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THIRD DIVISION

[G.R. No. 93695. February 4, 1992]

RAMON C. LEE and ANTONIO DM. LACDAO, *petitioners, vs.* **THE HON. COURT OF APPEALS, SACOBA MANUFACTURING CORP., PABLO GONZALES, JR., and TOMAS GONZALES,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; VOTING TRUST; DEFINED.— Under Section 59 of the new Corporation Code which expressly recognizes voting trust agreements, a more definite meaning may be gathered. The said provision partly reads: "Section 59. Voting Trusts — One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for a period not exceeding five (5) years at any one time: Provided, that in the case of a voting trust specifically required as a condition in a loan agreement, said voting trust may be for a period exceeding (5) years but shall automatically expire upon full payment of the loan. A voting trust agreement must be in writing and notarized, and shall specify the terms and conditions thereof. A certified copy of such agreement shall be filed with the corporation and with the Securities and Exchange Commission; otherwise, said agreement is ineffective and unenforceable. The certificate or certificates of stock covered by the voting trust agreement shall be cancelled and new ones shall be issued in the name of the trustee or trustees stating that they are issued pursuant to said agreement. In the books of the corporation, it shall be noted that the transfer in the name of the trustee or trustees is made pursuant to said voting trust agreement."

2. ID.; ID.; VOTING TRUST AGREEMENT; DEFINED.— By its very nature, a voting trust agreement results in the separation of the voting rights of a stockholder from his other rights such as the right to receive dividends, the right to inspect the books of the corporation, the right to sell certain interests in the assets of the corporation and other rights to which a stockholder may be entitled until the liquidation of the corporation. However,

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in order to distinguish a voting trust agreement from proxies and other voting pools and agreements, it must pass three criteria or tests, namely: (1) that the voting rights of the stock are separated from the other attributes of ownership; (2) that the voting rights granted are intended to be irrevocable for a definite period of time; and (3) that the principal purpose of the grant of voting rights is to acquire voting control of the corporation. (5 Fletcher, *Cylopedia of the Law on Private Corporations*, Section 2075 [1976] p. 331 citing *Tankersly v. Albright*, 374 F. Supp. 538)

3. ID.; ID.; ID.; EFFECT AS TO VOTING RIGHTS; CRITERIA TO DISTINGUISH IT FROM OTHER AGREEMENTS.— The law simply provides that a voting trust agreement is an agreement in writing whereby one or more stockholders of a corporation consent to transfer his or their shares to a trustee in order to vest in the latter voting or other rights pertaining to said shares for a period not exceeding five years upon the fulfillment of statutory conditions and such other terms and conditions specified in the agreement. The five year-period may be extended in cases where the voting trust is executed pursuant to a loan agreement whereby the period is made contingent upon full payment of the loan.

4. ID.; ID.; ID.; LIMITATIONS THEREON.— Under Section 59 of the Corporation Code, supra, a voting trust agreement may confer upon a trustee not only the stockholder's voting rights but also other rights pertaining to his shares as long as the voting trust agreement is not entered "for the purpose of circumventing the law against monopolies and illegal combinations in restraint of trade or used for purposes of fraud." (Section 59, 5th paragraph of the Corporation Code). Thus, the traditional concept of a voting trust agreement primarily intended to single out a stockholder's right to vote from his other rights as such and made irrevocable for a limited duration may in practice become a legal device whereby a transfer of the stockholders shares is effected subject to the specific provision of the voting trust agreement. The execution of a voting trust agreement, therefore, may create a dichotomy between the equitable or beneficial ownership of the corporate shares of a stockholder, on the one hand, and the legal title thereto on the other hand.

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5. ID.; ID.; ID.; EFFECT THEREOF ON THE STATUS OF TRANSFERRING STOCKHOLDERS.— Both under the old and the new Corporation Codes there is no dispute as to the most immediate effect of a voting trust agreement on the status of a stockholder who is a party to its execution — from legal title holder or owner of the shares subject of the voting trust agreement, he becomes the equitable or beneficial owner.

