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Thus, when respondents were paid a separation pay of two months salary for every year of service under the Redundancy Package, they already received what was due them under the law and in accordance with MPI's plan.

WHEREFORE, the petition of Motorola is hereby *GRANTED*. The Resolution of the Court of Appeals dated March 1, 2006 and its Resolution dated June 27, 2006 are *SET ASIDE*. Respondents' petition for *certiorari* is *DISMISSED*.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Peralta,* JJ.,* concur.

SECOND DIVISION

[G.R. No. 174168. March 30, 2009]

SY TIONG SHIOU, JUANITA TAN SY, JOLIE ROSS TAN, ROMER TAN, CHARLIE TAN, and JESSIE JAMES TAN, *petitioners, vs.* **SY CHIM and FELICIDAD CHAN SY,** *respondents.*

[G.R. No. 179438. March 30, 2009]

SY CHIM and FELICIDAD CHAN SY, *petitioners, vs.* **SY TIONG SHIOU and JUANITA TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY PROCEEDING; NOT A QUASI-JUDICIAL FUNCTION OF THE PROSECUTION AND COURT'S POLICY IS NON-INTERFERENCE THEREIN;

* Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

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EXCEPTIONS; GRAVE ABUSE OF DISCRETION.— A preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. Moreover, it is settled that the preliminary investigation proper, *i.e.*, the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution. This Court has adopted a policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender. As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for *certiorari* and prohibition under Rule 65, 1997 Rules of Civil Procedure.

2. ID.; ID.; PREJUDICIAL QUESTION; ELUCIDATED.— A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

3. ID.; ID.; ID.; IN THE ABSENCE THEREOF IN CASE AT BAR, THE DOCTRINE OF PRIMARY JURISDICTION NO LONGER PRECLUDES THE SIMULTANEOUS FILING OF CRIMINAL CASE WITH THE CORPORATE/CIVIL CASE.— The civil action and the criminal cases do not involve any prejudicial question. The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to render a full, complete and true accounting

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of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS. The Court agrees with the Court of Appeals' holding, citing the case of *Fabia v. Court of Appeals*, that the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.

4. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; ELUCIDATED.— The term probable cause does not mean 'actual and positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge. In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be–at the most–no criminal offense.

5. COMMERCIAL LAW; CORPORATION CODE; ON VIOLATION OF STOCKHOLDER'S RIGHT TO INSPECT THE CORPORATE BOOKS; REQUISITES BEFORE THE PENAL PROVISION MAY BE APPLIED, ELEMENTS.— In the recent case of *Ang-Abaya, et al. v. Ang, et al.*, the Court had the occasion to enumerate the requisites before the

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penal provision under Section 144 of the Corporation Code may be applied in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code. The elements of the offense, as laid down in the case, are: First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes; Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and, Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

6. ID.; ID.; ID.; DEFENSE OF IMPROPER USE OR MOTIVE MAY BE ALLEGED; NOT PRESENT IN CASE AT BAR; EFFECT THEREOF IN CASE AT BAR.— Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation. However, where no such improper motive or purpose is alleged, and even though so alleged, it is not proved by the corporation, then there is no valid reason to deny the requested inspection. There being no allegation of improper motive, and it being undisputed that Sy Tiong Shiou, *et al*. denied Sy Chim and Felicidad Chan Sy's request for inspection, the Court rules and so holds that the DOJ erred in dismissing the criminal charge for violation of Section 74 in relation to Section 144 of the Corporation Code.

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7. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS THROUGH UNTRUTHFUL NARRATION OF FACTS; ELEMENTS.— The elements of falsification of public documents through an untruthful narration of facts are: (a) the offender makes in a document untruthful statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated; (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.

8. ID.; PERJURY; ELEMENTS.— The elements of perjury are: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE OF ACTIONS; RULE WHERE CRIMINAL ACTION SHALL BE INSTITUTED; CASE AT BAR.— The Court finds that the City of Manila is the proper venue for the perjury charges, the GIS having been subscribed and sworn to in the said place. Under Section 10(a), Rule 110 of the Revised Rules of Court, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In *Villanueva v. Secretary of Justice*, the Court held that the felony is consummated when the false statement is made. Thus in this case, it was alleged that the perjury was committed when Sy Tiong Shiou subscribed and sworn to the GIS in the City of Manila, thus, following Section 10(a), Rule 110 of the Revised Rules of Court, the City of Manila is the proper venue for the offense.

