

**MANUEL A. TORRES, JR., (DECEASED), GRACIANO J. TOBIAS,
RODOLFO L. JOCSO, JR., MELVIN S. JURISPRUDENCIA, AUGUSTUS
CESAR AZURA AND EDGARDO D. PABALAN, PETITIONERS, VS.
COURT OF A...**

G.R. No. 120138. September 05, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition for review on certiorari under Rule 45 of the Revised Rules of Court, petitioners seek to annul the decision of the Court of Appeals in CA-G.R. SP. No. 31748 dated 23 May 1994 and its subsequent resolution dated 10 May 1995 denying petitioners' motion for reconsideration.

The present case involves two separate but interrelated conflicts. The facts leading to the first controversy are as follows:

The late Manuel A. Torres, Jr. (Judge Torres for brevity) was the majority stockholder of Tormil Realty & Development Corporation while private respondents who are the children of Judge Torres' deceased brother Antonio A. Torres, constituted the minority stockholders. In particular, their respective shareholdings and positions in the corporation were as follows:

Name of Stockholder	Number of Shares	Percentage	Position(s)
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Shares

Manuel A. Torres, Jr.	100,120	57.21	Dir./Pres./Chair
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Milagros P. Torres	33,430	19.10	Dir./Treasurer
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Josefina P. Torres	8,290	4.73	Dir./Ass. Cor-Sec.
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Ma. Cristina T. Carlos	8,290	4.73	Dir./Cor-Sec.
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Antonio P. Torres, Jr.	8,290	4.73	Director
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Ma. Jacinta P. Torres	8,290	4.73	Director
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Ma. Luisa T. Morales	7,790	4.45	Director
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Dante D. Morales	500	.28	Director [1]
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In 1984, Judge Torres, in order to make substantial savings in taxes, adopted an "estate planning" scheme under which he assigned to Tormil Realty & Development Corporation (Tormil for brevity) various real properties he owned and his shares of stock in other corporations in exchange for 225,972 Tormil Realty shares. Hence, on various dates in July and August of 1984, ten (10) deeds of assignment were executed by the late Judge Torres:

**ASSIGNMENT DATE PROPERTY ASSIGNED LOCATION SHARES TO
BE ISSUED**

1. July 13, 1984 TCT 81834 Quezon City 13,252

TCT 144240 Quezon City

2. July 13, 1984 TCT 77008 Manila

TCT 65689 Manila 78,493

TCT 109200 Manila

3. July 13, 1984 TCT 374079 Makati 8,307

4. July 24, 1984 TCT 41527 Pasay

TCT 41528 Pasay 9,855

TCT 41529 Pasay

5. Aug. 06, 1984 El Hogar Filipino Stocks 2,000

6. Aug. 06, 1984 Manila Jockey Club Stocks 48,737

7. Aug. 07, 1984 San Miguel Corp. Stocks 50,283

8. Aug. 07, 1984 China Banking Corp. Stocks 6,300

9. Aug. 20, 1984 Ayala Corp. Stocks 7,468

10. Aug. 29, 1984 Ayala Fund Stocks 1,322

225,972 [2]

Consequently, the aforelisted properties were duly recorded in the inventory of assets of Tormil Realty and the revenues generated by the said properties were correspondingly entered in the corporation's books of account and financial records.

Likewise, all the assigned parcels of land were duly registered with the respective Register of Deeds in the name of Tormil Realty, except for the ones located in Makati and Pasay City.

At the time of the assignments and exchange, however, only 225,000 Tormil Realty shares remained unsubscribed, all of which were duly issued to and received by Judge Torres (as evidenced by stock certificates Nos. 17, 18, 19, 20, 21, 22, 23, 24 & 25).[3]

Due to the insufficient number of shares of stock issued to Judge Torres and the alleged refusal of private respondents to approve the needed increase in the corporation's authorized capital stock (to cover the shortage of 972 shares due to Judge Torres under the "estate planning" scheme), on 11 September 1986, Judge Torres revoked the two (2) deeds of assignment covering the properties in Makati and Pasay City.[4]

Noting the disappearance of the Makati and Pasay City properties from the corporation's inventory of assets and financial records private respondents, on 31 March 1987, were constrained to file a complaint with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 3153 to compel Judge Torres to deliver to Tormil Corporation the two (2) deeds of assignment covering the aforementioned Makati and Pasay City properties

which he had unilaterally revoked and to cause the registration of the corresponding titles in the name of Tormil. Private respondents alleged that following the disappearance of the properties from the corporation's inventory of assets, they found that on October 24, 1986, Judge Torres, together with Edgardo Pabalan and Graciano Tobias, then General Manager and legal counsel, respectively, of Tormil, formed and organized a corporation named "Torres-Pabalan Realty and Development Corporation" and that as part of Judge Torres' contribution to the new corporation, he executed in its favor a Deed of Assignment conveying the same Makati and Pasay City properties he had earlier transferred to Tormil.

