THIRD DIVISION

[G.R. No. 261125. July 26, 2023]

PETER PAUL G. MARASIGAN, *Petitioner*, *v.* **BENITO G. MARASIGAN, ET AL.,** *Respondents*.

D E C I S I O N

SINGH, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision,[2] dated December 28, 2021, and the Resolution,[3] dated May 24, 2022, of the Court of Appeals **(CA)**, in CA-G.R. SP No. 168189. The assailed CA Decision and Resolution reversed and set aside the Decision,[4] dated February 3, 2021, of the Regional Trial Court **(RTC)**, Branch 159, Pasig City which declared that the meetings of the domestic, corporation, Ganco Resorts & Recreation, Incorporated **(Ganco)**, on November 6 and 12, 2017 and May 15, 2018, lacked the proper quorum due to the death of its majority stockholder.[5]

The Petition was filed by Peter Paul Marasigan **(Peter)**, against respondents Benito, Orlando, and Rommel (all surnamed **Marasigan**; collectively, the **respondents**). After a review of the records, the Court resolves to deny the same for failure to sufficiently show that the CA committed any reversible error to warrant the exercise of the Court's discretionary appellate jurisdiction.

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1 *Rollo*, Vol. 1, pp. 13-52.

2 Id. at 55-72. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Louis P. Acosta and Bonifacio S. Pascua.

3 Id. at 8-9.

4 Id. at 237-254. Penned by Presiding Judge Elma Rafallo-Lingan.

5 Note that the RTC Decision misstates the date of the second meeting as November 17, 2017, instead of November 12, 2017. The CA in its Decision, dated December 28, 2021, noted this error on the part of the RTC.

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The Facts

All the parties in the original complaint are children of the late spouses Cesar Marasigan **(Cesar)** and Luz Marasigan **(Luz)** (collectively, the **Spouses Marasigan**), save for Cesar Augustine C. Marasigan III **(Cesar Augustine)**, who is the grandson of the Spouses Marasigan.[6] The Spouses Marasigan acquired several properties, including La Luz Beach Resort, a private beach resort in San Juan, Batangas, and their conjugal dwelling in Mabini Street, Addition Hills, San Juan City **(Mabini Street property)**. Cesar passed away in 2001, but his estate has not yet been settled.

In 2013, Luz together with her 13 children **(Marasigan siblings)** incorporated Ganco, as a close corporation, and established its principal office at the Mabini Street property. Of the 5,600 total subscribed shares, Luz subscribed to 3,000 shares, while her children subscribed to 200 shares each, or 2,600 shares in total.[7]

Ganco's Articles of Incorporation[8] **(AOI)** provided that the corporation's business "shall be managed by the board of directors who are the stockholders."[9] This set-up is likewise reflected in its by-laws.[10]

In 2017, the following stockholders were elected as Ganco's officers:

Chairman of the Board	-	Luz Marasigan
President	-	Peter Marasigan
Vice President	-	Benito Marasigan

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[6] The defendants in the original Complaint for Declaration of Nullity of Meetings, Board Resolutions and Election of Officers, are Regina Marasigan-Palileo, Peter Paul G. Marasigan, Renato G. Marasigan, Gabriel G. Marasigan, Santiago G. Marasigan, Mauricio G. Marasigan, Maria Luz G. Marasigan, and Cesar Augustine C. Marasigan III.

[7] *Rollo*, Vol. 1, p. 238, RTC Decision.

[8] Id. at 353-359.

[9] Id. at 356.

[10] *Rollo*, Vol. 2, p. 969.

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Treasurer	-	Regina Marasigan-Palileo
Secretary	-	Orlando Marasigan[11]

Since becoming the President of Ganco in 2015, Peter claimed that he has not had any vacation. Thus, in August 2017, he requested for an authority to take a leave of absence for six weeks to visit his daughter in Australia and to also visit New Zealand. Luz allowed Peter to take a six-week vacation leave. On November 3, 2017, while Peter was still on vacation, Luz passed away. He then cut his vacation on November 4, 2017 and returned to Manila on the following day.[12]

On November 6, 2017, the children of the Spouses Marasigan, who are likewise Ganco's stockholders, met at the office of Rommel and elected a new set of officers. Of the then 13 stockholders, eight stockholders were considered present — only five were physically present at the said meeting, but they were joined by three others via video conference.[13]

According to Peter, the meeting was conducted despite the lack of any prior notice, agenda, or valid call for a meeting. Then Corporate Secretary Orlando declared a quorum, and it was tagged as a Special Board and Stockholders Meeting.[14]

In the said meeting, Benito declared that he was assuming the position of President, as Peter had been on absence without leave. Thus, Peter was removed and replaced by Benito as Interim President.[15]

On November 12, 2017, Luz was buried. After the burial, nine members of the family gathered and discussed the settlement of the estate, payment of estate taxes, and the Mabini Street property.[16]

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[11] *Rollo*, Vol. 1, p. 16, Petition.

[12] Id. at 16-17.

[13] Id. at 17.

[14] Id. at 17-18.

[15] Id. at 391, GANCO Minutes of Special Meeting (November 06, 2017).

[16] Id. at 396-405, GANCO Minutes of Special Meeting (November 12, 2017).

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On May 11, 2018, Orlando, the Corporate Secretary, issued an official notice to the stockholders that the Annual Shareholders' Meeting shall not proceed as the majority shares of Luz had to be settled and distributed.[17]

On May 15, 2018, the Annual Stockholders' Meeting of Ganco was held. Orlando and Regina were physically present, while seven others joined via video conference. In the said meeting, the following stockholders of Ganco were elected as officers:

Chairman of the Board	-	Gabriel Marasigan
President	-	Regina Marasigan-Palileo
Vice President	-	Peter Marasigan
Treasurer	-	Renato Marasigan
Secretary	-	Peter Marasigan[18]

The new signatories to the Ganco bank accounts, *i.e.*, Regina, Peter, and Renato, were likewise appointed during the meeting.

