Supreme Court E-Library

FIRST DIVISION

[G.R. No. 187702. October 22, 2014]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, OMICO CORPORATION, EMILIO S. TENG AND TOMMY KIN HING TIA,** *respondents.*

[G.R. No. 189014. October 22, 2014]

ASTRA SECURITIES CORPORATION, *petitioner, vs.* **OMICO CORPORATION, EMILIO S. TENG AND TOMMY KIN HING TIA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; WHEN PROXIES ARE SOLICITED IN RELATION TO THE ELECTION OF CORPORATE DIRECTORS, THEIR RESULTING CONTROVERSY, EVEN IF IT RAISED THE VIOLATION OF THE SEC RULES ON PROXY SOLICITATION, IS AN ELECTION CONTROVERSY WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE TRIAL COURT.— While the regular courts now had the power to hear and decide cases involving controversies in the election of directors, it was not clear whether the SRC also transferred to these courts the incidental and ancillary powers of the SEC as enumerated in Section 6 of P.D. 902-A. Thus, in *GSIS v. CA*, it was necessary for the Court to determine whether the action to invalidate the proxies was intimately tied to an election controversy. Hence, the Court pronounced: x x x. **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5 (c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.** This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or

controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5 (c) of Presidential Decree No. 902-A.**

2. **ID.; ID.; THE POWER TO REGULATE PROXIES IN INSTANCES WHEN THE STOCKHOLDERS VOTE ON MATTERS OTHER THAN THE ELECTION OF DIRECTORS LIES WITH THE SEC BUT CONTROVERSY INVOLVING THE VALIDATION OF PROXIES RELATING TO THE DETERMINATION OF THE EXISTENCE OF A QUORUM FOR THE ELECTION OF THE DIRECTORS IS COGNIZABLE BY THE REGULAR COURTS.—** The Court explained that the power of the SEC to regulate proxies remains in place in instances when stockholders vote on matters other than the election of directors. The test is whether the controversy relates to such election. All matters affecting the manner and conduct of the election of directors are properly cognizable by the regular courts. Otherwise, these matters may be brought before the SEC for resolution based on the regulatory powers it exercises over corporations, partnerships and associations. Indeed, the validation of proxies in this case relates to the determination of the existence of a quorum. Nonetheless, it is a quorum for the election of the directors, and, as such, which requires the presence – in person or by proxy – of the owners of the majority of the outstanding capital stock of Omico. Also, the fact that there was no actual voting did not make the election any less so, especially since Astra had never denied that an election of directors took place.

3. **ID.; ID.; ID.; ALL CONTROVERSIES RELATING TO THE ELECTION OF DIRECTORS, WHETHER BEFORE, DURING OR AFTER, SHALL BE PASSED UPON BY THE REGULAR COURTS.—** We find no merit either in the proposal of Astra regarding the "two (2) viable, non-exclusive and successive legal remedies to question the validity of proxies."

Supreme Court E-Library

It suggests that the power to pass upon the validity of proxies to determine the existence of a quorum prior to the conduct of the stockholders' meeting should lie with the SEC; but, after the stockholders' meeting, questions regarding the use of invalid proxies in the election of directors should be cognizable by the regular courts, since there was already an election to speak of. First, this interpretation is akin to the argument struck down by the Court in *GSIS v. CA*. If the Court adopts the suggestion, "we would be perpetually confronted with the spectacle of election controversies being heard and adjudicated by both the SEC and the regular courts, made possible through a mere allegation that the anteceding x x x process was errant, but the competing cases [were] filed with one objective in mind – to affect the outcome of the election of the board of directors." Second, the validation of proxies serves a number of purposes, including determining the existence of a quorum and ascertaining the authenticity of proxies to be used for the election of directors at the stockholders' meeting. Section 2, Rule 6, of the Interim Rules of Procedure Governing Intra-Corporate Disputes provides that an election contest covers any controversy or dispute involving the validation of proxies, in general. Thus, it can only refer to all the beneficial purposes that validation of proxies can bring about when made in connection with a forthcoming election of directors. Thus, there is no point in making distinctions between who has jurisdiction before and who has jurisdiction after the election of directors, as all controversies related thereto – whether before, during or after – shall be passed upon by regular courts as provided by law.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; QUASI-JUDICIAL AGENCY DOES NOT HAVE THE RIGHT TO SEEK THE REVIEW OF AN APPELLATE COURT DECISION REVERSING ANY OF ITS RULINGS, NOT BEING A REAL PARTY-IN-INTEREST; PETITION OF THE SEC EXPUNGED FOR LACK OF CAPACITY TO FILE THE SUIT.— As in the instant cases, *GSIS v. CA* is a consolidation of two cases, one of which was filed by a private party and the other by the SEC itself. In both cases, the parties were aggrieved by the CA ruling, so they filed the cases seeking a pronouncement from the Court that it recognizes the jurisdiction of the SEC over the controversy. Calling to mind established jurisprudential principles, the Court therein ruled that quasi-judicial agencies do not have the right

