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the lessor under 5 [c]), BP Blg. 877 amended Sec. 5 (f) of BP Blg. 25 into stating that 'expiration of the period of *the lease contract* is a ground for judicial ejectment x x x."

There is no showing under the circumstances of this case why the same rule should not apply to the respondent. Considering our rulings on the two issues raised by the petitioner, the lessor can judicially eject the lessee in this case.

WHEREFORE, the petition is hereby GRANTED. The decision of the respondent appellate court is REVERSED and SET ASIDE. The decision of the Regional Trial Court of Quezon City, Branch 95, dated 15 June 1984, in Civil Case No. Q-40803 is REINSTATED.

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin, and *Cortés, JJ.*, concur.

THIRD DIVISION

[G.R. No. 75875. December 15, 1989]

WOLFGANG AURBACH, JOHN GRIFFIN, DAVID P. WHITTINGHAM and CHARLES CHAMSAY, *petitioners, vs.* **SANITARY WARES MANUFACTURING CORPORATION, ERNESTO V. LAGDAMEO, ERNESTO R. LAGDAMEO, JR., ENRIQUE R. LAGDAMEO, GEORGE F. LEE, RAUL A. BONCAN, BALDWIN YOUNG and AVELINO V. CRUZ,** *respondents.*

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[G.R. No. 75951. December 15, 1989]

SANITARY WARES MANUFACTURING CORPORATION, ERNESTO R. LAGDAMEO, ENRIQUE B. LAGDAMEO, GEORGE F. LEE, RAUL A. BONCAN, BALDWIN YOUNG and AVELINO V. CRUZ, *petitioners, vs.* **THE COURT OF APPEALS, WOLFGANG AURBACH, JOHN GRIFFIN, DAVID P. WHITTINGHAM, CHARLES CHAMSAY and LUCIANO SALAZAR,** *respondents.*

[G.R. Nos. 75975-76. December 15, 1989]

LUCIANO E. SALAZAR, *petitioner, vs.* **SANITARY WARES MANUFACTURING CORPORATION, ERNESTO V. LAGDAMEO, ERNESTO R. LAGDAMEO, JR., ENRIQUE R. LAGDAMEO, GEORGE F. LEE, RAUL A. BONCAN, BALDWIN YOUNG, AVELINO V. CRUZ and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. *COMMERCIAL LAW*; JOINT VENTURE; WHETHER THERE EXISTS A JOINT VENTURE DEPENDS UPON THE PARTIES' ACTUAL INTENTION WHICH IS DETERMINED IN ACCORDANCE WITH THE RULES COVERING THE INTERPRETATION AND CONSTRUCTION OF CONTRACTS. — The rule is that whether the parties to a particular contract have thereby established among themselves a joint venture or some other relation depends upon their actual intention which is determined in accordance with the rules governing the interpretation and construction of contracts.

2. ID.; ID.; *ESTABLISHED IN CASE AT BAR.* — In the instant cases, our examination of important provisions of the Agreement as well as the *testimonial evidence presented* by the Lagdameo and Young Group shows that the parties agreed to establish a *joint venture and not a corporation.* The history of the organization of Saniwares and the unusual arrangements which *govern its policy making* body are all consistent with a joint

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venture and not with an ordinary corporation. Section 5 (a) of the agreement uses the word "designated" and not "nominated" or "elected" in the selection of the nine directors on a six to three ratio. Each group is assured of a fixed number of directors in the board. Moreover, ASI in its communications referred to the enterprise as joint venture. Baldwin Young also testified that Section 16(c) of the Agreement that "Nothing herein contained shall be construed to constitute any of the parties hereto partners or joint venturers in respect of any transaction hereunder" was merely to obviate the possibility of the enterprise being treated as partnership for tax purposes and liabilities to third parties.

3. ID.; ID.; **CONCEPT OF JOINT VENTURE; DISTINGUISHED FROM PARTNERSHIP.** — The point of query, however, is whether or not that provision is applicable to a joint venture with clearly defined agreements: "The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. It is in fact hardly distinguishable from the partnership, since their elements are similar — community of interest in the business, sharing of profits and losses, and a mutual right of control. The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. Moreover, the usual rules as regards the construction and operations of contracts generally apply to a contract of joint venture.

4. ID.; ID.; **RIGHT OF STOCKHOLDERS TO CUMULATIVE VOTES IN ELECTING DIRECTORS LIES IN THE AGREEMENT OF PARTIES.** — Bearing these principles in mind, the correct view

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would be that the resolution of the question of whether or not the ASI Group may vote their additional equity lies in the agreement of the parties. The appellate court was correct in upholding the agreement of the parties as regards the allocation of director seats under Section 5 (a) of the "Agreement," and the right of each group of stockholders to cumulative voting in the process of determining who the group's nominees would be under Section 3(a) (1) of the "Agreement." As pointed out by SEC, Section 5(a) of the Agreement relates to the manner of nominating the members of the board of directors while Section 3 (a) (1) relates to the manner of voting for these nominees.

