Supreme Court E-Library

	April 15, 1984	to	April 14, 1985	266.20	3,194.40
+20%–	April 15, 1985	to	April 14, 1986	319.44	3,833.28
	April 15, 1986	to	April 14, 1987	383,32	4,599.84
	April 15, 1987	to	April 14, 1988	459.98	5,519.75
	April 15, 1988	to	April 14, 1989	551.97	6,623.64
	April 15, 1989	to	August 14, 1989	662.36	2,649.44
					₱32,864.36

WHEREFORE, the petition for review is granted with respect to the computation of the rentals due from the petitioner. He is ordered to pay the unpaid rentals of ₱32,864.36 for his occupancy of the private respondent's property from December 1981 to August 14, 1989 plus ₱662.36 monthly thereafter until he vacates the premises. The dismissal of his counterclaim for the value of his improvements is affirmed. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Gancayco, and *Medialdea, JJ.*, concur.

FIRST DIVISION

[*G.R. No. 85339. August 11, 1989*]

SAN MIGUEL CORPORATION, represented by EDUARDO DE LOS ANGELES, *petitioners, vs.* **ERNEST KAHN, ANDRES SORIANO III, BENIGNO TODA, JR. ANTONIO ROXAS, ANTONIO PRIETO, FRANCISCO EIZMENDI, JR., EDUARDO SORIANO, RALPH KARR and RAMON DEL ROSARIO, JR.,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; SANDIGANBAYAN; WITHOUT JURISDICTION OVER ISSUE OF VALIDITY OF ASSUMPTION BY THE CORPORATION UNDER SEQUESTRATION OF ANOTHER CORPORATION'S INDEBTEDNESS.** — De los Angeles' complaint is confined to the issue of the validity of the assumption by the corporation of the indebtedness of Neptunia Co., Ltd., allegedly for the benefit of certain of its officers and stockholders. De los Angeles' dispute, as stockholder and director of SMC, with other SMC directors, an intra-corporate *one, to be sure, is of no concern to the Sandiganbayan, having* no relevance whatever to the ownership of the sequestered stock. The contention, therefore, that in view of this Court's ruling as regards the sequestered SMC stock above adverted to, the SEC has no jurisdiction over the de los Angeles complaint, cannot be sustained and must be rejected. The dispute concerns acts of the board of directors claimed to amount to fraud and misrepresentation which may be detrimental to the interest of the stockholders, or is one arising out of intra-corporate relations between and among stockholders, or between any or all of them and the corporation of which they are stockholders.

2. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; DERIVATIVE SUIT; REQUISITES.** — The requisites for a derivative suit are as follows: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.

3. **ID.; ID.; ID.; ID.; NUMBER OF SHARES, IMMATERIAL.** — The *bona fide* ownership by a stockholder of stock in his own right suffices to invest him with standing to bring a derivative action for the benefit of the corporation. The number of his shares is immaterial since he is not suing in his own behalf, or for the protection or vindication of his own particular right, or the redress of a wrong committed against him, individually, but in behalf and for the benefit of the corporation.

Supreme Court E-Library

4. ID.; ID.; ID.; ID.; OFFICIAL STANDING IN THE CORPORATION, NOT RELEVANT. — It was not necessary for de los Angeles to be a director in order to bring a derivative action; all he had to be was a stockholder, and that he was — owning in his own right 20 shares of stock, a fact not disputed by the respondents.

APPEARANCES OF COUNSEL

Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles for petitioners.

Roco & Bunag Law Offices for respondent Ernest Kahn.

Siguion Reyna, Montecillo and Ongsiako for other respondents.