6. ID.; ID.; ID.; RIGHTS GRANTED THEREIN AUTOMATICALLY EXPIRE AT THE END OF AGREED PERIOD.— The 6th paragraph of Section 59 of the new Corporation Code which reads: "Unless expressly renewed, all rights granted in a voting trust agreement shall automatically expire at the end of the agreed period, and the voting trust certificates as well as the certificates of stock in the name of the trustee or trustees shall thereby be deemed cancelled and new certificates of stock shall be reissued in the name of the transferors."

7. ID.; ID.; ID.; ELIGIBILITY OF A DIRECTOR UNDER THE OLD CORPORATION CODE AND UNDER THE NEW CORPORATION CODE.— Under the old Corporation Code, the eligibility of a director, strictly speaking, cannot be adversely affected by the simple act of such director being a party to a voting trust agreement inasmuch as he remains owner (although beneficial or equitable only) of the shares subject of the voting trust agreement pursuant to which a transfer of the stockholder's shares in favor of the trustee is required. No disqualification arises by virtue of the phrase "in his own right" provided under the old Corporation Code. With the omission of the phrase "in his own right" the election of trustees and other persons who in fact are not the beneficial owners of the shares registered in their names on the books of the corporation becomes formally legalized. Hence, this is a clear indication that in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation.

8. ID.; ID.; REPRESENTATIVES THEREOF AUTHORIZED TO RECEIVE COURT PROCESSES ON ITS BEHALF; RATIONALE.— Under Section 13, Rule 14 of the Revised Rules of Court, it is provided that: "Section. 13. Service upon private domestic corporation or partnership. — If the defendant is a corporation organized under the laws of the Philippines

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or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors. It is a basic principle in Corporation Law that a corporation has a personality separate and distinct from the officers or members who compose it. Thus, the above role on service of processes on a corporation enumerates the representatives of a corporation who can validly receive court processes on its behalf. Not every stockholder or officer can bind the corporation considering the existence of a corporate entity separate from those who compose it. The rationale of the aforecited rule is that service must be made on a representative so integrated with the corporation sued as to make it a *priori* supposable that he will realize his responsibilities and know what he should do with any legal papers served on him.

9. ID.; ID.; BOUND ONLY BY ACTS WITHIN THE SCOPE OF ITS OFFICER'S OR AGENT'S AUTHORITY.— The general principle that a corporation can only be bound by such acts which are within the scope of its officers' or agents' authority.

APPEARANCES OF COUNSEL

Cayanga, Zuniga & Angel Law Offices for petitioners.

Timbol & Associates for private respondents.

D E C I S I O N

GUTIERREZ, JR., *J.*:

What is the nature of the voting trust agreement executed between two parties in this case? Who owns the stocks of the corporation under the terms of the voting trust agreement? How long can a voting trust agreement remain valid and effective? Did a director of the corporation cease to be such upon the creation of the voting trust agreement? These are the questions the answers to which are necessary in resolving the principal issue in this petition for *certiorari* — whether or not there was proper service of summons on Alfa Integrated Textile Mills (ALFA, for short), through the petitioners as president and vice-

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president, allegedly, of the subject corporation after the execution of a voting trust agreement between ALFA and the Development Bank of the Philippines (DBP, for short).

From the records of the instant case, the following antecedent facts appear:

On November 15, 1985, a complaint for a sum of money was filed by the International Corporate Bank, Inc. against the private respondents who, in turn, filed a third party complaint against ALFA and the petitioners on March 17, 1986.

On September 17, 1987, the petitioners filed a motion to dismiss the third party complaint which the Regional Trial Court of Makati, Branch 58 denied in an Order dated June 27, 1988.

On July 18, 1988, the petitioners filed their answer to the third party complaint.

Meanwhile, on July 12, 1988, the trial issued an order requiring the issuance of an *alias* summons upon ALFA through the DBP as a consequence of the petitioners' letter informing the court that the summons for ALFA was erroneously served upon them considering that the management of ALFA had been transferred to the DBP.

In a manifestation dated July 22, 1988, the DBP claimed that it was not authorized to receive summons on behalf of ALFA since the DBP had not taken over the company which has a separate and distinct corporate personality and existence.

On August 4, 1988, the trial court issued an order advising the private respondents to take the appropriate steps to serve the summons to ALFA.

