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**SECOND DIVISION**

[G.R. No. 139802. December 10, 2002]

**VICENTE C. PONCE,** *petitioner, vs.* **ALSONS CEMENT CORPORATION and FRANCISCO M. GIRON, JR.,** *respondents.*

**SYNOPSIS**

Petitioner herein filed a complaint with the SEC for *mandamus* and damages against respondents. With his allegations, petitioner prayed for the SEC to issue in his name certificates of stocks covering the 239,500 shares of stocks and its legal increments and for the corporation to pay him damages. Respondent moved to dismiss the complaint on the ground, among others, that it states no cause of action. After respondents filed their reply, the SEC hearing officer granted the motion to dismiss. According to the hearing officer, insofar as the issuance of stock certificates is concerned, the real party-in-interest was Fausto G. Gaid, or his estate, or his heirs. Gaid was an incorporator and an original stockholder of the respondent corporation who subscribed and fully paid for 239,500 shares of stock. The petitioner tried to step into the shoes of Gaid and thereby become a stockholder of the defendant corporation by demanding the issuance of the stock certificate in his name. The SEC hearing officer decided that the petitioner could not do as he prayed because there was no record of any assignment or transfer in the books of the respondent corporation and there was neither instruction nor authority from the transferor for such assignment or transfer. Petitioner appealed the order of dismissal. The Commission *en banc* reversed the decision of the hearing officer. The motion for reconsideration having been denied, the respondents appealed to the Court of Appeals. The Court of Appeals held that in the absence of any allegations that the transfer of shares between Fausto Gaid and the petitioner was registered in the stock and transfer book of respondent corporation, petitioner failed to state a cause of action. Thus, the CA dismissed the complaint for *mandamus* for failure to state a cause of action. Hence, the instant petition for review on *certiorari*. At issue herein was

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whether the Court of Appeals erred in holding that herein petitioner had no cause of action for a writ of *mandamus*.

The Supreme Court ruled that petitioner had no cause of action and that his petition for *mandamus* was properly dismissed. From the corporation's point of view, the transfer is not effective until it is recorded. As between the corporation, on one hand, and its stockholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its stockholders are.

## SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; TRANSFER OF SHARES OF STOCKS; SHOULD BE RECORDED IN THE STOCK AND TRANSFER BOOK OF A CORPORATION; EFFECT OF FAILURE; APPLICATION IN CASE AT BAR.**— Pursuant to Sec. 63 of the Corporation Code, a transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises. Hence, without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64 of the Corporation Code. This is the import of Section 63 which states that "No transfer, however, shall be valid, except between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred." Unless and until such recording is made the demand for the issuance of stock certificates to the alleged transferee has no legal basis.

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2. **ID.; ID.; CERTIFICATE OF STOCK, A TANGIBLE EVIDENCE OF THE STOCK ITSELF AND OF THE VARIOUS INTERESTS THEREIN; IMPORTANCE OF CERTIFICATE OF STOCK, CONSTRUED.**— In *Tan vs. SEC*, 206 SCRA 740 (1992), we had occasion to declare that a certificate of stock is not necessary to render one a stockholder in a corporation. But a certificate of stock is the tangible evidence of the stock itself and of the various interests therein. The certificate is the evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. The certificate is in law, so to speak, an equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. In fact, it rests on the will of the stockholder whether he wants to be issued stock certificates, and a stockholder may opt not to be issued a certificate.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *MANDAMUS*; WHEN NOT PROPER TO COMPEL THE REGISTRATION OF STOCK TRANSFER; APPLICATION IN CASE AT BAR.**— The deed of undertaking with indorsement presented by petitioner does not establish, on its face, his right to demand for the registration of the transfer and the issuance of certificates of stocks. In *Hager vs. Bryan*, 19 Phil. 138 (1911), this Court held that a petition for *mandamus* fails to state a cause of action where it appears that the petitioner is not the registered stockholder and there is no allegation that he holds any power of attorney from the registered stockholder, from whom he obtained the stocks, to make the transfer. . . . In *Rivera vs. Florendo*, 144 SCRA 643, 657 (1986), we reiterated that a mere indorsement by the supposed owners of the stock, in the absence of express instructions from them, cannot be the basis of an action for *mandamus* and that the rights of the parties have to be threshed out in an ordinary action. That *Hager* and *Rivera* involved petitions for *mandamus* to compel the registration of the transfer, while this case is one for issuance of stock, is of no moment. It has been made clear, thus far, that before a transferee may ask for the issuance of stock certificates, he must first cause the registration of the transfer and thereby enjoy the status of a stockholder insofar as the corporation is concerned. A corporate secretary may not be compelled to register transfers of shares on the basis merely of an indorsement of stock