5. ID.; ANTI-DUMMY; LIMITS THE ELECTION OF ALIENS AS MEMBERS OF THE BOARD OF DIRECTORS IN *PROPORTION TO THEIR ALLOWANCE PARTICIPATION* IN THE ENTITY. — Equally important as the consideration of the contractual intent of the parties is the consideration as regards the possible domination by the foreign investors of the enterprise in violation of the nationalization requirements enshrined in the Constitution and circumvention of the Anti-Dummy Act. In this regard, petitioner Salazar's position is that the Anti-Dummy Act allows the ASI group to elect board directors in proportion to their *share in the capital of the entity*. It is to be noted, however, that the same law also limits the election of aliens as members of the board of directors in *proportion to their allowance participation* of said entity.

APPEARANCES OF COUNSEL

Belo, Abiera & Associates for petitioners in 75875.

Sycip, Salazar, Hernandez & Gatmaitan for Luciano E. Salazar.

D E C I S I O N

GUTIERREZ, JR., *J.*:

These consolidated petitions seek the review of the amended decision of the Court of Appeals in CA-G.R. SP Nos. 05604 and 05617 which set aside the earlier decision dated June 5, 1986, of the then Intermediate Appellate Court and directed

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that in all subsequent elections for directors of Sanitary Wares Manufacturing Corporation (Saniwares), American Standard Inc. (ASI) cannot nominate more than three (3) directors; that the Filipino stockholders shall not interfere in ASI's choice of its three (3) nominees; that, on the other hand, the Filipino stockholders can nominate only six (6) candidates and in the event they cannot agree on the six (6) nominees, they shall vote only among themselves to determine who the six (6) nominees will be, with cumulative voting to be allowed but without interference from ASI.

The antecedent facts can be summarized as follows:

In 1961, Saniwares, a domestic corporation was incorporated for the primary purpose of manufacturing and marketing sanitary wares. One of the incorporators, Mr. Baldwin Young went abroad to look for foreign partners, European or American who could help in its expansion plans. On August 15, 1962, ASI, a foreign corporation domiciled in Delaware, United States entered into an Agreement with Saniwares and some Filipino investors whereby ASI and the Filipino investors agreed to participate in the ownership of an enterprise which would engage primarily in the business of manufacturing in the Philippines and selling here and abroad vitreous china and sanitary wares. The parties agreed that the business operations in the Philippines shall be carried on by an incorporated enterprise and that the name of the corporation shall initially be "Sanitary Wares Manufacturing Corporation."

The Agreement has the following provisions relevant to the issues in these cases on the nomination and election of the directors of the corporation:

"3. *Articles of Incorporation*

(a) The Articles of Incorporation of the Corporation shall be substantially in the form annexed hereto as Exhibit A and, insofar as permitted under Philippine law, shall specifically provide for.

(1) Cumulative voting for directors:

xxx xxx xxx

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"5. *Management*

(a) The management of the Corporation shall be vested in a Board of Directors, which shall consist of nine individuals. As long as American-Standard shall own at least 30% of the outstanding stock of the Corporation, three of the nine directors shall be designated by American-Standard, and the others six: shall be designated by the other stockholders of the Corporation. (pp. 51 & 53, *Rollo* of 75875).

At the request of ASI, the agreement contained provisions designed to protect it as a minority group, including the grant of veto powers over a number of corporate acts and the right to designate certain officers, such as a member of the Executive Committee whose vote was required for important corporate transactions.

Later, the 30% capital stock of ASI was increased to 40%. The corporation was also registered with the Board of Investments for availment of incentives with the condition that at least 60% of the capital stock of the corporation shall be owned by Philippine nationals.

The joint enterprise thus entered into by the Filipino investors and the American corporation prospered. Unfortunately, with the business successes, there came a deterioration of the initially harmonious relations between the two groups. According to the Filipino group, a basic disagreement was due to their desire to expand the export operations of the company to which ASI objected as it apparently had other subsidiaries of joint venture groups in the countries where Philippine exports were contemplated. On March 8, 1983, the annual stockholders' meeting was held. The meeting was presided by Baldwin Young. The minutes were taken by the Secretary, Avelino Cruz. After disposing of the preliminary items in the agenda, the stockholders then proceeded to the election of the members of the board of directors. The ASI group nominated three persons namely; Wolfgang Aurbach, John Griffin and David P. Whittingham. The Philippine investors nominated six, namely; Ernesto Lagdameo, Sr., Raul A. Boncan, Ernesto R. Lagdameo, Jr., George F. Lee, and Baldwin Young. Mr. Eduardo R, Ceniza