10. COMMERCIAL LAW; INTERIM RULES OF PROCEDURE FOR INTER-CORPORATE CONTROVERSIES; PROHIBITED AND ALLOWED PLEADINGS; THIRD-PARTY COMPLAINT NOT INCLUDED BUT NEITHER EXCLUDED; CONFLICT RESOLVED ACCORDING TO RULES ON STATUTORY CONSTRUCTION.— The conflicting provisions of the Interim Rules of Procedure for

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Inter-Corporate Controversies read: Rule 1, Sec. 8. *Prohibited pleadings*.—The following pleadings are prohibited: (1) Motion to dismiss; (2) Motion for a bill of particulars; (3) Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial; (4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and (5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath. Rule 2, Sec.2. *Pleadings allowed*.—The only pleadings allowed to be filed under these Rules are the complaint, answer, compulsory counterclaims or cross-claims pleaded in the answer, and the answer to the counterclaims or cross-claims. There is a conflict, for while a third-party complaint is not included in the allowed pleadings, neither is it among the prohibited ones. Nevertheless, this conflict may be resolved by following the well-entrenched rule in statutory construction, that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Statutes, including rules, should be construed in the light of the object to be achieved and the evil or mischief to be suppressed and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended. A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act, and so that the policy and object of the statute as a whole may be made effectual and operative to the widest possible extent. Otherwise stated, the spirit, rather than the letter of a law determines its construction; hence, a statute, as in the rules in this case, must be read according to its spirit and intent. This spirit and intent can be gleaned from Sec. 3, Rule 1 of the Interim Rules, which reads: Sec. 3. *Construction*.—These Rules shall be liberally construed in order to promote their objective

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of securing a just, summary, speedy and inexpensive determination of every action or proceeding.

11. ID.; ID.; ID.; ID.; ID.; THIRD PARTY COMPLAINT ALLOWED IN CASE AT BAR.— It thus appears that the summary nature of the proceedings governed by the Interim Rules, and the allowance of the filing of third-party complaints is premised on one objective—the expeditious disposition of cases. Moreover, following the rule of liberal interpretation found in the Interim Rules, and taking into consideration the suppletory application of the Rules of Court under Rule 1, Sec. 2 of the Interim Rules, the Court finds that a third-party complaint is not, and should not be prohibited in controversies governed by the Interim Rules. The logic and justness of this conclusion are rendered beyond question when it is considered that Sy Tiong Shiou and Juanita Tan are not complete strangers to the litigation as in fact they are the moving spirit behind the filing of the principal complaint for accounting and damages against the Spouses Sy. The allegations in the third-party complaint impute direct liability on the part of Sy Tiong Shiou and Juanita Tan to the corporation for the very same claims which the corporation interposed against the Spouses Sy. It is clear therefore that the Spouses Sy's third-party complaint is in respect of the plaintiff corporation's claims, and thus the allowance of the third-party complaint is warranted.

12. REMEDIAL LAW; CIVIL PROCEDURE; THIRD PARTY COMPLAINT; ELUCIDATED.— A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. It is actually a complaint independent of, and separate and distinct from the plaintiff's complaint. In fact, were it not for Rule 6, Section 11 of the Rules of Court, such third-party complaint would have to be filed independently and separately from the original complaint by the defendant against the third-party defendant. Jurisprudence is consistent in declaring that the purpose of a third-party complaint is to avoid circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation all the matters arising from one particular set of facts. A prerequisite to the exercise of such right is that some substantive basis for a third-party claim be found to exist, whether the basis be one of indemnity,

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subrogation, contribution or other substantive right. The bringing of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant or both for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. The defendant may implead another as third-party defendant: (a) on an allegation of liability of the latter to the defendant for contribution, indemnity, subrogation or any other relief; (b) on the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant. In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined. A third-party complaint must allege facts which *prima facie* show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.

APPEARANCES OF COUNSEL

E.L. Gayo and Associates and *Bonifacio G. Bacani* for Sy Tiong Shiou, *et al*.

Siguion Reyna Montecillo and Ongsiako and *Divino & Gavino* for Sy Chim and Felicidad Chan Cy.

D E C I S I O N

TINGA, *J.*:

These consolidated petitions involving the same parties. although related, dwell on different issues.

G.R. No. 174168.

This is a petition for review[1] assailing the decision and resolution of the Court of Appeals dated 31 May 2006 and 8 August 2006, respectively, in CA-G.R. SP No. 91416.[2]

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[1] *Rollo* (G.R. No. 174168), pp. 10-33.

[2] *Id.* at 37-60; penned by Associate Justice Renato S. Dacudao with the concurrence of Associate Justice Remedios Salazar Fernando and Associate Justice Lucas P. Bersamin.