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certificates. With more reason, in our view, a corporate secretary may not be compelled to issue stock certificates without such registration. . . . Absent an allegation that the transfer of shares is recorded in the stock and transfer book of respondent ALSONS, there appears no basis for a clear and indisputable duty or clear legal obligation that can be imposed upon the respondent corporate secretary, so as to justify the issuance of the writ of *mandamus* to compel him to perform the transfer of the shares to petitioner. The test of sufficiency of the facts alleged in a petition is whether or not, admitting the facts alleged, the court could render a valid judgment thereon in accordance with the prayer of the petition. This test would not be satisfied if, as in this case, not all the elements of a cause of action are alleged in the complaint. Where the corporate secretary is under no clear legal duty to issue stock certificates because of the petitioner's failure to record earlier the transfer of shares, one of the elements of the cause of action for *mandamus* is clearly missing.

## APPEARANCES OF COUNSEL

*Quiason Makalintal Barot Torres and Ibarra* for petitioner.
*Estelito P. Mendoza* for respondents.

## D E C I S I O N

**QUISUMBING, *J.*:**

This petition for review seeks to annul the decision[1] of the Court of Appeals, in CA-G.R. SP No. 46692, which set aside the decision[2] of the Securities and Exchange Commission (SEC) *En Banc* in SEC-AC No. 545 and reinstated the order[3] of the Hearing Officer dismissing herein petitioner's complaint. Also assailed is the CA's resolution[4] of August 10, 1999, denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 120-133.

[2] *Id.* at 108-112.

[3] CA *Rollo*, pp. 172-177.

[4] *Rollo*, pp. 159-160.

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On January 25, 1996, plaintiff (now petitioner) Vicente C. Ponce, filed a complaint[5] with the SEC for *mandamus* and damages against defendants (now respondents) Alsons Cement Corporation and its corporate secretary Francisco M. Giron, Jr. In his complaint, petitioner alleged, among others, that:

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5. The late Fausto G. Gaid was an incorporator of Victory Cement Corporation (VCC), having subscribed to and fully paid 239,500 shares of said corporation.

6. On February 8, 1968, plaintiff and Fausto Gaid executed a "Deed of Undertaking" and "Indorsement" whereby the latter acknowledges that the former is the owner of said shares and he was therefore assigning/endorsing the same to the plaintiff. A copy of the said deed/ indorsement is attached as Annex "A".

7. On April 10, 1968, VCC was renamed Floro Cement Corporation (FCC for brevity).

8. On October 22, 1990, FCC was renamed Alsons Cement Corporation (ACC for brevity) as shown by the Amended Articles of Incorporation of ACC, a copy of which is attached as Annex "B".

9. From the time of incorporation of VCC up to the present, no certificates of stock corresponding to the 239,500 subscribed and fully paid shares of Gaid were issued in the name of Fausto G. Gaid and/or the plaintiff.

10. Despite repeated demands, the defendants refused and continue to refuse without any justifiable reason to issue to plaintiff the certificates of stocks corresponding to the 239,500 shares of Gaid, in violation of plaintiff's right to secure the corresponding certificate of stock in his name.[6]

Attached to the complaint was the Deed of Undertaking and Indorsement[7] upon which petitioner based his petition for *mandamus*. Said deed and indorsement read as follows:

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[5] *Id.* at 24-27.

[6] *Id.* at 24-25.

[7] *Id.* at 28.

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*DEED OF UNDERTAKING*

KNOW ALL MEN BY THESE PRESENTS:

I, VICENTE C. PONCE, is the owner of the total subscription of Fausto Gaid with Victory Cement Corporation in the total amount of TWO HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED (₱239,500.00) PESOS and that Fausto Gaid does not have any liability whatsoever on the subscription agreement in favor of Victory Cement Corporation.