Thereafter, the respondents refused to recognize the new officers, and to turnover possession and control of the assets and records of Ganco to the newly elected officers.[19] According to Peter, they allegedly attempted to encash checks worth millions at Ganco's depository banks.[20]

To protect the assets of the corporation, the newly elected officers informed Ganco's depository banks that the respondents were no longer authorized to represent Ganco. The respondents, however, insisted that they were still the officers of Ganco, causing the banks to freeze the corporation's accounts.[21]

After the Annual Stockholders' Meeting on May, 15, 2018, the respondents executed a General Information Sheet for Ganco, stating that there was an Annual Stockholders Meeting on November 12, 2017, and that they were still the officers of the corporation.

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[17] Id. at 57-58, CA Decision.

[18] Id. at 468-470, Minutes of the Illegal GANCO Meeting (May 15, 2018).

[19] Id. at 58, CA Decision.

[20] Id. at 19, Petition.

[21] Id. at 58, CA Decision.

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As the corporation's bank accounts had been frozen, the respondents allegedly collected fees and payments from guests of La Luz Beach Resort, in cash or through their personal bank accounts, and disallowed checks or online payments.[22]

The respondents, together with stockholders and siblings, Jose and Gerardo, filed a Complaint for Declaration of Nullity of Meetings, Board Resolutions and Election of Officers with Prayer for Issuance of a Temporary Restraining Order **(TRO)** and/or Writ of Preliminary Injunction. They sought to be recognized as the legitimate officers of Ganco and to have the Annual Stockholders' Meeting on May 15, 2018 declared null and void.[23]

The Ruling of the RTC

In its Order, dated June 1, 2018, the RTC denied the TRO prayed for by the respondents after finding that there was no extreme urgency for the issuance of the TRO. Similarly, the RTC denied the application for a Writ of Preliminary Injunction through its Order, dated January 6, 2020. Additionally, upon the motion of the defendants in the RTC case **(Peter, et al.)**, Jose and Gerardo were dropped as plaintiffs.[24]

In its Decision,[25] dated February 3, 2021, the RTC held that as the estate of Luz had yet to be settled, both parties did not automatically become owners or transferees of her shares in Ganco. It noted that they should not be able to exercise the rights of a stockholder, which is an incident of ownership, for purposes of a quorum for the conduct of stockholders' and directors' meetings, moreso for the election of its officers. The RTC also found, that for the same reason, Cesar Augustine, cannot be allowed to exercise the stockholder rights of his father, Cesar Jr. Thus, it dismissed the complaint.

WHEREFORE, in view of the foregoing, the instant Complaint is hereby DISMISSED. Due to lack of quorum in the meetings held on

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[22] Id. at 20, Petition.

[23] Id., docketed as R-PSG-18-01223-CV.

[24] Id. at 246-247, RTC Decision.

[25] Id. at 237-254.

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November 6, 2017, November 17, 2017 [*sic*] and May 15, 2018, the following corporate officers of Ganco for year 2017, that were elected immediately preceding the death of majority stockholder Luz Marasigan, namely, defendant Peter Paul Marasigan, as President, plaintiff Benito Marasigan as Vice-President, defendant Regina Marasigan-Palileo as Treasurer and plaintiff Orlando Marasigan as Corporate Secretary, are hereby immediately reinstated to their positions in a hold-over capacity until a new setoff officers are validly elected.

SO ORDERED.[26]

The dismissal prompted the respondents to file a Petition for Review under Rule 43 with the CA.

The Ruling of the CA

In a Decision,[27] dated December 28, 2021, in CA-G.R. SP No. 168189, the CA reversed and set aside the RTC Decision.

WHEREFORE, the petition is GRANTED. The decision of the Regional Trial Court of Pasig City, Branch 159 dated February 3, 2021 in R-PSG-18-01223-CV is REVERSED and SET ASIDE. The special meeting and election of petitioners as officers of the corporation on November 12, 2017 are declared valid and ratified. Said officers shall continue to act as such until regular officers are elected pursuant to law and by-laws of Ganco. The annual meeting of stockholders and election of officers held on May 15, 2018, as well as resolutions or actions subsequent to and arising from said annual meeting and election are declared null and void. The prayer in the complaint for damages and attorney's fees is denied.

SO ORDERED.[28]

While the CA agreed with the RTC in so far as it held "that both petitioners and respondents did not automatically acquire ownership of the shares of Luz Marasigan in Ganco after her death," it digressed with respect to the RTC's conclusion that the

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[26] Id. at 254.

[27] Id. at 55-72.

[28] Id. at 71.

special meetings on November 6, 2017, and November 12, 2017 are null and void for lack of quorum.[29]

The CA held that under Section 25 of the Corporation Code, the quorum for election of officers is not based on the majority of outstanding capital stock, but on all members of the board of directors. As such, it found that the remaining 13 stockholders of Ganco, who are also its directors, may elect their officers based on a valid quorum of eight stockholders or directors. The CA also noted that there was no prompt written objection to the meeting or election, hence, such acts were considered ratified under Section 101 of the Corporation Code.[30]

Additionally, the CA ruled that the Annual Stockholders' Meeting held on May 15, 2018, is not valid for lack of quorum, which in this case, must be the majority of the outstanding capital stock. It pointed out that the conduct of the meeting was also violative of Ganco's by-laws as there was no notice sent by the Corporate Secretary; in fact, the Corporate Secretary even sent an official notice to the stockholders that such meeting will not push through, pending the settlement of Luz's estate.[31]

In a Resolution,[32] dated May 24, 2022, the CA denied Peter's Motion for Reconsideration after finding that the arguments therein did not warrant a reconsideration or modification of its earlier Decision.

