

**CHEMPLEX (PHILIPPINES) INC. AND TOMMY P. S. LIM, PETITIONERS,
VS. HON. RAMON C. PAMATIAN, BENIGNO D. LIM, CARMEN L. LIM,
AQUILES J. LOPEZ AND SIXTO T. ANTONIO, RESPONDENTS.**

G.R. NO. L-37427. June 25, 1974

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In G.R. No. L-37427, Chemplex Philippines, Inc. and Tommy P.S. Lim, Petitioners vs. Hon. Ramon C. Pamatian, Benigno D. Lim, Carmen L. Lim, Aquiles J. Lopez and Sixto T. Antonio, Respondents, the COURT, after considering the allegations of the parties in the voluminous pleadings they have filed and the numerous annexes thereto, as well as the order of the respondent Judge of the Court of First Instance of Rizal (the late Ramon C. Pamatian, who was subsequently appointed Justice of the Court of Appeals), which order, dated August 29, 1973, was issued by him after due hearing and reception of evidence concerning the incident for the issuance of a writ of preliminary injunction as prayed for by the defendants below, now respondents herein, and is now challenged in the instant petition for certiorari, RESOLVED to dismiss said petition for lack of merit, there being no showing of grave abuse of discretion, and to lift the restraining order dated September 11, 1973.

Makalintal C.J., Zaldivar, Castro, Fernando, Esguerra, Fernandez and Aquino, JJ., explaining their votes in separate opinions, Castro, J., concurring in the separate opinion of Makalintal, C.J.; and Makalintal, C.J., and Castro, J., concurring in the separate opinion of Fernandez, J.; Teehankee, Makasiar, Antonio and Munoz Palma, JJ., voted to give due course and to grant the petition, with Teehankee, J., explaining his vote in a separate opinion, concurred in by Makasiar, Antonio and Munoz Palma, JJ.; and Barredo, J, reserved his vote and explained the same in a separate opinion.

The Court further RESOLVED unanimously to direct the respondent Court to act on this case with reasonable dispatch, considering the need for early settlement of the controversy between the parties, and to suggest (with Makalintal, C.J., voting against making such suggestion) to the respondent Court to consider the advisability of a receivership in the case before it.

CONCURRING

MAKALINTAL, C.J.,

I concur fully in the separate opinion of Mr. Justice Fernandez.

Judge Pamatian issued the order now assailed herein after he heard the parties and received relevant evidence bearing on the incident before him, namely, the issuance of a writ of preliminary injunction as prayed for by the defendants. He issued the writ on the basis of the facts as found by him, subject of course, as he himself admitted, considering the interlocutory nature of the injunction, to further consideration of the case on the merits after trial. I do not see that his factual findings are arbitrary or unsupported by the evidence. If anything, they are circumspect, reasoned out. and arrived at after serious judicial inquiry.

This Court is not a trier of facts, and it is beyond its function to make its own findings of certain vital facts

different from those of the trial court, especially on the basis of the conflicting claims of the parties and without the evidence being properly before it. For this Court to make such factual conclusions is entirely unjustified first, because if material facts are controverted, as in this case, and they are issues being litigated before the lower court, the petition for certiorari would not be in aid of the appellate jurisdiction of this Court; and, secondly, because it preempts the primary function of the lower court, namely, to try the case on the merits, receive all the evidence to be presented by the parties, and only then come to a definite decision, including either the maintenance or the discharge of the preliminary injunction it has issued.

The thousands of pages of pleadings, memoranda, and annexes already before this Court and the countless hours spent in discussing the bare allegations of the parties as to the factual aspects of which the members are in sharp disagreement merely to resolve whether or not to give due course to the petition, demonstrate clearly why this Court, in a case like this, should consider only one question, and no other, namely, did the court below commit a grave abuse of discretion in issuing the order complained of, and should answer that question without searching the pleadings for supposed facts still in dispute and not those set forth in the order itself, and in effect deciding the main case on the merits although it is yet in its preliminary stages and has not entered the period of trial.

Ruiz Castro, J., concurs fully in the above opinion of Chief Justice Q.C. Makalintal and in the separate opinion of Justice E.A. Fernandez,

SEPARATE OPINION:

FERNANDO, J.,

As with my brethren, Justices Teehankee, Barredo, and Fernandez, I would like to say a few words. The basic question, in my opinion, is not whether petitioner Tommy Lim is entitled to a remedy, but even on the assumption that such be the case, one not too difficult to make considering the vigor and learning with which his cause is championed by Attorney Gonzalo W. Gonzales, must it come from this Court? After two protracted hearings and over two thousand pages of pleadings and memoranda, so it was noted by Justice Teehankee, the presentation by distinguished panel of counsel of both parties being exhaustive, and, at times, exhausting, an affirmative answer, for me at least, is not indicated. I shall explain why.

The opening sentence of the then Justice, later Chief Justice, Concepcion, in *Aytona v. Castillo*,^[1] supplies my starting point. Thus: "It is well settled that the granting of writs of prohibition and mandamus [as well as certiorari] is ordinarily within the sound discretion of the courts, to be exercised on equitable principles, * * *"^[2] My reading on equitable remedies, admittedly haphazard and unmethodical, as historically conceived and applied in Anglo-American jurisprudence, if I do not misinterpret such illustrious treatise writers as Story^[3] Bispham,^[4] Pomeroy,^[5] and Keeton and Sheridan^[6] persuades me that this Court is not called upon to proceed further.

1. It could exercise its discretion thus under the oft-quoted maxim: "He who comes into Equity must come with clean hands." It is, according to Pomeroy, "a universal rule guiding and regulating the action of equity courts in their interposition on behalf of suitors for any and every purpose, and in their administration of any and every species of relief."^[7] Chafee, who was not too insistent on such a maxim being rigorously applied, noted that it had its origin in an opinion of an English jurist, Chief Baron Eyre in 1787, of the Exchequer, and not of the Court of Chancery. He did state therein "that a man must come into a Court of Equity with clean hands. * * *"

After a cursory appraisal of the pleadings, such a thought has come to mind. This is not to say that what was said by one party against the other is entitled to credence. Nor is this to prejudice the merits of the controversy, much less to attach blame to either group. It is merely to stress that under such circumstances, it may be more advisable

either to allow the lower court to proceed with dispatch or to transfer the forum to the Court of Appeals, which is in a better position to appraise the facts. Nor is this all. There is the belief in certain legal circles that unless a suitor can show indubitable legal rights, the discretion of the judiciary being thus circumscribed, struggles between prototypes of what was referred to by Roosevelt as economic royalists, do not automatically elicit, especially from the higher tribunals, an affirmative response to the plea that they be heard. So I would interpret Radin's Manners and Morals of Business.[8] Even this Court, in *Fieldman's Insurance Co., Inc. v. Vda. de Songco*,[9] did take note that "the morality of the business world is not the morality of institutions of rectitude like the pulpit and the academe, * * *." [10] Perhaps, that accounts for the need for a theologian like Obenhaus to write *Ethics for an Industrial Age*. [11] Such a consideration may be peripheral rather than crucial. But for me, they weigh sufficiently to preclude further inquiry by this Court.

2. Even more compelling for me for the result reached is that the certiorari jurisdiction of this Court was precisely expanded to allow a greater freedom as to the controversies deemed sufficiently meritorious for it to rule upon. It does not admit of doubt then that the amount involved in the controversy is hardly decisive. A dispute over a small sum of money, if fraught with implications vital for the state of law, has a more valid claim to its attention. It is not the interest of the parties as such, but the significance it possesses in terms of its doctrinal value, that supplies the criterion. Chafee had occasion to refer to an opinion of Justice Frankfurter which implies that what is decisive is a question of import for public policy presented, not a mere adjudication of adversary rights between the two litigants.[12] At any rate, such a mode of viewing the matter is not likely to be productive of injustice to the main protagonists before us who, considering their economic status, are very likely, to paraphrase that caustic but realistic critic of law and of life, Professor Rodell, to be able to protect themselves in the clinches. Considering that after the time and attention paid to this litigation, there are still aspects that continue to pose serious questions and considering the many other cases involving more important issues not so much of property but of liberty, I do not feel that the Court's discretion should be exercised in favor of petitioners. It was stressed by Justice Laurel, one of the chief architects of the 1935 Constitution, that precisely the minimum appellate jurisdiction of this Tribunal on factual matters was limited to all criminal cases in which the penalty imposed is death or life imprisonment[13] So it is under the present Constitution[14] As he had occasion to point out, the provision adopted was in the nature of a compromise between the view of the first Chairman of the Judiciary Committee in 1934 of the Constitutional Convention, former Justice Norberto Romualdez, then delegate from Leyte, who advocated that the Supreme Court should be a real *cour de cassation*[15] and the opposite view, likewise firmly held, that it should continue to be an ordinary appellate court of error as was then the practice. Moreover, he said that it is a cause for satisfaction that in thus confining jurisdiction over facts to this Court on matters affecting life and liberty, the Constitutional Convention anticipated a similar controversy between the so-called Hughes and Brandeis views on how certiorari jurisdiction should be exercised when property rights are involved, and deciding correctly in favor of freedom.[16] At any rate, even on the assumption made mention of at the outset, that Tommy Lim is entitled to a remedy, it does not have to come from this Court. The Court of Appeals, as the ultimate trier of facts, may be a better forum.[17]

Hence my vote. I trust that a halt would thus be called to the plethora of words to which of late this Court has been subjected and there be an end, at long last, to the needless luxuriance of language.

[1] L-19313, January 19, 1962, 4 SCRA 1.

[2] *Ibid.*, , 17-18.

[3] Cf. Lyon, *Story's Equity Jurisprudence*, 14th ed. (1941):'

- [4] Bispham's Principles of Equity, 11th ed. (1931).
- [5] Pomeroy, Equity Jurisprudence, 5th ed. (1941).
- [6] Keeton and Sheridan, Equity (1969).
- [7] 2 Pomeroy, op. cit., 91.
- [8] Cf. Radin, Manners and Morals of Business (1939).
- [9] L-24833, September 23, 1968, 25 SCRA 70.
- [10] Ibid., 76.
- [11] Cf. Obenhaus, Ethics for an Industrial Age (1965).
- [12] Chafee, op. cit., 4.
- [13] Cf. Article VIII, Sec. 2, par. 4 of the 1935 Constitution.
- [14] Cf Article X, Sec. 5, par. 2(d).
- [15] Cf Von Mehren, The Civil Law System, 83-85 (1957).
- [16] Cf. St. Joseph Stock Yards Co. v. US, 298 US 38 (1936).
- [17] Cf. Breslin v. Luzon Stevedoring Co., 84 Phil. 618(1949).

OPINION IN SUPPORT OF MY VOTE TO
DISMISS THE PETITION FOR CERTIORARI

FERNANDEZ, J.:

I find it necessary to explain briefly my vote, in view of the Dissenting Opinion of Justice Teehankee and the Reservation Opinion of Justice Barredo.