The second controversy--involving the same parties--concerned the election of the 1987 corporate board of directors.

The 1987 annual stockholders meeting and election of directors of Tormil corporation was scheduled on 25 March 1987 in compliance with the provisions of its by-laws.

Pursuant thereto, Judge Torres assigned from his own shares, one (1) share each to petitioners Tobias, Jocson, Jurisprudencia, Azura and Pabalan. These assigned shares were in the nature of "qualifying shares," for the sole purpose of meeting the legal requirement to be able to elect them (Tobias and company) to the Board of Directors as Torres' nominees.

The assigned shares were covered by corresponding Tormil Stock Certificates Nos. 030, 029, 028, 027, 026 and at the back of each certificate the following inscription is found:

The present certificate and/or the one share it represents, conformably to the purpose and intention of the Deed of Assignment dated March 6, 1987, is not held by me under any claim of ownership and I acknowledge that I hold the same merely as trustee of Judge Manuel A. Torres, Jr. and for the sole purpose of qualifying me as Director;

(Signature of Assignee) [5]

The reason behind the aforestated action was to remedy the "inequitable lopsided set-up obtaining in the corporation, where, notwithstanding his controlling interest in the corporation, the late Judge held only a single seat in the nine-member Board of Directors and was, therefore, at the mercy of the minority, a combination of any two (2) of whom would suffice to overrule the majority stockholder in the Board's decision making functions." [6]

On 25 March 1987, the annual stockholders meeting was held as scheduled. What transpired therein was ably narrated by Attys. Benito Cataran and Bayani De los Reyes, the official representatives dispatched by the SEC to observe the proceedings (upon request of the late Judge Torres) in their report dated 27 March 1987:

xxx.

The undersigned arrived at 1:55 p.m. in the place of the meeting, a residential bungalow in Urdaneta Village, Makati, Metro Manila. Upon arrival, Josefina Torres introduced us to the stockholders namely: Milagros Torres, Antonio Torres, Jr., Ma. Luisa Morales, Ma. Cristina Carlos and Ma. Jacinta Torres. Antonio Torres, Jr. questioned our authority and personality to appear in the meeting claiming subject corporation is a family and private firm. We explained that our appearance there was merely in response to the request of Manuel Torres, Jr. and that SEC has jurisdiction over all registered corporations. Manuel Torres, Jr., a septuagenarian, argued that as holder of the major and controlling shares, he approved of our attendance in the meeting.

At about 2:30 p.m., a group composed of Edgardo Pabalan, Atty. Graciano Tobias, Atty. Rodolfo Jocson, Jr., Atty. Melvin Jurisprudencia, and Atty. Augustus Cesar Azura arrived. Atty. Azura told the body that they came as counsels of Manuel Torres, Jr. and as stockholders having assigned qualifying shares by Manuel

Torres, Jr.

The stockholders' meeting started at 2:45 p.m. with Mr. Pabalan presiding after verbally authorized by Manuel Torres, Jr., the President and Chairman of the Board. The secretary when asked about the quorum, said that there was more than a quorum. Mr. Pabalan distributed copies of the president's report and the financial statements. Antonio Torres, Jr. requested time to study the said reports and brought out the question of auditing the finances of the corporation which he claimed was approved previously by the board. Heated arguments ensued which also touched on family matters. Antonio Torres, Jr. moved for the suspension of the meeting but Manuel Torres, Jr. voted for the continuation of the proceedings.

Mr. Pabalan suggested that the opinion of the SEC representatives be asked on the propriety of suspending the meeting but Antonio Torres, Jr. objected reasoning out that we were just observers.

When the Chairman called for the election of directors, the Secretary refused to write down the names of nominees prompting Atty. Azura to initiate the appointment of Atty. Jocson, Jr. as Acting Secretary.