On August 16, 1988, the private respondents filed a Manifestation and Motion for the Declaration of Proper Service of Summons which the trial court granted on August 17, 1988.

On September 12, 1988, the petitioners filed a motion for reconsideration submitting that the Rule 14, Section 13 of the Revised Rules of Court is not applicable since they were no longer officers of ALFA and the private respondents should have

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availed of another mode of service under Rule 14, Section 16 of the said Rules, *i.e.*, through publication to effect proper service upon ALFA.

In their Comment to the Motion for Reconsideration dated September 27, 1988, the private respondents argued that the voting trust agreement dated March 11, 1981 did not divest the petitioners of their positions as president and executive vice-president of ALFA so that service of summons upon ALFA through the petitioners as corporate officers was proper.

On January 2, 1989, the trial court upheld the validity of the service of summons on ALFA through the petitioners, thus, denying the latter's motion for reconsideration and requiring ALFA to file its answer through the petitioners as its corporate officers.

On January 19, 1989, a second motion for reconsideration was filed by the petitioners reiterating their stand that by virtue of the voting trust agreement they ceased to be officers and directors of ALFA, hence, they could no longer receive summons or any court processes for or on behalf of ALFA. In support of their second motion for reconsideration, the petitioners attached thereto a copy of the voting trust agreement between all the stockholders of ALFA (the petitioners included), on the one hand, and the DBP, on the other hand, whereby the management and control of ALFA became vested upon the DBP.

On April 25, 1989, the trial court reversed itself by setting aside its previous Order dated January 2, 1989 and declared that service upon the petitioners who were no longer corporate officers of ALFA cannot be considered as proper service of summons on ALFA.

On May 15, 1989, the private respondents moved for a reconsideration of the above Order which was affirmed by the court in its Order dated August 14, 1989 denying the private respondents' motion for reconsideration.

On September 18, 1989, a petition for *certiorari* was belatedly submitted by the private respondent before the public respondent which, nonetheless, resolved to give due course thereto on September 21, 1989.

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On October 17, 1989, the trial court, not having been notified of the pending petition for *certiorari* with the public respondent issued an Order declaring as final the Order dated April 25, 1989. The private respondents in the said Order were required to take positive steps in prosecuting the third party complaint in order that the court would not be constrained to dismiss the same for failure to prosecute. Subsequently, on October 25, 1989 the private respondents filed a motion for reconsideration on which the trial court took no further action.

On March 19, 1990, after the petitioners filed their answer to the private respondents' petition for *certiorari*, the public respondent rendered its decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the orders of respondent judge dated April 25, 1989 and August 14, 1989 are hereby SET ASIDE and respondent corporation is ordered to file its answer within the reglementary period." (CA Decision, p. 8; *Rollo*, p. 24)

On April 11, 1990, the petitioners moved for a reconsideration of the decision of the public respondent which resolved to deny the same on May 10, 1990. Hence, the petitioners filed this *certiorari* petition imputing grave abuse of discretion amounting to lack of jurisdiction on the part of the public respondent in reversing the questioned Orders dated April 25, 1989 and August 14, 1989 of the court *a quo*, thus, holding that there was proper service of summons on ALFA through the petitioners.

In the meantime, the public respondent inadvertently made an entry of judgment on July 16, 1990 erroneously applying the rule that the period during which a motion for reconsideration has been pending must be deducted from the 15-day period to appeal. However, in its Resolution dated January 3, 1991, the public respondent set aside the aforestated entry of judgment after further considering that the rule it relied on applies to appeals from decisions of the Regional Trial Courts to the Court of Appeals, not to appeals from its decision to us pursuant to our ruling in the case of *Refractories Corporation of the Philippines v. Intermediate Appellate Court*, 176 SCRA 539 [1989]. (CA *Rollo*, pp. 249-250)

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In their memorandum, the petitioners present the following arguments, to wit:

"(1) that the execution of the voting trust agreement by a stockholder whereby all his shares to the corporation have been transferred to the trustee deprives the stockholder of his position as director of the corporation; to rule otherwise, as the respondent Court of Appeals did, would be violative of section 23 of the Corporation Code (*Rollo*, pp. 270-273); and