Supreme Court E-Library

to seek the review of an appellate court decision reversing any of their rulings. This is because they are not real parties-in-interest. Thus, the Court expunged the petition filed by the SEC for the latter's lack of capacity to file the suit. So it must be in the instant cases.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez and Bretana for Astra Securities Corp.

Jimenez Gonzales Bello Valdez Caluya & Fernandez (JGLAW) for Omico Corp., *et al.*

D E C I S I O N

SERENO, *C.J.*:

G.R. No. 187702 is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision[1] dated 18 March 2009 in CA-G.R. SP No. 106006. G.R. No. 189014 is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the same Decision, as well as the CA Resolution[2] dated 9 July 2009. On 12 October 2009, the Court resolved to consolidate the two cases.[3]

The CA Decision ruled that because controversies involving the validation of proxies are considered election contests under the Interim Rules of Procedure Governing Intra-Corporate Controversies, they are properly cognizable by the regular courts, not by the Securities and Exchange Commission. The CA Resolution denied the motion for reconsideration filed by Astra Securities Corporation.

---

[1] *Rollo* (G.R. No. 187702), pp. 43-55; penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Rosalinda Asuncion-Vicente concurring.

[2] *Rollo* (G.R. No. 189014), p. 42; penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Magdangal M. de Leon concurring.

[3] *Id*. at 388-389.

Supreme Court E-Library

FACTS

Omico Corporation (Omico) is a company whose shares of stock are listed and traded in the Philippine Stock Exchange, Inc.[4] Astra Securities Corporation (Astra) is one of the stockholders of Omico owning about 18% of the latter's outstanding capital stock.[5]

Omico scheduled its annual stockholders' meeting on 3 November 2008.[6] It set the deadline for submission of proxies on 23 October 2008 and the validation of proxies on 25 October 2008.

Astra objected to the validation of the proxies issued in favor of Tommy Kin Hing Tia (Tia), representing about 38% of the outstanding capital stock of Omico.[7] Astra also objected to the inclusion of the proxies issued in favor of Tia and/or Martin Buncio, representing about 2% of the outstanding capital stock of Omico.[8]

Astra maintained that the proxy issuers, who were brokers, did not obtain the required express written authorization of their clients when they issued the proxies in favor of Tia. In so doing, the issuers were allegedly in violation of SRC Rule 20(11)(b)(xviii)[9] of the Amended Securities Regulation Code

---

[4] *Rollo* (G.R. No. 187702), p. 110.

[5] *Id*. at 60.

[6] *Id*. at 44.

[7] *Id*. at 46, 133.

[8] *Id*.

[9] SRC RULE 20. *Disclosures to Stockholders Prior to Meeting (formerly, SRC Rule 20 — The Proxy Rule)*

x x x x x x x x x

11. *Other Procedural Requirements*

x x x x x x x x x

b. Proxy

x x x x x x x x x

xviii. **No member of the Stock Exchange and no broker/**

Supreme Court E-Library

(SRC or Republic Act No. 8799) Rules.[10] Furthermore, the proxies issued in favor of Tia exceeded 19, thereby giving rise to the presumption of solicitation thereof under SRC Rule 20(2)(B)(ii)(b)[11] of the Amended SRC Rules. Tia did not comply with the rules on proxy solicitation, in violation of Section 20.1[12] of the SRC.

Despite the objections of Astra, Omico's Board of Inspectors declared that the proxies issued in favor of Tia were valid.[13]

---

dealer shall give any proxy, consent or authorization, in respect of any security carried for the account of a customer to a person other than the customer, without the express written authorization of such customer. The proxy executed by the broker shall be accompanied by a certification under oath stating that before the proxy was given to the broker, he had duly obtained the written consent of the persons in whose account the shares are held. (Emphasis supplied.)

[10] *Rollo* (G.R. No. 187702), p. 46.