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then nominated Mr. Luciano E. Salazar, who in turn nominated Mr. Charles Chamsay. The chairman, Baldwin Young ruled the last two nominations out of order on the basis of Section 5 (a) of the Agreement, the consistent practice of the parties during the past annual stockholders' meetings to nominate only nine persons as nominees for the nine-member board of directors, and the legal advice of Saniwares' legal counsel. The following events then, transpired:

x x x . There were protests against the action of the Chairman and heated arguments ensued. An appeal was made by the ASI representative to the body of stockholders present that a vote be taken on the ruling of the Chairman. The Chairman, Baldwin Young. declared the appeal out of order and no vote on the ruling was taken. The Chairman then instructed the Corporate Secretary to cast all the votes present and represented by proxy equally for the 6 nominees of the Philippine Investors and the 3 nominees of ASI, thus effectively excluding the 2 additional persons nominated, namely, Luciano E. Salazar and Charles Chamsay. The ASI representative, Mr. Jaqua. protested the decision of the Chairman and announced that all votes accruing to ASI shares, a total of 1,329,695 (p. 27, *Rollo*, AC-G.R. SP No. 05617) were being cumulatively voted for the three ASI nominees and Charles Chamsay, and instructed the Secretary to so vote. Luciano E. Salazar and other proxy holders announced that all the votes owned by and or represented by them 467,197 shares (p. 27, *Rollo*, AC-G.R. SP No. 05617) were being voted cumulatively in favor of Luciano E. Salazar. The Chairman, Baldwin Young. nevertheless instructed the Secretary to cast all votes equally in favor of the three ASI nominees, namely, Wolfgang Aurbach, John Griffin and David Whittingham, and the six originally nominated by Rogelio Vinluan, namely, Ernesto Lagdameo, Sr., Raul Boncan, Ernesto Lagdameo, Jr., Enrique Lagdameo, George F. Lee, and Baldwin Young. The Secretary then certified for the election of the following — Wolfgang Aurbach, John Griffin, David Whittingham, Ernesto Lagdameo, Sr., Ernesto Lagdameo, Jr., Enrique Lagdameo, George F. Lee, Raul A. Boncan, Baldwin Young. The representative of ASI then moved to recess the meeting which was duly seconded. There was also a motion to adjourn (p. 28, *Rollo*, Ac-G.R. SP No. 05617). This motion to adjourn was accepted by the Chairman, Baldwin Young, who announced that the motion was carried and declared the meeting adjourned. Protests against the adjournment were registered and having been ignored, Mr. Jaqua, the ASI representative, stated that

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the meeting was not adjourned but only recessed and that the meeting would be reconvened in the next room. The Chairman then threatened to have the stockholders who did not agree to the decision of the Chairman on the casting of votes bodily thrown out. The ASI Group, Luciano E. Salazar and other stockholders, allegedly representing 53 or 54% of the shares of Saniwares, decided to continue the meeting at the elevator lobby of the American Standard Building. The continued meeting was presided by Luciano E. Salazar, while Andres Gatmaitan acted as Secretary. On the basis of the cumulative votes cast earlier in the meeting, the ASI Group nominated its four nominees: Wolfgang Aurbach, John Griffin, David Whittingham and Charles Chamsay. Luciano E. Salazar voted for himself, thus the said five directors were certified as elected directors by the Acting Secretary, Andres Gatmaitan, with the explanation that there was a tie among the other six (6) nominees for the four (4) remaining positions of directors and that the body decided not to break the tie." (pp. 37-39, *Rollo* of 75975-76)

These incidents triggered off the filing of separate petitions by the parties with the Securities and Exchange Commission (SEC). The first petition filed was for preliminary injunction by Saniwares, Ernesto V. Lagdameo, Baldwin Young, Raul A. Boncan, Ernesto R. Lagdameo, Jr., Enrique Lagdameo and George F. Lee against Luciano Salazar and Charles Chamsay. The case was denominated as SEC Case No. 2417. The second petition was for *quo warranto* and application for receivership by Wolfgang Aurbach, John Griffin, David Whittingham, Luciano E. Salazar and Charles Chamsay against the group of Young and Lagdameo (petitioners in SEC Case No. 2417) and Avelino F. Cruz. The case was docketed as SEC Case No. 2718. Both sets of parties except for Avelino Cruz claimed to be the legitimate directors of the corporation.

The two petitions were consolidated and tried jointly by a hearing officer who rendered a decision upholding the election of the Lagdameo Group and dismissing the *quo warranto* petition of Salazar and Chamsay. The ASI Group and Salazar appealed the decision to the SEC *en banc* which affirmed the hearing officer's decision.

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The SEC decision led to the filing of two separate appeals with the Intermediate Appellate Court by Wolfgang Aurbach, John Griffin, David Whittingham and Charles Chamsay (docketed as AC-G.R. SP No. 05604) and by Luciano E. Salazar (docketed as AC-G.R. SP No. 05617). The petitions were consolidated and the appellate court in its decision ordered the remand of the case to the Securities and Exchange Commission with the directive that a new stockholders' meeting of Saniwares be ordered convoked as soon as possible, under the supervision of the Commission.

Upon a motion for reconsideration filed by the appellees (Lagdameo Group) the appellate court (Court of Appeals) rendered the questioned amended decision.