DECISION

NARVASA, *J.*:

On December 15, 1983, 33,133,266 shares of the outstanding capital stock of the San Miguel Corporation were acquired[1] by fourteen (14) other corporations,[2] and were placed under a Voting Trust Agreement in favor of the late Andres Soriano, Jr. When the latter died, Eduardo M. Cojuangco, Jr. was elected Substitute Trustee on April 9, 1984 with power to delegate the trusteeship in writing to Andres Soriano III.[3] Shortly after the Revolution of February, 1986, Cojuangro left the country amid "persistent reports" that "huge and unusual cash disbursements from the funds of SMC" had been irregularly made, and the resources of the firm extensively used in support of the candidacy of Ferdinand Marcos during the snap elections in February, 1986.[4]

---

[1] *Rollo*, p. 68.

[2] (1) Soriano Shares.. Inc.; (2) ASC Investors, Inc.: (3) Roxas Shares, Inc.; (4) ARC Investors, Inc.; (5) APHOLDINGS, INC.: (6) Toda Holdings, Inc.; (7) Fernandez Holdings, Inc.; (8) San Miguel Officers Corps. Inc.; (9) Te Deum Resources, Inc.: (10) Anglo Ventures Corporation; (11) First Meridian Development Inc.; (12) Rock Steel Resources, Inc.: (13) Randy Allied Ventures, Inc.: (14) Valhalla Properties, Limited, Inc.

[3] *Id.*, p. 68.

[4] *Id.*, 31.

Supreme Court E-Library

On March 26, 1986, an "Agreement" was executed between Andres Soriano III, as "Buyer," and the 14 corporations, as "Sellers," for the purchase by Soriano, "for himself and as agent of several persons," of the 33,133,266 shares of stock at the price of ₱100.00 per share, or "an aggregate sum of Three Billion Three Hundred Thirteen Million Three Hundred Twenty Six Thousand Six Hundred (₱3,313,326,600.00) Pesos payable in specified installments.[5] The Agreement revoked the voting trust above mentioned, and expressed the desire of the 14 corporations to sell the shares of stock "to pay certain outstanding and unpaid debts," and Soriano's own wish to purchase the same "in order to institutionalize and stabilize the management of the COMPANY in *** (himself) and the professional officer corps mandated by the COMPANY's By-laws, and to direct the COMPANY towards giving the highest priority to its principal products and extensive support to agriculture program of the Government ***.[6] Actually, according to Soriano and the other private respondents, the buyer of the shares was a foreign company, Neptunia Corporation limited (of Hongkong), a wholly owned subsidiary of San Miguel International which is, in turn, a wholly owned subsidiary of San Miguel Corporation;[7] and it was Neptunia which on or about April 1, 1986 had made the down payment of ₱500,000,000.00, "from the proceeds of certain loans."[8]

At this point the 33,133,266 SMC shares were sequestered by the Presidential Commission on Good Government (PCGG), on the ground that the stock belonged to Eduardo Cojuangco, Jr., allegedly a close associate and dummy of former President Marcos, and the sale thereof was "in direct contravention of *** Executive Orders Numbered 1 and 2 (*** dated February

---

[5] *Id.*, pp. 66-85.

[6] *Id.*, p. 69.

[7] *Id.*, pp. 32, 51; p. 2 of *undated Comment of respondent Kahn filed* by reg. mail on January 23, 1989, adopted as their own by the other private respondents thru a Manifestation dated Jan. 23, 1989.

[8] Undated Kahn Comment, p. 4.

Supreme Court E-Library

28, 1986 and March 12, 1986, respectively) which prohibit *** the transfer, conveyance, encumbrance, concealment or liquidation of assets and properties acquired by former President Ferdinand Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates."[9] "The sequestration was subsequently lifted, and the sale allowed to proceed, on representations by San Miguel Corporation *** that the shares were 'owned by 1.3 million coconut farmers;' the seller corporations were 'fully owned' by said farmers and Cojuangco owned only 2 shares in one of the companies, *etc.* However, the sequestration was soon re-imposed by Order of the PCGG dated May 19, 1986 ***. The same order forbade the SMC corporate Secretary to register any transfer or encumbrance of any of the stock without the PCGG's prior written authority."[10]

San Miguel promptly suspended payment of the other installments of the price to the fourteen (14) seller corporations. The latter as promptly sued for rescission and damages.[11]