(SGD.) VICENTE C. PONCE

February 8, 1968

CONFORME:

(SGD.) FAUSTO GAID

*INDORSEMENT*

I, FAUSTO GAID is indorsing the total amount of TWO HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED (239,500.00) stocks of Victory Cement Corporation to VICENTE C. PONCE.

(SGD.) FAUSTO GAID

With these allegations, petitioner prayed that judgment be rendered ordering respondents (a) to issue in his name certificates of stocks covering the 239,500 shares of stocks and its legal increments and (b) to pay him damages.[8]

Instead of filing an answer, respondents moved to dismiss the complaint on the grounds that: (a) the complaint states no cause of action; *mandamus* is improper and not available to petitioner; (b) the petitioner is not the real party-in-interest; (c) the cause of action is barred by the statute of limitations; and (d) in any case, the petitioner's cause of action is barred by laches.[9] They argued, *inter alia*, that there being no allegation

[8] *Id.* at 26.

[9] *Id.* at 37.

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that the alleged "INDORSEMENT" was recorded in the books of the corporation, said indorsement by Gaid to the plaintiff of the shares of stock in question — assuming that the indorsement was in fact a transfer of stocks — was not valid against third persons such as ALSONS under Section 63 of the Corporation Code.[10] There was, therefore, no specific legal duty on the part of the respondents to issue the corresponding certificates of stock, and *mandamus* will not lie.[11]

Petitioner filed his opposition to the motion to dismiss on February 19, 1996 contending that: (1) *mandamus* is the proper remedy when a corporation and its corporate secretary wrongfully refuse to record a transfer of shares and issue the corresponding certificates of stocks; (2) he is the proper party-in-interest since he stands to be benefited or injured by a judgment in the case; (3) the statute of limitations did not begin to run until defendant refused to issue the certificates of stock in favor of the plaintiff on April 13, 1992.

After respondents filed their reply, SEC Hearing Officer Enrique L. Flores, Jr. granted the motion to dismiss in an Order dated February 29, 1996, which held that:

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Insofar as the issuance of certificates of stock is concerned, the real party-in-interest is Fausto G. Gaid, or his estate or his heirs. Gaid was an incorporator and an original stockholder of the defendant corporation who subscribed and fully paid for 239,500 shares of stock (Annex "B"). In accordance with Section 37 of the old Corporation Law (Act No. 1459) obtaining in 1968 when the defendant corporation was incorporated, as well as Section 64 of the present Corporation Code (Batas Pambansa Blg. 68), a stockholder who has fully paid for his subscription together with interest and expenses in case of delinquent shares, is entitled to the issuance of a certificate of stock for his shares. According to paragraph 9 of the Complaint, no stock certificate was issued to Gaid.

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[10] *Id.* at 41-42.

[11] *Id.* at 43-44.

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Comes now the plaintiff who seeks to step into the shoes of Gaid and thereby become a stockholder of the defendant corporation by demanding issuance of the certificates of stock in his name. This he cannot do, for two reasons: there is no record of any assignment or transfer in the books of the defendant corporation, and there is no instruction or authority from the transferor (Gaid) for such assignment or transfer. Indeed, nothing is alleged in the complaint on these two points.

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In the present case, there is not even any indorsement of any stock certificate to speak of. What the plaintiff possesses is a document by which Gaid supposedly transferred the shares to him. Assuming the document has this effect, nevertheless there is neither any allegation nor any showing that it is recorded in the books of the defendant corporation, such recording being a prerequisite to the issuance of a stock certificate in favor of the transferee.[12]

Petitioner appealed the Order of dismissal. On January 6, 1997, the Commission *En Banc* reversed the appealed Order and directed the Hearing Officer to proceed with the case. In ruling that a transfer or assignment of stocks need not be registered first before it can take cognizance of the case to enforce the petitioner's rights as a stockholder, the Commission *En Banc* cited our ruling in *Abejo vs. De la Cruz*, 149 SCRA 654 (1987) to the effect that:

> x x x As the SEC maintains, "There is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take cognizance of a suit seeking to enforce his rights as such stockholder." This is because the SEC by express mandate has "absolute jurisdiction, supervision and control over all corporations" and is called upon to enforce the provisions of the Corporation Code, among which is the stock purchaser's right to secure the corresponding certificate in his name under the provisions of Section 63 of the Code. Needless to say, any problem encountered in securing the certificates of stock representing the investment made by the buyer must be

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[12] *Rollo*, pp. 104-106.