WHEREFORE, the Motion for Reconsideration and Supplemental Motion for Reconsideration with Motion to Admit are DENIED.

SO ORDERED.[33]

The CA's denial prompted Peter to file a Petition for Review on *Certiorari* under Rule 45 with the Court.

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[29] Id. at 64-65.

[30] Id. at 67-70.

[31] Id. at 70.

[32] Id. at 73-74.

[33] Id. at 74.

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In the Petition, Peter argues that as Ganco is a close corporation, it should be primarily governed by Title XII (Close Corporations) of the Old Corporation Code, Batas Pambansa Blg. 68 (Old Corporation Code),[34] and the rules on election of officers, under Section 25 thereof, therefore, do not apply to it. Additionally, Peter argues that Section 25 merely provides for a minimum requirement, and expressly recognizes that a corporation may provide otherwise through its AOI or by-laws. In this case, Peter contends that Ganco's by-laws provide for a greater majority to constitute a quorum.[35]

Peter further posits that per Ganco's by-laws, it is the stockholders, not the directors, that shall elect the board officers, as it has no elected board. As stockholders directly manage the corporate business, the scenario contemplated under Section 25, of an elected board of directors, cannot pertain to Ganco.[36] He further adds that the Revised Corporation Code[37] under the new Section 25 now provides, that notwithstanding any provision of the AOI or by-laws to the contrary, shares of stock represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election.[38]

As to the nature of the meetings, Peter challenges the CA's reliance on Section 101 of the Old Corporation Code, as he claims that the said provision refers to a directors' meeting. He asserts that the meetings held on November 6 and 12, 2017, and May 15, 2018 are stockholders', not directors' meetings.[39]

Finally, Peter claims that the respondents have made duplicitous statements in a separate but related criminal case pending before the RTC of Pasig City which "makes a mockery of justice." According to Peter, in the said criminal case, the respondents

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[34] Approved on May 1, 1980.

[35] *Rollo*, Vol. 1, 32-34, Petition.

[36] Id. at 36.

[37] Approved on February 20, 2019.

[38] *Rollo*, Vol. 1, p. 41.

[39] Id. at 42.

have made statements to the effect that Ganco did not have a functioning board from the time of their mother's death, negating their assertions in this case.[40]

The Issues

1. Did the CA err in ruling that the special meeting and election of petitioners as officers of Ganco on November 6 and 12, 2017 are valid and that the same had been ratified?

2. Did the respondents make duplicitous statements?

The Court is asked to determine the validity of Ganco's meetings on November 6 and 12, 2017 and the acts proceeding therefrom, in particular the election of its board officers, based on Ganco's AOI, its by-laws, and the applicable provisions of the Old Corporation Code, Batas Pambansa Blg. 68,[41] which was then in effect.

The nature of the assailed meetings, whether they are stockholders' or directors' meetings, is central to the resolution of this case.

The Ruling of the Court

After a review of the records, the Court holds that the CA made no reversible error as it correctly reversed and set aside the RTC Decision, dated February 3, 2021.

As a close corporation, Ganco must specifically invoke the privileges and exemptions it opts to exercise in its AOI

In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*,[42] the Court had occasion to illustrate that a corporation's classification as a close corporation rests on whether its AOI

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[40] Id. at 44-48.

[41] Approved on May 1, 1980.

[42] 357 Phil. 631 (1998).

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has expressly provided for the requisites under Section 96 of the Corporation Code:

Section 96 of the Corporation Code defines a close corporation as follows:

> SEC. 96. *Definition and Applicability of Title*. — A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All of the corporations issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) All of the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall be deemed not a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.

The articles of incorporation of Motorich Sales Corporation does not contain any provision stating that (1) the number of stockholders shall not exceed 20, or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation, or (3) listing its stocks in any stock exchange or making a public offering of such stocks is prohibited. From its articles, it is clear that Respondent Motorich is not a close corporation. Motorich does not become one either, just because Spouses Reynaldo and Nenita Gruenberg owned 99.866% of its subscribed capital stock. The [m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personalities. So too, a narrow distribution of ownership does not, by itself, make a close corporation.[43]

In the case of Ganco, its AOI indicates that: (1) ownership of its stocks shall only be held by no more than 14 persons; (2) existing shareholders have the option to purchase shares of transferring stockholders under the terms specified therein; and (3) Ganco cannot list in any stock exchange or publicly offer any

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[43] Id. at 649-650.

of its stocks.[44] Clearly, the AOI of Ganco satisfies the test laid out above, leaving no question that the same has been organized as a close corporation.

The Court has long recognized the importance of close corporations in the realm of Philippine commerce. In *Gala v. Ellice Agro-Industrial Corporation*,[45] the Court explained that:

> [t]he concept of a close corporation organized for the purpose of running a family business or managing family property has formed the backbone of Philippine commerce and industry. Through this device, Filipino families have been able to turn their humble, hard-earned life savings into going concerns capable of providing them and their families with a modicum of material comfort and financial security as a reward for years of hard work.[46]

Unlike regular corporations, stockholders of close corporations are limited in number, often they are related to if not acquainted with each other. It has been said that close corporations present a cross between a partnership and a corporation, whereby among themselves stockholders act and feel like partners, while availing of the advantages of corporate structure such as the limitation of their liability for losses to the amount of their investment.[47]

A close corporation is not simply a corporation; it is essentially the progeny of a marriage of commercial convenience between the essence of a partnership and that of a corporation. A close corporation should be considered a distinct type of business organization embodying what businessmen perceive to be the best features of a partnership and a corporation.