I voted to dismiss the petition for certiorari (without giving it due course), because the challenged order of the respondent Judge, the Hon. Ramon C. Pamatian (afterwards elevated to the Court of Appeals but now deceased), dated August 29, 1973, is correct. To say the least, there was no "grave abuse of discretion" in its issuance.

I noticed that the records of the case have become very voluminous because of the so many annexes attached to the pleadings and the repetition of statement of facts and arguments in the various memoranda.

Why do I say that the challenged order of August 29, 1973 of Judge Pamatian is correct? Said order can speak for itself.

Petitioners (plaintiffs in the court below), and the private respondents (defendants in the court below), fought for the control of the Eastern Plywood Corporation (EPC for short). The fact, however, is that as of the special meeting of the stockholders of said corporation held on April 23, 1973, the books of the corporation showed that petitioner Tommy P. S. Lim had only one share; the petitioner CHEMPLEX had no share; the respondent Benigno D. Lim had 12,300[1] shares. His wife and co-respondent Carmen L. Lim had 3,600 shares. The respondent Aquiles J. Lopez had 600 shares. The respondent Sixto T. Antonio had no share (he was sued as corporate secretary of EPC. Sixto L. Orosa had 12,899 shares; and Jose S. Orosa had 600 shares.[2]

All the shares are common shares and therefore with voting rights. And those present in the meeting, using these

shares in the exercise of their rights, elected the following directors to serve for a term of one year until their successors shall have been elected and shall have qualified, to wit: Benigno D. Lim, Carmen L. Lim, Aquiles J. Lopez, Tommy P.S. Lim and Jose S. Orosa (the latter was elected although he was absent). Sixto Orosa who was present at the meeting and who was nominated, declined. It must be noted that petitioner Tommy P.S. Lim attended the stockholders' meeting and himself nominated Jose S. Orosa.

There was no protest then on the part of anybody, much less of the petitioners, to the holding of said stockholders' meeting of April 23, 1973. Petitioners' letter of April 26, 1973 (Exh. "Y-17"), attacking the validity of said meeting, came too late.

The new board then agreed to have its first meeting on April 30, 1973,[3] and in that meeting, a general reorganization of top level officers was made. The pertinent portions of the minutes of said meeting of the Board read as follows:

"The meeting was called to order at 6:30 p.m. with Mr. Benigno D. Lim chosen to preside and Atty. Sixto T. Antonio as Secretary, who reported that there existed a quorum.

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"After due deliberations, the Board of Directors adopted the following —

"RESOLUTION NO. 73-01

"On motion which was duly seconded,

"BE IT RESOLVED, as it is hereby resolved, that the following be declared duly elected to the following offices:

President & General Manager

—

Mr. Benigno D. Lim

Vice President & Treasurer

—

Mrs. Carmen L. Lim

Corporate Secretary & Legal Counsel

—

Atty. Sixto T. Antonio

Operations & Marketing Manager

—

Mr. Mariano Velasco

Executive Assistant of the President & Assistant Treasurer

—

Mr. Leo Penala, Sr.

Assistant Corporate Secretary & Special Assistant to the President

—
Atty. Angel G. Ronquillo

Chief, Equipment & Maintenance Division
—

Mr. Joseph Lim

"UNANIMOUSLY APPROVED.

"Each of the officers so selected and present in the meeting, accepted the office to which he/she was elected.

Report of Management

"Considering that Mr. Tommy P.S. Lim, who is in charge of submitting the report of Management for the past year, is absent, the Board of Directors decided to defer action on the report of the operations of the corporation for the period ending April 30, 1973. It then directed that the past Management submit a written progress report of the corporation as soon as possible, in accordance with the assurance given by Mr. Tommy Lim during the last special meeting of the stockholders of the corporation on 23 April 1973.

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"After due deliberations, the Board adopted the following —

"RESOLUTION NO. 73-06

"On motion which was duly seconded,

"BE IT RESOLVED, as it is hereby resolved, that the AGREEMENT dated 7 September 1973, together with the Memorandum of Agreement dated 6 May 1971, which is attached and therewith incorporated as an integral part of said AGREEMENT (of 7 September 1971) BE DECLARED automatically considered null and void and of no force and effect whatsoever;

"BE IT RESOLVED, FURTHER, as it is hereby resolved, that Resolution No. 3, series of 1971, of the Board of Directors of the Eastern Plywood Corporation, accepting and approving the proposal dated- 6 May 1971 for the development and reorganization of EPC by Chemplex, Phils. Inc., be hereby RECALLED AND REVOKED;

"BE IT RESOLVED, FINALLY, as it is hereby resolved, that all positions occupied by Mr. Tommy Lim in the management of Eastern Plywood Corporation be DECLARED VACANT and notices to all creditors and parties concerned and the necessary publication in the newspapers of general circulation be immediately effected.

"UNANIMOUSLY APPROVED."

The principal arguments of the petitioners, as plaintiffs in the court below, have been disposed of by Judge Pamatian in his aforesaid order of August 29, 1973, as follows;

"It is contended by the plaintiffs that these acts principally of the defendants are illegal, they being in violation of the by-laws of EPC, of the May 6, 1971 agreement, and of plaintiffs' rights as owners of two-thirds of the capital stock of EPC. The Court disagrees.

"The Court observes that plaintiffs and principally plaintiff Tommy Lim had full knowledge of all these corporate acts above-mentioned; plaintiff Tommy Lim received his copy of the notice of stockholders' meeting of EPC on April 12, 1973, or a good eleven (11) days before the meeting of the stockholders on April 23, 1973. He and plaintiff Chemplex certainly had ample time to inquire from the corporate secretary about the

status of their shareholdings in EPC; they had all the time to notify EPC's corporate secretary about the status of their shareholdings in EPC; they had all the time to notify EPC's corporate secretary of their alleged acquisition of 10,000 shares from the Orosas and request for registration and transfer of the same in their names in the books of the corporation; they had plenty of time to seek for remedial measures in case of refusal or failure of the corporate secretary of EPC to register their shareholdings in EPC; as a matter of fact, they equally had sufficient opportunity to question the validity or legality of the call if they wished. These they did not do, neglected and failed to do. Instead, plaintiff Tommy Lim attended the stockholders meetings as called, participated therein by even nominating Mr. Jose Orosa to the board and finally accepting his election thereto. It was only after having received the notice and. did nothing to question it, after attending the stockholders' meeting and actively participated therein that it dawned on the plaintiffs that they are in danger of being removed as managers of EPC. They are now estopped to question the regularity of the said stockholders meeting, or the legality of the election of the directors at such meeting or the validity of the acts of the newly elected directors as a necessary and logical consequences thereof. Their (plaintiffs') letter of April 26, 1973 (Hxh. "Y-17");, indeed as aptly pointed out by the defendants, came much too late. [Italics Ours]

"The removal of the plaintiff's particularly plaintiff Tommy him, as managers of EPC by the new board of EPC even on the face of the May 6, 1971 agreement, is a valid exercise of corporate act and the supreme expression of corporate authority. Their remedy, if any, would be against EPC itself for damages for breach of contract. [Italics Ours]

"Lastly, plaintiffs take the stance that preliminary injunction should not issue in favor of the defendants to maintain and preserve their present pretension which are the very controversies involve in the case at bar, but, rather, it should be maintained to preserve the last, actual, peaceable, uncontested status between the parties prior to said controversy, which according to them was the relationship between the parties prior to the special stockholders' meeting of April 23, 1973. The defendants excepted to this as misleading and unrealistic for according to them, plaintiffs cannot gratuitously and arbitrarily pinpoint some segment of the past, freeze it and call it 'status quo.'

"Let us look at the whole situation. As earlier mentioned, the crux of the issue in this case is the corporate struggle between the parties for dominance in EPC and the consequent right to manage its business affairs. Will the equities in this case be better served by maintaining plaintiffs as managers of EPC despite the fact that their claim of ownership of some 20,000 EPC shares, except one share, is yet undetermined and unresolved, or will justice be best served and the balance of convenience as between litigants be attained by recognizing the validity and regularity of the stockholders' meeting of EPC held on April 23, 1973 which was attended by practically all the known stockholders of EPC as appearing in its corporate books and the subsequent official acts of the new Board? In dealing with the legal rights and interests of the parties to this case, the Court rules and so holds that justice will be best served and the balance of convenience as between them be attained by recognizing the regularity, validity and legality of the April 23, 1973 meeting of the stockholders of EPC and the subsequent official acts of the new Board. [Italics ours]

"It may, however, be insisted that equitable considerations demand that plaintiffs should get some kind of equitable remedy for the various advances plaintiff Chemplex made to EPC and for having acted as solidary guarantor for a number of items or equipment it allegedly purchased in EPC's behalf, which plaintiffs claim now amounts to a staggering sum of more than P13,000,000.00. Without attempting to rule on the correctness or incorrectness of the claim of the plaintiffs that they have exposed themselves, pursuant to the May 6, 1971 agreement, for EPC, in the huge amount of more than P13 million, the Court cannot help but consider this representation of the plaintiffs to be highly debatable and questionable in the light of the following: (1) The Report of the External Auditor of EPC, Joaquin Cunanan & Co. (Annex 6, affidavit of Benigno Lim), shows that they were not able to obtain confirmation of significant balances with debtors and creditors, including stockholders, and have not satisfied themselves by means of other procedures as to their reasonableness, because they found the system of internal accounting records inadequate for the purpose of providing

appropriate controls over cash transactions and inventories or for the purpose of providing reliable financial information; (2) neither short term loans extended by creditors to EPC, which term loans extended by creditors to EPC, which had already matured (one of which matured on May 31, 1971) been liquidated (even an amount as small as P5,000.00) nor is there a showing that they were extended or restructured (p. 3 of external auditor's report, supra). The Court, at this stage, is not convinced of the soundness and accuracy of such claim for advances by the plaintiffs to EPC. Besides, the same is reparable and can and must properly be included as one of the many conflicting claims between the parties that the Court must decide in the final adjudication of this case on its merits. [Italics ours]

"The Court is well aware of the huge amount involved in this case and the almost undetermined and irreparable damage that EPC and its stockholders may suffer if this struggle for corporate control between the contending parties continue and remain unabated and unrestrained. As reflected in the external auditor's report, supra, EPC suffered a loss from the operations in the sum of P7,526,231.00 and a negative stockholders equity of P4,520,231.00 as of December 31, 1972, this notwithstanding the external auditor's difficulties in determining the reasonableness of the financial data they gathered because of the inadequacy of the system of internal auditing controls and the accounting records and appropriate controls over cash transactions and inventories. If this would partly reflect the degree of management the plaintiffs have done for EPC, and this certainly reflects so, then this Court should and must extend its protective arm and prevent a graver and irreparable loss to EPC, and its stockholders. This Court is left with no alternative but to grant the writ of preliminary injunction prayed for by the defendants, for which it has the power to do. And taking into consideration the whole situation and the equities in this case, defendants who are the registered owners are entitled to the said relief as against the plaintiffs whose claim of ownership over a controlling block of shares in EPC is yet undetermined and unregistered (*Silen vs. Vera*, 64 Phil. 868-872, *Villasanta, et al. vs. Baulisla, et al.*, 36 SCRA 160-161)." [Italics ours]