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On 30 May 2003, four criminal complaints were filed by Sy Chim and Felicidad Chan Sy (Spouses Sy) against Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan (Sy Tiong Shiou, *et al*.) before the City Prosecutor's Office of Manila. The cases were later consolidated. Two of the complaints, I.S. Nos. 03E-15285 and 03E-15286,[3] were for alleged violation of Section 74 in relation to Section 144 of the Corporation Code. In these complaints, the Spouses Sy averred that they are stockholders and directors of Sy Siy Ho & Sons, Inc. (the corporation) who asked Sy Tiong Shiou, *et al.*, officers of the corporation, to allow them to inspect the books and records of the business on three occasions to no avail. In a letter[4] dated 21 May 2003, Sy Tiong Shiou, *et al.* denied the request, citing civil and intra-corporate cases pending in court.[5]

In the two other complaints, I.S. No. 03E-15287 and 03E-15288,[6] Sy Tiong Shiou was charged with falsification under Article 172, in relation to Article 171 of the Revised Penal Code (RPC), and perjury under Article 183 of the RPC. According to the Spouses Sy, Sy Tiong Shiou executed under oath the 2003 General Information Sheet (GIS) wherein he falsely stated that the shareholdings of the Spouses Sy had decreased despite the fact that they had not executed any conveyance of their shares.[7]

Sy Tiong Shiou, *et al*. argued before the prosecutor that the issues involved in the civil case for accounting and damages pending before the RTC of Manila were intimately related to

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[3] *Id.* at 85-94.

[4] *Id.* at 83.

[5] Civil Case No. 03-106456-00 is for Accounting and Damages pending before the Regional Trial Court of Manila, Branch 46. Incidentally, the other petition, G. R. No. 179438 is an offshoot of this civil case.

[6] *Id.* at 95-104.

[7] The 2003 GIS, compared to the 2002 GIS showed a decrease from 33.75 % to only 17.40 % ownership of the outstanding capital stock of the corporation for Sy Chim and a decrease from 16.88% to 8.70% ownership of the outstanding capital stock for Felicidad Chan Sy.

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the two criminal complaints filed by the Spouses Sy against them, and thus constituted a prejudicial question that should require the suspension of the criminal complaints. They also argued that the Spouses Sy's request for inspection was premature as the latter's concern may be properly addressed once an answer is filed in the civil case. Sy Tiong Shiou, on the other hand, denied the accusations against him, alleging that before the 2003 GIS was submitted to the Securities and Exchange Commission (SEC), the same was shown to respondents, who at that time were the President/Chairman of the Board and Assistant Treasurer of the corporation, and that they did not object to the entries in the GIS. Sy Tiong Shiou also argued that the issues raised in the pending civil case for accounting presented a prejudicial question that necessitated the suspension of criminal proceedings.

On 29 December 2003, the investigating prosecutor issued a resolution recommending the suspension of the criminal complaints for violation of the Corporation Code and the dismissal of the criminal complaints for falsification and perjury against Sy Tiong Shiou.[8] The reviewing prosecutor approved the resolution. The Spouses Sy moved for the reconsideration of the resolution, but their motion was denied on 14 June 2004.[9] The Spouses Sy thereupon filed a petition for review with the Department of Justice (DOJ), which the latter denied in a resolution issued on 02 September 2004.[10] Their subsequent motion for reconsideration was likewise denied in the resolution of 20 July 2005.[11]

The Spouses Sy elevated the DOJ's resolutions to the Court of Appeals through a petition for *certiorari*, imputing grave abuse of discretion on the part of the DOJ. The appellate court granted the petition[12] and directed the City Prosecutor's Office

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[8] *Id.* at 111-118; penned by Assistant City prosecutor Bernardino L. Cabiles.

[9] *Id.* at 137-143.

[10] *Id.* at 183-185.

[11] *Id.* at 207-209.

[12] *Id.* at 37-66; Decision dated 31 May 2006.

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to file the appropriate informations against Sy Tiong Shiou, *et al*. for violation of Section 74, in relation to Section 144 of the Corporation Code and of Articles 172 and 183 of the RPC. The appellate court ruled that the civil case for accounting and damages cannot be deemed prejudicial to the maintenance or prosecution of a criminal action for violation of Section 74 in relation to Section 144 of the Corporation Code since a finding in the civil case that respondents mishandled or misappropriated the funds would not be determinative of their guilt or innocence in the criminal complaint. In the same manner, the criminal complaints for falsification and/or perjury should not have been dismissed on the ground of prejudicial question because the accounting case is unrelated and not necessarily determinative of the success or failure of the falsification or perjury charges. Furthermore, the Court of Appeals held that there was probable cause that Sy Tiong Shiou had committed falsification and that the City of Manila where the 2003 GIS was executed is the proper venue for the institution of the perjury charges. Sy Tiong Shiou, *et al*. sought reconsideration of the Court of Appeals decision but their motion was denied.[13]

On 2 April 2008, the Court ordered the consolidation of G.R. No. 179438 with G.R. No. 174168.[14]

Sy Tiong Shiou, *et al*. argue that findings of the DOJ in affirming, modifying or reversing the recommendations of the public prosecutor cannot be the subject of *certiorari* or review of the Court of Appeals because the DOJ is not a quasi-judicial body within the purview of Section 1, Rule 65 of the Rules of Court. Petitioners rely on the separate opinion of former Chief Justice Andres R. Narvasa in *Roberts, Jr. v. Court of Appeals*,[15] wherein he wrote that this Court should not be called upon to determine the existence of probable cause, as there is no provision of law authorizing an aggrieved party to petition for such a determination.[16] In any event, they argue, assuming without

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[13] *Id.* at 71-72; Resolution dated 8 August 2006.

