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SECOND DIVISION

[G.R. No. 172948. October 5, 2016]

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION, *petitioner, vs.* **PABLITO O. LIM, MANUEL A. AGCAOILI, and CONSUELO M. PADILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUNDS FOR THE ISSUANCE THEREOF; THE TWIN REQUIREMENTS OF A VALID INJUNCTION ARE THE EXISTENCE OF A RIGHT AND ITS ACTUAL OR THREATENED VIOLATION.— For an action for injunction to prosper, the applicant must show the existence of a right, as well as the actual or threatened violation of this right. Specifically, [Rule 58 of the Rules of Court provides for grounds for issuance of preliminary injunction] x x x. In *Duvaz Corp. v. Export and Industry Bank*: Anent the first issue, the requisites for preliminary injunctive relief are: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the plaintiff is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violation. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.

2. ID.; ID.; ID.; ID.; THE APPLICANT FOR AN INJUNCTIVE WRIT MUST ESTABLISH HIS RIGHT THERETO BY COMPETENT EVIDENCE, AS THE POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF AN ACTUAL EXISTING RIGHT WOULD NOT JUSTIFY AN INJUNCTIVE RELIEF.— In *Almeida v. Court of Appeals,* the Court stressed how important it is for the applicant for an injunctive writ to establish his right thereto by competent

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evidence: Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be established. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in *esse* and which may never arise, or to restrain an action which did not give rise to a cause of action. There must be an existence of an actual right. Hence, where the plaintiffs right or title is doubtful or disputed, injunction is not proper. An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.

3. ID.; ID.; ID.; ID.; ABSENT CLEAR LEGAL RIGHT, THE ISSUANCE OF THE INJUNCTIVE WRIT CONSTITUTES GRAVE ABUSE OF DISCRETION.— In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon . . .* : It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. *It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it*. Thus, an injunction must fail where there is no clear showing of both an actual right to be protected and its threatened violation, which calls for the issuance of an injunction.

4. COMMERCIAL LAW; CORPORATIONS; CORPORATE BOOKS AND RECORDS; A STOCKHOLDER HAS THE RIGHT TO INSPECT THE RECORDS OF ALL BUSINESS TRANSACTIONS OF THE CORPORATION AND THE MINUTES OF ANY MEETING AT REASONABLE HOURS

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ON BUSINESS DAYS, AND MAY DEMAND IN WRITING FOR A COPY OF EXCERPTS FROM THESE RECORDS OR MINUTES, AT HIS OR HER EXPENSE, SUBJECT TO LIMITATIONS PROVIDED UNDER SECTION 74 OF THE CORPORATION CODE, WHICH MUST BE SET UP AS A DEFENSE BY THE CORPORATION WHO OBJECTS TO THE STOCKHOLDER'S RIGHT TO INSPECT.— The Corporation Code provides that a stockholder has the right to inspect the records of all business transactions of the corporation and the minutes of any meeting at reasonable hours on business days. The stockholder may demand in writing for a copy of excerpts from these records or minutes, at his or her expense x x x. The right to inspect under Section 74 of the Corporation Code is subject to certain limitations. However, these limitations are expressly provided as *defenses in actions filed under Section 74*. Thus, this Court has held that a corporation's objections to the right to inspect *must be raised as a defense* x x x. *Terelay Investment and Development Corp. v. Yulo* has held that although the corporation may deny a stockholder's request to inspect corporate records, the corporation must show that the purpose of the shareholder is improper by way of *defense*: The right of the shareholder to inspect the books and records of the petitioner should not be made subject to the condition of a showing of any particular dispute or of proving any mismanagement or other occasion rendering an examination proper, but *if the right is to be denied, the burden of proof is upon the corporation to show that the purpose of the shareholder is improper,* ***by way of defense***.

5. ID.; ID.; ID.; ID.; THE STOCKHOLDERS CANNOT BE PREVENTED FROM EXERCISING THEIR RIGHT TO INSPECTION BY A WRIT OF PRELIMINARY INJUNCTION FILED BY A CORPORATION.— Among the actions that may be filed is an action for specific performance, damages, petition for mandamus, or for violation of Section 74, in relation to Section 144 of the Corporation Code x x x. In this case, petitioner invokes its right to raise the limitations provided under Section 74 of the Corporation Code. However, petitioner provides scant legal basis to claim this right because it does not raise the limitations as a matter of defense. x x x. The clear provision in Section 74 of the Corporation Code is sufficient authority to conclude that an action for injunction and, consequently, a writ of preliminary

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injunction filed by a corporation is generally unavailable to prevent stockholders from exercising their right to inspection. Specifically, stockholders cannot be prevented from gaining access to the (a) records of all business transactions of the corporation; and (b) minutes of any meeting of stockholders or the board of directors, including their various committees and subcommittees.