On the question of ownership of the shares of stock of the Eastern Plywood Corporation, Judge Pamatian said the following in his disputed order:

"To the Court, the matter of ownership of plaintiffs of 20,000 liPC shares is the meat of the issue in the main case. While it is true that plaintiffs have presented evidence to prove that they are the owners of 10,000 EPC shares by virtue of the September 7, 1971 agreement (lixh. "B") it is equally true and evidence that the defendants have also presented evidence to prove that they (plaintiffs) do not own any shares in the liPC except the one share registered in the name of plaintiff Tommy I Am. Thus, when plaintiffs presented the December 6, 1971 letter of Mr. J.G. Tirona of FNCB (Exh. "C") to prove that they have assumed the amount of P2,250,000.00 in accordance with the September 7, 1971 agreement and that FNCB actually consented and agreed to said assumption, the defendants, on the other hand, presented the September 19, 1972 letter of Mr. D. N. Vi. stan of FNCB (Annex 2-M, affidavit of Benigno Lim) to prove that there was no such assumption, but on the contrary, to show that it is a reiteration of FNCB's position that it understood plaintiffs' participation in the equity and management of EPC not to correspond to a reduction of the outstanding obligations of EPC to FNCB. In like manner, the parties are poles apart in their explanation of the transaction that happened on December 1, 1971 involving the issuance and exchanges of plaintiff Chemplex's and EPC's Checks (Exhs. "D", "D-1", "D-2" "F" "F-1" and "F-2"). Similarly, the plaintiffs and the defendants are at loggerheads on the circumstances that led to the signing of the waivers by defendants Benigno Lim, Carmen Lim and Aquiles J. Lopez (Exhs. "G" "G-1" and "G-1") the former maintaining that these waivers were executed in connection with the continuing negotiations for Chemplex to purchase the total capital stock of EPC, whilst the latter insisting that the same were signed by them in compliance with the December 1, 1971 letter of FNCB (Annex 2-B, affidavit of Benigno Lim) and on the clear understanding that said waivers are limited to the number of shares subject-matter of the September 7, 1971 agreement and never intended to be an all-embracing and general waiver (affidavits of Aquiles J. Lopez and Carmen L. Lim; supplemental affidavit of Benigno Lim). In the light, therefore, of these conflicting position of the parties, it cannot be said at the state of the proceeding that the plaintiffs are the owners of 10,000 shares. [Italics ours]

Regarding the claim of plaintiffs that they now own an additional 10,000 EPC shares then belonging to the Orosas (Sixto, Jr. and Jose), as evidenced by Exhibit "Y-15", this again is being contested by the defendants on several grounds: First, there was no notification of this transaction to the corporate secretary and hence no recordal or registration thereof (affidavit of Sixto T. Antonio); second, it is a violation of Article VII of the Articles of Incorporation of EPC;^[4] and, third, that Sixto Orosa, Jr. was present at the stockholders' meeting of April 23, 1973 and even presided said meeting as chairman of said meeting (Annex 5-B, affidavit of Benigno Lim). Without passing on the validity or nullity of the transfer of 10,000 EPC shares from the Orosas to the plaintiffs, but in the light of the admission of Mr. Jose Orosa that he did not notify the corporate secretary of the transaction (t.s.n., pp. 135-136, May 14, 1973), the clear statement of the corporate secretary that he was not notified of the same (affidavit of Sixto T. Antonio) and the non-mention of any notification by plaintiff Tommy Lim in his affidavit (Exh. "Y"), this Court holds and so rules that the said transfer from the Orosas to plaintiff Chemplex of 10,000 EPC shares is not valid until the said transfer is entered and noted upon 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 and the number of shares transferred (Sec. 35, Corporation Law)."*[Italics ours]*

It must also be noted that the management contract between CHEMPLEX (Philippines) and Tommy P.S. Lim, on the one hand, and the respondents Benigno Lim, Carmen Lim, Aquiles Lopez, and the Orosas, on the other hand, has already expired as of now. It was for a minimum period of three years (the maximum period is not stated). The agreement is dated May 6, 1971, although formal takeover of management was effected on June 1, 1971. Consequently, the three-year period has already expired as June 1, 1974, (hereby rendering moot and academic, as of now, the claim of petitioners that they have right to continue managing the affairs of EPC.

Of course, it has been contended by the petitioners that the running of this three-year period has been suspended by the issuance of the writ of preliminary/mandatory injunction in favor of the private respondents and against the petitioners, in the disputed order of August 29, 1973 of Judge Pamatian. And this preliminary injunction issued by Judge Pamatian was enforced on August 31, 1973, upon the filing and the approval of the bond. However, said preliminary injunction was made ineffective with the issuance by this Court of a restraining order of September 11, 1973. And so, if there was an interruption of the management because of the court proceedings, the interruption was only from August 30, 1973 when the preliminary injunction issued by Judge Pamatian became effective, until it was suspended with the issuance by the restraining order of the Court on September 11, 1973, or a period of 12 days. Consequently, even if we are to add all 12 days to June 1, 1974, the expiration date of the three-year period of the management contract, the same would have expired just the same on June 13, 1974. We are now June 17, 1974.

As I have said, I am of the opinion that the disputed order of Judge Pamatian is correct. But granting for the sake of argument that there was error on his part, that would not justify Our setting the same aside, because Section 1, Rule 65 of the Rules of Court allows the issuance of a writ of certiorari only when the error amounts to a "grave abuse of discretion." The meaning of the phrase "grave abuse of discretion" has already been clearly established by jurisprudence that we need not cite anymore the authorities to support the same. To emphasize how serious the abuse must be, authorities even went to the extent of saying that by "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction. And so, in the case at bar, where there are sufficient facts and reasons to sustain the disputed order of Judge Pamatian, the same cannot be set aside on the ground of grave abuse of discretion.

The disputed order of Judge Pamatian did not constitute a grave abuse of discretion, and specifically:

1. In recognizing the regularity and validity of the stockholders' meeting of April 23, 1973 and the resolutions of the new Board of Directors approved in their meeting of April 30, 1973. Under established jurisprudence, the new Board of Directors are entitled to the recognition and may not be removed pending litigation by means of any

restraining order or writ of preliminary injunction. In fact, they are the ones entitled to a preliminary injunction to restrain interference with the exercise of their rights as such. This was what Judge Pamatian did. The removal as manager of petitioner Tommy P. S. Lim is a valid exercise of corporate power. A corporation can change its manager for reasons it considers sufficient. If the manager believes he has been illegally dismissed he has a right to sue for damages. In the meantime, however, corporate decisions must be respected.

2. In not passing in the meantime on the validity of the resolution of the new Board of Directors cancelling and annulling the management agreement in favor of petitioner Tommy P. S. Lim, in view of the serious conflicting allegations of the parties on the matter, and on the ownership of the 10,000 shares allegedly transferred to the petitioner CHEMPLEX, which conflicting allegations (and/or evidence) are recited in the disputed order of Judge Pamatian.

3. In holding that the sale of the 10,000 shares of the Orosas to the petitioner is not valid as against the corporation until the transfer is entered and noted upon the books of the corporation; and in finding that at this stage of the proceedings it cannot rule that the petitioners are the owners of said shares in view of the serious opposing allegations of the parties as summarized by Judge Pamatian in his disputed order. Neither the petitioners nor the Orosas revealed such alleged sale at the stockholders' meeting of April 23, 1973. Furthermore, such sale contravenes Art. VII of the Articles of Incorporation of the EPC which gives the first priority to the other stockholders of record and the second priority to the corporation itself, should a stockholder decide to sell his or her shares.

It is true that the petitioners were the first ones to go to Court and the injunction granted by Judge Pamatian in his disputed order in favor of the private respondents was due to a counterclaim contained in their answer. But who deserves a preliminary injunction must be determined on the basis of substantial facts and reasons, and not on the basis of who filed the action first.

This case has been discussed a number of times and to my mind, well enough. When the six members of this Court voted not to give due course to the petitioners' petition and to deny the same for lack of merit, they found sufficient basis to support their votes. The sooner we dispose of this case on the basis of the firm positions each and everyone of us has taken, the better it will be for all, including EPC itself. The case can go on in the trial court for a definite decision of all the issues among the parties.

[1] Annex "29" of Private Respondents' COMMENT, dated September 28, 1973.

[2] Idem.

[3] The following is the passage, on this point, from the disputed order of Judge Pamatian on August 29, 1973: "x x x On April 23, 1973, all the stockholders of record, except Mr. Jose Orosa, were in attendance. Mr. Sixto L. Orosa, Jr., chaired the meeting, assisted by defendant Sixto T. Antonio, secretary. After some discussions as indicated in the minutes (Annex 5-B, affidavit of Benigno D. Lim) the stockholders went to the actual business as indicated in the notice. They first tackled the management report and then proceeded to the election of the new set of directors. Mr. Sixto L. Orosa, Jr., as chairman of the meeting, opened the table for nomination of candidate for the positions of director of EPC. Defendant Aquiles J. Lopez nominated defendants Benigno Lim and Carmen Lim, Benigno Lim in turn nominated Aquiles Lopez, Sixto Orosa, Jr. and Tommy Lim; plaintiff Tommy Lim nominated Jose Orosa; Mr. Sixto Orosa, Jr. declined his nomination. There being no other nominations, defendants Benigno Lim, Carmen Lim, Aquiles Lopez, plaintiff Tommy Lim and Mr. Jose Orosa were considered unanimously elected directors to serve for a term of one year until their successors shall be elected and qualified. Each of the directors, except Mr. Jose Orosa, accepted the office to which he was elected.

The new Board then agreed to hold its first meeting on April 30, 1973”

[4] Which gives the prior right to buy, first,, to the other stockholders, and second, to the corporation, in case a stockholder sells his shares.

SEPARATE OPINION

TEEHANKEE, J.:

I vote for the granting of due course to the petition[1] and for the maintenance of the temporary restraining order of September 11, 1973 or for the issuance in lieu thereof of a regular writ of preliminary injunction with bond until decision is rendered on the merits of the petition.

On the facts and documents of record petitioners have made out a compelling case of being entitled to seek recourse to the "strong arm of equity" and to the issuance of the writ of preliminary injunction sought by them from respondent court for the preservation and protection of their rights and interests during the pendency of the principal action.