[14] *Id.* at 528-529.

[15] 324 Phil. 568, 619-620 (1996).

[16] *Rollo,* (G.R. No. 174168), pp. 22-23.

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admitting that the findings of the DOJ may be subject to judicial review under Section 1, Rule 65 of the Rules of Court, the DOJ has not committed any grave abuse of discretion in affirming the findings of the City Prosecutor of Manila. They claim that the Spouses Sy's request for inspection was not made in good faith and that their motives were tainted with the intention to harass and to intimidate Sy Tiong Shiou, *et al*. from pursuing the criminal and civil cases pending before the prosecutor's office and the Regional Trial Court (RTC) of Manila, Branch 46. Thus, to accede to the Spouses Sy's request would pose serious threats to the existence of the corporation.[17] Sy Tiong Shiou, *et al*. aver that the RTC had already denied the motion for production and inspection and instead ordered petitioners to make the corporate records available to the appointed independent auditor. Hence, the DOJ did not commit any grave abuse of discretion in affirming the recommendation of the City Prosecutor of Manila.[18] They further argue that adherence to the Court of Appeals' ruling that the accounting case is unrelated to, and not necessarily determinative of the success of, the criminal complaint for falsification and/or perjury would unnecessarily indict petitioner Sy Tiong Shiou for the said offenses he may not have committed but only because of an outcome unfavorable to him in the civil action.[19]

Indeed, a preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause.[20] Moreover, it is settled that the preliminary investigation proper, *i.e.*, the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.[21] This Court has adopted a

[17] *Id*. at 27.

[18] *Id*. at 28.

[19] *Id*. at 29.

[20] *Santos v. Go*, G.R. No. 156081, 19 October 2005, 473 SCRA 350, 360-361.

[21] *Cabahug v. People*, 426 Phil. 490, 499 (2002).

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policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender.[22]

As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for *certiorari* and prohibition under Rule 65, 1997 Rules of Civil Procedure.[23]

As correctly found by the Court of Appeals, the DOJ gravely abused its discretion when it suspended the hearing of the charges for violation of the Corporation Code on the ground of prejudicial question and when it dismissed the criminal complaints.

A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.[24]

The civil action and the criminal cases do not involve any prejudicial question.

The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to

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[22] *Yupangco Cotton Mills, Inc., v. Mendoza,* G.R. No. 139912, 31 March 2005, 454 SCRA 386, 406.

[23] *Sistoza v. Desierto,* 437 Phil. 117, 129 (2002).

[24] *Tuanda v. Sandiganbayan,* 319 Phil. 460, 470 (1995).

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render a full, complete and true accounting of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS.

Anent the issue of probable cause, the Court also finds that there is enough probable cause to warrant the institution of the criminal cases.

The term probable cause does not mean 'actual and positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[25]

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be–at the most–no criminal offense.[26]

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[25] *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[26] G.R. No. 178511, 4 December 2008, citing *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

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Section 74 of the Corporation Code reads in part:

x x x x x x x x x

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

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

Meanwhile, Section 144 of the same Code provides:

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

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In the recent case of *Ang-Abaya, et al. v. Ang, et al.*,[27] the Court had the occasion to enumerate the requisites before the penal provision under Section 144 of the Corporation Code may be applied in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code. The elements of the offense, as laid down in the case, are:

> First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;
>
> Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;
>
> Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,
>
> Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[28]

Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation.[29] However, where no such improper motive or purpose is alleged, and even though

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[27] *Id.*

[28] *Id.*

[29] *Id.* citing 5A Fletcher Cyc. Corp. §. 2220, 2008.

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so alleged, it is not proved by the corporation, then there is no valid reason to deny the requested inspection.

In the instant case, however, the Court finds that the denial of inspection was predicated on the pending civil case against the Spouses Sy. This is evident from the 21 May 2003 letter of Sy Tiong Shiou, *et al.*'s counsel[30] to the Spouses Sy,[31] which reads:

> Gentlemen:
>
> We write in behalf of our clients, SY SIY HO, INC. (Guan Yiac Hardware); SY TIONG SHIOU, JUANITA TAN SY; JOLIE ROSS TAN; CHARLIE TAN; ROMER TAN; and JESSE JAMES TAN, relative to your letter dated 16 May 2003. Please be informed that a case for Accounting and Damages had already been filed against your clients, Sy Chim and Felicidad Chan Sy before the Regional Trial Court of Manila, Branch 46, denominated as Civil Case No. 03-106456.
>
> We fully understand your desire for our clients to respond to your demands, however, under the prevailing circumstance this would not be advisable. The concerns that you raised in your letter can later on be addressed after your clients shall have filed their responsive pleading in the abovesaid case.
>
> We trust that this response will at the moment be enough.[32]

Even in their Joint Counter-Affidavit dated 23 September 2003,[33] Sy Tiong Shiou, *et al*. did not make any allegation that "the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand." Instead, they merely reiterated the pendency of the civil case. There being no allegation of improper motive,

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[30] Atty. Elvin P. Grana of A. Tan, Zoleta and Associates Law Firm.