Petitioners Wolfgang Aurbach, John Griffin, David P. Whittingham and Charles Chamsay in G.R. No. 75875 assign the following errors:

I. THE COURT OF APPEALS, IN EFFECT, UPHELD THE ALLEGED ELECTION OF PRIVATE RESPONDENTS AS MEMBERS OF THE BOARD OF DIRECTORS OF SANIWARES WHEN IN FACT THERE WAS NO ELECTION AT ALL.

II. THE COURT OF APPEALS PROHIBITS THE STOCKHOLDERS FROM EXERCISING THEIR FULL VOTING RIGHTS REPRESENTED BY THE NUMBER OF SHARES IN SANIWARES, THUS DEPRIVING PETITIONERS AND THE CORPORATION THEY REPRESENT OF THEIR PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.

III. THE COURT OF APPEALS IMPOSES CONDITIONS AND READS PROVISIONS INTO THE AGREEMENT OF THE PARTIES WHICH WERE NOT THERE, WHICH ACTION IT CANNOT LEGALLY DO. (p. 17, *Rollo* — 75875).

Petitioner Luciano E. Salazar in G.R. Nos. 75975-76 assails the amended decision on the following grounds:

"11.1 That Amended Decision would sanction the CA's disregard of binding contractual agreements entered into by stockholders and the replacement of the conditions of such agreements with terms never contemplated by the stockholders but merely dictated by the CA.

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"11.2 The Amended decision would likewise sanction the *unlawful deprivation of the property rights of stockholders without* due process of law in order that a favored group of stockholders may be illegally benefited and guaranteed a continuing monopoly of the control of a corporation." (pp. 14-15, *Rollo* — 75975-76).

On the other hand, the petitioners in G.R. No. 75951 contend that:

I

"THE AMENDED DECISION OF THE RESPONDENT COURT, WHILE RECOGNIZING THAT THE STOCKHOLDERS OF SANIWARES ARE DIVIDED INTO TWO BLOCKS, FAILS TO FULLY ENFORCE THE BASIC INTENT OF THE AGREEMENT AND THE LAW.

II

"THE AMENDED DECISION DOES NOT CATEGORICALLY RULE THAT PRIVATE PETITIONERS HEREIN WERE THE DULY ELECTED DIRECTORS DURING THE 8 MARCH 1983 ANNUAL STOCKHOLDERS MEETING OF SANIWARES." (P. 24, *Rollo* — 75951).

The issues raised in the petitions are interrelated, hence, they are discussed jointly.

The main issue hinges on who were the duly elected directors of Saniwares for the year 1983 during its annual stockholders' meeting held on March 8, 1983. To answer this question the following factors should be determined: (1) the nature of the business established by the parties — whether it was a joint venture or a corporation and (2) whether or not the ASI Group may vote their additional 10% equity during elections of Saniwares' board of directors.

The rule is that whether the parties to a particular contract have thereby established among themselves a joint venture or some other relation depends upon their actual intention which is determined in accordance with the rules governing the interpretation and construction of contracts. (*Terminal Shares, Inc. v. Chicago*, B. and Q.R. Co. (DC MO) 65 F Supp 678; *Universal Sales Corp. v. California Press Mfg. Co.*, 20 Cal. 2nd 751, 128 P 2nd 668)

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The ASI Group and petitioner Salazar (G.R. Nos. 75975-76) contend that the actual intention of the parties should be viewed strictly on the "Agreement" dated August 15, 1962 wherein it is clearly stated that the parties' intention was to form a corporation and not a joint venture.

They specifically mention number 16 under *Miscellaneous Provisions* which states:

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"(c) nothing herein contained shall be construed to constitute any of the parties hereto partners or joint venturers in respect of any transaction hereunder." (At p. 66, *Rollo* — G.R. No. 75875)

They object to the admission of other evidence which tends to show that the parties' agreement was to establish a joint venture presented by the Lagdameo and Young Group on the ground that it contravenes the parol evidence rule under section 7, Rule 130 of the Revised Rules of Court. According to them, the Lagdameo and Young Group never pleaded in their pleading that the "Agreement" failed to express the true intent of the parties.

The parol evidence Rule under Rule 130 provides:

"Evidence of written agreements — When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties or the validity of the agreement is put in issue by the pleadings.

(b) When there is an intrinsic ambiguity in the writing.

Contrary to ASI Group's stand, the Lagdameo and Young Group pleaded in their Reply and Answer to Counterclaim in SEC Case No. 2417 that the Agreement failed to express the true intent of the parties, to wit:

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"4. While certain provisions of the Agreement would make it appear that the parties thereto disclaim being partners or joint venturers such disclaimer is directed at third parties and is not inconsistent with, and does not preclude, the existence of two distinct groups of stockholders in Saniwares one of which (the Philippine Investors) shall constitute the majority, and the other (ASI) shall constitute the minority stockholder. In any event, the evident intention of the Philippine Investors and ASI in entering into the Agreement is to enter into a joint venture enterprise, and if some words in the Agreement appear to be contrary to the evident intention of the parties, the latter shall prevail over the former (Art. 1370, New Civil Code). The various stipulations of a contract shall be interpreted together attributing to the doubtful ones that sense which may result from all of them taken jointly (Art. 1374, New Civil Code). Moreover, in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (Art. 1371, New Civil Code). (Part I, Original Records, SEC Case No. 2417).