Respondent court in not only denying the preliminary injunction timely sought by petitioners with their complaint filed on April 27, 1973 against respondents (defendants) ousting them from the management, control and possession of Eastern Plywood Corporation (EPC) which they held for already two years under a three-year management contract (dated May 6, 1971 and to expire on May 6, 1974) and from their majority ownership of 20,000 EPC shares representing two-thirds of its capital stock[2] but instead ordering their very ouster by granting in its questioned order of August 29, 1973 respondents' counter-petition for a writ of prohibitory/mandatory injunction upon a mere P50,000-bond enjoining petitioners "from continuing with the operations and management of EPC" and commanding them "to allow opposing defendants to operate the concession and the corporation" manifestly committed a grave abuse of discretion that calls for the corrective process of certiorari.

In the simplest possible terms, a party be it a corporation or natural person, cannot just declare a management contract cancelled prior to its expiration and go to court and secure a mandatory injunction to enforce the ouster.

The Court that denies injunctive relief to the plaintiff-manager and instead upon counter-petition slaps a mandatory injunction commanding the ouster commits the gravest abuse of discretion. This is compounded when the premature and arbitrary ouster is that of a manager, who actually owns 2/3 of the corporation's capital stock (although not recorded in the stock register) and could not possibly be dislodged or ousted in a fair voting.

Corporations are composed of natural persons and the legal fiction of a separate corporate personality is not a shield for the commission of injustice and inequity.

Essential allegations

The essential allegations of the petition may be briefly summarized as follows: By virtue of the May 6, 1971 memorandum agreement[3] between petitioners and respondents Benigno Urn, his wife Carmen L. Lim and Aquiles J. Lopez (who together with Sixto L. Orosa, Jr. and Jose Orosa, not made parties as they recognize petitioners' rights, then constituted the five and only shareholders-owners of EPC), 10,000 EPC shares were sold to petitioners (with the remaining 20,000 EPC shares held in equal parts of 10,000 shares each by the Benigno Lim spouses and by the Orosas) and petitioner Tommy Lim with a qualifying share was given the management of EPC for a three-year period from May 6, 1971 to May 6, 1974. The agreement was duly ratified by EPC and petitioners took over its management on June 1, 1971 and in discharge of their commitment petitioners secured and rendered financial assistance to make EPC operational; petitioners inter alia purchased almost P7.5 million

worth of logging equipment with petitioner Chemplex signing as solidary guarantor in favor of USIPHIL, Inc., made various financial advances to EPC amounting to almost P14 million, with Benigno Lim as nominal president of EPC co-signing with petitioner Tommy Lim all EPC checks and receiving a monthly salary and allowance of P4,000 from June, 1971 to the filing of the case below in April 1973. Petitioners also in compliance with the agreement assumed EPC's obligations with the First National City Bank (FNCB) for P2.25 million and reduced the selling stockholders' personal guarantees to the bank to the same extent (from P5 million to P2.75 million).

Negotiations followed for the purchase by petitioners of the remaining 20,000 EPC shares of the Benigno Lim spouses and the Orosas. On February 28, 1973, petitioners concluded with the Orosas a final agreement for the purchase by Chemplex of the remaining 10,000 EPC shares of the Orosas thereby making petitioners the owners of 20,000 shares or 2/3 of EPC's capital stock.

On March 1, 1973, respondent Benigno Lim wrote petitioners (by way of answer to the latter's proposal of December 28, 1972 to buy out said respondent's remaining block of 10,000 EPC shares) proposing in turn to buy back petitioners' 10,000 EPC shares for P2.15 million payable in 30 equal monthly installments without interest and offering to pay Chemplex' advances to EPC at P50,000 a month with 12% interest, which was rejected by petitioners.

On April 2, 1973, respondent Benigno Lim wrote again to petitioners withdrawing his previous letter of March 1, 1973 and claiming for the first time that petitioners had not complied with the terms of their agreement for Chemplex to assume EPC's obligations to FNCB to the extent of P2.25 million, notwithstanding the bank's express admission as creditor that such assumption had been validly effected.

This signalled, according to the petition, respondents' scheme to violate petitioners' management contract over EPC and their rights as majority owners of 20,000 EPC shares or 2/3 of its capital stock. A special stockholders' meeting of EPC was called on April 23, 1973 and when Sixto Orosa declined his nomination to the board the remaining five registered stockholders namely respondents Benigno Lim and his wife, Carmen Lim, and Aquiles Lopez, Jose Orosa (who was absent) and petitioner Tommy Lim were "considered unanimously elected directors." With the three respondents Benigno Lim and his wife Carmen Lim and Aquiles Lopez then forming a bare majority of the "new board" (with the inclusion of respondent Carmen Lim vice Sixto Orosa who declined his nomination as against the previous board composition of two respondents, two Orosas with petitioner Tommy Lim), said petitioner wrote a formal letter on April 26, 1973 stating his objections to the election of the "new board" and its announced plans to oust petitioners from their management contract and rights as majority owners of 20,000 EPC shares and asking that respondents recognize petitioners' ownership of 20,000 EPC shares and record the same in the books of the corporation, and that otherwise they would take court action.

As this proved unavailing, petitioners filed on the next day April 27, 1973 their complaint with respondent court for recognition of their management contract with restraining order or injunction against their being ousted or interfered with in the operation and management of EPC for the maintenance of the status quo and for mandamus against respondent Antonio as EPC secretary to record in its books Chemplex' ownership of 20,000 EPC shares.

Respondent court did not act on petitioners' urgent motion for a restraining order and respondents Benigno Lim, Carmen Lim and Lopez held the scheduled April 30, 1973 board meeting by themselves as the "new board" with respondent Antonio as corporate secretary (with Tommy Lim and Jose Orosa absent) and declared EPC's 1971 management contract with petitioners as "automatically considered null and void and of no force and effect whatsoever" and declaring Tommy Lim's positions in EPC as "vacant."

Respondents filed their opposition and counter-petition for the issuance of a mandatory injunction to remove and

oust petitioners from the operation and management of EPC and to command petitioners to allow them instead to operate the concession and the corporation as officers of EPC. In their answer of June 14, 1973, they denied petitioners' claims and asserted their right to recover the management and operation of EPC and its concessions by virtue of petitioners' alleged non-compliance with their undertaking to assume EPC's obligations to the FNCB to the extent of P2.25 million and alleging further that petitioners had been mismanaging and "milking" EPC. They further cavalierly dismissed petitioners' claims of having made huge advances and secured financial assistance totalling over P20 million as "pure gimmickry" without any specifics and waving aside the plain import of documents of record, such as the FNCB's affirmation that petitioners had indeed assumed P2.25 million of EPC's P5 million-liability to it (with the consequent substantial relief from the burden of having to pay the heavy interests accruing on such amount, which was shifted to petitioners) and petitioners' undertaking the solidary guaranty for almost P7.5 million worth of equipment purchased from USIPHIL, Inc.

Respondent court set petitioners' injunction petition for hearing and required petitioners to present witnesses (Messrs. Jose Orosa who affirmed the Orosa sales of a total of 13,500 shares of EPC to petitioners and S.F. Hefner III of the FNCB who affirmed Chemplex' assumption of P2.25 million of EPC obligations with the bank and the corresponding reduction of respondents' personal guarantees with the bank from P5 million to P2.75 million). Later, respondent court granted respondents motion that the claims for the issuance of preliminary injunction be submitted on affidavits and documents instead of in the form of oral testimony (after turning down an earlier motion to the same effect of petitioners) and thereafter respondent judge handed down the disputed order of August 29, 1973 denying petitioners' application for injunction and instead granting respondents' counter-application for a prohibitory/mandatory injunction.

Upon the filing on September 6, 1973 of the petition at bar, this Court issued its temporary restraining order of September 11, 1973 restraining enforcement of the questioned orders and granting petitioners the injunctive relief for the preservation and protection of their rights during the pendency of the case below as sought by them of, and denied by, respondent court by restraining respondents as follows:

"xxx xxx xxx (a) from ousting the petitioners herein from the management, control and possession of Eastern Plywood Corporation and from their ownership of 20,000 EPC shares representing two-thirds of the total capital stock of said corporation; (b) from continuing, based on said disputed order of August 29, 1973, in the management, control and operation of EPC and (c) from continuing with the exercise of rights pertaining to the majority stockholders of the said corporation." [4]

Two hearings were held on October 4, 1973 and on March 28, 1974 by this Court and extensive pleadings, memoranda and documents covering over 2,000 pages were filed by the parties. The second hearing was set by resolutions of March 12, 1974 and in a second resolution of March 19, 1974, the Court resolved "to limit the said rehearing requiring the parties (a) to consider and inform this Court as to the possibility of a compromise or amicable settlement of the case, and, failing which, as to the advisability of proposing to the lower court the appointment of a receiver; and (b) to inform this Court as to what has been done in compliance with its resolution of December 21, 1973."

The case is as ready for a reasoned decision as any case could be but the majority has voted for a summary dismissal of the petition on the ground that no grave abuse of discretion on the part of respondent court which heard the parties before issuing the disputed injunction order has been shown. This was the generic overall reason given for the majority's peremptory dismissal of the petition, although in the deliberations in getting down to specifics, individual members of the majority voiced separate views (either untenable or inapplicable) that considerations of equity do not count much in intra-corporate struggles for power, that the April 23, 1973 stockholders' meeting of EPC resulting in respondent Benigno Lim getting a majority of the "new board" (with

Sixto Orosa's declination of his nomination) was tantamount to an ouster of petitioners from the EPC management, that petitioners were "outmaneuvered" in said April 23, 1973 meeting and cannot now seek injunctive relief, and that this Court is not a trier of disputed facts which are yet for the trial court to try and determine.

Undisputed documented facts

To clear the boards as it were, it should not be lost sight of that the basic facts of petitioners' complaint constituting their cause of action are not disputed, are based on documentary evidence, and have in fact been admitted by respondents at the hearings, as follows:

- Under their 1971 agreements, petitioners purchased a block of 10,000 EPC shares (6500 shares of Benigno Lim and 3500 shares of the Orosas) and under a three-year contract took over the management of EPC since June 1, 1971 continuously, peaceably and uncontestedly until the eruption of the present controversy in April, 1974;
- Under their February 28, 1973 agreement with the Orosas, petitioners bought out the Orosas' remaining block of 10,000 shares, and thereby purchased a total of 20,000 EPC shares or 2/3 of its capital stock;
- While such purchases of 20,000 EPC shares have not been recorded on the books of EPC (and such recording is now the object of their complaint in the case below) respondents do not deny the fact of such documented sales to petitioners of 20,000 EPC shares having been made;
- The Orosas, as owners-sellers of a total of 13,500 EPC shares, do not question and admit the sale of said shares to petitioners; and
- Respondents questioned as "null and void" the sale of their 6,500 EPC shares and 3-year management contract with petitioners only in April, 1973 after the same had been implemented and petitioners had taken over the management uncontestedly for nearly two years.