On June 4, 1986, the PCGG directed San Miguel Corporation "to issue qualifying shares" in the corporation to seven (7) individuals, including Eduardo de los Angeles, "from the sequestered shares registered as street certificates under the control of Anscor-Hagedorn Securities, Inc.," to "be held in trust by *** (said seven [7] persons) for the benefit of Anscor-Hagedorn Securities, Inc. and/or whoever shall finally be determined to be the owner/owners of said shares."[12]

In December, 1986, the SMC Board, by Resolution No. 86-12-2, "decided to assume the loans incurred by Neptunia for the down payment (₱500M) on the 33,133,266 shares."

---

[9] *Id.*, pp. 3-4; SEE Resolution, G.R. Nos. 74910, 75075, 75094, 76397, 79459 and 79520, Aug. 10, 1988, at p.3.

[10] *Id.*, at p. 4.

[11] The action was docketed as Civil Case No. 13865 of the Regional Trial Court at Makati (Branch 149).

[12] Annex 1 of Undated Kahn Comment.

Supreme Court E-Library

The Board opined that there was "nothing illegal in this assumption (of liability for the loans)," since Neptunia was "an indirectly wholly owned subsidiary of SMC," there "was no additional expense or exposure for the SMC Group, and there were tax and other benefits which would redound to the SMC group of companies."[13]

However, at the meeting of the SMC Board on January 30, 1987, Eduardo de los Angeles, one of the PCCG representatives in the SMC board, impugned said Resolution No. 86-12-2, denying that it was ever adopted, and stating that what in truth was agreed upon at the meeting of December 4, 1986 was merely a "further study" by Director Ramon del Rosario of a plan presented by him for the assumption of the loan. De los Angeles also pointed out certain "deleterious effects" thereof. He was however overruled by private respondents.[14] When his efforts to obtain relief within the corporation and later the PCGG proved futile, he repaired to the Securities and Exchange Commission (SEC).

He filed with the SEC in April, 1987, what he describes as a derivative suit in behalf of San Miguel Corporation, against ten (10) of the fifteen-member Board of Directors who had "either voted to approve and/or refused to reconsider and revoke Board Resolution No. 86-12-2."[15] His Amended Petition in the SEC recited substantially the foregoing antecedents and the following additional facts, to wit:

---

[13] Undated Comment, p. 4.

[14] *Rollo*, pp. 7-8.

[15] *Id.*, pp. 48. 49. The case was docketed as SEC Case No. 3152; and impleaded as respondents were (1) Andres Soriano III, (2) Ernest Kahn, (3) Benigno Toda. Jr.. (4) Antonio J. Roxas. (5) Antonio Prieto,(6) Francisco C. Eizmendi. Jr.. (7) Eduardo Soriano, (8) Ramon Garcia,(9) Ralph Karr, and (10) Abraham P. Sarmiento (who has since severed all relations with San Miguel Corporation and now sits in the Supreme Court as Associate Justice thereof). Excluded were (then Secretary, now Senator) Aquilino Pimentel, (GSIS General Manager Feliciano Belmonte, (Sec.) Teodoro Locsin, Jr., and Sec. Lourdes R. Quisumbing who did not approve the resolution or repudiated it.

Supreme Court E-Library

a) On April, 1 1986 Soriano, Kahn and Roxas, as directors of Neptunia Corporation, Ltd., had met and passed a resolution authorizing the company to borrow up to US $26,500,000.00 from the Hongkong & Shanghai Banking Corporation, Hongkong "to enable the Soriano family to initiate steps and sign an agreement for the purchase of some 33,133,266 shares of San Miguel Corporation."[16]

b) The loan of $26,500,000.00 was obtained on the same day, the corresponding loan agreement having been signed for Neptunia by Ralph Karr and Carl Ottiger. At the latter's request, the proceeds of the loan were deposited in different banks[17] "for the account of "*Eduardo J. Soriano.*"

c) Three (3) days later, on April 4, 1986, Soriano III sent identical letters to the stockholders of San Miguel Corporation,[18] *inter alia* soliciting their proxies and announcing that "the Soriano family, friends and affiliates acquired a considerable block of San Miguel Corporation shares only a few days ago ***, the transaction *** (having been) made through the facilities of the Manila Stock Exchange, and 33,133,266 shares *** (having thereby been) purchased for the aggregate price of ₱3,313,326,600.00." The letters also stated that the purchase was "an exercise of the Sorianos' right to buy back the same number of shares purchased in 1983 by the *** (14 seller corporations)."