It has been ruled:

"In an action at law, where there is evidence tending to prove that the parties joined their efforts in furtherance of an enterprise for their joint profit, the question whether they intended by their agreement to create a joint adventure, or to assume some other relation is a question of fact for the jury. (*Binder v. Kessler* v 200 App. Div. 40, 192 NYS 653; *Pyroa v. Brownfield* (Tex. Civ. A.) 238 SW 725; *Hoge v. George,* 27 Wyo, 423, 200 P 96 33 C.J. p. 871).

In the instant cases, our examination of important provisions of the Agreement as well as the testimonial evidence presented by the Lagdameo and Young Group shows that the parties agreed to establish a joint venture and not a corporation. The history of the organization of Saniwares and the unusual arrangements which govern its policy making body are all consistent with a joint venture and not with an ordinary corporation. As stated by the SEC:

"According to the unrebutted testimony of Mr. Baldwin Young, he negotiated the Agreement with ASI in behalf of the Philippine nationals. He testified that ASI agreed to accept the role of minority

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vis-a-vis the Philippine National group of investors, on the condition that the Agreement should contain provisions to protest ASI as the minority.

"An examination of the Agreement shows that certain provisions were included to protect the interests of ASI as the minority. For example, the vote of 7 out of 9 directors is required in certain enumerated corporate acts [Sec. 3 (b) (ii) (a) of the Agreement]. ASI is contractually entitled to designate a member of the Executive Committee and the vote of this member is required for certain transactions [Sec. 3 (b) (i)].

"The Agreement also requires a 75% super-majority vote for the amendment of the articles and by-laws of Saniwares [Sec. 3 (a) (iv) and (b) (iii)]. ASI is also given the right to designate the president and plant manager [Sec. 5 (6)]. The Agreement further provides that the sales policy of Saniwares shall be that which is normally followed by ASI [Sec. 13 (a)] and that Saniwares should not export "Standard" products otherwise than through ASI's Export Marketing Services [Sec. 13 (6)]. Under the Agreement, ASI agreed to provide technology and know-how to Saniwares and the latter paid royalties for the same. (At p. 2).

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"It is pertinent to note that the provisions of the Agreement requiring a 7 out of 9 votes of the board of directors for certain actions, in effect gave ASI (which designates 3 directors under the Agreement) an effective veto power. Furthermore, the grant to ASI of the right to designate certain officers of the corporation; the super-majority voting requirements for amendments of the articles and by-laws; and most significantly to the issues of this case, the provision that ASI shall designate 3 out of the 9 directors and the other stockholders shall designate the other 6, clearly indicate that — 1) there are two distinct groups in Saniwares, namely ASI, which owns 40% of the capital stock and the Philippine National stockholders who own the balance of 60%, and that 2) ASI is given certain protections as the minority stockholder.

Premises considered, we believe that under the Agreement there are two groups of stockholders who established a corporation with provisions for a special contractual relationship between the parties, *i.e.*, ASI and the other stockholders." (pp. 4-5)

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Section 5 (a) of the agreement uses the word "designated" and not "nominated" or "elected" in the selection of the nine directors on a six to three ratio. Each group is assured of a fixed number of directors in the board.

Moreover, ASI in its communications referred to the enterprise as joint venture. Baldwin Young also testified that Section 16(c) of the Agreement that "Nothing herein contained shall be construed to constitute any of the parties hereto partners or joint venturers in respect of any transaction hereunder" was merely to obviate the possibility of the enterprise being treated as partnership for tax purposes and liabilities to third parties.

Quite often, Filipino entrepreneurs in their desire to develop the industrial and manufacturing capacities of a local firm are constrained to seek the technology and marketing assistance of huge multinational corporations of the developed world. Arrangements are formalized where a foreign group becomes a minority owner of a firm in exchange for its manufacturing expertise, use of its brand names, and other such assistance. However, there is always a danger from such arrangements. The foreign group may, from the start, intend to establish its own sole or monopolistic operations and merely uses the joint venture arrangement to gain a foothold or test the Philippine waters, so to speak. Or the covetousness may come later. As the Philippine firm enlarges its operations and becomes profitable, the foreign group undermines the local majority ownership and actively tries to completely or predominantly take over the entire company. This undermining of joint ventures is not consistent with fair dealing to say the least. To the extent that such subversive actions can be lawfully prevented, the courts should extend protection especially in industries where constitutional and legal requirements reserve controlling ownership to Filipino citizens.

The Lagdameo Group stated in their appellees' brief in the Court of Appeals:

"In fact, the Philippine Corporation Code itself recognizes the right of stockholders to enter into agreements regarding the exercise of their voting rights.