Disputed facts: respondents' allegations in counterclaim for rescinding sale and management contract

On the other hand, the alleged ground advanced by respondents for reneging after two years on their 1971 agreements, viz that petitioners did not assume EPC's obligation with FNCB by P2.25 million and correspondingly reduce their P5 million personal guarantees to the bank by the same amount to P2.75 million is denied by the very creditor, the FNCB which affirms that such assumption and reduction of liability had been in fact effected by petitioners. (So equivocal has been respondents' position on this that they could not even reply straight to the bank's demand letter as late as July 3, 1973 that Benigno Lim state formally whether he considered EPC's original loan P5 million granted by the bank on January 29, 1971 as outstanding still if Chemplex had not assumed P2.25 million thereof and reduced it to P2.75 million by virtue of the May 6, 1971 sale of 10,000 EPC shares as now claimed by him or whether the same had been in fact, as attested by the bank itself, reduced by Chemplex to P2.75 million in due compliance with its undertaking.[5])

In other words, what are alleged facts that still have to be tried and determined by the trial court are the counter-allegations of respondents as to the alleged non-compliance by petitioners with the 1971 agreements as basis for their counterclaim to rescind and declare "null and void" the sale to petitioners of their 6500 EPC shares (as against the Orosas' contrary position that the sale as to their 13,500 shares has been fully consummated although not recorded) as well as the three-year management contract of petitioners (notwithstanding that for almost 2 years, petitioners had uncontestedly taken over management of EPC.)

Grave abuse of discretion

With these premises, it appears crystal-clear that respondent court in issuing its disputed writ of prohibitory

mandatory injunction ousting petitioners from their management and control of EPC pursuant to their management contract and commanding petitioners to turn over such management and control to respondents notwithstanding that respondents have not shown a clear and undisputed right thereto manifestly acted with grave abuse of discretion, which calls in turn for the corrective process of a counter-injunction from this Court, for the following considerations:

1. Respondent court violated the fundamental rule of injunctions that a mandatory injunction will not issue in favor of a party whose rights are not clear and free of doubt or are as yet undetermined,[6] despite its statement of the correct premise in its order that the "conflicting claims and interest" of the parties and "their rights, or the lack of them, will yet be determined in the actual trial of the merits of this case." [7]
2. Respondent court violated another fundamental rule of injunctions that for the simple reason that no advantage may be given to one to the prejudice of the other, a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto[8] (and submits, as petitioners have done, undisputed documentary evidence), despite its recognition of the fact that petitioners assert to be "the actual owners of two-thirds (20,000 EPC shares) of the total capital stock of EPC." [9]
3. Respondent court violated still another fundamental rule of injunctions that the primary purpose of an injunction is to preserve the status quo, i.e. the last actual peaceable uncontested status which preceded the controversy.[10] The status quo in the case at bar is certainly the actual, uncontested management by petitioners of EPC from May 6, 1971 to April 30, 1973 pursuant to an almost two-year implementation of their May 6, 1971 management contract until the present controversy when respondents sought to declare the same "null and void" in their solo "new board" meeting of April 30, 1973 notwithstanding petitioners' letter-protest of April 26, 1973 and filing of the suit below with petition for preliminary injunction on April 27, 1973. This was the status quo which petitioners were entitled to preserve by means of a preliminary prohibitory injunction against respondents' wrongful efforts to oust them.[11] Instead, respondent court sustained respondents' untenable contention that the status quo was "the situation of the parties prior to the signing of the aforementioned May 6, 1971 agreement," [12] and issued its mandatory injunction ousting petitioners from the management of EPC as if they were never actually managing the same for almost two years prior to the controversy.
4. Respondent court violated still an equally fundamental rule that rescission of a (management) contract or removal of a corporate officer (petitioner Tommy Lim) from office cannot be effected by mandamus or mandatory injunction. In granting respondents' counter-petition for a mandatory injunction ousting petitioners from the management and possession of EPC and its concessions under respondents' thesis that respondents were entitled to cancel the same for alleged non-compliance and abuse by petitioners (matters yet to be duly proven and which respondents certainly cannot be shown to have in any way established clearly and beyond doubt at this stage respondent court practically granted all of the relief (except damages) sought by respondents in their counterclaim without trial and by sheer arbitrary prejudgment.
5. As glaring examples of such arbitrary prejudgment, respondent court took cognizance that "equitable considerations demand that [petitioners] should get some equitable remedy" for their "various advances . . . made to EPC" and for acting as "solidary guarantor" for the purchase of equipment claimed to "amount to a staggering sum of more than P13,000,000.00." Yet, while stating that it was not "attempting to rule on the correctness or incorrectness of the claim of (petitioners)," it dismissed the same as being "highly debatable and questionable" in the light of the external auditors' claim that "they were not able to obtain confirmation of significant balances with debtors and creditors" and that some small short-term loans had not been liquidated or restructured, grossly disregarding the documents presented by petitioners in support of their claim, e.g. the purchase from USIPHIL,

Inc. solidarity guaranteed by Chemplex for almost P7.5 million and the fact that EPC before petitioners took over the same under the management contract was already non-operational and could no longer obtain any credit accommodations with its large losses in operations and negative stockholders' equity.[13] Worse, as we know now, while EPC had zero funds before petitioners took over under their management contract in June, 1971, EPC had P808,000.00 on deposit in the Security Bank at the time of respondent court's mandatory injunction order of August 29, 1973 which respondents lost no time in withdrawing about P690,000.00 thereof[14] and disbursements whereof in the total amount of P429,451.50 by respondent "B.D. him for a/c EPC allegedly from September 1973 - March, 1974 as reported in respondents' compliance dated March 29, 1974 are all unsupported and without any detail or explanation whatsoever.

Respondent court sought to make the assuaging statement that petitioners' claim of more than P13 million advances to EPC "is reparable and can and must properly be included as one of the many conflicting claims between the parties that the court must decide in the final adjudication of this case on its merits." Reparable on a P50,000 bond, the utter inadequacy of which as against the claimed exposure of petitioners totalling over P20 million the majority has plainly disregarded? And if such conflicting claims have yet to be decided and adjudged by the trial court on its merits, how then could it prejudge against the "soundness and accuracy of such claims for advances by the (petitioners) to EPC" to rule against petitioners' plea for equity and to order their precipitate ouster?

6. Respondent court violated still another fundamental rule that a party should not be deprived of control and possession until the court is prepared to adjudicate the controverted right in favor of the other party[15] and until the controverted question who rightfully owns the controlling shareholding interest in EPC is adjudicated, the status quo should be preserved and the party in control and possession of the corporation, viz, petitioners, should not be ousted.

Here petitioners claim to own by purchase 20,000 EPC shares or 2/3 of its capital stock (including Benigno Lim's 6,500 shares sold in May 6, 1971) while respondents' claim can at most be 16,500 shares if it succeeds in getting a judgment annulling his sale of 6,500 EPC shares to petitioners on the ground of non-compliance of their undertaking to reduce EPC's liability to FNCB. In the face of FNCB's affirmance that EPC's liability to it was so reduced from P5 million to P2.75 million by Chemplex' assumption, does there appear to be any clear and indubitable merit in respondents' claim to warrant petitioners' peremptory ouster by a mandatory injunction?

7. Respondent court further grossly disregarded the provision of law that "Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore, xxx xxx xxx" as provided by Article 1385 of the Civil Code.

Thus assuming that respondent Benigno Lim could prove his alleged ground for rescission of the sale of his 6500 EPC shares to petitioners as against the documented fact of P2.25 million consideration received for the 10,000 EPC shares (including 3500 shares of the Orosas) whereby EPC's P5 million obligation to the FNCB was reduced by said amount to P2.75 million through petitioners' assumption of P2.25 million of said liability (reducing accordingly respondents' personal guarantees to the bank by the same amount), respondent court could not prematurely effect such rescission of Benigno Lim's sale of 6500 EPC shares or grant respondents the benefit of such rescission by ousting petitioners by a preliminary mandatory writ without first determining and adjudging affirmatively or otherwise said respondents' liability in turn to return the consideration and benefits received by him (such as the release of petitioners from the solidary guaranty of over P7 million to USIPHIL, Inc., the release of petitioners from their assumption of EPC's liability to FNCB in the sum of P2.25 million and the return of whatever amounts may be determined to have been advanced to EPC by petitioners claimed at almost P14

million) and assuring proper restitution to petitioners as a consequence of the rescission of sale as mandated by law.

8. Respondent court grossly disregarded the established principle of law that as among the contracting parties the sale of corporate shares even without recordal thereof in the books of the corporation is valid and binding. More so is this true in the case of a closed corporation like EPC where there are only six (6) shareholders reduced further to four (4) shareholders after the Orosas sold out all their shareholdings (13,500 shares) to petitioners.[16]

Respondents cannot deny the sale of the first block of 10,000 EPC shares that they made to petitioners. They approved the same as the only members-directors of EPC (with the 2 Orosas) and turned over the management to petitioners on June 1, 1971 under the 3-year management contract. Respondents cannot deny nor question the Orosas' sale of their remaining 10,000 EPC shares to petitioners, as duly documented and affirmed by the Orosas.

Thus notwithstanding that the sales of the total of 20,000 EPC shares to petitioners remain pending recordal in the EPC books which is the object of the suit below and which it is obvious, is and will be resisted to the hilt by the corporate secretary, respondent Sixto Antonio (who instead of being the neutral party that he should be is openly resisting petitioners' complaint, having filed the answer to the complaint in the case below as a lawyer of record for respondents as defendants therein,[17] respondents cannot deny knowledge of the fact that petitioners are in truth and in fact the owners by purchase of 13,500 EPC shares of the Orosas and of 6500 EPC shares of respondent Benigno Lim or a total of 20,000 EPC shares or 2/3 of its capital stock while respondents own the other 10,000 EPC shares or 1/3 of its capital stock (with Benigno Lim however seeking in his counterclaim below to rescind or annul the sale of his 6500 shares). Parenthetically, it may be recalled, however, that at the second hearing respondents' counsel, Atty. Garcia, assured that they would record upon presentation the sale of the Orosas' shareholdings to petitioners.

In the deliberations, it was also stressed for the majority when attention was called to petitioners' actual ownership of a 2/3 majority of EPC's capital stock and their action for mandamus below to compel the transfer on EPC's share register of the total 20,000 EPC shares acquired by them through purchase from Benigno Lim and the Orosas, as to why petitioners took so long to record the share transfers (2 years in the case of the first block of 10,000 shares purchased in May, 1971 and actually only 2 months in the case of 10,000 Orosa shares bought in February, 1973).