Under a free-market system, businessmen should be at liberty to adopt a business set-up that they feel is the best medium for the pursuit of their commercial affairs, so long as the route chosen by them is not contrary to law, morals, public policy, and public order. The strong juridical

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[44] *Rollo*, Vol. 1, p. 356.

[45] 463 Phil. 846 (2003).

[46] Id. at 862.

[47] 1 JOSE CAMPOS, JR. & MARIA CLARA L. CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES, AND SELECTED CASES, 10-11, (1990).

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personality, limited liability and right of succession are all features of a corporate entity that the law upholds, and which businessmen may avail of. The feature of *delectus personae*, general management by all partners of business affairs are attractive features of a partnership which the law guarantees and supervise.[48] (Emphasis supplied)

Additionally, the management of its day-to-day operations likewise follows a more casual and *ad hoc* set-up, making it a more convenient choice for businesses run by families or closely-knit groups. This is markedly the most distinctive feature of the close corporation — the merger of the ownership and management rights.[49]

The nature of close corporations is such that stock ownership is usually identical with management. Unlike in other corporations where the members of the board are merely representatives of the body of stockholders who, due to their bigger number, cannot directly manage corporate affairs efficiently, close corporation are composed usually of a smaller number of persons, closely related to each other by blood or other common interests, and all or most of whom directly participate in management. **Thus, they often find it unnecessary and even inconvenient to follow all the formal requirements for a board meeting, or even to hold formal board meetings at all. The Code recognizes this fact and even allows such close corporations to do away with the board entirely, treating the stockholders as directors.**[50] (Emphasis supplied)

The Court is aware that the Old Corporation Code clearly intended to carve out specific rules for close corporations in recognition of their unique set-up and composition. These rules have been retained even in the Revised Corporation Code under Title XII thereof.

Close corporations are thus allowed to provide in its AOIs special provisions pertaining to prerogatives otherwise not availing in regular corporations, such as the management of the

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[48] CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW, pp. 669-670, (2021).

[49] CAMPOS, JR. & CAMPOS, supra, at 12 and 344.

[50] Id. at 345-346.

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corporation directly through its stockholders, and the election or appointment of corporate officers directly by the stockholders, instead of by the board of directors, under Section 97 of the Old Corporation Code. It provides:

> Section 97. *Articles of incorporation*. – The articles of incorporation of a close corporation may provide:
>
> 1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;
>
> 2. For a classification of directors into one or more classes, each of whom may be voted for and elected solely by a particular class of stock; and
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> 3. For a greater quorum or voting requirements in meetings of stockholders or directors than those provided in this Code.
>
> **The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors.** So long as this provision continues in effect:
>
> 1. No meeting of stockholders need be called to elect directors;
>
> 2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code; and
>
> 3. The stockholders of the corporation shall be subject to all liabilities of directors.
>
> **The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors.** (Emphasis supplied)

A close corporation seeking to have its business managed by its stockholders must clearly indicate such intention in its AOI. The mere constitution of the corporation as a close corporation does not automatically make its stockholders the board directors or allow stockholders to directly elect or appoint the corporation's board officers.

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Just as being a close corporation does not simply attach based on the concentrated ownership of shares in a single or few stockholders, but must be pursued through a compliance with the requirements for the establishment of a close corporation under Section 96 of the Old Corporation Code, so too, must the privileges or exemptions accorded to close corporations, under Section 97 or other relevant provisions, be expressly invoked and stipulated in the corporation's AOI or by-laws, as they may be required. As the language of Section 97 is clearly permissive, the general rules applicable to all other corporations shall apply if the close corporation fails to do so.

Again, the Court cannot overemphasize that a close corporation must expressly and properly invoke, in the appropriate instrument, the prerogatives and exemptions which it has been allowed to avail of under the Old Corporation Code.

Based on its AOI, the management of Ganco was left to its stockholders constituted as its board of directors

In a corporation, control and management are exercised along three levels of control. The Court in *Citibank N.A. v. Chua*[51] explains:

> In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.[52]

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[51] 292-A Phil. 167 (1993).

[52] Id. at 178.

In *Tan v. Sycip*,[53] the Court has aptly illustrated how the rights and prerogatives of stockholders and members of the board of directors differ. In the said case, the Court likewise depicted how the stockholders relinquish corporate powers to a duly constituted board of directors who are then charged with the management and operation of the corporation's business.

Generally, stockholders' or members' meetings are called for the purpose of electing directors or trustees and transacting some other business calling for or requiring the action or consent of the shareholders or members, such as the amendment of the articles of incorporation and bylaws, sale or disposition of all or substantially all corporate assets, consolidation and merger and the like, or any other business that may properly come before the meeting.

Under the Corporation Code, stockholders or members periodically elect the board of directors or trustees, who are charged with the management of the corporation. The board, in turn, periodically elects officers to carry out management functions on a day-to-day basis. As owners, though, the stockholders or members have residual powers over fundamental and major corporate changes.

While stockholders and members (in some instances) are entitled to receive profits, the management and direction of the corporation are lodged with their representatives and agents – the board of directors or trustees. In other words, acts of management pertain to the board; and those of ownership, to the stockholders or members. In the latter case, the board cannot act alone, but must seek approval of the stockholders or members.

Conformably with the foregoing principles, one of the most important rights of a qualified shareholder or member is the right to vote – either personally or by proxy – for the directors or trustees who are to manage the corporate affairs. The right to choose the persons who will direct, manage and operate the corporation is significant, because it is the main way in which a stockholder can have a voice in the management of corporate affairs, or in which a member in a nonstock corporation can have a say on how the purposes and goals of the corporation may be achieved. Once the directors or trustees are elected, the stockholders or

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[53] 530 Phil. 609 (2006).