Antonio Torres, Jr. nominated the present members of the Board. At this juncture, Milagros Torres cried out and told the group of Manuel Torres, Jr. to leave the house.

Manuel Torres, Jr., together with his lawyers-stockholders went to the residence of Ma. Jacinta Torres in San Miguel Village, Makati, Metro Manila. The undersigned joined them since the group with Manuel Torres, Jr. the one who requested for S.E.C. observers, represented the majority of the outstanding capital stock and still constituted a quorum.

At the resumption of the meeting, the following were nominated and elected as directors for the year 1987-1988:

1. Manuel Torres, Jr.
2. Ma. Jacinta Torres
3. Edgardo Pabalan
4. Graciano Tobias
5. Rodolfo Jocson, Jr.
6. Melvin Jurisprudencia
7. Augustus Cesar Azura
8. Josefina Torres
9. Dante Morales

After the election, it was resolved that after the meeting, the new board of directors shall convene for the election of officers.

xxx. [7]

Consequently, on 10 April 1987, private respondents instituted a complaint with the SEC (SEC Case No. 3161) praying in the main, that the election of petitioners to the Board of Directors be annulled.

Private respondents alleged that the petitioners-nominees were not legitimate stockholders of Tormil because the assignment of shares to them violated the minority stockholders' right of pre-emption as provided in the corporation's articles and by-laws.

Upon motion of petitioners, SEC Cases Nos. 3153 and 3161 were consolidated for joint hearing and adjudication.

On 6 March 1991, the Panel of Hearing Officers of the SEC rendered a decision in favor of private respondents. The dispositive portion thereof states, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering and directing the respondents, particularly respondent Manuel A. Torres, Jr., to turn over and deliver to TORMIL through its Corporate Secretary, Ma. Cristina T. Carlos: (a) the originals of the Deeds of Assignment dated July 13 and 24, 1984 together with the owner's duplicates of Transfer Certificates of Title Nos. 374079 of the Registry of Deeds for Makati, and 41527, 41528 and 41529 of the Registry of Deeds for Pasay City and/or to cause the formal registration and transfer of title in and over such real properties in favor of TORMIL with the proper government agency; (b) all corporate books of account, records and papers as may be necessary for the conduct of a comprehensive audit examination, and to allow the examination and inspection of such accounting books, papers and records by any or all of the corporate directors, officers and stockholders and/or their duly authorized representatives or auditors;
2. Declaring as permanent and final the writ of preliminary injunction issued by the Hearing Panel on February 13, 1989;
3. Declaring as null and void the election and appointment of respondents to the Board of Directors and executive positions of TORMIL held on March 25, 1987, and all their acts and resolutions made for and in behalf of TORMIL by authority of and pursuant to such invalid appointment & election held on March 25, 1987;
4. Ordering the respondents jointly and severally, to pay the complainants the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) and by way of attorney's fees. [8]

Petitioners promptly appealed to the SEC en banc (docketed as SEC-AC No. 339). Thereafter, on 3 April 1991, during the pendency of said appeal, petitioner Manuel A. Torres, Jr. died. However, notice thereof was brought to the attention of the SEC not by petitioners' counsel but by private respondents in a Manifestation dated 24 April 1991.[9]

On 8 June 1993, petitioners filed a Motion to Suspend Proceedings on grounds that no administrator or legal representative of the late Judge Torres' estate has yet been appointed by the Regional Trial Court of Makati where Sp. Proc. No. M-1768 ("In Matter of the Issuance of the Last Will and Testament of Manuel A. Torres, Jr.") was pending. Two similar motions for suspension were filed by petitioners on 28 June 1993 and 9 July 1993.

On 19 July 1993, the SEC en banc issued an Order denying petitioners' aforecited motions on the following ground:

Before the filing of these motions, the Commission en banc had already completed all proceedings and had likewise ruled on the merits of the appealed cases. Viewed in this light, we thus feel that there is nothing left to be done except to deny these motions to suspend proceedings." [10]

On the same date, the SEC en banc rendered a decision, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the appealed decision of the hearing panel is hereby affirmed and all motions pending before us incident to this appealed case are necessarily DISMISSED.