6. ID.; ID.; ID.; ID.; CORPORATIONS MAY RAISE THEIR OBJECTIONS TO THE STOCKHOLDER'S RIGHT OF INSPECTION THROUGH AFFIRMATIVE DEFENSE IN AN ORDINARY CIVIL ACTION FOR SPECIFIC PERFORMANCE OR DAMAGES, OR THROUGH A COMMENT IN A PETITION FOR MANDAMUS, AND MUST PROVE THAT THE STOCKHOLDER HAS IMPROPERLY USED INFORMATION BEFORE, LACK OF GOOD FAITH OR LACK OF LEGITIMATE PURPOSE.— The grant of legal personality to a corporation is conditioned on its compliance with certain obligations. Among these are its fiduciary responsibilities to its stockholders. Providing stockholders with access to information is a fundamental basis for their intelligent participation in the governance of the corporation as a business organization that they partially own. The law is agnostic with respect to the amount of shares required. Generally, each individual stockholder should be given reasonable access so that he or she can assess or share his or her assessment of the management of the corporation with other stockholders. The separate legal personality of a corporation is not so absolutely separate that it divorces itself from its responsibility to its constituent owners. The law takes into consideration the potential disparity in the financial legal resources between the corporation and an ordinary stockholder. The phraseology of the text of the law provides that access to the information mentioned in Section 74 of the Corporation Code is mandatory. The presumption is that the corporation should provide access. If it has basis for denial, then the corporation shoulders the risks of being sued and of successfully raising the proper defenses. The corporation cannot immediately deploy its resources—part of which is owned by the requesting stockholder—to put the owner on the defensive. Specifically, corporations may raise their objections to the right of inspection through affirmative defense in an ordinary civil action for specific performance or damages, or through a comment (if one is

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required) in a petition for mandamus. The corporation or defendant or respondent still carries the burden of proving (a) that the stockholder has improperly used information before; (b) lack of good faith; or (c) lack of legitimate purpose.

7. ID.; ID.; ID.; ID.; THE CONFIDENTIALITY OF BUSINESS TRANSACTIONS IS NOT A MAGICAL INCANTATION THAT WILL DEFEAT THE REQUEST OF A STOCKHOLDER TO INSPECT THE RECORDS; THUS, ALTHOUGH THE BUSINESS IS ENTITLED TO THE PROTECTION OF ITS TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY RIGHTS, FACTS MUST BE PLEADED TO CONVINCE THE COURT THAT A SPECIFIC STOCKHOLDER'S REQUEST FOR INSPECTION, UNDER CERTAIN CONDITIONS, WOULD VIOLATE THE CORPORATION'S OWN LEGAL RIGHT.— Good faith and a legitimate purpose are presumed. It is the duty of the corporation to allege and prove with sufficient evidence the facts that give rise to a claim of bad faith as to the existence of an illegitimate purpose. The confidentiality of business transactions is not a magical incantation that will defeat the request of a stockholder to inspect the records. Although it is true that the business is entitled to the protection of its trade secrets and other intellectual property rights, facts must be pleaded to convince the court that a specific stockholder's request for inspection, under certain conditions, would violate the corporation's own legal right. Furthermore, the discomfort caused to the management of a corporation when a request for inspection is claimed is part of the regular matters that a business wanting to ensure good governance must endure. The range between discomfort and vexation is a broad one, which may tend to be located in the personalities of those involved. Certainly, by themselves, these are not sufficient factual basis to conclude bad faith on the part of the requesting stockholder. Courts must be convinced that the scope or manner of the request and the conditions under which it was made are so frivolous that the huge cost to the business will, in equity, be unfair to the other stockholders. There is no iota of evidence that this happened here.

8. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DISREGARD OF THE PROCEDURE ON DISSOLUTION OF INJUNCTIVE WRITS NOT AN ERROR OF LAW WHERE THE INJUNCTION WAS LIFTED AND

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CANCELLED VIA A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT BASED ON THE GRAVE ABUSE OF DISCRETION ON THE PART OF THE REGIONAL TRIAL COURT IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION, RATHER THAN WHETHER THE INJUNCTION WOULD CAUSE IRREPARABLE DAMAGE TO RESPONDENTS.— The Court of Appeals did not commit an error of law in disregarding the procedure on dissolution of injunctive writs. It lifted and cancelled the injunction via a petition for certiorari under Rule 65 of the Rules of Court based on the grave abuse of discretion on the part of the Regional Trial Court in issuing the writ of preliminary injunction. Petitioner invokes Rule 58, Section 6 of the Rules of Court x x x. Petitioner assails respondents' failure to submit any affidavit or counter-bond pertaining to irreparable damage and compensation of damages that may be suffered if the injunction is dissolved. However, the injunction was lifted and cancelled via a petition for certiorari under Rule 65 of the Rules of Court, not based on a motion for dissolution of the injunction. Thus, the Court of Appeals evaluated the basis for the injunction granted by the Regional Trial Court rather than whether the injunction would cause irreparable damage to respondents.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for respondents.

Cayetano Sebastian Ata Dado and Cruz collaborating counsels for respondents.