d) In implementing the assumption of the Neptunia loan and the purchase agreement for which said loan was obtained, which assumption constituted an improper use of corporate funds to pay personal obligations of Andrea Soriano III, enabling him; to purchase stock of the corporation using funds of the corporation itself, the respondents, through various subsequent machinations and manipulations, for ulterior motives and in breach of fiduciary duty, compound the damages caused San Miguel Corporation by, among other things: (1) agreeing to pay a higher

---

[16] *Id.*, pp. 5-6.

[17] Morgan Guaranty & Trust Co., New York; Chase Manhattan Bank, New York; Hongkong & Shanghai Banking Corporation, Hongkong.

[18] *Rollo*, p. 7; Annex D, Amended Petition filed in SEC Case No. 3152.

Supreme Court E-Library

price for the shares than was originally covenanted in order to prevent a rescission of the purchase agreement by the sellers; (2) urging UCPB to accept San Miguel Corporation and Neptunia as buyers of the shares, thereby committing the former to the purchase of its own shares for at least 25% higher than the price at which they were fairly traded in the stock exchanges, and shifting to said corporations the personal obligations of Soriano III under the purchase agreement; and (3) causing to be applied to the part payment of ₱1,800,000.00 on said purchase, various assets and receivable of San Miguel Corporation.

The complaint closed with a prayer for injunctions against the execution or consummation of any agreement causing San Miguel Corporation to purchase the shares in question or entailing the use of its corporate funds or assets for said purchase, and against Andres Soriano III from further using or disposing of the funds or assets of the corporation for his obligations; for the nullification of the SMC Board's resolution of April 2, 1987 making San Miguel Corporation a party to the purchase agreement; and for damages.

Ernest Kahn moved to dismiss de los Angeles' derivative suit on two grounds, to wit:

1. De los Angeles has no legal capacity to sue because —

a) having been merely "imposed" by the PCGG as a director on San Miguel, he has no standing to bring a minority derivative suit;

b) he personally holds only 20 shares and hence cannot fairly and adequately represent the minority stockholders of the corporation;

c) he has not come to court with clean hands;

and

2. The Securities & Exchange Commission has no jurisdiction over the controversy because the matters involved are exclusively within the business judgment of the Board of Directors.[19]

---

[19] *Id.*

Supreme Court E-Library

Kahn's motion to dismiss was subsequently adopted by his correspondents.[20]

The motion to dismiss was denied by SEC Hearing Officer Josefina L. Pasay-Paz, by order dated September 4, 1987.[21] In her view —

1) the fact that de los Angeles was a PCGG nominee was irrelevant because in law, ownership of even one share only, sufficed to qualify a person to bring a derivative suit;

2) it is indisputable that the action had been brought by de los Angeles for the benefit of the corporation and all the other stockholders;

3) he was a stockholder at the time of the commission of the acts complained of, the number of shares owned by him being to repeat, immaterial;

4) there is no merit in the assertion that he had come to Court with unclean hands, it not having been shown that he participated in the act complained of or ratified the same; and

5) where business judgment transgresses the law, the Securities and Exchange Commission always has competence to inquire thereinto.

Kahn filed a petition for *certiorari* and prohibition with the Court of Appeals, seeking the annulment of this adverse resolution of the SEC Hearing Officer and her perpetual inhibition from proceeding with SEC Case No. 3152.