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> expeditiously dealt with through administrative *mandamus* proceedings with the SEC, rather than through the usual tedious regular court procedure. x x x

Applying this principle in the case on hand, a transfer or assignment of stocks need not be registered first before the Commission can take cognizance of the case to enforce his rights as a stockholder. Also, the problem encountered in securing the certificates of stock made by the buyer must be expeditiously taken up through the so-called administrative *mandamus* proceedings with the SEC than in the regular courts.[13]

The Commission *En Banc* also found that the Hearing Officer erred in holding that petitioner is not the real party-in-interest.

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As appearing in the allegations of the complaint, plaintiff-appellant is the transferee of the shares of stock of Gaid and is therefore entitled to avail of the suit to obtain the proper remedy to make him the rightful owner and holder of a stock certificate to be issued in his name. Moreover, defendant-appellees failed to show that the transferor nor his heirs have refuted the ownership of the transferee. Assuming these allegations to be true, the corporation has a mere ministerial duty to register in its stock and transfer book the shares of stock in the name of the plaintiff-appellant subject to the determination of the validity of the deed of assignment in the proper tribunal.[14]

Their motion for reconsideration having been denied, herein respondents appealed the decision[15] of the SEC *En Banc* and the resolution[16] denying their motion for reconsideration to the Court of Appeals.

In its decision, the Court of Appeals held that in the absence of any allegation that the transfer of the shares between Fausto Gaid and Vicente C. Ponce was registered in the stock and

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[13] *Id.* at 110.

[14] *Rollo*, p. 111.

[15] *Supra*, note 2.

[16] *Rollo*, pp. 113-116.

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transfer book of ALSONS, Ponce failed to state a cause of action. Thus, said the CA, "the complaint for *mandamus* should be dismissed for failure to state a cause of action."[17] Petitioner's motion for reconsideration was likewise denied in a resolution[18] dated August 10, 1999.

Hence, the instant petition for review on *certiorari* alleging that:

I. . . . THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT FOR ISSUANCE OF A CERTIFICATE OF STOCK FILED BY PETITIONER FAILED TO STATE A CAUSE OF ACTION BECAUSE IT DID NOT ALLEGE THAT THE TRANSFER OF THE SHARES (SUBJECT MATTER OF THE COMPLAINT) WAS REGISTERED IN THE STOCK AND TRANSFER BOOK OF THE CORPORATION, CITING SECTION 63 OF THE CORPORATION CODE.

II. . . . THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASES OF "*ABEJO VS. DE LA CRUZ*", 149 SCRA 654 AND "*RURAL BANK OF SALINAS, INC., ET AL. VS. COURT OF APPEALS, ET AL.*", G.R. NO. 96674, JUNE 26, 1992.

III. . . . THE HONORABLE COURT OF APPEALS ERRED IN APPLYING A 1911 CASE, "*HAGER VS. BRYAN*", 19 PHIL. 138, TO DISMISS THE COMPLAINT FOR ISSUANCE OF A CERTIFICATE OF STOCK.[19]

At issue is whether the Court of Appeals erred in holding that herein petitioner has no cause of action for a writ of *mandamus*.

Petitioner first contends that the act of recording the transfer of shares in the stock and transfer book and that of issuing a certificate of stock for the transferred shares involves only one continuous process. Thus, when a corporate secretary is presented

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[17] *Id.* at 128.

[18] *Id.* at 159-160.

[19] *Id.* at 13-14.

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with a document of transfer of fully paid shares, it is his duty to record the transfer in the stock and transfer book of the corporation, issue a new stock certificate in the name of the transferee, and cancel the old one. A transferee who requests for the issuance of a stock certificate need not spell out each and every act that needs to be done by the corporate secretary, as a request for issuance of stock certificates necessarily includes a request for the recording of the transfer. *Ergo*, the failure to record the transfer does not mean that the transferee cannot ask for the issuance of stock certificates.