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members relinquish corporate powers to the board in accordance with law.[54] (Emphasis supplied; citations omitted)

While ownership ultimately pertains to stockholders, normally they cannot directly intervene in the day-to-day course of operations of the corporation, precisely because the same has been delegated to the board of directors, who have been entrusted with the exercise of corporate powers. However, as earlier discussed, this is not necessarily the case for close corporations wherein ownership and management usually merge in the same set of individuals who are both its stockholders and board of directors.

In view of this merger of ownership and management in close corporations, Section 97 of the Old Corporation Code allows close corporations to do away with board of directors all together. It provides that "[t]he articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors."

A careful reading of Ganco's AOI and by-laws reveal that the intention for Ganco is to be managed by a board of directors, comprised of its stockholders.

ARTICLES OF INCORPORATION OF GANCO RESORTS & RECREATION, INCORPORATED

NINTH. The business of the Corporation shall be managed by the board of directors who are the stockholders of the Corporation. The stockholders shall be deemed to be the directors and shall function as such without need of further election of appointment.[55]

BY-LAWS OF GANCO RESORTS & RECREATION, INCORPORATED
ARTICLE II. MEETINGS OF STOCKHOLDERS

Section 1. Annual Meetings. – The annual meetings of stockholders shall be held at the principal office of the Corporation on the 15 May of each year, or if a legal holiday, then on the day following.

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[54] Id. at 619-620.

[55] *Rollo*, Vol. 1, p. 356.

Considering that the business of the Corporation shall be managed directly by the stockholders, being themselves the board of directors, then the stockholders shall likewise have regular meetings.[56]

Ganco's AOI refers to "the board of directors who are the stockholders of the Corporation," while its by-laws refers to "the stockholders, being themselves the board of directors." This only means the stockholders have been charged to assume dual roles as stockholders and as directors.

When, as in this case, stockholders are designated as board directors, each individual stockholder, regardless of the number of shares they own, is deemed a director, member of the constituted board, entitled to one vote in the exercise of corporate powers. In the case of Ganco, all of its 14 stockholders were clothed with corporate powers as a group, wherein each stockholder, no matter how miniscule his or her ownership of the shares, becomes one voice alongside 13 other directors.

The decision to designate all of Ganco's stockholders as the board of directors carries with it a limitation of the corporate powers that may be ascribed to Luz, who in an alternative set-up may wield more control over the corporation as the majority shareholder with over 50% of its authorized capital stock. Consequently, such power is dispersed among her children who, by virtue of their inclusion in the board of directors, are given more say in how the business of the corporation is run.

Again, the designation of Ganco's stockholders as its board of directors clearly does not mean that they simply remain as such stockholders and are subject only to rules concerning such stockholders even when they perform acts vested in the board directors. When they assume corporate powers reserved by law for board directors, they are subject to the rules governing directors. Their designation in the AOI as board of directors only does away with the necessity for their election as such board directors, but it does not exclude them from the operation of rules that necessarily apply to board directors, including those which govern directors'

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[56] *Rollo*, Vol. 2, p. 969.

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meetings. To reiterate, the second paragraph of Section 97 of the Old Corporation Code, specifies:

> The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:
>
> **1. No meeting of stockholders need be called to elect directors;**
>
> **2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code; and**
>
> **3. The stockholders of the corporation shall be subject to all liabilities of directors.**
>
> The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors. (Emphasis supplied)

The CA correctly considered the special meetings held on November 6 and 12, 2017 as directors' meetings

When Ganco's AOI provided that the corporation's business "shall be managed by the board of directors who are the stockholders," it likewise provided for a single quorum requirement for its meetings – *a majority of the outstanding capital stock*. Without distinguishing between stockholders' and directors' meetings, the quorum requirement applies to both such meetings.

> NINTH. **The business of the Corporation shall be managed by the board of directors who are the stockholders of the Corporation.** The stockholders shall be deemed to be the directors and shall function as such without need of further election or appointment.
>
> TENTH. **A majority of the outstanding capital stock shall constitute a quorum for a valid meeting.** An affirmative vote of stockholders representing at least a majority of its outstanding capital stock of the stockholders present at a meeting at which there is a quorum shall be necessary for the approval of any transaction which requires

the Corporation's approval except instances greater votes is required by law.[57] (Emphasis supplied)

The same observation can be made with respect to Ganco's by-laws, which only contains a section on "Meetings of Stockholders" and glaringly lacks a separate section on board of directors' meetings. Nonetheless, from the language employed, it appears that the quorum requirements set under Article II, Section 7 of the by-laws was intended to apply to both stockholders' and directors' meetings.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Annual Meetings. – The annual meetings of stockholders shall be held at the principal office of the Corporation on the 15 May of each year, or if a legal holiday, then on the day following.

Considering that the business of the Corporation shall be managed directly by the stockholders, being themselves the board of directors, then the stockholders shall likewise have regular meetings.

x x x x

Section 7. **Quorum.** – **Majority of the outstanding capital stock as fixed in the Articles of Incorporation shall constitute a quorum for the transaction of corporate business and every decision of at least a majority of the outstanding capital stock of the stockholders present at a meeting at which there is a quorum shall be valid as a corporate act.** If no quorum is constituted, the meeting shall be adjourned until the requisite amount of stocks shall be represented.[58] (Emphasis supplied)

Despite the nuances between the roles of Luz and her children as stockholders and directors of Ganco, its AOI and by-laws as written failed to distinguish. Perhaps it was thought to be of no practical value, considering that the stockholders are themselves the board directors or perhaps, it was a mere omission. Regardless, there are significant considerations that justify making the distinction, which the CA correctly made.