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"'Sec. 100. Agreements by stockholders. —

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"'2. An agreement between two or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.'

"Appellants contend that the above provision is included in the Corporation Code's chapter on close corporations and Saniwares cannot be a close corporation because it has 95 stockholders. Firstly, although Saniwares had 95 stockholders at the time of the disputed stockholders meeting, these 95 stockholders are not separate from each other but are divisible into groups representing a single identifiable interest. For example, ASI, its nominees and lawyers count for 13 of the 95 stockholders. The Young/Yutivo family count for another 13 stockholders, the Cham family for 8 stockholders, the Santos family for 9 stockholders, the Dy family for 7 stockholders, *etc.* If the members of one family and/or business or interest group are considered as one (which, it is respectfully submitted, they should be for purposes of determining how closely held Saniwares is), there were as of 8 March 1983, practically only 17 stockholders of Saniwares. (Please refer to discussion in pp. 5 to 6 of appellees' Rejoinder Memorandum dated 11 December 1984 and Annex "A" thereof).

"Secondly, even assuming that Saniwares is technically not a close corporation because it has more than 20 stockholders, the undeniable fact is that it is a *close-held* corporation. Surely, appellants cannot honestly claim that Saniwares is a public issue or a widely held corporation.

"In the United States, many courts have taken a realistic approach to joint venture corporations and have not rigidly applied principles of corporation law designed primarily for public issue corporations. These courts have indicated that express arrangements between corporate joint ventures should be construed with less emphasis on the ordinary rules of law usually applied to corporate entities and with more consideration given to the nature of the agreement between the joint venturers (Please see *Wabash Ry v. American Refrigerator Transit Co.*, 7 F 2d 335; *Chicago, M & St. P. Ry v. Des Moines Union Ry*, 254 Ass'n. 247 US. 490'; *Seaboard Airline Ry v. Atlantic Coast Line Ry*, 240 N.C. 495, 82 S.E. 2d 771; *Deboy v. Harris*, 207 Md., 212,

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113 A 2d 903; *Hathway v. Porter Royalty Pool, Inc.*, 296 Mich. 90, 90, 295 N.W. 571; *Beardsley v. Beardsley*, 138 U.S. 262; "The Legal Status of Joint Venture Corporations," 11 Vand. Law Rev., p. 680, 1958). These American cases dealt with legal questions as to the extent to which the requirements arising from the corporate form of joint venture corporations should control, and the courts ruled that substantial justice lay with those litigants who relied on the joint venture agreement rather than the litigants who relied on the orthodox principles of corporation law.

"As correctly held by the SEC Hearing Officer:

"'It is said that participants in a joint venture, in organizing the joint venture deviate from the traditional pattern of corporation management. A noted authority has pointed out that just as in close corporations, shareholders' agreements in joint venture corporations often contain provisions which do one or more of the following: (1) require greater than majority vote for shareholder and director action; (2) give certain shareholders or groups of shareholders power to select a specified number of directors; (3) give to the shareholders control over the selection and retention of employees; and (4) set up a procedure for the settlement of disputes by arbitration (See I O'Neal, Close Corporations, 1971 ed., Section 1.06a, pp. 15-16) (Decision of SEC Hearing Officer, p. 16)'

"Thirdly, paragraph 2 of Sec. 100 of the Corporation Code does not necessarily imply that agreements regarding the exercise of voting rights are allowed only in close corporations. As Campos and Lopez-Campos explain:

"'Paragraph 2 refers to pooling and voting agreements in particular. Does this provision necessarily imply that these agreements can be valid only in close corporations as defined by the Code? Suppose that a corporation has twenty five stockholders, and therefore cannot qualify as a close corporation under Section 96, can some of them enter into an agreement to vote as a unit in the election of directors? It is submitted that there is no reason for denying stockholders of corporations other than close ones the right to enter into voting or pooling agreements to protect their interests, as long as they do not intend to commit any wrong, or fraud on the other stockholders not parties to the agreement. Of course, voting or pooling agreements are perhaps more useful and more often resorted to in close corporations. But they may also be found necessary even in widely held corporations. Moreover, since the Code limits the legal meaning

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of close corporations to those which comply with the requisites laid down by Section 96, it is entirely possible that a corporation which is in fact a close corporation will not come within the definition. In such case, its stockholders should not be precluded from entering into contracts like voting agreements if these are otherwise valid. (Campos & Lopez-Campos, *op cit,* p. 405)'

"In short, even assuming that Sec. 5(a) of the Agreement relating to the designation or nomination of directors restricts the right of the Agreement's signatories to vote for directors, such contractual provision, as correctly held by the SEC, is valid and binding upon the signatories thereto, which include appellants." (*Rollo,* G.R. No. 75951, pp. 90-94).