SO ORDERED. [11]

Undaunted, on 10 August 1993, petitioners proceeded to plead its cause to the Court of Appeals by way of a petition for review (docketed as CA-G.R. SP No. 31748).

On 23 May 1994, the Court of Appeals rendered a decision, the dispositive portion of which states:

WHEREFORE, the petition for review is DISMISSED and the appealed decision is accordingly affirmed.

SO ORDERED. [12]

From the said decision, petitioners filed a motion for reconsideration which was denied in a resolution issued by the Court of Appeals dated 10 May 1995. [13]

Insisting on their cause, petitioners filed the present petition for review alleging that the Court of Appeals committed the following errors in its decision:

(1)

WHEN IT RENDERED THE MAY 23, 1994 DECISION, WHICH IS A FULL LENGTH DECISION, WITHOUT THE EVIDENCE AND THE ORIGINAL RECORD OF S.E.C. - AC NO. 339 BEING PROPERLY BROUGHT BEFORE IT FOR REVIEW AND RE-EXAMINATION, AN OMISSION RESULTING IN A CLEAR TRANSGRESSION OR CURTAILMENT OF THE RIGHTS OF THE HEREIN PETITIONERS TO PROCEDURAL DUE PROCESS;

(2)

WHEN IT SANCTIONED THE JULY 19, 1993 DECISION OF THE RESPONDENT S.E.C., WHICH IS VOID FOR HAVING BEEN RENDERED WITHOUT THE PROPER SUBSTITUTION OF THE DECEASED PRINCIPAL PARTY-RESPONDENT IN S.E.C.-AC NO. 339 AND CONSEQUENTLY, FOR WANT OF JURISDICTION OVER THE SAID DECEASED'S TESTATE ESTATE, AND MOREOVER, WHEN IT SOUGHT TO JUSTIFY THE NON-SUBSTITUTION BY ITS APPLICATION OF THE CIVIL LAW CONCEPT OF NEGOTIORUM GESTIO;

(3)

WHEN IT FAILED TO SEE, AS A CONSEQUENCE OF THE EVIDENCE AND THE ORIGINAL RECORD OF S.E.C. -AC NO. 339 NOT HAVING ACTUALLY BEEN RE-EXAMINED, THAT S.E.C. CASE NO. 3153 INVOLVED A SITUATION WHERE PERFORMANCE WAS IMPOSSIBLE (AS CONTEMPLATED UNDER ARTICLE 1191 OF THE CIVIL CODE) AND WAS NOT A MERE CASE OF LESION OR INADEQUACY OF CAUSE (UNDER ARTICLE 1355 OF THE CIVIL CODE) AS SO ERRONEOUSLY CHARACTERIZED BY THE RESPONDENT S.E.C.; and,

(4)

WHEN IT FAILED TO SEE, AS A CONSEQUENCE OF THE EVIDENCE AND THE ORIGINAL RECORD OF S.E.C.-AC NO. 339 NOT HAVING ACTUALLY BEEN EXAMINED, THAT THE RECORDING BY THE LATE JUDGE MANUEL A. TORRES, JR. OF THE QUESTIONED ASSIGNMENT OF QUALIFYING SHARES TO HIS NOMINEES, WAS AFFIRMED IN THE STOCK AND TRANSFER BOOK BY AN ACTING CORPORATE SECRETARY AND MOREOVER, THAT ACTUAL NOTICE OF SAID ASSIGNMENT WAS TIMELY MADE TO THE OTHER STOCKHOLDERS. [14]

We shall resolve the issues in seriatim.

I

Petitioners insist that the failure to transmit the original records to the Court of Appeals deprived them of procedural due process. Without the evidence and the original records of the proceedings before the SEC, the Court of Appeals, petitioners adamantly state, could not have possibly made a proper appreciation and correct determination of the issues, particularly the factual issues they had raised on appeal. Petitioners also assert that

since the Court of Appeals allegedly gave due course to their petition, the original records should have been forwarded to said court.

Petitioners anchor their argument on Secs. 8 and 11 of SC Circular 1-91 (dated 27 February 1991) which provides that:

8. WHEN PETITION GIVEN DUE COURSE.-The Court of Appeals shall give due course to the petition only when it shows prima facie that the court, commission, board, office or agency concerned has committed errors of fact or law that would warrant reversal or modification of the order, ruling or decision sought to be reviewed. The findings of fact of the court commission, board, office or agency concerned when supported by substantial evidence shall be final.

xxx.