D E C I S I O N

LEONEN, *J.*:

An action for injunction filed by a corporation generally does not lie to prevent the enforcement by a stockholder of his or her right to inspection.[1]

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[1] See *Spouses Lim v. Court of Appeals,* 517 Phil. 522 (2006) [Per *J.* Garcia, Second Division].

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Philippine Associated Smelting and Refining Corporation filed a Petition for Review on Certiorari[2] to assail the Court of Appeals Decision[3] dated January 243 2006 and Resolution[4] dated May 18, 2006, The Court of Appeals lifted and cancelled the writ of preliminary injunction issued by the Regional Trial Court,[5] which enjoined respondents Pablito O. Lim (Lim), Manuel A. Agcaoili (Agcaoili), and Consuelo M. Padilla (Padilla), or their representatives, from gaining access to the records of Philippine Associated Smelting and Refining Corporation. The records were then classified as either confidential or inexistent until further orders from the court.[6]

As summarized by the Court of Appeals, the facts are as follows:

> Philippine Associated Smelting and Refining Corporation (hereafter PASAR) is a corporation duly organized and existing under the laws of the Philippines and is engaged in copper smelting and refining.
>
> On the other hand, Pablito Lim, Manuel Agcaoili and Consuelo Padilla (collectively referred to as petitioners) were former senior officers and presently shareholders of PASAR holding 500 shares each.
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> An Amended Petition for Injunction and Damages with prayer for Preliminary Injunction and/or Temporary Restraining Order, dated February 4, 2004 was filed by PASAR seeking to restrain petitioners from demanding inspection of its confidential and inexistent records.

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[2] *Rollo,* pp. 32-86.

[3] *Id.* at 7-16. The Decision, docketed as CA-GR. SP No. 88975, was penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Godardo A. Jacinto and Vicente Q. Roxas of the Second Division, Court of Appeals, Manila.

[4] *Id.* at 17-18. The Resolution was penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Godardo A. Jacinto and Vicente Q. Roxas of the Second Division, Court of Appeals, Manila.

[5] *Id.* at 218-220. The Order, dated April 14, 2004 and docketed as SEC Case No. 04-33, was penned by Pairing Judge Rodolfo R. Bonifacio of Branch 158 of the Regional Trial Court, Pasig City.

[6] *Id.* at 99.

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On February 23, 2004, petitioners moved for the dismissal of the petition on the following grounds: 1) the petition states no cause of action; 2) the petition should be dismissed on account of *litis pendentia;* 3) the petition is a nuisance or harassment suit; and 4) the petition should be dismissed on account of improper venue.

On April 14, 2004, the RTC issued an Order granting PASAR's prayer for a writ of preliminary injunction. The RTC held that the right to inspect book should not be denied to the stockholders, however, the same may be restricted. The right to inspect should be limited to the ordinary records as identified and classified by PASAR. Thus, pending the determination of which records are confidential or inexistent, the petitioners should be enjoined from inspecting the books. The dispositive portion of said Order states:

> "WHEREFORE, let a writ of preliminary injunction be issued enjoining respondents Pablito Lim, Manuel A. Agcaoili and Consuelo N. Padilla or their representatives from gaining access to records of Philippine Associated Smelting and Refining Corporation which are presently classified as either confidential or inexistent, until further orders from this Court.
>
> Petitioner is required to execute a bond in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) in favor of herein respondents to answer for all damages which the latter may sustain by reason of the injunction should this Court, finally decide that petitioner is not entitled thereto.
>
> SO ORDERED."

On May 26, 2004, petitioners filed a Motion for Dissolution of the Writ of Preliminary Injunction on the ground that the petition is insufficient. Petitioners claim that the enforcement of the right to inspect book should be on the stockholders and not on PASAR. Petitioners further claim that no irreparable injury is caused to PASAR which justifies the issuance of the writ of preliminary injunction.

On January 10, 2005, the RTC issued the assailed Order, denying the Motion to Dismiss filed by petitioners on the ground that it is a prohibited pleading under *Section 8, Rule 1* of the *Interim Rules on Intra-Corporate Controversies* under the Securities Regulation Code (RA 8799). The Motion for Dissolution of the Writ of Preliminary Injunction was likewise denied on the ground that the writ does not completely result in unjust denial of petitioners' right to inspect the

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books of the corporation. The RTC further stated that if no preliminary injunction is issued, petitioners may, before final judgment, do the act which PASAR is seeking the Court to restrain which will make ineffectual the final judgment that it may afterward render.[7] (Emphasis in the original)

Aggrieved, Lim, Agcaoili, and Padilla filed before the Court of Appeals a Petition for Certiorari[8] questioning the propriety of the writ of preliminary injunction. The Court of Appeals held that there was no basis to issue an injunctive writ, thus:

> We agree. The act of PASAR in filing a petition for injunction with prayer for writ of preliminary injunction is uncalled for. The petition is a pre-emptive action unjustly intended to impede and restrain the stockholders' rights. If a stockholder demands the inspection of corporate books, the corporation could refuse to heed to such demand. When the corporation, through its officers, denies the stockholders of such right, the latter could then go to court and enforce their rights. It is then that the corporation could set up its defenses and the reasons for the denial of such right. Thus, the proper remedy available for the enforcement of the right of inspection is undoubtedly the writ of mandamus to be filed by the stockholders and not a petition for injunction filed by the corporation.
>
> The Order of the RTC shows that indeed there is no basis for the issuance not only of the temporary but also of the permanent injunctive writ. The Order dated April 14, 2004 states:
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> > "In the present case, PASAR failed to present sufficient evidence to show that respondents' (petitioners') demand to inspect the corporate records was not made in good faith nor for a lawful purpose. . . . PASAR is reminded that it is its burden to prove that respondents' action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right[.]"[9]

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[7] *Id.* at 8-9.

[8] *Id.* at 231-249.

[9] *Id.* at 14-15.

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Hence, Philippine Associated Smelting and Refining Corporation filed this Petition praying that this Court render judgment:

(a) reversing and setting aside the Decision dated 24 January 2006 and Resolution dated 18 May 2006 rendered by the Court of Appeals;

(b) reinstating the writ of preliminary injunction granted by the RTC in its Order dated 14 April 2004, and consequently ordering respondents to desist from further harassing, vexing, or annoying petitioner with threats of filing criminal complaints against its President, Bruce Anderson, and other appropriate parties, as embodied in the letters dated 25 and 27 February 2006 and 31 March 2006;

(c) reinstating the main action for injunction and ordering the RTC to continue hearing SEC Case No. 04-33;

(d) meanwhile, it is respectfully prayed that a temporary restraining order or status quo order be issued by this Honorable Court to urgently restrain respondents from further committing acts which are bases for the application of the writ of preliminary injunction.[10]

In the Resolution[11] dated July 19, 2006, this Court denied petitioner's prayer for the issuance of a temporary restraining order and required respondents Lim, Agcaoili, and Padilla to comment on the Petition.

Respondents filed their Comment[12] on October 16, 2006 through counsel Cayetano Sebastian Ata Dado & Cruz. On October 20, 2006, they filed a second Comment[13] through counsel Siguion Reyna Montecillo & Ongsiako. Petitioner filed a Motion for Leave to Admit Attached Reply,[14] together with its Reply,[15] on December 12, 2006.

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[10] *Id.* at 84.

[11] *Id.* at 402.

[12] *Id.* at 410-422.

[13] *Id.* at 423-437.

[14] *Id.* at 438-441.

[15] *Id.* at 442-461.

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In the Resolution[16] dated January 24, 2007, this Court noted respondents' separate Comments and petitioner's Reply. The parties were also directed to submit their respective memoranda within 30 days from notice.[17] Respondents filed their Memorandum[18] on March 26, 2007, and petitioner filed its Memorandum[19] on April 2, 2007.

Petitioner argues that the right of a stockholder to inspect corporate books and records is limited in that any demand must be made in good faith or for a legitimate purpose.[20] Respondents, however, have no legitimate purpose in this case.[21] If respondents gain access to petitioner's confidential records, petitioner's trade secrets and other confidential information will be used by its former officers to give undue commercial advantage to third parties.[22] Petitioner insists that to hold that objections to the right of inspection can only be raised in an action for mandamus brought by the stockholder, would leave a corporation helpless and without an adequate legal remedy.[23] To leave the corporation helpless negates the doctrine that where there is a right, there is a remedy for its violation.[24]

Petitioner argues that it has the right to protect itself against all forms of embarrassment or harassment against its officers, including the filing of criminal cases against them.[25] Moreover, respondents' request for inspection of confidential corporate

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[16] *Id.* at 492-493.

[17] *Id.* at 492.

[18] *Id.* at 495-510.

[19] *Id.* at 516-586.

[20] *Id.* at 539.

[21] *Id.* at 540.

[22] *Id.* at 554.

[23] *Id.* at 559.

[24] *Id.*

[25] *Id.* at 560.

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records and documents violates and breaches petitioner's right to peaceful and continuous possession of its confidential records and documents.[26]

Petitioner further argues that respondents' Motion for Dissolution before the Court of Appeals did not comply with Rule 58, Section 6 of the Rules of Court. Therefore, the Motion should not have been granted.[27] Likewise, respondents' Motion to Dismiss is a prohibited pleading under Rule 1, Section 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies[28] and should not have been granted.[29] In any case, the Court of Appeals should have remanded the case to the trial court for further disposition.[30]

We are asked to resolve whether injunction properly lies to prevent respondents from invoking their right to inspect.

We deny the Petition.