Secondly, according to petitioner, there is no law, rule or regulation requiring a transferor of shares of stock to first issue express instructions or execute a power of attorney for the transfer of said shares before a certificate of stock is issued in the name of the transferee and the transfer registered in the books of the corporation. He contends that *Hager vs. Bryan*, 19 Phil. 138 (1911), and *Rivera vs. Florendo*, 144 SCRA 643 (1986), cited by respondents, do not apply to this case. These cases contemplate a situation where a certificate of stock has been issued by the company whereas in this case at bar, no stock certificates have been issued even in the name of the original stockholder, Fausto Gaid.

Finally, petitioner maintains that since he is under no compulsion to register the transfer or to secure stock certificates in his name, his cause of action is deemed not to have accrued until respondent ALSONS denied his request.

Respondents, in their comment, maintain that the transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent insofar as the corporation is concerned and no certificate of stock can be issued in the name of the transferee. Until the recording is made, the transfer cannot be the basis of issuance of a certificate of stock. They add that petitioner is not the real party-in-interest, the real party-in-interest being Fausto Gaid since it is his name that appears in the records of the corporation. They conclude that petitioner's cause of action is barred by prescription and laches since 24 years elapsed before he made any demand upon ALSONS.

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We find the instant petition without merit. The Court of Appeals did not err in ruling that petitioner had no cause of action, and that his petition for *mandamus* was properly dismissed.

There is no question that Fausto Gaid was an original subscriber of respondent corporation's 239,500 shares. This is clear from the numerous pleadings filed by either party. It is also clear from the Amended Articles of Incorporation[20] approved on April 9, 1995[21] that each share had a par value of ₱1.00 per share. And, it is undisputed that petitioners had not made a previous request upon the corporate secretary of ALSONS, respondent Francisco M. Giron Jr., to record the alleged transfer of stocks.

The Corporation Code states that:

SEC. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

Pursuant to the foregoing provision, a transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is

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[20] *Id.* at 30-36.

[21] *Id.* at 29.

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concerned.[22] As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.[23] It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.

Hence, without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates in the name of the transferee even when there has been compliance with the requirements of Section 64[24] of the Corporation Code. This is the import of Section 63 which states that "No transfer, however, shall be valid, except between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred." The situation would be different if the petitioner was himself the registered owner of the stock which he sought to transfer to a third party, for then he would be entitled to the remedy of *mandamus*.[25]

From the corporation's point of view, the transfer is not effective until it is recorded. Unless and until such recording is made the demand for the issuance of stock certificates to the alleged transferee has no legal basis. As between the

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[22] *Uson vs. Diosomito*, 61 Phil. 535, 540 (1935); *Garcia vs. Jomouad*, 323 SCRA 424, 428 (2000); *Magsaysay-Labrador vs. CA*, 180 SCRA 266, 273 (1989).

[23] *Hager vs. Bryan*, 19 Phil. 138, 140-141 (1911).

[24] SEC. 64. *Issuance of stock certificates.* — No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid.

[25] See *Hager vs. Bryan, supra* at 141-142.

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corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.[26] In other words, the stock and transfer book is the basis for ascertaining the persons entitled to the rights and subject to the liabilities of a stockholder. Where a transferee is not yet recognized as a stockholder, the corporation is under no specific legal duty to issue stock certificates in the transferee's name.

It follows that, as held by the Court of Appeals:

> x x x until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. Thus, in the absence of any allegation that the transfer of the shares between Gaid and the private respondent [herein petitioner] was registered in the stock and transfer book of the petitioner corporation, the private respondent has failed to state a cause of action.[27]

Petitioner insists that it is precisely the duty of the corporate secretary, when presented with the document of fully paid shares, to effect the transfer by recording the transfer in the stock and transfer book of the corporation and to issue stock certificates in the name of the transferee. On this point, the SEC *En Banc* cited *Rural Bank of Salinas, Inc. vs. Court of Appeals*,[28] where we held that:

> For the petitioner Rural Bank of Salinas to refuse registration of the transferred shares in its stock and transfer book, which duty is ministerial on its part, is to render nugatory and ineffectual the spirit and intent of Section 63 of the Corporation Code. Thus, respondent Court of Appeals did not err in upholding the decision of respondent SEC affirming the Decision of its Hearing Officer directing the registration of the 473 shares in the stock and transfer book in the names of private respondents. At all events, the registration is without prejudice to the proceedings in court to determine the validity of the Deeds of Assignment of the shares of stock in question.

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[26] *Supra*, note 23.

[27] *Rollo*, p. 128.