A Special Division of that Court sustained him, upon a vote of three-to-two. The majority[22] ruled that de los Angeles had no legal capacity to institute the derivative suit, a conclusion founded on the following propositions:

1) a party "who files a derivative suit should adequately represent the interests of the minority stockholders"; since "De

---

[20] SEC Order dtd Sept. 4. 1987 (*Rollo*, p. 123)

[21] *Rollo*, pp. 123-128: Annex "I" of Petition.

[22] Castro Bartolome, *J. ponente*. Luciano, *J.*, and Cacdac, *J.*

Supreme Court E-Library

los Angeles holds 20 shares of stock out of 121,645,860 or 0.00001644% (appearing to be undisputed), (he) cannot even be remotely said to adequately represent the interests of the minority stockholders, (e)specially so when *** de los Angeles was put by the PCGG to vote the majority stock," a situation generating "a genuine conflict of interest;"

2) de los Angeles has not met this conflict-of-interest argument, *i.e.*, that his position as PCGG-nominated director is inconsistent with his assumed role of representative of minority stockholders; not having been elected by the minority, his voting would expectedly consider the interest of the entity which placed him in the board of directors;

3) *Baseco v. PCGG*, May 27, 1987,[23] has laid down the principle that the (a) PCGG cannot exercise acts of dominion over sequestered property, (b) it has only powers of administration, and (c) its voting of sequestered stock must be done only pursuant to its power of administration; and

4) de los Angeles' suit is not a derivative suit, a derivative suit being one brought for the benefit of the corporation.

The dissenting Justices,[24] on the other hand, were of the opinion that the suit had been properly brought by de los Angeles because —

1) the number of shares owned by him was immaterial, he being a stockholder in his own right;

2) he had not voted in favor of the resolution authorizing the purchase of the shares; and

3) even if PCGG was not the owner of the sequestered shares, it had the right to seek the protection of the interest of the corporation, it having been held that even an unregistered shareholder or an equitable owner of shares and pledges of shares may be deemed a shareholder for purposes of instituting a derivative suit.

---

[23] 150 SCRA 181.

[24] Campos, *J.* and Paras, *J.*

Supreme Court E-Library

De los Angeles has appealed to this Court. He prays for reversal of the judgment of the Court of Appeals, imputing to the latter the following errors:

1) having granted the writ of *certiorari* despite the fact that Kahn had not first resorted to the plain remedy available to him, *i.e.*, appeal to the SEC *en banc* and despite the fact that no question of jurisdiction was involved;

2) having ruled on Kahn's petition on the basis merely of his factual allegations, although he (de los Angeles) had disputed them and there had been no trial in the SEC; and

3) having held that he (de los Angeles) could not file derivative suit as stockholder and/or director of the San Miguel Corporation.

For their part, and in this Court, the respondents make the following assertions:

1) SEC has no jurisdiction over the dispute at bar which involves the ownership of the 33,133,266 shares of SMC stock, in light of this Court's Resolution in G.R. Nos. 74910, 75075, 75094, 76397, 79459 and 79520, promulgated on August 10, 1988.[25]

2) de los Angeles was beholden to the controlling stockholder in the corporation (PCGG), which had "imposed" him on the corporation; since the PCGG had a clear conflict of interest with the minority, de los Angeles, as director of the former, had no legal capacity to sue on behalf of the latter;

3) even assuming absence of conflict of interest, de los Angeles does not fairly and adequately represent the interest of the minority stockholders;

4) the respondents had properly applied for *certiorari* with the Court of Appeals because —

a) that Court had, by law, exclusive appellate jurisdiction over officers and agencies exercising quasi-judicial functions, and hence had competence to issue the writ of *certiorari*;

---

[25] SEE footnote 5 and related text at p. 2, *supra*.