[11] SRC RULE 20. *Disclosures to Stockholders Prior to Meeting (formerly, SRC Rule 20 — The Proxy Rule)*

x x x x x x x x x

2. *Definitions*

x x x x x x x x x

B. Solicitation

i. **The terms solicit and solicitation** shall include:

a. any request for a proxy or authorization;

b. any request to execute or not to execute, or to revoke, a proxy or authorization; or

c. the furnishing of a form of proxy or other communication to security holders under a circumstance reasonably calculated to result in the procurement, withholding or revocation of a proxy.

ii. **The terms shall not apply to**:

a. the performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

b. any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than nineteen (19). (Emphasis supplied.)

[12] SECTION 20. *Proxy Solicitations.* — 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission.

[13] *Rollo* (G.R. No. 187702), p. 46.

Supreme Court E-Library

On 27 October 2008, Astra filed a Complaint[14] before the Securities and Exchange Commission (SEC) praying for the invalidation of the proxies issued in favor of Tia. Astra also prayed for the issuance of a cease and desist order (CDO) enjoining the holding of Omico's annual stockholders' meeting until the SEC had resolved the issues pertaining to the validation of proxies.

On 30 October 2008, SEC issued the CDO enjoining Omico from accepting and including the questioned proxies in determining a quorum and in electing the members of the board of directors during the annual stockholders' meeting on 3 November 2008.[15]

Attempts to serve the CDO on 3 November 2008 failed, and the stockholders' meeting proceeded as scheduled with 52.3% of the outstanding capital stock of Omico present in person or by proxy.[16] The nominees for the board of directors were elected upon motion.[17]

Astra instituted before the SEC a Complaint[18] for indirect contempt against Omico for disobedience of the CDO. On the other hand, Omico filed before the CA a Petition for *Certiorari* and Prohibition[19] imputing grave abuse of discretion on the part of the SEC for issuing the CDO.

RULING OF THE CA

In the assailed Decision dated 18 March 2009, the CA declared the CDO null and void.[20]

---

[14] *Id*. at 59-71.

[15] *Id*. at 110-113.

[16] *Id*. at 47; *rollo* (G.R. No. 189014), p. 176.

[17] *Rollo* (G.R. No. 189014), p. 177.

[18] *Id*. at 170-185.

[19] *Rollo* (G.R. No. 187702), pp. 73-109.

[20] *Id*. at 54.

Supreme Court E-Library

The CA held that the controversy was an intra-corporate dispute.[21] The SRC expressly transferred the jurisdiction over actions involving intra-corporate controversies from the SEC to the regional trial courts.[22] Furthermore, Section 2, Rule 6[23] of the Interim Rules of Procedure Governing Intra-Corporate Disputes,[24] provides that any controversy or dispute involving the validation of proxies is an election contest, the jurisdiction over which has also been transferred by the SRC to the regular courts.[25]

Thus, according to the CA, the SEC committed grave abuse of discretion in taking cognizance of Astra's complaint.[26] The CDO was a patent nullity, for an order issued without jurisdiction is no order at all.

Aggrieved by the CA Decision, the SEC filed before us the instant Petition for *Certiorari* docketed as G.R. No. 187702.[27] Meanwhile, Astra filed a Motion for Reconsideration before the CA,[28] which subsequently denied the motion in the assailed Resolution dated 9 July 2009.

On 14 September 2009, Astra filed the instant Petition for Review on *Certiorari* docketed as G.R. No. 189014.[29] The Court consolidated the two petitions on 12 October 2009.[30]

---

[21] *Id*. at 49.

[22] *Id*. at 49-50.

[23] SECTION 2. *Definition*. — **An election contest refers to any controversy or dispute involving** title or claim to any elective office in a stock or non-stock corporation, **the validation of proxies**, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. (Emphasis supplied)

[24] A.M. No. 01-2-04-SC, 13 March 2001.

[25] *Rollo* (G.R. No. 187702), p. 51.

[26] *Id*. at 52.

[27] *Id*. at 2-41.

[28] *Rollo* (G.R. No. 189014), pp. 23-41.

[29] *Id*. at 45-92.

[30] *Id*. at 388.

Supreme Court E-Library

ISSUE

Whether the SEC has jurisdiction over controversies arising from the validation of proxies for the election of the directors of a corporation.

OUR RULING

About a month after the CA issued the assailed Decision, this Court promulgated *GSIS v. CA*,[31] which squarely answered the above issue in the negative.

In that case, we observed that Section 6[32](g) of Presidential Decree No. (P.D.) 902-A dated 11 March 1976 conferred on

---

[31] 603 Phil. 676 (2009).