11. TRANSMITTAL OF RECORD.-Within fifteen (15) days from notice that the petition has been given due course, the court, commission, board, office or agency concerned shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction or addition to the record.

Petitioners contend that the Court of Appeals had given due course to their petition as allegedly indicated by the following acts:

a) it granted the restraining order applied for by the herein petitioners, and after hearing, also the writ of preliminary injunction sought by them; under the original SC Circular No. 1-91, a petition for review may be given due course at the onset (paragraph 8) upon a mere prima facie finding of errors of fact or law having been committed, and such prima facie finding is but consistent with the grant of the extra-ordinary writ of preliminary injunction;

b) it required the parties to submit “simultaneous memoranda” in its resolution dated October 15, 1993 (this is in addition to the comment required to be filed by the respondents) and furthermore declared in the same resolution that the petition will be decided “on the merits,” instead of outrightly dismissing the same;

c) it rendered a full length decision, wherein: (aa) it expressly declared the respondent S.E.C. as having erred in denying the pertinent motions to suspend proceedings; (bb) it declared the supposed error as having become a non-issue when the respondent C.A. “proceeded to hear (the) appeal”; (cc) it formulated and applied its own theory of negotiorum gestio in justifying the non-substitution of the deceased principal party in S.E.C. -AC No. 339 and moreover, its theory of di minimis non curat lex (this, without first determining the true extent of and the correct legal characterization of the so-called “shortage” of Tormil shares; and, (dd) it expressly affirmed the assailed decision of respondent S.E.C. [15]

Petitioners’ contention is unmeritorious.

There is nothing on record to show that the Court of Appeals gave due course to the petition. The fact alone that the Court of Appeals issued a restraining order and a writ of preliminary injunction and required the parties to submit their respective memoranda does not indicate that the petition was given due course. The office of an injunction is merely to preserve the status quo pending the disposition of the case. The court can require the submission of memoranda in support of the respective claims and positions of the parties without necessarily giving due course to the petition. The matter of whether or not to give due course to a petition lies in the discretion of the court.

It is worthy to mention that SC Circular No. 1-91 has been replaced by Revised Administrative Circular No. 1-95 (which took effect on 1 June 1995) wherein the procedure for appeals from quasi-judicial agencies to the Court of

Appeals was clarified thus:

10. Due course.-- If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the bases of the petition or the record the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.

11. Transmittal of record.-- Within fifteen (15) days from notice that the petition has been given due course, the Court of Appeals may require the court or agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record. (Underscoring ours.)

The aforecited circular now formalizes the correct practice and clearly states that in resolving appeals from quasi judicial agencies, it is within the discretion of the Court of Appeals to have the original records of the proceedings under review be transmitted to it. In this connection, petitioners' claim that the Court of Appeals could not have decided the case on the merits without the records being brought before it is patently lame. Indubitably, the Court of Appeals decided the case on the basis of the uncontroverted facts and admissions contained in the pleadings, that is, the petition, comment, reply, rejoinder, memoranda, etc. filed by the parties.

II

Petitioners contend that the decisions of the SEC and the Court of Appeals are null and void for being rendered without the necessary substitution of parties (for the deceased petitioner Manuel A. Torres, Jr.) as mandated by Sec. 17, Rule 3 of the Revised Rules of Court, which provides as follows:

SEC. 17. Death of party.--After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.

Petitioners insist that the SEC en banc should have granted the motions to suspend they filed based as they were on the ground that the Regional Trial Court of Makati, where the probate of the late Judge Torres' will was pending, had yet to appoint an administrator or legal representative of his estate.

We are not unaware of the principle underlying the aforequoted provision:

It has been held that when a party dies in an action that survives, and no order is issued by the Court for the appearance of the legal representative or of the heirs of the deceased to be substituted for the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representative or heirs, and the judgment rendered after such trial, are null and void because the court acquired no jurisdiction over the persons of the legal representative or of the heirs upon whom the trial and the judgment are not binding. [16]

As early as 8 April 1988, Judge Torres instituted Special Proceedings No. M-1768 before the Regional Trial Court of Makati for the ante-mortem probate of his holographic will which he had executed on 31 October 1986. Testifying in the said proceedings, Judge Torres confirmed his appointment of petitioner Edgardo D. Pabalan as the sole executor of his will and administrator of his estate. The proceedings, however, were opposed by the same parties, herein private respondents Antonio P. Torres, Jr., Ma. Luisa T. Morales and Ma. Cristina T. Carlos, [17] who are nephew and nieces of Judge Torres, being the children of his late brother Antonio A. Torres.