[28] 210 SCRA 510, 516 (1992).

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In *Rural Bank of Salinas, Inc.*, however, private respondent Melania Guerrero had a Special Power of Attorney executed in her favor by Clemente Guerrero, the registered stockholder. It gave Guerrero full authority to sell or otherwise dispose of the 473 shares of stock registered in Clemente's name and to execute the proper documents therefor. Pursuant to the authority so given, Melania assigned the 473 shares of stock owned by Guerrero and presented to the Rural Bank of Salinas the deeds of assignment covering the assigned shares. Melania Guerrero prayed for the transfer of the stocks in the stock and transfer book and the issuance of stock certificates in the name of the new owners thereof. Based on those circumstances, there was a clear duty on the part of the corporate secretary to register the 473 shares in favor of the new owners, since the person who sought the transfer of shares had express instructions from and specific authority given by the registered stockholder to cause the disposition of stocks registered in his name.

That cannot be said of this case. The deed of undertaking with indorsement presented by petitioner does not establish, on its face, his right to demand for the registration of the transfer and the issuance of certificates of stocks. In *Hager vs. Bryan*, 19 Phil. 138 (1911), this Court held that a petition for *mandamus* fails to state a cause of action where it appears that the petitioner is not the registered stockholder and there is no allegation that he holds any power of attorney from the registered stockholder, from whom he obtained the stocks, to make the transfer, thus:

> It appears, however, from the original as well as the amended petition, that this petitioner is not the registered owner of the stock which he seeks to have transferred, and except in so far as he alleges that he is the owner of the stock and that it was "indorsed" to him on February 5 by the Bryan-Landon Company, in whose name it is registered on the books of the Visayan Electric Company, there is no allegation that the petitioner holds any power of attorney from the Bryan-Landon Company authorizing him to make demand on the secretary of the Visayan Electric Company to make the transfer which petitioner seeks to have made through the medium of the *mandamus* of this court.

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Without discussing or deciding the respective rights of the parties which might be properly asserted in an ordinary action or an action in the nature of an equitable suit, we are all agreed that **in a case such as that at bar, a mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the company, unless it affirmatively appears that he has failed or refused so to do, upon the demand either of the person in whose name the stock is registered, or of some person holding a power of attorney for that purpose from the registered owner of the stock.** There is no allegation in the petition that the petitioner or anyone else holds a power of attorney from the Bryan-Landon Company authorizing a demand for the transfer of the stock, or that the Bryan-Landon Company has ever itself made such demand upon the Visayan Electric Company, and in the absence of such allegation we are not able to say that there was such a clear indisputable duty, such a clear legal obligation upon the respondent, as to justify the issuance of the writ to compel him to perform it.

Under the provisions of our statute touching the transfer of stock (Secs. 35 and 36 of Act No. 1459),[29] the mere indorsement of stock certificates does not in itself give to the indorsee such a right to have a transfer of the shares of stock on the books of the company as will entitle him to the writ of *mandamus* to compel the company and its officers to make such transfer at his demand, because, under such circumstances the duty, the legal obligation, is not so clear and indisputable as to justify the issuance of the writ. As a general rule and especially under the above-cited statute, as between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are, so that a mere indorsee of a stock certificate, claiming to be the owner, will not necessarily be recognized as such by the corporation and its officers, in the absence of express instructions of the registered owner to make such transfer to the indorsee, or a power of attorney authorizing such transfer.[30]

In *Rivera vs. Florendo*, 144 SCRA 643, 657 (1986), we reiterated that a mere indorsement by the supposed owners of the stock, in the absence of express instructions from them,

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[29] Now Sections 63 and 64 of the Corporation Code.

[30] *Supra*, note 23 at 142-143.