(2) that the petitioners were no longer acting or holding any of the positions provided under Rule 14, Section 13 of the Rules of Court authorized to receive service of summons for and in behalf of the private domestic corporation so that the service of summons on ALFA effected through the petitioners is not valid and ineffective; to maintain the respondent Court of Appeals' position that ALFA was properly served its summons through the petitioners would be contrary to the general principle that a corporation can only be bound by such acts which are within the scope of its officers' or agents' authority (*Rollo*, pp. 273-275)

In resolving the issue of the propriety of the service of summons in the instant case, we dwell first on the nature of a voting trust agreement and the consequent effects upon its creation in the light of the provisions of the Corporation Code.

A voting trust is defined in Ballentine's Law Dictionary as follows:

"(a) trust created by an agreement between a group of the stockholders of a corporation and the trustee or by a group of identical agreements between individual stockholders and a common trustee, whereby it is provided that for a term of years, or for a period contingent upon a certain event, or until the agreement is terminated, control over the stock owned by such stockholders, either for certain purposes or for all purposes, is to be lodged in the trustee, either with or without a reservation to the owners, or persons designated by them, of the power to direct how such control shall be used. (98 ALR 2d. 379 sec. 1 [d]; 19 Am J 2d Corp. sec. 685)."

Under Section 59 of the new Corporation Code which expressly recognizes voting trust agreements, a more definite meaning may be gathered. The said provision partly reads:

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"Section 59. Voting Trusts. — One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for a period not exceeding five (5) years at any one time: Provided, that in the case of a voting trust specifically required as a condition in a loan agreement, said voting trust may be for a period exceeding (5) years but shall automatically expire upon full payment of the loan. A voting trust agreement must be in writing and notarized, and shall specify the terms and conditions thereof. A certified copy of such agreement shall be filed with the corporation and with the Securities and Exchange Commission; otherwise, said agreement is ineffective and unenforceable. The certificate or certificates of stock covered by the voting trust agreement shall be cancelled and new ones shall be issued in the name of the trustee or trustees stating that they are issued pursuant to said agreement. In the books of the corporation, it shall be noted that the transfer in the name of the trustee or trustees is made pursuant to said voting trust agreement."

By its very nature, a voting trust agreement results in the separation of the voting rights of a stockholder from his other rights such as the right to receive dividends, the right to inspect the books of the corporation, the right to sell certain interests in the assets of the corporation and other rights to which a stockholder may be entitled until the liquidation of the corporation. However, in order to distinguish a voting trust agreement from proxies and other voting pools and agreements, it must pass three criteria or tests, namely: (1) that the voting rights of the stock are separated from the other attributes of ownership; (2) that the voting rights granted are intended to be irrevocable for a definite period of time; and (3) that the principal purpose of the grant of voting rights is to acquire voting control of the corporation. (5 Fletcher, *Cylopedia of the Law on Private Corporations*, Section 2075 [1976] p. 331 citing *Tankersly v. Albright*, 374 F. Supp. 538)

Under Section 59 of the Corporation Code, *supra*, a voting trust agreement may confer upon a trustee not only the stockholder's voting rights but also other rights pertaining to his shares as long as the voting trust agreement is not entered "for the purpose of circumventing the law against monopolies

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and illegal combinations in restraint of trade or used for purposes of fraud." (Section 59, 5th paragraph of the Corporation Code). Thus, the traditional concept of a voting trust agreement primarily intended to single out a stockholder's right to vote from his other rights as such and made irrevocable for a limited duration may in practice become a legal device whereby a transfer of the stockholder's shares is effected subject to the specific provision of the voting trust agreement.

The execution of a voting trust agreement, therefore, may create a dichotomy between the equitable or beneficial ownership of the corporate shares of a stockholder, on the one hand, and the legal title thereto on the other hand.

The law simply provides that a voting trust agreement is an agreement in writing whereby one or more stockholders of a corporation consent to transfer his or their shares to a trustee in order to vest in the latter voting or other rights pertaining to said shares for a period not exceeding five years upon the fulfillment of statutory conditions and such other terms and conditions specified in the agreement. The five year-period may be extended in cases where the voting trust is executed pursuant to a loan agreement whereby the period is made contingent upon full payment of the loan.