It can readily be observed therefore that the parties involved in the present controversy are virtually the same parties fighting over the representation of the late Judge Torres' estate. It should be recalled that the purpose behind the rule on substitution of parties is the protection of the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. In the present case, this purpose has been substantially fulfilled (despite the lack of formal substitution) in view of the peculiar fact that both proceedings involve practically the same parties. Both parties have been fiercely fighting in the probate proceedings of Judge Torres' holographic will for appointment as legal representative of his estate. Since both parties claim interests over the estate, the rights of the estate were expected to be fully protected in the proceedings before the SEC en banc and the Court of Appeals. In either case, whoever shall be appointed legal representative of Judge Torres' estate (petitioner Pabalan or private respondents) would no longer be a stranger to the present case, the said parties having voluntarily submitted to the jurisdiction of the SEC and the Court of Appeals and having thoroughly participated in the proceedings.

The foregoing rationale finds support in the recent case of *Vda. de Salazar v. CA*, [18] wherein the Court expounded thus:

The need for substitution of heirs is based on the right to due process accruing to every party in any proceeding. The rationale underlying this requirement in case a party dies during the pendency of proceedings of a nature not extinguished by such death, is that xxx the exercise of judicial power to hear and determine a cause implicitly presupposes in the trial court, amongst other essentials, jurisdiction over the persons of the parties. That jurisdiction was inevitably impaired upon the death of the protestee pending the proceedings below such that unless and until a legal representative is for him duly named and within the jurisdiction of the trial court, no adjudication in the cause could have been accorded any validity or binding effect upon any party, in representation of the deceased, without trenching upon the fundamental right to a day in court which is the very essence of the constitutionally enshrined guarantee of due process.

We are not unaware of several cases where we have ruled that a party having died in an action that survives, the trial held by the court without appearance of the deceased's legal representative or substitution of heirs and the judgment rendered after such trial, are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. This general rule notwithstanding, in denying petitioner's motion for reconsideration, the Court of Appeals correctly ruled that formal substitution of heirs is not necessary when the heirs themselves voluntarily appeared, participated in the case and presented evidence in defense of deceased defendant. Attending the case at bench, after all, are these particular circumstances which negate petitioner's belated and seemingly ostensible claim of violation of her rights to due process. We should not lose sight of the principle underlying the general rule that formal substitution of heirs must be effectuated for them to be bound by a subsequent judgment. Such had been the general rule established not because the rule on substitution of heirs and that on appointment of a legal representative are jurisdictional requirements per se but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein. xxx.

It is appropriate to mention here that when Judge Torres died on April 3, 1991, the SEC en banc had already fully heard the parties and what remained was the evaluation of the evidence and rendition of the judgment.

Further, petitioners filed their motions to suspend proceedings only after more than two (2) years from the death of Judge Torres. Petitioners' counsel was even remiss in his duty under Sec. 16, Rule 3 of the Revised Rules of Court.[19] Instead, it was private respondents who informed the SEC of Judge Torres' death through a manifestation dated 24 April 1991.

For the SEC en banc to have suspended the proceedings to await the appointment of the legal representatives by the estate was impractical and would have caused undue delay in the proceedings and a denial of justice. There is no telling when the probate court will decide the issue, which may still be appealed to the higher courts.

In any case, there has been no final disposition of the properties of the late Judge Torres before the SEC. On the contrary, the decision of the SEC en banc as affirmed by the Court of Appeals served to protect and preserve his estate. Consequently, the rule that when a party dies, he should be substituted by his legal representative to protect the interest of his estate in observance of due process was not violated in this case in view of its peculiar situation where the estate was fully protected by the presence of the parties who claim interest thereto either as directors, stockholders or heirs.

Finally, we agree with petitioners' contention that the principle of negotiorum gestio [20] does not apply in the present case. Said principle explicitly covers abandoned or neglected property or business.