Aside from the fact of record that all EPC shares were pledged to FNCB and the securing of the bank's consent to the transfer took some time as it was tied up to petitioners' assumption of P2.25 million of EPC's P5 million liability to the bank, and the obvious element of neglect in not recording such transfers (since for the same period of almost 2 years, petitioners remained uncontestedly in management of EPC), it may well be asked; Is this delay or neglect in formally recording the transfers of any relevance? Does it make any difference? Did the non-recording of the transfers make petitioners any less the owners of 20,000 EPC shares representing 2/3 of its capital stock insofar as the transferors (Benigno Lim and the Orosas) are concerned? As Benigno Lim was and is the president and chief executive officer of EPC, can he as the transferor-seller and respondent Antonio (his corporate secretary) validly disclaim any actual knowledge of the transfer notwithstanding its technical non-recording on EPC's share register? Did such non-recording or delay cause any prejudice at all to Benigno Lim as transferor?

9. Under these facts, respondent court's rationalization that "(T)he removal of the plaintiffs particularly plaintiff Tommy Lim, as managers of EPC by the new board of EPC even on the face of the May 6, 1971 agreement, is a valid exercise of corporate act and the supreme expression of corporate authority. Their remedy, if any, would be against EPC itself for damages for breach of contract,"[18] strikes one as hollow reliance on empty form and

technicality rather than on substance and truth.

It is offensive to one's sense of justice and equity and will plainly appear to effect injustice to oust petitioners from the management of EPC when they in fact own 2/3 thereof on respondent court's wrong reasoning that petitioners are now estopped to question "the regularity of the EPC stockholders' meeting of April 23, 1973 and the legality of the election of directors," when petitioners had done nothing to mislead respondents but on the contrary were taken advantage of upon Sixto Orosa's declination of his nomination to the board (which led to Benigno Lim's wife being included in the "new board") and upon realizing that the "new board" of three respondents was intending to cancel their management contract, timely but in vain applied through their complaint of April 27, 1973 for a prohibitory injunction so that their lawful management contract and rightful ownership of 2/3 of EPC's capital stock may not be wrongfully and oppressively interfered with by respondents.

10. Respondent court grossly disregarded the substance and truth when he ruled and prejudged as above quoted, that the ouster of petitioners "is a valid exercise of corporate act and the supreme expression of corporate authority."

It begged the very question submitted by petitioners that respondents could not falsely pretend to speak "the supreme expression of corporate authority" for the plain and simple reason that under the documented sales made by respondents and the Orosas to petitioners (unrecorded but valid as between them as the contracting parties in a 5-man corporation) said petitioners and not respondents are the ones entitled to validly exercise the "supreme expression of corporate authority" as the actual owners of two-thirds of EPC's capital stock.

What to do then since Benigno Lim claims the sale of his 6500 shares should be cancelled for alleged non-compliance of conditions by petitioners which claim has yet to be tried and determined and which if Benigno Lim ultimately wins would revert the 6500 shares to him and leave him with a total of 16,500 shares against petitioners' 13,500 shares if he establishes his nebulous claim for rescission and if he makes proper restitution of the consideration and benefits as required by Article 1385, Civil Code, whereas if petitioners ultimately win, they would obtain judicial confirmation of their claim as actual owners of 20,000 shares or 2/3 of EPC's capital stock in accordance with the documented sales. But respondents' claim for rescission is indeed nebulous, since they have not even pleaded the same as a cause of action nor asked for such relief and declaration of rescission in their counter-claim below (merely for accounting and damages, *infra*, pp. 16-17) and have merely gratuitously assumed their May 6, 1971 sales agreement to be "null and void" by their own self-serving declaration (as against the Orosas who recognize the validity of the sale of their 3500 shares in the same agreement).

Jurisprudence, the law and equity all give the same answer of preserving the status quo, as shown above. In the leading case of *Madrigal vs. Rodas*, [19] this Court ruled that while the question of who is the lawful owner of the disputed controlling block of shares was to be decided in the pending controversy, "it is but proper and just that one party should not be allowed to take, advantage of his favored position to the damage and prejudice of the other" and therefore reinstated[^] preliminary injunction obtained by Madrigal (as the registered holder of 96 million shares of the corporation which the corporation through five of seven directors refused to honor and recognize as they favored Magdalena Estate, Inc. to whom they had issued a certificate for 94 million shares of the corporation which Madrigal in turn with two minority directors assailed as void and overissued) against Magdalena Estate and the corporation against voting or making any use of Magdalena Estate's disputed shares, after the trial court had arbitrarily dissolved the writ after several previous unsuccessful attempts on Magdalena Estate's part.

This Court stressed that in such cases of disputes over the ownership of corporation shares, "a writ of preliminary injunction is the most appropriate and effective remedy to prevent any injustice that may be committed by one

party against the other" and directed the trial court to expedite its determination of the controversy between the parties, in ruling that the dissolution by the lower court of Madrigal's preliminary injunction against Magdalena Estate "constituted a grave abuse of discretion" and annulled and set aside the same.

Respondent court utterly misread the Madrigal doctrine when it sought to distinguish the same by saying that "in the Madrigal case, the issue hinges on the validity or invalidity of certain overissued and void shares. In the present case, the issue is who shall prevail as between a 'registered owner' of EPC shares as against the claim of a controlling undetermined and unregistered block of shares. In the Madrigal case, it concerns the disposition of corporate assets. In the present case, it concerns management and control of EPC."

On the contrary, the Madrigal doctrine fully applies here and petitioners' case presents an even stronger case, for here there is no question or dispute of the same controlling block of shares being sold to two conflicting claimants (Madrigal and Magdalena Estate) but a documented sale of 6500 EPC shares by respondent Benigno Lim to petitioners which Benigno Lim would now belatedly after two years repudiate on unclear grounds (to say the least) and a documented and undisputed sale of 13,500 shares from the Orosas or a total of 20,000 shares representing 2/3 of EPC's capital stock which undisputedly in fact were sold by the majority shareholders including Benigno Lim to petitioners. Respondents' claim to still being the majority owner could only come about if his counterclaim for cancellation of the sale of his 6500 shares to petitioners is ultimately adjudged in his favor. As already noted, while petitioners precisely now demand in their complaint the recording of their 20,000 shares, such non-recordal does not affect the validity of the sales if said shares as between the parties.[20]

Both the Madrigal and the present cases - contrary to respondent court's misimpression — deal with the right to the management and control of the corporations concerned (Consolidated Investments, Inc. in the Madrigal case) and as to who can vote and make use of the shares in question and this Court pointed the way that pending determination of the controversy, preliminary injunction should issue so that respondents may not take advantage of their favored position (being in control of the stock register through their co-respondent Sixto Antonio) to prejudice and damage petitioners by blocking registration of petitioners' 2/3 majority shares and worse pretend to vote these very shares of petitioners to oust them from their management of EPC under their 3-year contract.

On the premise then that petitioners cannot vote the 65 00 shares sold to them and now sought to be cancelled by Benigno Lim during the pendency of the principal action, still it is quite clear as above indicated that petitioners cannot be ousted from management in a fair voting since petitioners undisputedly own and can vote 13,500 shares (sold by the Orosas) against the 10,000 shares undisputedly owned by Benigno Lim.

Thus, respondents have remain inexplicably silent as to why Benigno Lim as EPC president has not called last April the annual stockholders' meeting of the corporation for 1974 in violation of the Corporation Law and EPC's by-laws, so that petitioners as majority shareholders could proceed and obtain the corresponding majority representation in the EPC board of directors with the election of their nominees and thus render moot Benigno Lim's attempt through the April 23 and April 30, 1973 'new board' resolutions to usurp petitioners' majority rights and effect therewith their very ouster.

In fine, in the Madrigal case, the respondent court therein wrongfully dissolved the injunction to which Madrigal was entitled, hence this Court restored this injunction by a counter-injunction against said respondent court. In the case at bar, respondent court wrongfully denied the injunction against ouster to which petitioners are entitled, hence, this Court itself in effect issued the injunction by a counter-restraining order against respondent court. No plausible justification has been shown for the dissolution of the Court's counter-restraining order much less for the summary dismissal of the petition at bar, pending trial and adjudication on its merits of the principal action pending before respondent court.

11. Respondent court thus violated the very criteria provided by this Court in Rule 58, Section 3 on grounds for issuance of preliminary injunction as the strong arm of equity to preserve and protect the plaintiffs rights during the pendency of the principal action. The cited Rule specifically enumerates three grounds or cases where the protective writ of injunction may be properly applied for and granted,[21] to wit;

"(a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually"; viz, petitioners are entitled to the recognition and recording of their 2/3 majority 20,000 EPC shares and to restrain respondents from pretending falsely to be the majority and dishonoring the management contract placing petitioners in management of EPC for a three-year period;

"(b) That the commission or continuance of sonic act complained or during the litigation or the non-performance thereof would probably work injustice to the plaintiff viz, petitioners' ouster from the management of EPC under their three-year contract and in gross disregard of the huge advances and financial commitments made and undertaken by them claimed to total over P20 million in pursuance of their commitment would not only probably but certainly work grave injustice to petitioners; or

"(c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiffs rights respecting the subject of the action, and tending to render the judgment ineffectual"; viz, respondents' ousting petitioners and taking over the management of EPC and usurping and taking petitioners' 2/3 majority rights to effect their very ouster as ordered by respondent court's improvident mandatory injunction would not only probably but certainly violate petitioner's rights respecting the subject of the action (that their management contract and 2/3 majority shareholders' rights be honored rather than defiled) and render such judgment as they may ultimately obtain ineffectual.

12. Respondent court has committed grave abuse of discretion in a two-fold manner: first, in denying petitioners their application for prohibitory injunction to which they have shown themselves to be entitled under all three grounds enumerated in the cited Rule, as stated in the preceding paragraph 12; and second, in granting respondents' counter-application for a mandatory injunction to oust petitioners from their contractual management of EPC and commanding petitioners to turn over the operation and control of EPC to respondents (notwithstanding petitioners being the actual owners of 2/3 of EPC's capital stock), despite petitioners not having discharged the burden of showing a case that is clear and free from doubt and dispute.

Petitioners have made out a compelling case for injunction; a three-year management contract that entitled them to an injunction from ouster and for their rights as 2/3 majority owners of EPC not to be usurped and subverted to effect their very ouster which would be the very nadir of injustice and inequity and which if not enjoined would violate their rights and render ineffectual and nugatory ultimate judgment in their favor.

Have respondents made out an equally compelling case to justify respondent court's mandatory injunction under the very same criteria of the cited Rule? Have they made out a case of being entitled to the ouster of petitioners from the management of EPC ahead of the trial and a judgment in their favor? What injustice or damage would be caused then by petitioners' continuation in EPC's management under the very contract given them by respondents and pursuant to which petitioners have made huge advances and financial commitments for EPC (e.g. USIPHIL guaranty) in the millions and respondent Benigno Lim has received a handsome monthly salary and allowance of P4,000 as nominal president? In what way would non-issuance of the mandatory injunction and awaiting the presentation of evidence and decision on the merits tend to render ineffectual a judgment in respondents' favor?