Supreme Court E-Library

b) the principle of exhaustion of administrative remedies does not apply since the issue involved is one of law;

c) said respondents had no plain, speedy and adequate remedy within the SEC;

d) the Order of the SEC Investigating Officer — denying the motion to dismiss — was issued without or in excess of jurisdiction, hence was correctly nullified by the Court of Appeals; and

e) de los Angeles had not raised the issue of absence of a motion for reconsideration by respondents in the SEC case; in any event, such a motion was unnecessary in the premises.

De los Angeles' Reply seeks to make the following points:

1) since the law lays down three (3) requisites for a derivative suit, *viz*:

a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of;

b) he has exhausted intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been caused to the corporation and not to the particular stockholder bringing the suit;

and since (1) he is admittedly the owner of 20 shares of SMC stock *in his own right*, having acquired those shares as early as 1977, (2) he had sought without success to have the board of directors remedy the wrong, and (3) that wrong was in truth a wrong against the stockholders of the corporation, generally, and not against him individually — and it was the corporation, and not he, particularly, that would be entitled to the appropriate relief — the propriety of his suit cannot be gainsaid;

2) Kahn had not limited himself to questions of law in the proceedings in the Court of Appeals and hence could not claim exclusion from the scope of the doctrine of exhaustion of remedies; moreover, Rule 65, invoked by him, bars a resort to *certiorari* where a *plain, speedy and adequate remedy* was available to him, as it had been available to him in this case, to wit: a motion for reconsideration before the SEC *en banc* and, contrary to respondents'

Supreme Court E-Library

claim, de los Angeles had in fact asserted these propositions before the Appellate Tribunal; and

3) the respondents had not raised the issue of jurisdiction before the Court of Appeals; indeed, they admit in their Comment that that

"issue has not yet been resolved by the SEC," be this as it may, the derivative suit does not fall within the *BASECO doctrine* since it does not involve any question of ownership of the 33,133,266 sequestered SMC shares but rather, the validity of the resolution of the board of directors for the assumption by the corporation, for the benefits of certain of its officers and stockholders, of liability for loans contracted by another corporation, which is an intra-corporate dispute within the exclusive jurisdiction of the SEC.

1. De los Angeles is not opposed to the asserted position of the PCGG that the sequestered SMC shares of stock belong to Ferdinand Marcos and/or his dummies and/or cronies. His consent to sit in the board as nominee of PCGG unquestionably indicates his advocacy of the PCGG position. He does not here seek, and his complaint in the SEC does not pray for, the annulment of the purchase by SMC of the stock in question, or even the subsequent purchase of the same stock by others[26] — which proposition was challenged by (1) one Evio, in SEC Case No. 3000; (2) by the 14 corporations which sold the stock to SMC, in Civil Case No. 13865 of the Manila RTC, said cases having later become subject of G.R. No. 74910 of this Court; (3) by Neptunia, SMC, and others, in G.R. No. 79520 of this Court; and (4) by Eduardo Cojuangco and others in Civil Case No. 16371 of the RTC, Makati, [on the theory that the sequestered stock in fact belonged to coconut planters and oil millers], said case later having become subject of G.R. No. 79459 of this Court.[27] Neither does de los Angeles impugn, obviously, the right of the PCGG to vote the sequestered stock thru its nominee directors — as was done by United Coconut Planters Bank and the 14 seller corporations (in SEC Case No. 3005, later

---

[26] SEE de los Angeles' Amended Petition of April 3, 1987 before the SEC (*Rollo*, pp. 48-65).

[27] SEE Resolution in G.R. Nos. 74910, 75075, 75094, 76397, 79549 and 79520, Aug. 10, 1988, *supra*.

Supreme Court E-Library

consolidated with SEC Case No. 3000 above mentioned, these two (2) cases later having become subject of G.R. No. *76397*) as well as by one Clifton Ganay, a UCPB stockholder (in G.R. No. 75094 of this Court).[28]

The subject matter of his complaint in the SEC does not therefore fall within the ambit of this Court's Resolution of August 10, 1988 on the cases just mentioned, to the effect that, citing *PCGG v. Peña, et al.,*[29] "all cases of the Commission regarding 'the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees, whether civil or criminal, are lodged within the exclusive and original jurisdiction of, the Sandiganbayan,' and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court." His complaint does not involve any property illegally acquired or misappropriated by Marcos, *et al.*, or "any incidents arising from, incidental to, or related to" any case involving such property, but assets indisputably belonging to San Miguel Corporation which were, in his (de los Angeles') view, being illicitly committed by a majority of its board of directors to answer for loans assumed by a sister corporation, Neptunia Co., Ltd.