I

The Petition asks this Court to enjoin acts ***beyond*** what was enjoined by the Regional Trial Court in its April 14, 2004 Order.[31] The Regional Trial Court Order did not specify the particular acts it enjoined respondents from doing:

> The question as to what records should be deemed confidential and inexistent, however, cannot be passed upon at this time, since neither were admissions made nor sufficient evidence presented to categorically determine which corporate records are to be considered confidential and inexistent. In the meantime, then, and in order to prevent grave and irreparable injury on the part of PASAR should

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[26] *Id.* at 561.

[27] *Id.* at 68.

[28] A.M. No. 01-2-04-SC (2001).

[29] *Rollo*, p. 71.

[30] *Id.* at 73.

[31] *Id.* at 218-220.

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otherwise be allowed [sic], respondents' right to inspect is limited to the ordinary records as identified and classified by PASAR. Subsequent hearings shall be set to determine which among the corporate records demanded to be inspected by the respondents are indeed confidential or inexistent, and to further determine whether or not the issuance of a writ of final injunction is in order.

WHEREFORE, let a writ of preliminary injunction be issued enjoining respondents Pablito Lim, Manuel A. Agcaoili and Consuelo N. Padilla or their *representatives from gaining access to records* of Philippine Associated Smelting & Refining Corporation which are presently classified as either confidential or inexistent, until further orders from this Court.[32] (Emphasis supplied)

What precisely is contemplated by the phrase "gaming access to records" is not clear.

Taking advantage of this ambiguity, petitioner prays that the injunction be reinstated and that this Court enjoin respondents from "harassing, vexing, or annoying petitioner with threats of filing criminal complaints" and from "further committing acts which are bases for the application of the writ of preliminary injunction":

(b) reinstating the writ of preliminary injunction granted by the RTC in its Order dated 14 April 2004, and consequently ordering respondents to desist from further harassing, vexing, or annoying petitioner with threats of filing criminal complaints against its President, Bruce Anderson, and other appropriate parties, as embodied in the letters dated 25 and 27 February 2006 and 31 March 2006;

. . . . . .

(d) meanwhile, it is respectfully prayed that a temporary restraining order or status quo order be issued by this Honorable Court to urgently restrain respondents from further committing acts which are bases for the application of the writ of preliminary injunction.[33]

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[32] *Id.* at 219-220.

[33] *Id.* at 84.

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Petitioner claims that respondents are materially and substantially invading its right to protect itself by demanding to inspect petitioner's purportedly confidential records. Respondents wrote petitioner and demanded to inspect its corporate books and records.[34] They reiterated this demand in a subsequent letter.[35]

On at least two (2) occasions, respondents went to petitioner's office to again demand that they be allowed to inspect.[36] On one of these occasions, respondents brought members of the press, caused work disruption, and harassed petitioner's representatives who met with them.[37] When asked the purpose of the inspection of certain records not ordinarily inspected by stockholders, respondents answered they wished to ensure that petitioner's business transactions were "above board" and "entered into for the best interest of the company."[38]

During negotiations on the terms of confidentiality agreements to be executed before respondents are allowed to inspect certain confidential records, respondents wrote petitioner stating that they would proceed to inspect the corporate books and records. They warned petitioner that should petitioner fail to allow inspection, they would initiate legal proceedings against it.[39] They refused to accept the final terms and conditions of the confidentiality agreement and wrote another letter, reiterating their demand to inspect confidential records.[40]

After petitioner filed before the Regional Trial Court of Pasig City a Petition for Declaratory Relief[41] seeking a declaration

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[34] *Id.* at 523.

[35] *Id.*

[36] *Id.* at 524.

[37] *Id.*

[38] *Id.* at 525.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 118-145.

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of the rights and duties of the parties in relation to the inspection of the records, respondent Lim filed a criminal Complaint[42] against some of petitioner's officers for infringing on their right to inspect petitioner's corporate books and records.[43] As a result, a criminal case was filed against Javier Herrero, petitioner's Former President, and Jocelyn Sanchez-Salazar, its Former Corporate Secretary.[44] Respondents caused news reports to be published on the arrest warrants issued in relation to these Informations.[45]

Respondents wrote another letter dated January 30, 2004 demanding again that they be allowed to inspect, among others, the confidential records.[46] On March 31, 2006, respondents wrote another letter threatening to file criminal charges if they were not allowed to inspect the confidential records. They stated that they wanted to ensure that petitioner complied with environmental laws in the operations of its plant in Leyte.[47]

On April 7, 2006, petitioner advised respondents that it would furnish them with records kept by the Department of Environment and Natural Resources. These records supposedly showed that all environmental laws were complied with.[48] On June 28, 2006 and July 4, 2006, respondents Lim and Padilla wrote to demand that they be allowed to inspect the audited financial statements for 2004 and 2005; the interim statements for the end of May 2006; and more detailed records on finance, production, marketing, and purchasing.[49]

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[42] *Id.* at 151-154.

[43] *Id.* at 527.

[44] *Id.* at 51.

[45] The criminal case, entitled *People of the Philippines v. Javier Herrero and Jocelyn I. Sanchez-Salazar* and docketed as Criminal Case No. 76718, was eventually dismissed.