In the instant case, the point of controversy arises from the effects of the creation of the voting trust agreement. The petitioners maintain that with the execution of the voting trust agreement between them and the other stockholders of ALFA, as one party, and the DBP, as the other party, the former assigned and transferred all their shares in ALFA to DBP, as trustee. They argue that by virtue of the voting trust agreement the petitioners can no longer be considered directors of ALFA. In support of their contention, the petitioners invoke section 23 of the Corporation Code which provides, in part, that:

"Every director must own at least one (1) share of the capital stock of the corporation of which he is a director which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital

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stock of the corporation of which he is a director shall thereby cease to be director. x x x." (*Rollo,* p. 270)

The private respondents, on the contrary, insist that the voting trust agreement between ALFA and the DBP had all the more safeguarded the petitioners' continuance as officers and directors of ALFA inasmuch as the general object of voting trust is to insure permanency of the tenure of the directors of a corporation. They cited the commentaries by Prof. Aguedo Agbayani on the right and status of the transferring stockholder, *to wit*:

"The 'transferring stockholder', also called the 'depositing stockholder', is equitable owner of the stocks represented by the voting trust certificates and the stock reversible on termination of the trust by surrender. It is said that the voting trust agreement does not destroy the status of the transferring stockholders as such, and thus render them ineligible as directors. But a more accurate statement seems to be that for some purposes the depositing stockholder holding voting trust certificates in lieu of his stock and being the beneficial owner thereof, remains and is treated as a stockholder. It seems to be deducible from the case that he may sue as a stockholder if the suit is in equity or is of an equitable nature, such as, a technical stockholders' suit in right of the corporation. [*Commercial Laws of the Philippines* by Agbayani, Vol. 3, pp. 492-493, citing 5 Fletcher 326, 327]" (*Rollo,* p. 291)

We find the petitioners' position meritorious.

Both under the old and the new Corporation Codes there is no dispute as to the most immediate effect of a voting trust agreement on the status of a stockholder who is a party to its execution — from legal title-holder or owner of the shares subject of the voting trust agreement, he becomes the equitable or beneficial owner. (Salonga, *Philippine Law on Private Corporations,* 1958 ed., p. 268; Pineda and Carlos, *the Law on Private Corporations and Corporate Practice,* 1969 ed., p. 175; Campos and Lopez-Campos, *The Corporation Code; Comments, Notes & Selected Cases,* 1981 ed., p. 386; Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines,* Vol. 3, 1988 ed., p. 536). The penultimate question, therefore, is whether the change in his status deprives

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the stockholder of the right to qualify as a director under Section 23 of the present Corporation Code which deletes the phrase "in his own right." Section 30 of the old Code states that:

> "Every director must own *in his own right* at least one share of the capital stock of the stock corporation of which he is a director, which stock shall stand in his name on the books of the corporation. A director who ceases to be the owner of at least one share of the capital stock of a stock corporation of which is a director shall thereby cease to be a director xxx." (Italics supplied)

Under the old Corporation Code, the eligibility of a director, strictly speaking, cannot be adversely affected by the simple act of such director being a party to a voting trust agreement inasmuch as he remains owner (although beneficial or equitable only) of the shares subject of the voting trust agreement pursuant to which a transfer of the stockholder's shares in favor of the trustee is required (Section 36 of the old Corporation Code). No disqualification arises by virtue of the phrase "in his own right" provided under the old Corporation Code.

With the omission of the phrase "in his own right" the election of trustees and other persons who in fact are not the beneficial owners of the shares registered in their names on the books of the corporation becomes formally legalized (see Campos and Lopez-Campos, *supra*, p. 296). Hence, this is a clear indication that in order to be eligible as a director, what is material is the legal title to, not beneficial ownership of, the stock as appearing on the books of the corporation (2 Fletcher, *Cyclopedia of the Law of Private Corporations,* Section 300, p. 92 [1969] citing *People v. Lihme,* 269 Ill. 351, 109 N.E. 1051).