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cannot be the basis of an action for *mandamus* and that the rights of the parties have to be threshed out in an ordinary action. That *Hager* and *Rivera* involved petitions for *mandamus* to compel the registration of the transfer, while this case is one for issuance of stock, is of no moment. It has been made clear, thus far, that before a transferee may ask for the issuance of stock certificates, he must first cause the registration of the transfer and thereby enjoy the status of a stockholder insofar as the corporation is concerned. A corporate secretary may not be compelled to register transfers of shares on the basis merely of an indorsement of stock certificates. With more reason, in our view, a corporate secretary may not be compelled to issue stock certificates without such registration.[31]

Petitioner's reliance on our ruling in *Abejo vs. De la Cruz*, 149 SCRA 654 (1987), that notice given to the corporation of the sale of the shares and presentation of the certificates for transfer is equivalent to registration is misplaced. In this case there is no allegation in the complaint that petitioner ever gave notice to respondents of the alleged transfer in his favor. Moreover, that case arose between and among the principal stockholders of the corporation, Pocket Bell, due to the refusal of the corporate secretary to record the transfers in favor of Telectronics of the corporation's controlling 56% shares of stock which were covered by duly endorsed stock certificates. As aforesaid, the request for the recording of a transfer is different from the request for the issuance of stock certificates in the transferee's name. Finally, in *Abejo* we did not say that transfer of shares need not be recorded in the books of the corporation before the transferee may ask for the issuance of stock certificates. The Court's statement, that "there is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take cognizance of a suit seeking to enforce his rights as such stockholder among which is the stock purchaser's right to secure the corresponding certificate in his name,"[32] was addressed to

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[31] See *Hager vs. Bryan*, 19 Phil. 138, 141-143 (1911).

[32] *Abejo vs. Dela* Cruz, 149 SCRA 654, 668-669 (1987).

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the issue of jurisdiction, which is not pertinent to the issue at hand.

Absent an allegation that the transfer of shares is recorded in the stock and transfer book of respondent ALSONS, there appears no basis for a clear and indisputable duty or clear legal obligation that can be imposed upon the respondent corporate secretary, so as to justify the issuance of the writ of *mandamus* to compel him to perform the transfer of the shares to petitioner. The test of sufficiency of the facts alleged in a petition is whether or not, admitting the facts alleged, the court could render a valid judgment thereon in accordance with the prayer of the petition.[33] This test would not be satisfied if, as in this case, not all the elements of a cause of action are alleged in the complaint.[34] Where the corporate secretary is under no clear legal duty to issue stock certificates because of the petitioner's failure to record earlier the transfer of shares, one of the elements of the cause of action for *mandamus* is clearly missing.

That petitioner was under no obligation to request for the registration of the transfer is not in issue. It has no pertinence in this controversy. One may own shares of corporate stock without possessing a stock certificate. In *Tan vs. SEC*, 206 SCRA 740 (1992), we had occasion to declare that a certificate of stock is not necessary to render one a stockholder in a corporation. But a certificate of stock is the tangible evidence of the stock itself and of the various interests therein. The certificate is the evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. The certificate is in law, so to speak, an equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation.[35] In fact, it rests on the will of the stockholder

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[33] *Parañaque Kings Enterprises, Inc. vs. CA*, 268 SCRA 727, 739 (1997).

[34] See *Mathay vs. The Consolidated Bank and Trust Co.*, 58 SCRA 559, 576-578 (1974).

[35] *Tan vs. SEC*, 206 SCRA 740, 749-750 (1992).

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whether he wants to be issued stock certificates, and a stockholder may opt not to be issued a certificate. In *Won vs. Wack Wack Golf and Country Club, Inc.*, 104 Phil. 466 (1958), we held that considering that the law does not prescribe a period within which the registration should be effected, the action to enforce the right does not accrue until there has been a demand and a refusal concerning the transfer. In the present case, petitioner's complaint for *mandamus* must fail, not because of laches or estoppel, but because he had alleged no cause of action sufficient for the issuance of the writ.

**WHEREFORE**, the petition is *DENIED* for lack of merit. The decision of the Court of Appeals, in CA-G.R. SP No. 46692, which set aside that of the Securities and Exchange Commission *En Banc* in SEC-AC No. 545 and reinstated the order of the Hearing Officer, is hereby *AFFIRMED*.

No pronouncement as to costs.

**SO ORDERED**.

*Bellosillo (Chairman), Mendoza, Austria-Martinez,* and *Callejo, Sr., JJ.*, concur.

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**EN BANC**

[G.R. Nos. 146452-53. December 10, 2002]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **ARTEMIO D. OCHEA,** *appellant.*

**SYNOPSIS**

For automatic review by the Supreme Court is the decision of the Regional Trial Court which found Artemio D. Ochea guilty beyond reasonable doubt of one act of rape in its qualified form,