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[57] *Rollo*, Vol. 1, p. 356.

[58] *Rollo*, Vol. 2, pp. 969-970.

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For the Marasigan siblings, while their right to corporate profits is limited by their shares, their right to participate in the management of the family business is expanded by their express inclusion in the board of directors. As earlier mentioned, Luz and each of her children, regardless of their number of shares, stand as equals when they are acting as directors.

The practice of the Marasigan siblings, as reflected in the Minutes of their November 6 and 12, 2017 meetings, is quite telling. The Minutes clearly indicate that despite the ambiguity in the language of Ganco's AOI and by-laws as regards the quorum requirement for directors' meetings, the number of directors present is considered in the determination of the quorum.

> VI. Meeting Proper
>
> 1. Determination of quorum
>
> a. **Having 8 members present representing majority of shares and of board members**, the Secretary declares that there is quorum.[59] (Emphasis supplied)

Therefore eight of the 14 stockholders (Luz and her 13 children) were stated to represent the majority of the stockholders, and validly constitute a quorum.

Further, the agenda of the special meeting held on November 6, 2017 included an item on the "Status of the President and a call for a vote on the said position."[60] The Minutes of the special meeting clearly captured the understanding of the directors that it was a *special board and stockholders meeting*.[61] The nature of the said meeting as such was discussed therein, thereby contradicting the assertion of Peter that it was only intended as a stockholders meeting, or that there was such a distinction. The Minutes also showed how Peter, who was then the President, was removed and an Interim President installed in his stead upon the vote of the directors.[62]

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[59] *Rollo*, Vol. 1, pp. 391 & 396.

[60] Id. at 391.

[61] Id. at 392-393.

[62] Id. at 393.

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The Minutes of the special meeting on November 6, 2017 was silent on whether it was meant to be a stockholders meeting, a directors meeting, or both. However, during this special meeting, the directors elected a new set of board officers – the Chairperson, President, Vice President, Treasurer, and Secretary.[63] The election of board officers clearly pertains to the prerogative of the board of directors and is a practice observed in Ganco.

Section 25 of the Old Corporation Code expressly refers to the election of officers by the board of directors. Thus, when its stockholders are electing their President, Vice President, Treasurer, and Secretary, who are their board officers, the Marasigan siblings are clearly acting as directors and not as stockholders.

> Section 25. *Corporate officers, quorum*. – Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the bylaws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, **except for the election of officers which shall require the vote of a majority of all the members of the board.** Directors or trustees cannot attend or vote by proxy at board meetings. (Emphasis supplied)

At this point, it is worth highlighting that among the privileges afforded to close corporations is the election or appointment of corporate officers directly by the stockholders. The last paragraph of Section 97 provides that "[t]he articles of incorporation may likewise provide that all officers or employees or that specified

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[63] Id. at 403-404.

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officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors."

There would have been no need to make the distinction herein as to whether the November 6 and 12, 2017 Meetings are stockholders' or directors' meetings had there been such a provision in Ganco's AOI allowing the direct election or appointment of the corporate officers by the stockholders. Unfortunately, such a provision only appears in its by-laws,[64] failing to satisfy the requirement under Section 97 of the Old Corporation Code that the same must be made in the AOI. Without a specific authority for the election or appointment of board officers directly by the stockholders themselves in its AOI, the general rule that they ought to be elected by the board of directors remains applicable to Ganco.

The election of Ganco's officers was clearly made by the stockholders sitting as its board of directors, and the meetings wherein such election took place were aptly directors' meetings subject to the rules governing directors' meetings.

The CA cannot thus be faulted for considering the meetings on November 6 and 12, 2017 as directors' meetings, as this conclusion is inevitable from the facts of this case.

However, the Court must point out that it cannot agree with the CA's reliance on Article IV, Section 1 of Ganco's by-laws, which allows its stockholders "to appoint such officers as it may determine necessary or proper," in justifying the validity of the election of Ganco's officers during the November 6 and 12 meetings. As earlier discussed, there is no similar provision in Ganco's AOI, where it must be indicated pursuant to Section 97 of the Old Corporation Code. While the CA's argument arrives at the same conclusion, that the elections of the officers are in fact valid, it is not consistent with its holding that the two meetings are directors' and not stockholders' meetings.

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[64] Article IV, Officers. Section 1. Election/Appointment. – The stockholders shall formally organize the Corporation by the election of the President, Vice-President, the Treasurer, and the Secretary at said meeting.

With this settled, the Court shall now discuss the applicable quorum requirement for such directors' meetings.

The CA correctly relied on Section 25 of the Old Corporation Code in determining the quorum for election of Ganco's officers

Section 52 of the Old Corporation Code provides that the quorum for stockholders' meetings shall "consist of the stockholders representing a majority of the outstanding capital stock."

Meanwhile, the quorum requirement for directors' meetings is set under Section 25 of the Old Corporation Code which provides that "a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business." The same provision likewise provides that a corporation's AOI or by-laws may provide for a *greater majority*.

Section 25 also requires for decisions to be supported by, at least, the majority of the directors present at a meeting at which there is a quorum, and it further sets the requirement for election of officers to "the vote of the majority of all members of the board."

As applied to Ganco, the default minimum quorum for stockholders' meetings shall be a majority of its outstanding capital stock represented or 2,801 out of 5,600, while the quorum for directors' meetings shall be the attendance of eight out of its 14 directors. For the validity of its corporate acts, it will only need the majority of five, should the meeting be only attended by a minimum of eight directors. However, the election of its officers shall require the vote of, at least, eight directors.