The facts of this case show that the petitioners, by virtue of the voting trust agreement executed in 1981 disposed of *all their shares through assignment and delivery in favor of the DBP, as trustee*. Consequently, the petitioners ceased to own at least one share standing in their names on the books of ALFA as required under Section 23 of the new Corporation Code. They also ceased to have anything to do with the management of the enterprise. The petitioners ceased to be directors. Hence, the

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transfer of the petitioners' shares to the DBP created vacancies in their respective positions as directors of ALFA. The transfer of shares from the stockholders of ALFA to the DBP is the essence of the subject voting trust agreement as evident from the following stipulations:

"1. The TRUSTORS hereby assign and deliver to the TRUSTEE the certificate of the shares of stocks owned by them respectively and shall do all things necessary for the transfer of their respective shares to the TRUSTEE on the books of ALFA.

2. The TRUSTEE shall issue to each of the TRUSTORS a trust certificate for the number of shares transferred, which shall be transferable in the same manner and with the same effect as certificates of stock subject to the provisions of this agreement;

3. The TRUSTEE shall vote upon the shares of stock at all meetings of ALFA, annual or special, upon any resolution, matter or business that may be submitted to any such meeting, *and shall possess in that respect the same powers as owners of the equitable as well as the legal title to the stock*;

4. The TRUSTEE may cause to be transferred to any person one share of stock for the purpose of qualifying such person as director of ALFA, and cause a certificate of stock evidencing the share so transferred to be issued in the name of such person;

xxx xxx xxx

9. Any stockholder not entering into this agreement may transfer his shares to the same trustee, without the need of revising this agreement, and this agreement shall have the same force and effect upon that said stockholder." (CA *Rollo*, pp. 137-138; Italics supplied)

Considering that the voting trust agreement between ALFA and the DBP transferred legal ownership of the stocks covered by the agreement to the DBP as trustee, the latter became the stockholder of record with respect to the said shares of stocks. In the absence of a showing that the DBP had caused to be transferred in their names one share of stock for the purpose of qualifying as directors of ALFA, the petitioners can no longer be deemed to have retained their status as officers of ALFA

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which was the case before the execution of the subject voting trust agreement. There appears to be no dispute from the records that DBP has taken over full control and management of the firm.

Moreover, in the Certification dated January 24, 1989 issued by the DBP through one Elsa A. Guevarra, Vice-President of its Special Accounts Department II, Remedial Management Group, the petitioners were no longer included in the list of officers of ALFA "as of April 1982". (CA *Rollo*, pp. 140-142)

Inasmuch as the private respondents in this case failed to substantiate their claim that the subject voting trust agreement did not deprive the petitioners of their position as directors of ALFA, the public respondent committed a reversible error when it ruled that:

"xxx while the individual respondents (petitioners Lee and Lacdao) may have ceased to be president and vice-president, respectively, of the corporation at the time of service of summons on them on August 21, 1987, they were at least up to that time, still directors xxx".

The aforequoted statement is quite inaccurate in the light of the express terms of Stipulation No. 4 of the subject voting trust agreement. Both parties, ALFA and the DBP, were aware at the time of the execution of the agreement that by virtue of the transfer of shares of ALFA to the DBP, all the directors of ALFA were stripped of their positions as such.

There can be no reliance on the inference that the five-year period of the voting trust agreement in question had lapsed in 1986 so that the legal title to the stocks covered by the said voting trust agreement *ipso facto* reverted to the petitioners as beneficial owners pursuant to the 6th paragraph of Section 59 of the new Corporation Code which reads:

"Unless expressly renewed, all rights granted in a voting trust agreement shall automatically expire at the end of the agreed period, and the voting trust certificates as well as the certificates of stock in the name of the trustee or trustees shall thereby be deemed cancelled and new certificates of stock shall be reissued in the name of the transferors."

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On the contrary, it is manifestly clear from the terms of the voting trust agreement between ALFA and the DBP that the duration of the agreement is contingent upon the fulfillment of certain obligations of ALFA with the DBP. This is shown by the following portions of the agreement.

"WHEREAS, the TRUSTEE is one of the creditors of ALFA, and its credit is secured by a first mortgage on the manufacturing plant of said company;

WHEREAS, ALFA is also indebted to other creditors for various financial accommodations and because of the burden of these obligations is encountering very serious difficulties in continuing with its operations.