[46] *Rollo*, p. 528.

[47] *Id.* at 529.

[48] *Id.*

[49] *Id.* at 530.

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In September 2006, after a stockholders' meeting, respondents again demanded access to certain information and documents.[50] In a letter dated September 8, 2006, respondents again asked about balance sheet accounts, advances to suppliers, trade and other receivables, inventory, investments, current assets, trade and other payables, related party transactions, cost of goods manufactured and sold, selling and administrative expenses, other operating expenses, metal hedging, and staff costs, among others.[51]

For an action for injunction to prosper, the applicant must show the existence of a right, as well as the actual or threatened violation of this right.[52]

Specifically, for a writ of preliminary injunction to be issued, Rule 58 of the Rules of Court provides:

RULE 58
PRELIMINARY INJUNCTION

. . . . . .

SEC. 3. *Grounds for issuance of preliminary injunction*. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;

(b) That the commission, continuance or non- performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done

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[50] *Id.*

[51] *Id.*

[52] *Spouses Lim v. Court of Appeals*, 517 Phil. 522, 527 (2006) [Per *J.* Garcia, Second Division].

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> some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In *Duvaz Corp. v. Export and Industry Bank*:[53]

> Anent the first issue, the requisites for preliminary injunctive relief are: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the plaintiff is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violation. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.

In *Almeida v. Court of Appeals,* the Court stressed how important it is for the applicant for an injunctive writ to establish his right thereto by competent evidence:

> Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be established. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in *esse* and which may never arise, or to restrain an action which did not give rise to a cause of action. There must be an existence of an actual right. Hence, where the plaintiffs right or title is doubtful or disputed, injunction is not proper.
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> An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.

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[53] 551 Phil. 382 (2007) [Per *J.* Garcia, First Division].

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In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon* . . . :

> It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. *It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it*.[54] (Emphasis supplied, citations omitted)

Thus, an injunction must fail where there is no clear showing of both an actual right to be protected and its threatened violation, which calls for the issuance of an injunction.

The Corporation Code provides that a stockholder has the right to inspect the records of all business transactions of the corporation and the minutes of any meeting at reasonable hours on business days. The stockholder may demand in writing for a copy of excerpts from these records or minutes, at his or her expense:

Title VIII
Corporate Books and Records

SECTION 74. *Books to be Kept; Stock Transfer Agent.* — Every corporation shall, at its principal office, keep and carefully preserve a record of all business transactions, and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the

[54] *Id.* at 388-390.

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meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the *yeas* and *nays* must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further, That it shall be a* ***defense to any action under this section*** *that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.* (Emphasis supplied)

The right to inspect under Section 74 of the Corporation Code is subject to certain limitations. However, these limitations are expressly provided as *defenses in actions filed under Section 74*. Thus, this Court has held that a corporation's objections to the right to inspect *must be raised as a defense:*

2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any

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information secured through any previous examination of the records of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance. As such, and in the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers.[55]

Gokongwei, Jr. v. Securities and Exchange Commission[56] stresses that "impropriety of purpose . . . must be set up the [sic] corporation defensively":

> The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation. In *Grey v. Insular Lumber*, this Court held that "the right to examine the books of the corporation must be exercised in good faith, for specific and honest purpose, and not to gratify curiosity, or for speculative or vexatious purposes." The weight of judicial opinion appears to be, that on application for mandamus to enforce the right, it is proper for the court to inquire into and consider the stockholder's good faith and his purpose and motives hi seeking inspection. Thus, it was held that "the right given by statute is not absolute and may be refused when the information is not sought in good faith or is used to the detriment of the corporation." But the "impropriety of purpose such

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[55] *Republic v. Sandiganbayan*, 276 Phil. 43, 50 (1991) [Per *J.* Bidin, *En Banc*].

[56] 178 Phil. 266 (1979) [Per *J.* Antonio, *En Banc*]

as will defeat enforcement ***must be set up the corporation defensively if the Court is to take cognizance of it as a qualification.*** In other words, the specific provisions take from the stockholder the burden of showing propriety of purpose and place upon the corporation the burden of showing impropriety of purpose or motive." It appears to be the "general rule that stockholders are entitled to full information as to the management of the corporation and the manner of expenditure of its funds, and to inspection to obtain such information, especially where it appears that the company is being mismanaged or that it is being managed for the personal benefit of officers or directors or certain of the stockholders to the exclusion of others."[57] (Emphasis supplied, citations omitted)

Terelay Investment and Development Corp. v. Yulo[58] has held that although the corporation may deny a stockholder's request to inspect corporate records, the corporation must show that the purpose of the shareholder is improper by way of defense:

> The right of the shareholder to inspect the books and records of the petitioner should not be made subject to the condition of a showing of any particular dispute or of proving any mismanagement or other occasion rendering an examination proper, but *if the right is to be denied, the burden of proof is upon the corporation to show that the purpose of the shareholder is improper,* ***by way of defense***. According to a recognized commentator:
>
> > By early English decisions it was formerly held that there must be something more than bare suspicion of mismanagement or fraud. There must be some particular controversy or question in which the party applying was interested, and inspection would be granted only so far as necessary for that particular occasion. By the general rule in the United States, however, shareholders have a right to inspect the books and papers of the corporation without first showing any particular dispute or proving any mismanagement or other occasion rendering an examination proper. The privilege, however, is not absolute and the corporation may show in defense that the applicant is acting from wrongful motives.