In regard to the question as to whether or not the ASI group may vote their additional equity during elections of Saniwares' board of directors, the Court of Appeals correctly stated:

"As in other joint venture companies, the extent of ASI's participation in the management of the corporation is spelled out in the Agreement. Section 5(a) hereof says that three of the nine directors shall be designated by ASI and the remaining six by the other stockholders, *i.e.*, the Filipino stockholders. This allocation of board seats is obviously in consonance with the minority position of ASI.

"Having entered into a well-defined contractual relationship, it is imperative that the parties should honor and adhere to their respective rights and obligations thereunder. Appellants seem to contend that any allocation of board seats, even in joint venture corporations, are null and void to the extent that such may interfere with the stockholder's rights to cumulative voting as provided in Section 24 of the Corporation Code. This Court should not be prepared to hold that any agreement which curtails in any way cumulative voting should be struck down, even if such agreement has been freely entered into by experienced businessmen and do not prejudice those who are not parties thereto. It may well be that it would be more cogent to hold, as the Securities and exchange Commission has held in the decision appealed from, that cumulative voting rights may be voluntary waived by stockholders who enter into special relationships with each other to pursue and implement specific purposes, as in joint venture relationships between foreign and local stockholders, so long as such agreements do not adversely affect third parties.

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"In any event, it is believed that we are not here called upon to make a general rule on this question. Rather, all that needs to be done is to give life and effect to the particular contractual rights and obligations which the parties have assumed for themselves.

"On the one hand, the clearly established minority position of ASI and the contractual allocation of board seats cannot be disregarded. On the other hand, the rights of the stockholders to cumulative voting should also be protected.

"In our decision sought to be reconsidered, we opted to uphold the second over the first. Upon further reflection, we feel that the proper and just solution to give due consideration to both factors suggests itself quite clearly. This Court should recognize and uphold the division of the stockholders into two groups, and at the same time uphold the right of the stockholders within each group to cumulative voting in the process of determining who the group's nominees would be. In practical terms, as suggested by appellant Luciano E. Salazar himself, this means that if the Filipino stockholders cannot agree who their six nominees will be, a vote would have to be taken among the Filipino stockholders only. During this voting, each Filipino stockholder can cumulate his votes. ASI, however, should not be allowed to interfere in the voting within the Filipino group. Otherwise, ASI would be able to designate more than the three directors it is allowed to designate under the Agreement, and may even be able to get a majority of the board seats, a result which is clearly contrary to the contractual intent of the parties.

"Such a ruling will give effect to both the allocation of the board seats and the stockholder's right to cumulative voting. Moreover, this ruling will also give due consideration to the issue raised by the appellees on possible violation or circumvention of the Anti-Dummy Law (Com. Act No. 108, as amended) and the nationalization requirements of the Constitution and the laws if ASI is allowed to nominate more than three directors." (*Rollo* — 75875, pp. 38-39)

The ASI Group and petitioner Salazar, now reiterate their theory that the ASI Group has the right to vote their additional equity pursuant to Section 24 of the Corporation Code which gives the stockholders of a corporation the right to cumulate their votes in electing directors. Petitioner Salazar adds that this right if granted to the ASI Group would not necessarily

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mean a violation of the Anti-Dummy Act (Commonwealth Act 108, as amended). He cites Section 2-a thereof which provides:

"And provided finally that the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities. (amendments introduced by Presidential Decree 715, Section 1, promulgated May 28, 1975)"

The ASI Group's argument is correct within the context of Section 24 of the Corporation Code. The point of query, however, is whether or not that provision is applicable to a joint venture with clearly defined agreements:

"The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. (*Gates v. Megargel*, 266 Fed. 811 [1920]) It is in fact hardly distinguishable from the partnership, since their elements are similar — community of interest in the business, sharing of profits and losses, and a mutual right of control. (*Blackner v. McDermott*, 176 F. 2d. 498, [1949]; *Carboneau v. Peterson*, 95 P. 2d., 1043 [1939]; *Buckley v. Chadwick*, 45 Cal. 2d. 183, 288 P. 2d. 12 289 P. 2d. 242 [1955]). The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. (*Tufts v. Mann*, 116 Cal. App. 170, 2 P. 2d. 500 [1931]; *Harmon v. Martin*, 395 Ill. 595, 71 NE 2d. 74 [1947]; *Gates v. Megargel*, 266 Fed. 811 [1920]). This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. (Art. 1783, Civil Code). It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. (At p. 12, *Tuazon v. Bolaños*, 95 Phil. 906 [1954]) (Campos and Lopez — Campos Comments, Notes and Selected Cases, Corporation Code 1981).

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Moreover, the usual rules as regards the construction and operations of contracts generally apply to a contract of joint venture. (*O'Hara v. Harman,* 14 App. Dev. (167) 43 NYS 556).

Bearing these principles in mind, the correct view would be that the resolution of the question of whether or not the ASI Group may vote their additional equity lies in the agreement of the parties.

Necessarily, the appellate court was correct in upholding the agreement of the parties as regards the allocation of director seats under Section 5 (a) of the "Agreement," and the right of each group of stockholders to cumulative voting in the process of determining who the group's nominees would be under Section 3(a) (1) of the "Agreement." As pointed out by SEC, Section 5(a) of the Agreement relates to the manner of nominating the members of the board of directors while Section 3 (a) (1) relates to the manner of voting for these nominees.