Section 97 of the Old Corporation Code provides that a close corporation can provide for "greater quorum or voting requirements in meetings of stockholders or directors" in its AOI.

As earlier discussed, Ganco's AOI not only provided that the corporation's business shall be managed by the board of directors who are its shareholders, but it likewise provided for a single quorum requirement for its meetings – *a majority of the outstanding capital stock*.

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With the uniform quorum requirement, Ganco merely adopted what is provided in the Old Corporation Code with respect to stockholders' meetings – *a majority of the outstanding capital stock*. However, with respect to directors' meetings, Ganco's AOI and by-laws diverged from the Old Corporation Code when the quorum requirement was changed from the originally provided "majority of its board of directors" to "a majority of the outstanding capital stock."

Peter argues that in doing so, Ganco's AOI and by-laws simply provided for a *greater majority*.

The Court cannot agree.

It is a fundamental rule that a statute clear and unambiguous on its face need not be interpreted, but simply applied.[65] In *H. Villarica Pawnshop, Inc. v. Social Security Commission*,[66] the Court had occasion to reiterate this precept and emphasize its duty to uphold laws by applying their literal meaning when they are clear and suffer from no ambiguity.

> It is the duty of the Court to apply the law the way it is worded. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language. The courts can only pronounce what the law is and what the rights of the parties thereunder are. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it. Thus, it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.
>
> Parenthetically, the "plain meaning rule" or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule of interpretation is in deference to the plenary power of Congress to make, alter and repeal laws as this power is an embodiment of the People's sovereign will. Accordingly, when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their

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[65] See *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

[66] 824 Phil. 613 (2018).

solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.[67]

In this case, the Court must insist on a plain reading of the provisions of the Old Corporation Code as they apply to Ganco, given that the pertinent provisions are clear and unambiguous.

Section 25 sets the minimum requirement for a quorum in directors' meetings and election of officers, and only provides for an exception when the AOIs/by-laws provide for a *greater majority* as provided in Section 97. The word *greater* is used as a comparative of the word *great* and is plainly understood as *more*.

Moreover, the word *greater* is used in conjunction with the word *majority*, which is clearly described in the Old Corporation Code. After the mention of the *greater majority* exception in Section 25, the Old Corporation Code clarified what is meant by the *majority*, by referring to the majority of the directors as fixed in the AOI. Considering the provision in its entirety, and in its plain meaning, the use of *greater majority* simply refers to more than a majority or more than 50% of the number of directors as fixed in the AOI, or 50% plus one.

Thus, the phrase *greater majority* can only mean more than the majority referred to. It depicts a quantitative and not a qualitative change.

Necessarily, while Section 97 allows close corporations, such as Ganco, to adopt a *greater majority* with respect to a quorum for both stockholders' and directors' meetings, as well as voting requirements for certain acts, it does not authorize close corporations to altogether change what comprises such majority. Close corporations may increase the required majority for stocks represented for stockholders' meetings, or the required majority for directors' attendance and voting in directors' meetings, but they cannot change the very substance of what must comprise the quorum.

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[67] Id. at 628-629.

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A close corporation can opt to set stockholders' meeting quorum to 2/3 of its outstanding capital stock, but it cannot arbitrarily set the quorum of its stockholders' meetings to a majority of its board of directors, even if it requires 100% attendance of its board directors. Conversely, a close corporation can opt to increase its quorum requirement for directors' meetings and election of its officers from a simple majority, to 2/3 or even 80% of its board of directors, but it cannot set the same to be a majority of its outstanding capital stock.

While the logical absurdity of such switching is readily apparent with respect to regular corporations, wherein there are separate stockholders and board directors, it easily gets effaced in the case of close corporations wherein there is a similarity if not outright identity of stockholders and board directors. However, the distinction must be maintained, as even though there may be identity of ownership and management in a close corporation, the exercise of powers pertaining to ownership and management remain different.

As Ganco's AOI and by-laws failed to specify a greater majority than what is provided in the Old Corporation Code, Section 25 thus remains applicable.

Therefore, the CA, in its contested Decision, was correct in disregarding the AOI and by-laws of Ganco, and in holding that the quorum for the directors' meetings must perforce adhere to Section 25 which provides for a quorum of a majority of Ganco's board directors for the election of Ganco's officers.

Notwithstanding the above provisions in the By-laws, Sec. 25 of the Corporation Code provides that the quorum for election of officers is not based on majority of the outstanding capital stock but majority of all the members of the board. **Directors cannot attend or vote by proxy at board meetings. In other words, with the death of Luz Marasigan, the remaining thirteen (13) stockholders who are also directors of GANCO may elect their officers based on a valid quorum of eight (8) stockholders/directors present in the meeting.**[68] (Emphasis supplied)

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[68] *Rollo*, Vol. 1, p. 69, CA Decision.

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The meeting held on May 15, 2018 is not a stockholders' but a directors' meeting

Even as the same is not in issue, it is worthy of clarification that the CA incorrectly held that the meeting held on May 15, 2018, is a shareholders' meeting. Verily, Ganco's by-laws clearly states that "the annual meetings of stockholders shall be held at the principal office of the Corporation on May 15 of each year, or if a legal holiday, then on the following day."[69] Ostensibly, the meeting on May 15, 2018 thereby appears to be a stockholders' meeting.

However, a closer look at the agenda of the said meeting, as reflected in the Minutes, will indubitably show that the said meeting was actually a directors' meeting as its main purpose was the election of Ganco's board officers.[70] Therefore, the reasoning that the said meeting is invalid for failing to meet the quorum requirement of the majority of Ganco's outstanding capital stock, the quorum requirement for stockholders' meetings, is unavailing. Nonetheless, despite being a directors' meeting, the May 15, 2018 meeting was correctly held to be invalid, and as such the election of officers conducted during the said meeting cannot be recognized.

