The crossing out of the acknowledgement portion of the deed of assignment attached to the compromise agreement is of no moment precisely because, as advanced by the parties, the notarization of the deed or even its execution[22] is not a requirement for the valid transfer of shares of stocks.[23] On the question why the deed is undated, again, the date is not essential for its

to alienate their property; *see also Great Asian Sales Center Corporation v. Court of Appeals*, G.R. No. 105774, April 25, 2002, 381 SCRA 557, where the Court stated that the Corporation Code of the Philippines vests in the board of directors the exercise of the corporate powers of the corporation, save in those instances where the Code requires stockholders' approval for certain specific acts.

[21] G.R. No. 124267, January 17, 2005, 448 SCRA 340.

[22] See *Republic v. Estate of Hans Menzi*, G.R. Nos. 152578, 154487 & 154518, November 23, 2005, 476 SCRA 20, where the Court declared that the absence of a deed of assignment is not a fatal flaw which renders the transfer of shares of stocks invalid.

[23] Section 63 of the Corporation Code of the Philippines provides that:

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 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 stocks so issued are personal*

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validity. In any case, the execution of the deed of assignment and its annexation to the compromise agreement are a superfluity because, as aforesaid, petitioner's board of directors had authorized Saito to enter into the compromise agreement, he signed the same, and even the representatives of petitioner's new management likewise signed the agreement.

From the foregoing, our inevitable conclusion is that the CA acted with grave abuse of discretion when it disapproved the compromise agreement. However, rather than remand the case to the appellate court which will only further delay the lengthy litigation that the parties wish to end, we choose to act directly on the matter. Thus, on the basis of our finding that the compromise agreement is not contrary to law, public order, public policy, morals or good customs, the Court hereby approves the same.

WHEREFORE, premises considered, the petition is *GRANTED*. The assailed November 12, 2001 and March 7, 2002 Resolutions of the Court of Appeals in CA-G.R. CV No. 71311 are *ANNULLED AND SET ASIDE* for having been issued with grave abuse of discretion. The Compromise Agreement submitted by the parties on April 2, 1998 is hereby *APPROVED* and judgment is rendered in conformity with and embodying the terms and conditions mentioned in the said Compromise Agreement.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.*, concur.

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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.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. [Italics supplied]