This is the proper interpretation of the Agreement of the parties as regards the election of members of the board of directors.

To allow the ASI Group to vote their additional equity to help elect even a Filipino director who would be beholden to them would obliterate their minority status as agreed upon by the parties. As aptly stated by the appellate court:

"x x x ASI, however, should not be allowed to interfere in the voting within the Filipino group. Otherwise, ASI would be able to designate more than the three directors it is allowed to designate under the Agreement, and may even be able to get a majority of the board seats, a result which is clearly contrary to the contractual intent of the parties.

"Such a ruling will give effect to both the allocation of the board seats and the stockholder's right to cumulative voting. Moreover, this ruling will also give due consideration to the issue raised by the appellees on possible violation or circumvention of the Anti-Dummy Law (Com. Act No. 108, as amended) and the nationalization requirements of the Constitution and the laws if ASI is allowed to nominate more than three directors." (At p. 39, *Rollo*, 75875).

Equally important as the consideration of the contractual intent of the parties is the consideration as regards the possible

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domination by the foreign investors of the enterprise in violation of the nationalization requirements enshrined in the Constitution and circumvention of the Anti-Dummy Act. In this regard, petitioner Salazar's position is that the Anti-Dummy Act allows the ASI group to elect board directors in proportion to their *share in the capital of the entity*. It is to be noted, however, that the same law also limits the election of aliens as members of the board of directors in *proportion to their allowance participation* of said entity. In the instant case, the foreign Group (ASI) was limited to designate three directors . This is the allowable participation of the ASI Group. Hence, in future dealings, this limitation of six to three board seats should always be maintained as long as the joint venture agreement exists considering that in limiting 3 board seats in the 9-man board of directors there are provisions already agreed upon and embodied in the parties' Agreement to protect the interests arising from the minority status of the foreign investors.

With these findings, we affirm the decisions of the SEC Hearing Officer and SEC which were impliedly affirmed by the appellate court declaring Messrs. Wolfgang Aurbach, John Griffin, David P. Whittingham, Ernesto V. Lagdameo, Baldwin Young, Raul A. Boncan, Ernesto R. Lagdameo, Jr., Enrique Lagdameo, and George F. Lee as the duly elected directors of Saniwares at the March 8, 1983 annual stockholders' meeting.

On the other hand, the Lagdameo and Young Group (petitioners in G.R. No. 75951) object to a cumulative voting during the election of the board of directors of the enterprise as ruled by the appellate court and submits that the six (6) directors allotted the Filipino stockholders should be selected by consensus pursuant to Section 5 (a) of the Agreement which uses the word "designate" meaning "*nominate, delegate* or *appoint.*"

They also stress the possibility that the ASI Group might take control of the enterprise if the Filipino stockholders are allowed to select their nominees separately and not as a common slot determined by the majority of their group.

Section 5(a) of the Agreement which uses the word *designates* in the allocation of board directors should not be interpreted in

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isolation. This should be construed in relation to Section 3 (a) (1) of the Agreement. As we stated earlier, Section 3(a) (1) relates to the *manner of voting* for these nominees which is *cumulative voting* while section 5(a) relates to the *manner of nominating the members* of the board of directors. The petitioners in G.R. No. 75951 agreed to this procedure, hence, they cannot now impugn its legality.

The insinuation that the ASI Group may be able to control the enterprise under the cumulative voting procedure cannot, however, be ignored. The validity of the cumulative voting procedure is dependent on the directors thus elected being genuine members of the Filipino group, not voters whose interest is to increase the ASI share in the management of Saniwares. The joint venture character of the enterprise must always be taken into account, so long as the company exists under its original agreement. Cumulative voting may not be used as a device to enable ASI to achieve stealthily or indirectly what they cannot accomplish openly. There are substantial safeguards in the Agreement which are intended to preserve the majority status of the Filipino investors as well as to maintain the minority status of the foreign investors group as earlier discussed. They should be maintained.

WHEREFORE, the petitions in G.R. Nos. 75975-76 and G.R. No. 75875 are DISMISSED and the petition in G.R. No. 75951 is partly GRANTED. The amended decision of the Court of Appeals is MODIFIED in that Messrs. Wolfgang Aurbach, John Griffin, David Whittingham, Ernesto V. Lagdameo, Baldwin Young, Raul A. Boncan, Ernesto R. Lagdameo, Jr., Enrique Lagdameo, and George F. Lee are declared as the duly elected directors of Saniwares at the March 8, 1983 annual stockholders' meeting. In all other respects, the questioned decision is AFFIRMED. Costs against the petitioners in G.R. Nos. 75975-76 and G.R. No. 75875.

SO ORDERED.

Fernan, C.J. (Chairman), Bidin and *Cortés, JJ.*, concur.

Feliciano, J., took no part.