As it was a board meeting, the applicable quorum requirement is a majority of the number of directors. In this case, there was no proper notice, and in fact, Orlando, the Corporate Secretary, sent an email notice to all stockholders that the meeting cannot proceed pending the settlement of Luz's estate. Nonetheless, out of Ganco's remaining 13 directors, nine directors were deemed present, which included eight directors and Cesar Augustine representing his late father, Cesar, Jr.

Of the nine present, Orlando, the Corporate Secretary, expressed his objection during the meeting and thereafter labeled the minutes of the said meeting as "Minutes of the Illegal GANCO Meeting."

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[69] *Rollo*, Vol. 2, p. 969, by-laws of Ganco.

[70] *Rollo*, Vol. 1, p. 468, Minutes of the Ganco Illegal Meeting.

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Further, Orlando, as well as Benito and Rommel, who were not present, registered their written objections on the conduct of the said meeting.[71]

Section 101 of the Old Corporation Code provides that actions in improperly held board meetings may be deemed valid if "[a]ll directors have actual or implied knowledge of the action and make no prompt objection thereto in writing." Thus, actions in an improperly held board meeting where directors seasonably registered their objections cannot be deemed valid.

Here, the CA found that Benito, Orlando, and Rommel filed written objections. Moreover, the Minutes of the May 15, 2018 meeting clearly recorded the Corporate Secretary's continuing objection on the conduct of the said meeting. While their objection partly hinges on the lack of quorum given the pendency of the settlement of Luz's estate, their objection likewise pointed out the conduct of the meeting despite the lack of due notice and the notice of cancellation issued by the Corporate Secretary.

It should likewise be noted that the elections conducted on May 15, 2018, failed to meet the voting requirement laid down under Section 25 of the Old Corporation Code, which provides that the "the election of officers [which] shall require the vote of a majority of all the members of the board." Among the attendees to the meeting was Cesar Augustine, who the RTC correctly held cannot validly represent his father, Cesar, Jr. There being only eight actual directors present, with one director, Orlando, questioning the validity of the meeting, it cannot be said that the elected officers were able to meet the prescribed threshold of eight votes, or a majority of Ganco's board of directors. By the same logic, it also cannot be said that there was a quorum in the said meeting, considering that of the eight directors present, only seven were amenable to holding the meeting; thus, there was no majority of directors needed to transact business.

Based on the foregoing, even as the meeting held on May 15, 2018 was incorrectly tagged as a stockholders' meeting, the same was aptly declared as invalid.

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[71] Id. at 70, CA Decision.

A final word

The Court recognizes that the imposition of higher voting and quorum requirements is one of the means by which the veto power of the minority may be enhanced.[72] In such a case, the majority must hurdle a higher threshold in order to steer corporate policies and decisions. This is true for both close and widely-held corporations.

It may be particularly useful as a democratizing tool in widely-held corporations, but even in the context of close corporations, the imposition of more onerous voting and quorum requirements may facilitate cordiality and consensus building, which are critical for business operations run by families or closely-knit groups.

With such purpose in mind, the Court cannot allow a watering down of the quorum or voting requirements in the guise of an imposition of a greater majority, a real risk when the Court allows the modification from number of outstanding capital stock to board of directors, and *vice versa*.

As a final point of clarification, the fact that Ganco was organized as a close corporation to leverage the structure's unique characteristics for the management of the businesses of the Marasigan family is not lost on the Court.

It is conceded that Section 97 of the Old Corporation Code allows close corporations to completely do away with a board of directors entirely. In such a case, the AOI may simply state that the business of the corporation shall be managed by the stockholders directly, without so much of a mention that the stockholders shall be the corporation's board of directors.

In that scenario, while the stockholders may be deemed as the board of directors for the purposes of applying the provisions of the Corporation Code, the imposition of a single set of quorum requirements in the AOI and by-laws, only pertaining to stockholders' meetings and voting requirements, may very well be justified to achieve a true merger of ownership and management

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[72] See CAMPOS, JR. & CAMPOS, supra note 47, at 632 and VILLANUEVA & VILLANUEVA-TIANSAY, supra note 48, at 878.

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in a close corporation. However, here, Ganco decided to designate its stockholders as its board of directors.

Additionally, Section 97 also allows a close corporation's stockholders to directly elect or appoint corporate officers. However, instead of indicating the same in the AOI, the said provision only appears in Ganco's by-laws, contrary to the requirement in the Old Corporation Code.

Thus, based on a different set of facts, the result would have been different, and the Court would have supported the close corporation in its bid to maximize the advantages of its unique corporate form. But absent a showing of such faithful compliance with the statutory requirements for the availment of such privileges, the Court must insist on the application of rules governing regular corporations.

Therefore, the CA, through its assailed Decision and Resolution, did not commit a reversible error to warrant the exercise of the Court's discretionary appellate jurisdiction.

In view of the foregoing discussions, there is no need for the Court to further delve on the other issue raised in the Petition.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision, dated December 28, 2021, and the Resolution, dated May 24, 2022, of the Court of Appeals in CA-G.R. SP No. 168189 are **AFFIRMED**.

SO ORDERED.

Inting[*] and *Gaerlan, JJ.*, concur.

Caguioa, J., on leave.

Dimaampao, J., on official travel.

APPEARANCES OF COUNSEL

Rondain & Mendiola for petitioner.
Joseph Donato J. Bernardo for respondents.
Felomino E. Mongan, collaborating counsel for respondents.

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[*] Acting Chairperson.