WHEREAS, in consideration of additional accommodations from the TRUSTEE, ALFA has offered and the TRUSTEE has accepted participation in the management and control of the company and to assure the aforesaid participation by the TRUSTEE, the TRUSTORS have agreed to execute a voting trust covering their shareholding in ALFA in favor of the TRUSTEE;

AND WHEREAS, DBP, is willing to accept the trust for the purpose aforementioned.

NOW, THEREFORE, it is hereby agreed as follows:

xxx xxx xxx

6. This Agreement shall last for a period of Five (5) years, and is renewable for as long as the obligations of ALFA with DBP, or any portion thereof, remains outstanding;' (CA *Rollo*, pp. 137-138)

Had the five-year period of the voting trust agreement expired in 1986, the DBP would not have transferred all its rights, titles and interests in ALFA "effective June 30, 1986" to the national government through the Asset Privatization Trust (APT) as attested to in a Certification dated January 24, 1989 of the Vice President of the DBP's Special Accounts Department II. In the same certification, it is stated that the DBP, from 1987 until 1989, had handled APT's account which included ALFA's assets pursuant to a management agreement by and between the DBP and APT. (CA *Rollo*, p. 142) Hence, there is evidence on record that at the time of the service of summons on ALFA through

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the petitioners on August 21, 1987, the voting trust agreement in question was not yet terminated so that the legal title to the stocks of ALFA, then, still belonged to the DBP.

In view of the foregoing, the ultimate issue of whether or not there was proper service of summons on ALFA through the petitioners is readily answered in the negative.

Under section 13, Rule 14 of the Revised Rules of Court, it is provided that:

"Sec. 13. Service upon private domestic corporation or partnership.— If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors."

It is a basic principle in Corporation Law that a corporation has a personality separate and distinct from the officers or members who compose it. (See *Sulo ng Bayan, Inc. v. Araneta, Inc*., 72 SCRA 347 [1976]; *Osias Academy v. Department of Labor and Employment, et al*., G.R. Nos. 83257-58, December 21, 1990). Thus, the above rule on service of processes on a corporation enumerates the representatives of a corporation who can validly receive court processes on its behalf. Not every stockholder or officer can bind the corporation considering the existence of a corporate entity separate from those who compose it.

The rationale of the aforecited rule is that service must be made on a representative so integrated with the corporation sued as to make it a *priori* supposable that he will realize his responsibilities and know what he should do with any legal papers served on him. (*Far Corporation v. Francisco*, 146 SCRA 197 1986] citing *Villa Rey Transit, Inc. v. Far East Motor Corp*., 81 SCRA 303 [1978]).

The petitioners in this case do not fall under any of the enumerated officers. The service of summons upon ALFA, through the petitioners, therefore, is not valid. To rule otherwise, as correctly argued by the petitioners, will contravene the general principle that a corporation can only be bound by such acts

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which are within the scope of the officer's or agent's authority. (see *Vicente v. Geraldez*, 52 SCRA 210 [1973].)

WHEREFORE, premises considered, the petition is hereby GRANTED. The appealed decision dated March 19, 1990 and the Court of Appeals' resolution of May 10, 1990 are *SET ASIDE* and the Orders dated April 25, 1989 and October 17, 1989 issued by the Regional Trial Court of Makati, Branch 58 are *REINSTATED*.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and *Romero, JJ.,* concur.

SECOND DIVISION

[G.R. No. 94338. February 4, 1992]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE BULIGON, @ JOSE NICOLAS,** *accused,* **ELISER MENOR @ BOYET,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY FAILURE TO STATE CERTAIN MATTERS IN SWORN STATEMENTS.—** As far as failure to state certain matters in sworn statements is concerned, this is not an unusual occurrence. Such omission does not materially impair the intrinsic veracity of the witnesses concerned. It is a matter of judicial experience that affidavits are not prepared by the affiants themselves. Omissions and misunderstandings, therefore, are not infrequent.

2. **ID.; ID.; ID.; NOT AFFLICTED BY RELATIONSHIP WITH THE VICTIM.—** Accused-appellant prays the Court to adopt