[31] The law firm of Siguion Reyna Montecillo & Ongsiako.

[32] *Rollo,* (G.R. No. 174168), p. 83.

[33] *Id.* at 106-108.

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and it being undisputed that Sy Tiong Shiou, *et al*. denied Sy Chim and Felicidad Chan Sy's request for inspection, the Court rules and so holds that the DOJ erred in dismissing the criminal charge for violation of Section 74 in relation to Section 144 of the Corporation Code.

Now on the existence of probable cause for the falsification and/or perjury charges.

The Spouses Sy charge Sy Tiong Shiou with the offense of falsification of public documents under Article 171, paragraph 4; and/or perjury under Article 183 of the Revised Penal Code (RPC). The elements of falsification of public documents through an untruthful narration of facts are: (a) the offender makes in a document untruthful statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated;[34] (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.[35] On the other hand, the elements of perjury are: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

A General Information Sheet (GIS) is required to be filed within thirty (30) days following the date of the annual or a special meeting, and must be certified and sworn to by the corporate secretary, or by the president, or any duly authorized officer of the corporation.[36] From the records, the 2003 GIS submitted to the SEC on 8 April 2003 was executed under oath

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[34] "Legal obligation "means that there is a law requiring the disclosure of the truth of the facts narrated, REYES, *THE REVISED PENAL CODE,* Book Two 210, (15th Ed., Rev. 2001).

[35] *Enemecio v. Office of the Ombudsman,* 464 Phil. 102, 115 (2004).

[36] *Rollo,* p. 317; As stated in the instructions on the GIS Form.

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by Sy Tiong Shiou in Manila, in his capacity as Vice President and General Manager.[37] By executing the document under oath, he, in effect, attested to the veracity[38] of its contents. The Spouses Sy claim that the entries in the GIS pertaining to them do not reflect the true number of shares that they own in the company. They attached to their complaint the 2002 GIS of the company, also executed by Sy Tiong Shiou, and compared the entries therein *vis-a-vis* the ones in the 2003 GIS. The Spouses Sy noted the marked decrease in their shareholdings, averring that at no time after the execution of the 2002 GIS, up to the time of the filing of their criminal complaints did they execute or authorize the execution of any document or deed transferring, conveying or disposing their shares or any portion thereof; and thus there is absolutely no basis for the figures reflected in the 2003 GIS.[39] The Spouses Sy claim that the false statements were made by Sy Tiong Shiou with the wrongful intent of injuring them. All the elements of both offenses are sufficiently averred in the complaint-affidavits.

The Court agrees with the Court of Appeals' holding, citing the case of *Fabia v. Court of Appeals*, that the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.[40] Moreover, the Court finds that the City of Manila is the proper venue for the perjury charges, the GIS having been subscribed and sworn to in the said place. Under Section 10(a), Rule 110 of the Revised Rules of Court, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.[41]

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[37] *Id.* at 321.

[38] *Id.*; "that the matters set forth in this General Information Sheet x x x are true and correct to the best of my knowledge," last page of the GIS Standard Form.

[39] *Supra* note 6.

[40] *Fabia v. Court of Appeals*, 437 Phil. 389, 397 (2002).

[41] *Saavedra, Jr. v. Department of Justice*, G.R. No. 93173, 15 September 1993, 226 SCRA 438, 445 citing *Diaz v. People*, 191 SCRA 86, 93 (1990); see also *Burgos v. Aquino*, 319 Phil. 623 (1995). The elements of perjury are:

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In *Villanueva v. Secretary of Justice*,[42] the Court held that the felony is consummated when the false statement is made.[43] Thus in this case, it was alleged that the perjury was committed when Sy Tiong Shiou subscribed and sworn to the GIS in the City of Manila, thus, following Section 10(a), Rule 110 of the Revised Rules of Court, the City of Manila is the proper venue for the offense.

G. R. No. 179438.

This petition assails the decision[44] and resolution[45] of the Court of Appeals dated 26 May 2004 and 29 August 2007, respectively, in CA-G.R. SP No. 81897.

On 3 February 2003, Juanita Tan, corporate treasurer of *Sy Siy Ho & Sons, Inc*. (the corporation), a family corporation doing business under the name and style Guan Yiac Hardware, submitted a letter[46] to the corporation's Board of Directors (Board) stating that the control, supervision and administration of all corporate funds were exercised by Sy Chim and Felicidad Chan Sy (Spouses Sy), corporate president and assistant treasurer,

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1.The accused made a statement under oath or executed an affidavit upon a material matter;

2.The statement or affidavit was made before a competent officer authorized to receive and administer oath;

3.In that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and

4.The sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

[42] *Villanueva v. Secretary of Justice*, G.R. No. 162187, 18 November 2005, 475 SCRA 495.