De los Angeles' complaint, in fine, is confined to the issue of the validity of the assumption by the corporation of the indebtedness of Neptunia Co., Ltd., allegedly for the benefit of certain of its officers and stockholders, an issue evidently distinct from, and not even remotely requiring inquiry into the matter of whether or not the 33,133,266 SMC shares sequestered by the PCGG belong to Marcos and his cronies or dummies (on which issue, as already pointed out, de los Angeles, in common

---

[28] *Id.* The right of the PCGG to sequester the UCPB stock and to vote the same was questioned in SEC Case No. 3014, which case later became subject of G.R. No. 75075.

[29] G.R. No. 77663, April 12, 1988.

Supreme Court E-Library

with the PCGG, had in fact espoused the affirmative). De los Angeles' dispute, as stockholder and director of SMC, with other SMC directors, an intra-corporate one, to be sure, is of no concern to the Sandiganbayan, having no relevance whatever to the ownership of the sequestered stock. The contention, therefore, that in view of this Court's ruling as regards the sequestered SMC stock above adverted to, the SEC has no jurisdiction over the de los Angeles complaint, cannot be sustained and must be rejected. The dispute concerns acts of the board of directors claimed to amount to fraud and misrepresentation which may be detrimental to the interest of the stockholders, or is one arising out of intra-corporate relations between and among stockholders, or between any or all of them and the corporation of which they are stockholders.[30]

2. The theory that de los Angeles has no personality to bring suit in behalf of the corporation — because his stockholding is minuscule, and there is a "conflict of interest" between him and the PCGG — cannot be sustained, either.

It is claimed that since de los Angeles' 20 shares (owned by him since 1977) represent only .00001644% of the total number of outstanding shares (121,645,860), he cannot be deemed to fairly and adequately represent the interests of the minority stockholders. The implicit argument — that stockholder, to be considered as qualified to bring a derivative suit, must hold a substantial or significant block of stock — finds no support whatever in the law. The requisites for a derivative suit[31] are as follows:

a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;[32]

---

[30] Sec. 5, P.D. 902-A.

[31] SEE A. Agbayani, *Commercial Laws of the Philippines*, 1988 ed., Vol. 3, pp. 550-552; Jose and Ma. Clara Campos, *The Corporation Code*, 1981 ed., pp. 574-577; Martin, T.C., *Philippine Commercial Laws*, 1971 ed., *p.* 60.

[32] *Pascual v. Orozco*, 19 Phil. 82; *Republic Bank v. Cuaderno*, 19 SCRA 671.

Supreme Court E-Library

b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea;[33] and

c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[34]

The *bona fide* ownership by a stockholder of stock in his own right suffices to invest him with standing to bring a derivative action for the benefit of the corporation. The number of his shares is immaterial since he is not suing in his own behalf, or for the protection or vindication of his own particular right, or the redress of a wrong committed against him, individually, but in behalf and for the benefit of the corporation.

3. Neither can the "conflict-of-interest" theory be upheld. From the conceded premise that de los Angeles now sits in the SMC Board of Directors by the grace of the PCGG, it does not follow that he is legally obliged to vote as the PCGG would have him do, that he cannot legitimately take a position inconsistent with that of the PCGG, or that, not having been elected by the minority stockholders, his vote would necessarily never consider the latter's interests. The proposition is not only logically indefensible, *non sequitur*, but also constitutes an erroneous conception of a director's role and function, it being plainly a director's duty to vote according to his own independent judgment and his own conscience as to what is in the best interests of the company. Moreover, it is undisputed that apart from the qualifying shares given to him by the PCGG, he owns 20 shares in his own right, as regards which he cannot from any aspect be deemed to be "beholden" to the PCGG, his ownership of these shares being precisely what he invokes as the source of his authority to bring the derivative suit.