[32] SECTION 6. **In order to effectively exercise such jurisdiction**, the Commission shall possess the following powers:

a) To issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the Rules of Court shall apply;

b) To issue writs of attachment in cases in which it has jurisdiction, in order to preserve the rights of parties and in such cases the pertinent provisions of the Rules of Court shall apply;

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: Provided, however, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: Provided, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

d) To create and appoint a management committee, board, or body upon petition or *motu proprio* to undertake the management of corporations,

Supreme Court E-Library

SEC the power "[t]o pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders

---

partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties of paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public: Provided, further, That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission: Provided, however, That the Commission may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred.

e) To punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of, and penalties prescribed by, the Rules of Court;

f) To compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision;

g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members;

Supreme Court E-Library

or members." Section 6, however, opens thus: "In order to effectively exercise such jurisdiction x x x." This opening clearly

---

h) To issue subpoena *duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases order the examination, search and seizure of all documents, papers, files and records,tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, notwithstanding the provisions of any law to the contrary.

i) To impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings;

j) To authorize the establishment and operation of stock exchanges, commodity exchanges and such other similar organization and to supervise and regulate the same; including the authority to determine their number, size and location, in the light of national or regional requirements for such activities with the view to promote, conserve or rationalize investment;

k) To pass upon, refuse or deny, after consultation with the Board of Investments, Department of Industry, National Economic and Development Authority or any other appropriate government agency, the application for registration of any corporation, partnership or association or any form of organization falling within its jurisdiction, if their establishment, organization or operation will not be consistent with the declared national economic policies;

l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;

4. Continuous inoperation for a period of at least five (5) years;

5. Failure to file by-laws within the required period;

6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;

m) To exercise such powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted to the Commission to achieve the objectives and purposes of this Decree.

Supreme Court E-Library

refers to the preceding Section 5.[33] The Court pointed out therein that the power to pass upon the validity of proxies was merely incidental or ancillary to the powers conferred on the SEC under

---

In the exercise of the foregoing authority and jurisdiction of the Commission, hearings shall be conducted by the Commission or by a Commissioner or by such other bodies, boards, committees and/or any officer as may be created or designated by the Commission for the purpose. The decision, ruling or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting *en banc* within thirty (30) days after receipt by the appellant of notice of such decision, ruling or order. The Commission shall promulgate rules of procedures to govern the proceedings, hearings and appeals of cases falling within its jurisdiction.

The aggrieved party may appeal the order, decision or ruling of the Commission sitting en banc to the Supreme Court by petition for review in accordance with the pertinent provisions of the Rules of Court. (Emphasis supplied.)

[33] SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

Supreme Court E-Library

Section 5 of the same decree. With the passage of the SRC, the powers granted to SEC under Section 5 were withdrawn, together with the incidental and ancillary powers enumerated in Section 6.

While the regular courts now had the power to hear and decide cases involving controversies in the election of directors, it was not clear whether the SRC also transferred to these courts the incidental and ancillary powers of the SEC as enumerated in Section 6 of P.D. 902-A. Thus, in *GSIS v. CA*, it was necessary for the Court to determine whether the action to invalidate the proxies was intimately tied to an election controversy. Hence, the Court pronounced:

> Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5 (c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.**
>
> This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5 (c) of Presidential Decree No. 902-A.**
>
> The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors

Supreme Court E-Library

must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies,** (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5 (c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases.[34] x x x.

The ruling harmonizes the seeming conflict between the Amended SRC Rules promulgated by the SEC and the Interim Rules of Procedure Governing Intra-Corporate Disputes promulgated by the Court.

SRC Rule 20(11)(b)(xxi) of the Amended SRC Rules provides:

SRC RULE 20.

Disclosures to Stockholders Prior to Meeting

(formerly, SRC Rule 20 – The Proxy Rule)

x x x x x x x x x

11. Other Procedural Requirements

x x x x x x x x x

b. Proxy

x x x x x x x x x

---

[34] *Supra* note 31, at 707-708.