[43] *Id.* at 512 citing *U.S. v. Norris*, 300 U.S. 564 (1937).

[44] *Id.* at 386-389.

[45] *Rollo* (G.R. No. 179438), pp. 363-373; *Sy Tiong Shiou and Juanita Tan v. Hon. Artemio S. Tipon, Presiding Judge of the Regional Trial Court*, Branch 46, Manila, Sy Chim and Felicidad Chan Sy, penned by Associate Justice Noel G. Tijam with the concurrence of Associate Justice Delilah Vidallon-Magtolis and Associate Justice Edgardo P. Cruz.

[46] *Id.* at 58-59.

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respectively. In the same letter, Juanita Tan disclosed that Felicidad Chan Sy did not make cash deposits to any of the corporation's banks from 1 November 2001 to 31 January 2003, thus the total bank remittances for the past years were less than reflected in the corporate financial statements, accounting books and records. Finally, Juanita Tan sought to be free from any responsibility over all corporate funds. The Board granted Juanita Tan's request and authorized the employment of an external auditor to render a complete audit of all the corporate accounting books and records.[47] Consequently, the Board hired the accounting firm *Banaria, Banaria & Company*. In its Report[48] dated 5 April 2003, the accounting firm attributed to the Spouses Sy ₱67,117,230.30 as unaccounted receipts and disbursements from 1994 to 2002.[49]

A demand letter[50] was subsequently served on the Spouses Sy on 15 April 2003. On the same date, the children of the Spouses Sy allegedly stole from the corporation cash, postdated checks and other important documents. After the incident, the Spouses Sy allegedly transferred residence and ceased reporting to the corporation. Thereupon, the corporation filed a criminal complaint for robbery against the Spouses Sy before the City Prosecutor's Office of Manila.[51] A search warrant was subsequently issued by the Regional Trial Court.[52]

On 26 April 2003, Sy Tiong Shiou, corporate Vice President and General Manager, called a special meeting to be held on 6 May 2003 to fill up the positions vacated by the Spouses Sy. Sy Tiong Shiou was subsequently elected as the new president and his wife, Juanita Tan, the new Vice President.[53] Despite

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[47] *Id.* at 60-63; Minutes of the Special Meeting dated 24 March 2003.

[48] *Rollo* (G.R. No. 179438), pp. 66-74.

[49] *Id.* at 73.

[50] *Id.* at 85.

[51] *Id.* at 75. The complaint was docketed as IS No. 03D-12147.

[52] *Id.* at 76-77.

[53] *Rollo* (G.R. No. 179436), pp. 78-81; Minutes of the Special Meeting dated 6 May 2003.

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these developments, Sy Chim still caused the issuance of a Notice of Stockholders meeting dated 11 June 2003 in his capacity as the alleged corporate president.[54]

Meanwhile, on 1 July 2003, the corporation, through Romer S. Tan, filed its *Amended Complaint for Accounting and Damages*[55] against the Spouses Sy before the RTC Manila, praying for a complete and true accounting of all the amounts paid to, received and earned by the company since 1993 and for the restitution of the said amount.[56] The complaint also prayed for a temporary restraining order (TRO) and or preliminary injunction to restrain Sy Chim from calling a stockholders' meeting on the ground of lack of authority.

By way of *Answer*,[57] the Spouses Sy averred that Sy Chim was a mere figurehead and Felicidad Chan Sy merely performed clerical functions, as it was Sy Tiong Shiou and his spouse, Juanita Tan, who have been authorized by the corporation's by-laws to supervise, control and administer corporate funds, and as such were the ones responsible for the unaccounted funds. They assailed the meetings called by Sy Tiong Shiou on the grounds that the same were held without notice to them and without their participation, in violation of the by-laws. The Spouses Sy also pursued their counter-claim for moral and exemplary damages and attorney's fees.

On 9 September 2003, the Spouses Sy filed their *Motion for Leave to File Third-Party Complaint*,[58] praying that their attached *Third Party Complaint*[59] be allowed and admitted against Sy Tiong Shiou and his spouse. In the said third-party complaint, the Spouses Sy accused Sy Tiong Shiou and Juanita Tan as

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[54] *Id.* at 84.

[55] *Id.* at 34-49.

[56] *Id.* at 48-49.

[57] *Id.* at 86-113.

[58] *Id.* at 179-185.

[59] *Id.* at 186-197. The third party plaintiffs prayed that Sy Tiong Shiou and Juanita Tan directly and solely liable in respect of plaintiff's claim for accounting and damages.

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directly liable for the corporation's claim for misappropriating corporate funds.

On 8 October 2003, the trial court granted the motion for leave to file the third-party complaint, and forthwith directed the issuance of summons against Sy Tiong Shiou and Juanita Tan.[60] On 16 January 2004, their counsel allegedly discovered that Sy Tiong Shiou and Juanita Tan were not furnished with the copies of several pleadings, as well as a court order, which resulted in their having been declared in default for failure to file their answer to the third-party complaint; thus, they opted not to file a motion for reconsideration anymore and instead filed a petition for *certiorari* before the Court of Appeals.