4. It is also theorized, on the authority of the BASECO decision, that the PCGG has no power to vote sequestered

---

[33] *Everett v. Asia Banking Corporation*, 49 Phil. 512; *Angeles v. Santos*, 64 Phil. 697.

[34] *Evangelista v. Santos*, 86 Phil. 387.

Supreme Court E-Library

shares of stock as an act of dominion but only in pursuance to its power of administration. The inference is that the PCGG's act of voting the stock to elect de los Angeles to the SMC Board of Directors was unauthorized and void; hence, the latter could not bring suit in the corporation's behalf. The argument is strained and obviously of no merit. As already more than plainly indicated, it was not necessary for de los Angeles to be a director in order to bring a derivative action; all he had to be was a stockholder, and that he was — owning in his own right 20 shares of stock, a fact not disputed by the respondents.

Nor is there anything in the *Baseco* decision which can be interpreted as ruling that sequestered stock may not under any circumstances be voted by the PCGG to elect a director in the company in which such stock is held. On the contrary, that it held such act permissible is evident from the context of its reference to the Presidential Memorandum of June 26, 1986 authorizing the PCGG, "pending the outcome of proceedings to determine the ownership of *** sequestered shares of stock," "to vote such shares *** at all stockholders' meetings called for the election of directors ***," the only *caveat* being that the stock is not to be voted simply because the power to do so exists, whether it be to oust and replace directors or to effect substantial changes in corporate policy, programs or practice, but only "for demonstrably weighty and defensible grounds" or "when essential to prevent disappearance or wastage of corporate property."

The issues raised here do not peremptorily call for a determination of whether or not in voting petitioner de los Angeles to the San Miguel Board, the PCGG kept within the parameters announced in *Baseco*; and absent any showing to the contrary, consistently with the presumption that official duty is regularly performed, it must be assumed to have done so.

WHEREFORE, the petition is GRANTED. The appealed decision of the Court of Appeals in CA-G.R. SP No. 12857 — setting aside the order of September 4, 1987 issued in SEC Case No. 3153 and dismissing said case — is REVERSED AND SET ASIDE. The further disposition in the appealed decision

Supreme Court E-Library

for the issuance of a writ of preliminary injunction upon the filing and approval of a bond of ₱500,000.00 by respondent Ernest Kahn (petitioner in the Appellate Court) is also SET ASIDE, and any writ of injunction issued pursuant thereto is lifted. Costs against private respondents.

SO ORDERED.

Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur

Cruz, J., no part. Related to one of the counsel.

EN BANC

[G.R. Nos. 57999, 58143-53. August 15, 1989]

RESURRECCION SUZARA, CESAR DIMAANDAL, ANGELITO MENDOZA, ANTONIO TANEDO AMORSOLO CABRERA, DOMINADOR SANTOS, ISIDRO BRACIA, RAMON DE BELEN, ERNESTO SABADO, MARTIN MALABANAN, ROMEO HUERTO and VITALIANO PANGUE, *petitioners, vs.* **THE HON. JUDGE ALFREDO L. BENIPAYO and MAGSAYSAY LINES, INC.,** *respondents.*

[G.R. Nos. 64781-99. August 15, 1989]

RESURRECCION SUZARA, CESAR DIMAANDAL, ANGELITO MENDOZA, ANTONIO TANEDO, RAYMUNDO PEREZ, AMORSOLO CABRERA, DOMINADOR SANTOS, ISIDRO BRACIA, CATALINO CASICA, VITALIANO PANGUE, RAMON DE BELEN, EDUARDO PAGTALUNAN, ANTONIO MIRANDA, RAMON UNIANA, ERNESTO SARADO, MARTIN MALABANAN,