Supreme Court E-Library

> xxi. **In the validation of proxies,** a special committee of inspectors shall be designated or appointed by the Board of Directors which shall be empowered to pass on the validity of proxies. **Any dispute that may arise pertaining thereto, shall be resolved by the Securities and Exchange Commission upon formal complaint filed by the aggrieved party, or by the SEC officer supervising the proxy validation process.** (Emphasis supplied)

On the other hand, these are the provisions of Section 1, Rule 1; and Section 2, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Disputes:

RULE 1

General Provisions

SECTION 1. (a) *Cases Covered* – **These Rules shall govern the procedure to be observed in civil cases involving the following:**

a) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

b) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

c) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

d) Derivative suits; and

e) Inspection of corporate books.

x x x x x x x x x

RULE 6

Election Contests

Supreme Court E-Library

x x x x x x x x x

SECTION 2. *Definition*. – **An election contest refers to any controversy or dispute involving** title or claim to any elective office in a stock or non-stock corporation, **the validation of proxies**, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. (Emphases supplied)

The Court explained that the power of the SEC to regulate proxies remains in place in instances when stockholders vote on matters other than the election of directors.[35] The test is whether the controversy relates to such election. All matters affecting the manner and conduct of the election of directors are properly cognizable by the regular courts. Otherwise, these matters may be brought before the SEC for resolution based on the regulatory powers it exercises over corporations, partnerships and associations.

Astra endeavors to remove the instant case from the ambit of *GSIS v. CA* by arguing that 1) the validation of proxies in this case relates to the determination of the existence of a quorum; and 2) no actual voting for the members of the board of directors was conducted, as the directors were merely elected by motion.

Indeed, the validation of proxies in this case relates to the determination of the existence of a quorum. Nonetheless, it is a quorum for the election of the directors, and, as such, which requires the presence – in person or by proxy – of the owners of the majority of the outstanding capital stock of Omico.[36] Also, the fact that there was no actual voting did not make the election any less so, especially since Astra had never denied that an election of directors took place.

We find no merit either in the proposal of Astra regarding the "two (2) viable, non-exclusive and successive legal remedies

---

[35] *Id*. at 709.

[36] THE CORPORATION CODE OF THE PHILIPPINES, Sec. 24.

Supreme Court E-Library

to question the validity of proxies."[37] It suggests that the power to pass upon the validity of proxies to determine the existence of a quorum prior to the conduct of the stockholders' meeting should lie with the SEC; but, after the stockholders' meeting, questions regarding the use of invalid proxies in the election of directors should be cognizable by the regular courts, since there was already an election to speak of.

First, this interpretation is akin to the argument struck down by the Court in *GSIS v. CA*. If the Court adopts the suggestion, "we would be perpetually confronted with the spectacle of election controversies being heard and adjudicated by both the SEC and the regular courts, made possible through a mere allegation that the anteceding x x x process was errant, but the competing cases [were] filed with one objective in mind – to affect the outcome of the election of the board of directors."[38]

Second, the validation of proxies serves a number of purposes, including determining the existence of a quorum and ascertaining the authenticity of proxies to be used for the election of directors at the stockholders' meeting. Section 2, Rule 6, of the Interim Rules of Procedure Governing Intra-Corporate Disputes provides that an election contest covers any controversy or dispute involving the validation of proxies, in general. Thus, it can only refer to all the beneficial purposes that validation of proxies can bring about when made in connection with a forthcoming election of directors. Thus, there is no point in making distinctions between who has jurisdiction before and who has jurisdiction after the election of directors, as all controversies related thereto – whether before, during or after – shall be passed upon by regular courts as provided by law.

The Court closes with an observation.

As in the instant cases, *GSIS v. CA* is a consolidation of two cases, one of which was filed by a private party and the other by the SEC itself. In both cases, the parties were aggrieved

---

[37] *Rollo* (G.R. No. 189014), p. 66.

[38] *GSIS v. CA*, *supra* at 709.

Supreme Court E-Library

by the CA ruling, so they filed the cases seeking a pronouncement from the Court that it recognizes the jurisdiction of the SEC over the controversy.

Calling to mind established jurisprudential principles, the Court therein ruled that quasi-judicial agencies do not have the right to seek the review of an appellate court decision reversing any of their rulings.[39] This is because they are not real parties-in-interest. Thus, the Court expunged the petition filed by the SEC for the latter's lack of capacity to file the suit. So it must be in the instant cases.

WHEREFORE, the petition in G.R. No. 187702 is **EXPUNGED** for lack of capacity of petitioner to file the suit.

The petition in G.R. No. 189014 is **DENIED.** The Court of Appeals Decision dated 18 March 2009 and Resolution dated 9 July 2009 in CA-G.R. SP No. 106006 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Perez, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188066. October 22, 2014]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **CYNTHIA E. CABEROY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; LIMITED ONLY TO A REVIEW OF ERRORS OF LAW COMMITTED BY THE

---

[39] *Id*. at 696.