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[57] *Id.* at 314-315.

[58] G.R. No. 160924, August 5, 2015, 765 SCRA 1 [Per *J.* Bersamin, First Division].

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In *Guthrie v. Harkness,* there was involved the right of a shareholder hi a national bank to inspect its books for the purpose of ascertaining whether the business affairs of the bank' had been conducted according to law, and whether, as suspected, the bank was guilty of irregularities. The court said: "The decisive weight of American authority recognizes the right of the shareholder, for proper purposes and under reasonable regulations as to place and time, to inspect the books of the corporation of which he is a member. . . . In issuing the writ of *mandamus* the court will exercise a sound discretion and grant the right under proper safeguards to protect the interest of all concerned. The writ should not be granted for speculative purposes or to gratify idle curiosity or to aid a blackmailer, but it may not be denied to the stockholder who seeks the information for legitimate purposes."

Among the purposes held to justify a demand for inspection are the following: (1) To ascertain the financial condition of the company or the propriety of dividends; (2) the value of the shares of stock for sale or investment; (3) whether there has been mismanagement; (4) in anticipation of shareholders' meetings to obtain a mailing list of shareholders to solicit proxies or influence voting; (5) to obtain information in aid of litigation with the corporation or its officers as to corporate transactions. Among the improper purposes which may justify denial of the right of inspection are: (1) Obtaining of information as to business secrets or to aid a competitor; (2) to secure business "prospects" or investment or advertising lists; (3) to find technical defects in corporate transactions in order to bring "strike suits" for purposes of blackmail or extortion.

In general, however, officers and directors have no legal authority to close the office doors against shareholders for whom they are only agents, and withhold from them the right to inspect the books which furnishes the most effective method of gaining information which the law has provided, on mere doubt or suspicion as to the motives of the shareholder. While there is some conflict of authority, when an inspection by a shareholder is contested, the burden is usually held to be upon the corporation to establish a probability that the applicant is attempting to gain inspection for a purpose not connected with his interests as a shareholder, or that his purpose is otherwise improper.

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> The burden is not upon the petitioner to show the propriety of his examination or that the refusal by the officers or directors was wrongful, except under statutory provisions.[59] (Citations omitted)

Among the actions that may be filed is an action for specific performance, damages, petition for mandamus, or for violation of Section 74, in relation to Section 144 of the Corporation Code, which provides:

> SECTION 144. *Violations of the Code*. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided,* That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

In this case, petitioner invokes its right to raise the limitations provided under Section 74 of the Corporation Code. However, petitioner provides scant legal basis to claim this right because it does not raise the limitations as a matter of defense. As properly appreciated by the Court of Appeals:

> We agree. The act of PASAR in filing a petition for injunction with prayer for writ of preliminary injunction is uncalled for. The petition is a pre-emptive action unjustly intended to impede and restrain the stockholders' rights. If a stockholder demands the inspection of corporate books, the corporation could refuse to heed to such demand. When the corporation, through its officers, denies the stockholders of such right, the latter could then go to court and enforce their rights. It is then that the corporation could set up its defenses and the reasons for the denial of such right. Thus, the proper remedy available for

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[59] *Id.* at 15-17.

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the enforcement of the right of inspection is undoubtedly the writ of mandamus to be filed by the stockholders and not a petition for injunction filed by the corporation.[60]

Petitioner insists that the Court of Appeals erred in relying on Section 74 of the Corporation Code. It claims that jurisprudence allows the corporation to prevent a stockholder from inspecting records containing confidential information.[61] Petitioner cites *W.G. Philpotts v. Philippine Manufacturing Company*:[62]

> In order that the rule above stated may not be taken in too sweeping a sense, we deem it advisable to say that there are some things which a corporation may undoubtedly keep secret, notwithstanding the right of inspection given by law to the stockholder; as, for instance, where a corporation engaged in the business of manufacture, has acquired a formula or process, not generally known, which has proved of utility to it in the manufacture of its products. It is not our intention to declare that the authorities of the corporation, and more particularly the Board of Directors, might not adopt measures for the protection of such process from publicity.[63]

However, *W.G. Philpotts* cannot support petitioner's contention since it involved a petition for mandamus where the stockholder prayed to be allowed to exercise its right to inspect, and the respondent's objections were raised *as a defense*. Nothing in *W.G. Philpotts* grants a corporation a cause of action to enjoin the exercise of the right of inspection by a stockholder.