In its Decision dated 26 May 2004, the Court of Appeals granted the petition of Sy Tiong Shiou and Juanita Tan.[61] The appellate court declared that a third-party complaint is not allowed under the *Interim Rules of Procedure Governing Intra-Corporate Controversies Under R.A. No. 8799* (Interim Rules), it not being included in the exclusive enumeration of allowed pleadings under Section 2, Rule 2 thereof. Moreover, even if such a pleading were allowed, the admission of the third-party complaint against Sy Tiong Shiou and Juanita Tan still would have no basis from the facts or the law and jurisprudence.[62] The Court of Appeals also ruled that the respondent judge committed a manifest error amounting to lack of jurisdiction in admitting the third-party complaint and in summarily declaring Sy Tiong Shiou and Juanita Tan in default for failure to file their answer within the purported reglementary period. The Court of Appeals set aside the trial court's 8 October 2003 Order admitting the third-party complaint, as well as the 19 December 2003 Order, declaring Sy Tiong Shiou and Juanita Tan in default for failure to file their answer. The trial court was further ordered to dismiss the third-party complaint without prejudice to any action that the corporation may separately file against Sy Tiong Shiou and Juanita Tan.[63]

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[60] *Id.* at 229-232.

[61] *Id.* at 363-373.

[62] *Id.* at 368-371.

[63] *Id.* at 363-373; Court of Appeals Decision dated 26 May 2004.

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The Spouses Sy filed a motion for reconsideration, but their motion was denied on 29 August 2007.[64]

Sy Chim and Felicidad Chan Sy argue before this Court that a third-party complaint is not excluded or prohibited by the Interim Rules, and that the Court of Appeals erred in ruling that their third- party complaint is not actionable because their action is not in respect of the corporation's claims. They add that the disallowance of the third-party complaint will result in multiplicity of suits.

The third-party complaint should be allowed.

The conflicting provisions of the Interim Rules of Procedure for Inter-Corporate Controversies read:

Rule 1, Sec. 8. *Prohibited pleadings*.—The following pleadings are prohibited:

(1) Motion to dismiss;

(2) Motion for a bill of particulars;

(3) Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;

(4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and

(5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath.

Rule 2, Sec.2. *Pleadings allowed*.—The only pleadings allowed to be filed under these Rules are the complaint, answer, compulsory counterclaims or cross-claims pleaded in the answer, and the answer to the counterclaims or cross-claims.[65]

There is a conflict, for while a third-party complaint is not included in the allowed pleadings, neither is it among the prohibited

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[64] *Id.* at 386-389.

[65] SC-A.M. No. 01-2-04 (2001) ENTITLED, INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES.

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ones. Nevertheless, this conflict may be resolved by following the well-entrenched rule in statutory construction, that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[66] Statutes, including rules, should be construed in the light of the object to be achieved and the evil or mischief to be suppressed and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended. A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act, and so that the policy and object of the statute as a whole may be made effectual and operative to the widest possible extent.[67] Otherwise stated, the spirit, rather than the letter of a law determines its construction; hence, a statute, as in the rules in this case, must be read according to its spirit and intent.[68]

This spirit and intent can be gleaned from Sec. 3, Rule 1 of the Interim Rules, which reads:

> Sec. 3. *Construction*.—These Rules shall be liberally construed in order to promote their objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding.[69]

Now, a third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his

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[66] *Aisporna v. Court of Appeals*, 113 SCRA 459, 467.

[67] H.C. BLACK, *HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS* 322, (2nd Ed, 1971).

[68] *Paras v. COMELEC*, 332 Phil. 56, 64 (1996).

[69] SC-A.M. No. 01-2-04 (2001), Rule 1, Sec. 3.

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opponent's claim. It is actually a complaint independent of, and separate and distinct from the plaintiff's complaint. In fact, were it not for Rule 6, Section 11 of the Rules of Court, such third-party complaint would have to be filed independently and separately from the original complaint by the defendant against the third-party defendant. Jurisprudence is consistent in declaring that the purpose of a third-party complaint is to avoid circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation all the matters arising from one particular set of facts.[70]

It thus appears that the summary nature of the proceedings governed by the Interim Rules, and the allowance of the filing of third-party complaints is premised on one objective—the expeditious disposition of cases. Moreover, following the rule of liberal interpretation found in the Interim Rules, and taking into consideration the suppletory application of the Rules of Court under Rule 1, Sec. 2[71] of the Interim Rules, the Court finds that a third-party complaint is not, and should not be prohibited in controversies governed by the Interim Rules. The logic and justness of this conclusion are rendered beyond question when it is considered that Sy Tiong Shiou and Juanita Tan are not complete strangers to the litigation as in fact they are the moving spirit behind the filing of the principal complaint for accounting and damages against the Spouses Sy.