Respondents' principal causes of action in their counterclaim (with their answer of June 14, 1973) are for accounting (of allegedly illegally collected moneys of EPC and improper disbursements thereof) and for P500,000 — moral damages, P500 — exemplary damages and P200,000 — attorneys' fees, in the remote event of their

substantiation and being tenable under the law, would in no way be lost or prejudiced without the mandatory injunction.

13. Respondent court's admission in its disputed order that "(T)he Court is well aware of the huge amount involved in this ease and the almost undetermined and irreparable damage that EPC and its stockholders may suffer if this struggle for corporate control between the contending parties continue and remain unabated and unrestrained,"[22] accentuates its grave abuse of discretion in not having observed and abided by the cited cardinal rules on injunctions and fundamental principles of justice and equity. Had it but done so, it would have ordered the preservation of the status quo and expedited the determination of the controversy on its merits, rather than issued the disputed mandatory injunction arbitrarily prejudging the case and prematurely granting respondents all the relief sought in their counterclaim (except damages) and grossly disregarding that whatever its decision on Benigno Lim's claim for rescission of his sale of 6500 shares may be, petitioners hold far greater stakes as EPC shareholders (13,500 shares from the Orosas) and creditors and guarantors of EPC claimed to be over P20 million which stand to be irreparably lost

14. A number of the members of the Court voting peremptorily for dismissal of the petition appears to have realized the grave if not irreparable damage that would result therefrom. Hence, in the Court's second resolution of March 19, 1974[23] express mention was made that the second hearing of March 28, 1974 would require the parties' views on a compromise or amicable settlement or the advisability of the appointment of a receiver. Still, the second resolution of March 19, 1974 was issued as much to limit the scope of the rehearing to the items stated, in view of the majority's aversion to inquiries and interpellations being made by the members of the Court at such second rehearing on the factual allegations and counter-allegations of the parties at least to clear the muddy waters and be in a position to gauge the equities and probabilities of the case in the light of the actionable documents.

EPC was much more insolvent (if the term be correct) than now after petitioners' cash advances and infusion of credit and financing in two years of management but EPC is still very insolvent with a negative stockholders' equity. (It was just beginning to be apparently viable when the case broke with respondents trying to wrest back its management). Since respondent court's issuance of its mandatory injunction of August 29, 1973 for the ouster of petitioners, things have stood still for EPC. Petitioners could no longer comply with their commitment to pay USIPHIL, Inc. EPC's overdue accounts of over P5.7 million (per amicable settlement effected by petitioners on May 31, 1973 whereby they paid USIPHIL P1 million and made monthly amortizations of P180,000.00 from June thru August, 1973) and USIPHIL is now poised to proceed with its extrajudicial foreclosure of EPC's logging equipment without which EPC would revert to a state of utter collapse.[24]

But the prevailing majority of the Court has just voted for peremptory dismissal and has chosen to ignore the other lesser alternatives of receivership* under Rule 59 as "the most convenient and feasible means of preserving or administering" EPC to prevent its total collapse and to avoid irreparable prejudice and loss both to petitioners and respondents as EPC stockholders, and as already mentioned, the alternative of imposing an adequate bond requirement on respondents for the maintenance of respondent court's mandatory injunction that would at least afford some measure of protection and safeguard to petitioners.

15. A final word. It is indeed tempting — and correct in some cases — where the Court is inundated with a flood of confusing verbiage (not excluding respondent court's disputed injunction order of August 29, 1973) to dismiss peremptorily a petition for certiorari on the ground that petitioner has failed to make out a clear case of grave abuse of discretion on the part of respondent court which heard the parties and exercised its "sound judicial discretion" in issuing the disputed injunction (or denying the requested injunction) which the appellate courts are loath to interfere with or set aside except in clear cases of manifest abuse.

But it is well to reiterate certain established criteria set down by our laws, rules of court and jurisprudence for the determination of grave abuse of discretion and which serve to show that the term is not as amorphous as it is sometimes described by commentators and text writers: —

- The circumstance that a lower court issues or denies injunction after notice and hearing is not the only criterion for determining that it has not committed a grave abuse of discretion. Otherwise, so long as the lower court holds a hearing and affords both parties an opportunity to be heard, the respondent court and the party it favors would acquire immunity from the corrective writ of certiorari. Section 5 of Rule 58 on injunctions expressly proscribes the ex-parte issuance of preliminary injunctions except in cases of a showing of "great or irreparable injury";
- "Sound judicial discretion" is circumscribed and delimited by the cardinal principles of law above restated in consonance with the role of injunction as the strong arm of equity to protect and preserve the rights of the aggrieved party during the pendency of the principal action. Rule 58, Section 3 on injunctions specifically enumerates the three grounds and cases wherein the writ may properly be applied for and granted;
- "Sound judicial discretion" is no license to frustrate or undo the law and principles of injunction by defeating its objectives of preserving the status quo and keeping faith with the imperatives of justice and equity;
- Thus, grave abuse of discretion is generally defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. A gross refusal to grant injunction in a proper case under the Rule is grave abuse of discretion. So is the improvident granting of a mandatory writ that subverts the status quo, oppressively changes the relation of the parties and causes great if not irreparable prejudice;
- There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law;[25]
- There is grave abuse of discretion when the disputed act of the lower court violates the fundamental norms and rules of injunction or it constitutes an act beyond the limits of discretion effecting an injustice, when it is clearly against the logic and effect of such facts as are presented by the aggrieved party in support of his application or when it is exercised to an end or purpose not justified by and clearly against reason and the undisputed facts;
- The rule is even more strict in the issuance of mandatory injunctions, as was issued here: "(M)ore than this, as a mandatory injunction 'usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing.' Per contra, it may issue 'in cases of extreme urgency; where the right is very clear, where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently arbitrarily interrupted by the defendant, than to establish a new relation.'"[26] A mandatory writ "should be issued only where there is a willful and unlawful invasion of the (applicant's) right and the latter's case is one free from doubt and dispute"[27]
- The most convincing argument, to paraphrase *Customs vs. Clorihel*[28] is that to enforce respondent court's mandatory writ is to arbitrarily prejudge and practically decide the case without basis in fact and in law in favor of respondents even before a hearing on the merits. To proceed with the case below on the merits would then be a useless ceremony. As stated in *Lucero vs. Dacayo*[29] the duty devolves upon the appellate courts in the exercise of their supervisory control over lower courts and through the prerogative writ of certiorari to protect the rights of an aggrieved party against a patent abuse of discretion.

Under these established criteria and principles, respondent court's issuance of the mandatory writ totally

overthrowing the status quo and ordering petitioners' ouster from their contractual management of EPC and allowing respondents to usurp petitioners' 2/3 majority share in EPC to effect their very ouster constitutes a manifest case of grave abuse of discretion that calls for the corrective process of a counter-injunction from this Court to forestall the gravest injustice and oppression.

For all the foregoing considerations since there has been ample discussion of the petition (although in the past a substantial vote for due course although failing of the majority required to render a decision^[30] as in the case at bar was generally deemed sufficient to grant due course so as to afford the Court further time and opportunity to study the case and deliberate on its merits or lack thereof and to hand down a reasoned decision rather than to stonewall the petition with a minute resolution of peremptory dismissal) I vote—unless the majority^[31] wishes to call for further argument—that the case be deemed submitted for decision, that the petition be granted and that the writ of certiorari prayed for therein be issued.

Makasiar, Muñoz Palma, and Antonio, JJ., concur.

[1] Filed with this Court on September 6, 1973.

[2] The first block of 10,000 shares was acquired on May 6, 1971 by petitioners from respondent Benigno Lim (6,500 shares) and from the Orosas (3,500 shares); and the second block of 10,000 shares was acquired by them on February 23, 1973 from the Orosas alone who thereby sold out the remainder of their EPC shareholdings. The sales are duly documented.

[3] Formalized in an agreement dated September 7, 1971.

[4] Rollo, pp. 304-305.

[5] Annex 66, Rollo, p. 849.

[6] Vera vs. Area, 28 SCRA 532; Com. of Customs vs. Cloribel, 19 SCRA 234, 245; Namarco vs. Cloribel, 22 SCRA 1033, 1038.

[7] Mimeographed Injunction Order, Annex M, petition, p. 7.

[8] Detective and Protective Bureau vs. Cloribel, 46 SCRA 255; Rodulfa vs. Alonso, 76 PHIL. 225.

[9] Idem, p. 7.

[10] Rodulfa vs. Alonso, *supra*, fn. 8.

[11] Villasanta vs. Bautista, 36 SCRA 160.

[12] Respondents' memorandum of Oct. 11, 1973, at p. 2; Rollo, p. 955; Italics copied.

[13] Mimeographed Injunction Order, Annex M, petition, pp. 14-15; Italics supplied.

[14] Annex 7 of urgent motion of Sept. 15, 1973, Rollo, p. 360.

[15] Detective & Protective Bureau vs. Cloribel, 26 SCRA 255.

[16] Sec. 52 of the Corporation Law (Act 1459) provides for a stock and transfer book to record the stockholders and their transfers of stock and that "no such transfer shall be valid except as between the parties until they are noted upon such share register . . ." See Sec. 35 of the same law to same effect.

[17] Annex I, petition, Rollo, pp. 213-239.

[18] Mimeographed injunction order, Annex M, petition, p. 13.

[19] 80 Phil. 252, 255.

[20] "Even prior to the transfer on the books, the transferee is entitled, as against the transferor, to all benefits attached to or out of the shares and is responsible for all the burdens and liabilities growing out of their ownership." 12 Fletcher Cyc. Corps. p. 458.

[21] 3 Moran's 1970 Ed., p. 59.

[22] Mimeographed injunction order, Annex M, petition, p. 15; *Italics supplied*.

[23] *Supra*, at page 5, *hereof*.

[24] See USIPHIL'S "motion for clarification of restraining order on behalf of mortgage creditor USIPHIL, Inc." dated May 14, 1974.

* See Addendum, *infra* at page 22.

[25] *Alafriz vs. Nable*, 72 Phil. 278, 280, per Chief Justice Moran.

[26] *Com. of Customs vs. Cloribel*, 19 SCRA 234; *Italics supplied*.

[27] *Namarco vs. Cloribel*, 22 SCRA 1033, 1038 and cases cited.

[28] *Supra*, fn. 26, at p. 247.

[29] 24 SCRA 402, per Reyes, J.B.L., J.

[30] Formerly, a majority vote of six votes for an 11-member Court; now, a majority vote of eight votes for cases before the (15-member) Court en banc (except constitutional and death cases which require a qualified majority vote of ten votes) and of five votes for cases before the Court in division.