The clear provision in Section 74 of the Corporation Code is sufficient authority to conclude that an action for injunction and, consequently, a writ of preliminary injunction filed by a corporation is generally unavailable to prevent stockholders from exercising their right to inspection. Specifically, stockholders cannot be prevented from gaining access to the

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[60] *Rollo*, p. 14.

[61] *Id.* at 549.

[62] 40 Phil 471 (1919) [Per *J.* Street, *En Banc*].

[63] *Id.* at 474-475.

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(a) records of all business transactions of the corporation; and (b) minutes of any meeting of stockholders or the board of directors, including their various committees and subcommittees.

The grant of legal personality to a corporation is conditioned on its compliance with certain obligations. Among these are its fiduciary responsibilities to its stockholders. Providing stockholders with access to information is a fundamental basis for their intelligent participation in the governance of the corporation as a business organization that they partially own. The law is agnostic with respect to the amount of shares required. Generally, each individual stockholder should be given reasonable access so that he or she can assess or share his or her assessment of the management of the corporation with other stockholders. The separate legal personality of a corporation is not so absolutely separate that it divorces itself from its responsibility to its constituent owners.

The law takes into consideration the potential disparity in the financial legal resources between the corporation and an ordinary stockholder. The phraseology of the text of the law provides that access to the information mentioned in Section 74 of the Corporation Code is mandatory. The presumption is that the corporation should provide access. If it has basis for denial, then the corporation shoulders the risks of being sued and of successfully raising the proper defenses. The corporation cannot immediately deploy its resources—part of which is owned by the requesting stockholder—to put the owner on the defensive.

Specifically, corporations may raise their objections to the right of inspection through affirmative defense in an ordinary civil action for specific performance or damages, or through a comment (if one is required) in a petition for mandamus.[64] The

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[64] RULES OF COURT, Rule 65, Sec. 6 provides:

Section 6. *Order to comment*. – If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy therof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

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corporation or defendant or respondent still carries the burden of proving (a) that the stockholder has improperly used information before; (b) lack of good faith; or (c) lack of legitimate purpose.[65]

Good faith and a legitimate purpose are presumed. It is the duty of the corporation to allege and prove with sufficient evidence the facts that give rise to a claim of bad faith as to the existence of an illegitimate purpose.

The confidentiality of business transactions is not a magical incantation that will defeat the request of a stockholder to inspect the records. Although it is true that the business is entitled to the protection of its trade secrets and other intellectual property rights, facts must be pleaded to convince the court that a specific stockholder's request for inspection, under certain conditions, would violate the corporation's own legal right.

Furthermore, the discomfort caused to the management of a corporation when a request for inspection is claimed is part of the regular matters that a business wanting to ensure good governance must endure. The range between discomfort and vexation is a broad one, which may tend to be located in the personalities of those involved.

Certainly, by themselves, these are not sufficient factual basis to conclude bad faith on the part of the requesting stockholder. Courts must be convinced that the scope or manner of the request and the conditions under which it was made are so frivolous that the huge cost to the business will, in equity, be unfair to the other stockholders. There is no iota of evidence that this happened here.

In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

[65] *See* CORP. CODE, Sec. 74.

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II

The Court of Appeals did not commit an error of law in disregarding the procedure on dissolution of injunctive writs. It lifted and cancelled the injunction via a petition for certiorari under Rule 65 of the Rules of Court based on the grave abuse of discretion on the part of the Regional Trial Court in issuing the writ of preliminary injunction.

Petitioner invokes Rule 58, Section 6 of the Rules of Court, which provides:

> SEC. 6. *Grounds for Objection to, or for Motion of Dissolution of, Injunction or Restraining Order.* — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

Petitioner assails respondents' failure to submit any affidavit or counter-bond pertaining to irreparable damage and compensation of damages that may be suffered if the injunction is dissolved.[66]

However, the injunction was lifted and cancelled via a petition for certiorari under Rule 65 of the Rules of Court,[67] not based

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[66] *Rollo*, p. 563.

[67] *Id.* at 91.

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on a motion for dissolution of the injunction. Thus, the Court of Appeals evaluated the basis for the injunction granted by the Regional Trial Court rather than whether the injunction would cause irreparable damage to respondents.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta,*[*] and *Mendoza, JJ.,* concur

Jardeleza,[**] *J.,* concur in the result.

THIRD DIVISION

[G.R. No. 174964. October 5, 2016]

SANGGUNIANG PANLALAWIGAN OF BATAAN, *petitioner, vs.* **CONGRESSMAN ENRIQUE T. GARCIA, JR., Members of the Faculty, Concerned Students and the Board of Trustees of the BATAAN POLYTECHNIC STATE COLLEGE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ALL LANDS OF THE PUBLIC DOMAIN ARE UNDER THE ABSOLUTE CONTROL AND OWNERSHIP OF THE STATE.— The

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[*] Designated additional member per Raffle dated October 3, 2016.

[**] Designated additional member per Raffle dated November 12, 2014.