The Court also rules that the third-party complaint of the Spouses Sy should be admitted.

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[70] *Tayao v. Mendoza*, G.R. No. 162733, 12 April 2005, 455 SCRA 726, 732-733; *Firestone Tire and Rubber Company of the Philippines v. Tempongco*, 137 Phil. 238, 243 (1969); *British Airways v. Court of Appeals*, 349 Phil. 379, 394 (1998) citing 67 CJS 1034. *In Asian Construction and Development Corporation v. Court of Appeals*, G.R. No. 160242, 17 May 2005, the Court had the occasion to declare that "the purpose of Section 11, Rule 6 of the Rules of Court is to permit a defendant to assert an independent claim against a third-party which he, otherwise, would assert in another action, thus preventing multiplicity of suits."

[71] SEC. 2. *Suppletory application of the Rules of Court*.—The Rules of Court, in so far as they may be applicable and are not inconsistent with these Rules, are hereby adopted to form an integral part of these Rules.

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A prerequisite to the exercise of such right is that some substantive basis for a third-party claim be found to exist, whether the basis be one of indemnity, subrogation, contribution or other substantive right. The bringing of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant or both for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. The defendant may implead another as third-party defendant: (a) on an allegation of liability of the latter to the defendant for contribution, indemnity, subrogation or any other relief; (b) on the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant.[72]

In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined. A third-party complaint must allege facts which *prima facie* show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.[73]

The complaint alleges that the Spouses Sy, as officers of the corporation, have acted illegally in raiding its corporate funds, hence they are duty bound to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the corporation since 1993 and to restitute to the corporation all such amounts, proceeds, and funds which they took and misappropriated for their own use and benefit, to the damage and prejudice of the plaintiff and its stockholders.[74] On the other hand, in the third-party complaint, the Spouses Sy claim that it is Sy Tiong Shiou and Juanita Tan who had full and complete control of the day-to day operations and complete control and custody of the funds of the corporation, and hence they are the ones liable for any shortfall or unaccounted difference of the corporation's cash account. Thus, Sy Tiong Shiou and

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[72] *Asian Construction and Development Corporation v. Court of Appeals*, G.R. No. 160242, 17 May 2005, 458 SCRA 750, 759.

[73] *Id.*

[74] *Rollo* (G.R. No. 179438), p. 40.

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Juanita Tan should render a full, complete and true accounting of all the amounts, proceeds, funds paid to, received and earned by the corporation since 1993, including the amount attributed to the Spouses Sy in the complaint for accounting and damages. In their prayer, the Spouses Sy moved that Sy Tiong Shiou and Juanita Tan be declared as directly and solely liable in respect of the corporation's claim for accounting and damages, and that in the event that they, the Spouses Sy, are adjudged liable to the corporation, Sy Tiong Shiou and Juanita Tan be ordered to pay all amounts necessary to discharge their liability to the corporation by way of indemnity or reimbursement.

The allegations in the third-party complaint impute direct liability on the part of Sy Tiong Shiou and Juanita Tan to the corporation for the very same claims which the corporation interposed against the Spouses Sy. It is clear therefore that the Spouses Sy's third-party complaint is in respect of the plaintiff corporation's claims,[75] and thus the allowance of the third-party complaint is warranted.

WHEREFORE, these cases are resolved as follows:

G.R. No. 174168

The petition for review is *DENIED*. The Decision and Resolution of the Court of Appeals dated 31 May 2006 and 8 August 2006, respectively, in CA-G.R. SP No. 91416 are *AFFIRMED*.

Costs against the petitioners.

G.R. No. 179438

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[75] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 85868, 13 October 1989, 178 SCRA 526. The tests to determine whether the claim for indemnity in a third-party claim is "in respect of plaintiff's claim." are: (a) whether it arises out of the same transaction on which the plaintiffs claim is based, or whether the third-party's claim, although arising out of another or different contract or transaction, is connected with the plaintiffs claim; (b) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiffs claim against the original defendant, although the third-party defendant's liability arises out of another transaction; or (c) whether the third-party defendant may assert any defense which the third-party plaintiff has, or may have against plaintiff s claim.

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The petition is *GRANTED*. The decision and resolution of the Court of Appeals dated 26 May 2004 and 29 August 2007, respectively, in CA-G.R. SP No. 81897 are *SET ASIDE* and the Orders of the Regional Trial Court of Manila Branch 46 dated 8 October 2003 and 19 December 2003 are *REINSTATED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Nachura,* JJ.,* concur.

SECOND DIVISION

[G.R. No. 177827. March 30, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANSELMO BERONDO, JR.** ***y*** **PATERES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN REVEALING IDENTITY OF ACCUSED. — Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnessed a strange or frightful experience. Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied reasons. Some fear for their lives and that of their family; while others shy away when those involved in the crime are their relatives or townmates. And where there is delay, it is more

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* Additional member per Raffle dated 25 June 2008 in lieu of J. Arturo D. Brion who inhibited himself.