[31] When the Court voted on the fate of the petition on June 6, 1974, a majority of six members, namely, Makalintal, C.J. and Ruiz Castro, Fernando, Esguerra, Fernandez, and Aquino, JJ. voted to DISMISS the petition. Four members, namely, Makasiar, Antonio and Palma, JJ. with the writer voted to GRANT DUE COURSE and maintain the restraining order or injunction. Barredo, J. reserved his vote, while Zaldivar, J. was absent at the time of voting. Hence, although not an absolute majority of the actual membership of the Court, those who voted for dismissal are herein referred to as the majority.

This separate opinion shall be released together with the resolution of dismissal at a later date, which resolution shall show the final and complete voting as determined on such date.

A D D E N D U M:

When this separate opinion together with the reservation of Justice Barredo and the separate opinion of Justice Fernandez were taken up by the Court at its session of June 18, 1974, the suggestion of Justice Barredo that the petition be given due course in view of the Court being evenly or almost evenly divided was turned down by the same majority of six members (*supra*, fn. 31) who had voted earlier on June 6, 1974 to summarily dismiss the petition. (Justice Zaldivar's vote remained undetermined, as he was absent.)

The same majority of six members, however, expressed their conformity to the Court's asking respondent court to consider the advisability of the appointment of a receiver for the purpose of preserving and administering EPC

and protecting its shareholders during the pendency of the principal action below. The dissenting members of the Court join the majority in this, as a lesser alternative to prevent EPC's "total collapse" and "to avoid irreparable prejudice and loss both to petitioners and respondents as EPC stockholders," as already mentioned in paragraph 14 hereof (supra, at page 18 hereof)

There was also unanimity of the Court (for obvious reasons) on the additional suggestion that respondent court be directed to act on the principal case below with reasonable dispatch and all deliberate speed, so that the rights of the parties may be determined as soon as possible.

Finally, with reference to the statement on page 4 of Justice Barredo's reservation (distributed on June 13, 1974) to the effect that at the first tentative vote taken some two to three months ago, only the writer was for granting due course to the petition (in the event that the statement has not as yet been accordingly rectified). Justices Makasiar and Palma wish to place it on record that from the beginning they had voted to give due course to the petition.

Makasiar, Muñoz Palma, and Antonio, J.J., concur.

RESERVATION

BARREDO, J.:

I reserve my vote.

With due respect to the feeling of the other members of the Court, I am afraid we have not sufficiently explored all the angles of this case which might help us in arriving at a more basic and comprehensive resolution of the real issues between the parties.

For instance, to my mind, in our deliberations on the question of whether or not respondent court gravely abused its discretion in issuing the impugned writ of preliminary injunction in favor of private respondents, We failed to consider what would be the greater probabilities regarding the final outcome of the main controversy which made the parties go to court. The way I look at it, so far, we have been acting only on the old premise that because the trial judge held a hearing and studied and reasoned out his resolution, it is no longer important, much less decisive, whether or not he has committed an error of judgment, as long as he has not acted arbitrarily or without circumspection. On my part, I believe it is high time the Court considered taking a second look at such criterion in deciding cases of petitions for certiorari involving injunctions issued by lower courts. My considered view is that the interests of justice and equity require that an injunction should issue only in favor of the party who has, on the basis of the most ascertainable probabilities, in the light of the circumstances already revealed by the record, the better chance of securing the ultimate judgment in its favor. I cannot relish the idea of sustaining a studied action of a trial judge, even if I am more or less certain that in the long run, in subsequent proceedings or in the final appeal of the case on the merits, the result would be different. I hold it is unfair to all concerned for the Supreme Court to take a course of action that could in a way give rise to false hopes and which will certainly entail for the parties as well as for the courts the unnecessary expense, effort and trouble of a protracted litigation only to end the way it could have ended earlier. Of course, I am referring to instances wherein it is possible for the Court to more or less see clearly who of the parties has a better claim on the merits.

The whole trouble is that in holding to the view that injunction is a remedy in equity, We quite often fall into the temptation of using the jurisprudential yardstick that since the trial judge had acted with circumspection and deliberation, his actuation must be upheld regardless of possible, even discernible, errors of judgment he might have committed, and even if such probable error might adversely affect the merits of the claim of the party against

whom the interlocutory injunction has been granted. I reiterate, the Court should reexamine the jurisprudence on this score, and I feel very strongly that this case affords Us the opportunity to do so, and yet, our deliberations herein have not gone that far. It seems to me that just because the Court has tarried in this case for some time, with off and on casual discussions of one isolated point or another, some of our colleagues would want it to be disposed of without more ado, since anyway, it is not very obvious that the respondent court has acted without any basis.

I am particularly concerned with the observation that intracorporate power struggles are too pragmatic and materialistic to warrant inquiries into the equities involved. I am afraid such a point of view is not proper when what is involved is an equitable remedy that injunction is.

In connection again with the probable final outcome of the controversy between the parties, I perceive that the undisputed facts extant in the record furnish adequate basis for the Court to determine which issues raised in the pleadings here and in the court below are genuine and which of them are not. The fundamental issue here, as I see it, is whether or not the corporate resolution of Eastern Plywood rescinding the management contract with Chemplex is valid. In turn, the proper resolution of that issue depends on whether or not it is true that more than two years before, there had been actually and in fact a sale by Benigno Lim and the Orosas of their majority interests in Eastern Plywood in favor of Tommy Limor Chemplex, since the said resolution was approved after the election of a new board in a special meeting wherein the alleged sale was disregarded. Some members of the Court are of the view that this issue of fact is a complicated one. My considered opinion is that if We just deliberated a little more on it, it can be seen that said issue is not really genuine. Verily, it cannot be made insoluble by the contention that the stock and transfer book of the corporation does not reflect such sale, for there are no third parties involved here and the only persons who could possibly be affected by said sale are those who have actual knowledge of it. If the existence of a corporation cannot be a shield to fraud, I cannot conceive of its stock and transfer book being a cover for taking advantage of a technicality to override an indubitable reality commonly known to all the parties in the controversy.

To make myself clearer, what is probably the genuine issue here is whether or not, as claimed by Benigno Lim, Chemplex has committed acts of mismanagement in violation of the contract, part of the reason for being of which is precisely the sale which is being attempted to be disputed. In other words, the sale of the shares aforementioned could be a reality or not independently of any possible mismanagement by Chemplex of the business of Eastern Plywood to the detriment of Benigno Lim and the rest of the stockholders other than Chemplex or Tommy Lim. And so, whether or not an injunction should have been granted on the basis of such alleged mismanagement is again a different matter from an injunction issued on the actuality or not of the sale of the majority shares of Eastern Plywood to Chempiex or Tommy Lim. Indeed, contrary to what apparently is the impression of some members of the Court, even respondent Benny Lim does not and cannot deny that the aforementioned sale of shares is a reality. What he is claiming is that Chemplex or Tommy Lim has not complied with the terms of the sale because said party failed to make the First National City Bank of New York accept its assumption of portion of the obligation of Eastern Plywood and Benny Lim to said bank, without any allegation, much less any showing at all, however, that he has suffered any substantial damage as a consequence of such alleged breach to entitle him to a rescission. When the fundamental issue in a case does not appear to be genuine, should an injunction issue in favor of the party who raises the same? Is it not grave abuse of discretion on the part of a trial judge to base an interlocutory order on an issue which is not genuine? This point, I would say, has not yet been discussed by us.

The trial court issued a very unusual order of injunction, and again, this aspect of the case has not been sufficiently discussed by the Court. Very importantly, it must be noted that Eastern Plywood and Benigno Lim as

well as the other private respondents are not plaintiffs in the court a quo — they are defendants. It was Chemplex or Tommy Lim that went to court first. And what is most important, they went to the respondent court to ask precisely that Eastern Plywood and the other respondents be enjoined from holding a meeting and approving the impugned resolution rescinding the management contract in question. In other words, when the action in the court below was filed, there was no rescission yet, albeit I am not sure whether or not said respondents had already been served with summons then. But even assuming that they had not yet been summoned, it is not unlikely that they knew about such filing. At the very least, Chemplex had determinedly advised them beforehand and in writing against it, to the extent of announcing that otherwise it would file a court suit. Under these circumstances, the question may be asked, can it be safely said that respondents, who had been hailed to court by petitioners, went to said court with clean hands in invoking the very resolution the approval of which petitioners were precisely asking the Court to enjoin? My own question is, have We seriously discussed this point enough?

Neither have We, in my opinion, sufficiently and adequately, considered in our deliberations the advisability of intimating to the trial court the possibility of appointing a receiver, which appears to be the best way of preserving the subject matter of the controversy until its final outcome. It is no secret that both parties are accusing each other, not altogether without reason, of bad faith, in the sense that each one claims that its adversary would take advantage of any order of the court in its favor and thereby dissipate the money and properties the parties are fighting for. Is it not evident that by granting either party the injunction it prays for, this dismal possibility is enhanced, with the aggravating circumstance that it would come about under the protecting umbrella of a court order? Where is the equity in such a case? But have We discussed these points seriously enough?[1]

Incidentally, I was not present when the initial action of issuing an interlocutory order and requiring comment of respondents on the petition was taken. My impression is that said restraining order has fallen on deaf ears. Indeed, the Court's resolution of December 28, 1973, which We issued upon agreement of the parties has been little respected, if it has instilled any sense of responsibility on the part of the parties at all. It looks like the Court is being taken for granted.

If I am not seriously mistaken, when our first so-called tentative vote in this case was taken more than two or three months ago, only, there were only three definite votes[2] in favor of giving due course to the petition. At the last voting, this number already increased, maintaining with six known votes definitely for dismissal. Accordingly, by rule, perhaps, it would be right to hold that the petition should be considered dismissed. But I would like to close with this thought; Further reflection seems to have convinced some members of the Court to change their original votes. Does not this indicate that perhaps we should deliberate a little more? But if that is not possible, and without myself having to necessarily take a definite stand at the moment, except to state that, for the reasons I have explained above, I am more inclined to believe that it might be best to go deeper into the case by requiring an answer and hearing, and, of course, enforcing strictly meanwhile Our restraining order, unless We can find a way of having a receiver in this case, I would like to recall to the Court that in the past, when we were only eleven as a matter of general practice, unless the Court agreed to take a definitive voting, the opinion of three justices to the effect that a petition should be given due course sufficed for the adoption of that course of action. Supposing I were to vote for giving due course here, to make five votes in favor thereof, will the Court agree that We do so? More, if Justice Zaldivar also votes to give due course, shall We still order the dismissal of the petition? Worse, should there be seven votes to give due course, are We going to be bound by the vote of the minority? Have We sufficiently discussed the point of whether or not it would be the better policy that when the Court is evenly or almost evenly divided, or there is a majority, but less than eight votes in favor of accepting the case, to give due course to a petition in order that the case may be better studied and more properly resolved?

[1] I understand that our resolution will now say something on this point.

[2] Justices Teehankee, Makasiar, and Palma.

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