III

Petitioners find legal basis for Judge Torres' act of revoking the assignment of his properties in Makati and Pasay City to Tormil corporation by relying on Art. 1191 of the Civil Code which provides that:

ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

Petitioners' contentions cannot be sustained. We see no justifiable reason to disturb the findings of SEC, as affirmed by the Court of Appeals:

We sustain the ruling of respondent SEC in the decision appealed from (Rollo, pp. 45-46) that -

x x x the shortage of 972 shares would not be valid ground for respondent Torres to unilaterally revoke the deeds of assignment he had executed on July 13, 1984 and July 24, 1984 wherein he voluntarily assigned to TORMIL real properties covered by TCT No. 374079 (Makati) and TCT No. 41527, 41528 and 41529 (Pasay) respectively.

A comparison of the number of shares that respondent Torres received from TORMIL by virtue of the "deeds of assignment" and the stock certificates issued by the latter to the former readily shows that TORMIL had substantially performed what was expected of it. In fact, the first two issuances were in satisfaction to the properties being revoked by respondent Torres. Hence, the shortage of 972 shares would never be a valid ground for the revocation of the deeds covering Pasay and Quezon City properties.

In *Universal Food Corp. vs. CA*, the Supreme Court held:

The general rule is that rescission of a contract will not be permitted for a slight or carnal breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement.

The shortage of 972 shares definitely is not substantial and fundamental breach as would defeat the very object of the parties in entering into contract. Art. 1355 of the Civil Code also provides: "Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influences." There being no fraud, mistake or undue influence exerted on respondent Torres by TORMIL and the latter having already issued to the former of its 225,000 unissued shares, the most logical course of action is to declare as null and void the deed of revocation executed by respondent Torres. (Rollo, pp. 45-46.) [21]

The aforequoted Civil Code provision does not apply in this particular situation for the obvious reason that a specific number of shares of stock (as evidenced by stock certificates) had already been issued to the late Judge Torres in exchange for his Makati and Pasay City properties. The records thus disclose:

DATE OF PROPERTY LOCATION NO. OF SHARES ORDER OF
ASSIGNMENT ASSIGNED TO BE ISSUED COMPLIANCE

1. July 13, 1984 TCT 81834 Quezon City) 13,252 3rd
TCT 144240 Quezon City)
 2. July 13, 1984 TCT 77008 Manila)
TCT 65689 Manila) 78,493 2nd
TCT 102200 Manila)
 3. July 13, 1984 TCT 374079 Makati 8,307 1st
 4. July 24, 1984 TCT 41527 Pasay)
TCT 41528 Pasay) 9,855 4th
TCT 41529 Pasay)
 5. August 6, 1984 El Hogar Filipino Stocks 2,000 7th
 6. August 6, 1984 Manila Jockey Club Stocks 48,737 5th
 7. August 7, 1984 San Miguel Corp. Stocks 50,238 8th
 8. August 7, 1984 China Banking Corp. Stocks 6,300 6th
 9. August 20, 1984 Ayala Corp. Stocks 7,468.2) 9th
 10. August 29, 1984 Ayala Fund Stocks 1,322.1)
- TOTAL 225,972.3

* Order of stock certificate issuances by TORMIL to respondent Torres relative to the Deeds of Assignment he executed sometime in July and August, 1984. [22] (Emphasis ours.)

Moreover, we agree with the contention of the Solicitor General that the shortage of shares should not have affected the assignment of the Makati and Pasay City properties which were executed in 13 and 24 July 1984 and the consideration for which have been duly paid or fulfilled but should have been applied logically to the last assignment of property -- Judge Torres' Ayala Fund shares--which was executed on 29 August 1984.[23]

IV

Petitioners insist that the assignment of “qualifying shares” to the nominees of the late Judge Torres (herein petitioners) does not partake of the real nature of a transfer or conveyance of shares of stock as would call for the “imposition of stringent requirements (with respect to the) recording of the transfer of said shares.” Anyway, petitioners add, there was substantial compliance with the above-stated requirement since said assignments were entered by the late Judge Torres himself in the corporation’s stock and transfer book on 6 March 1987, prior to the 25 March 1987 annual stockholders meeting and which entries were confirmed on 8 March 1987 by petitioner Azura who was appointed Assistant Corporate Secretary by Judge Torres.

Petitioners further argue that:

10.10. Certainly, there is no legal or just basis for the respondent S.E.C. to penalize the late Judge Torres by invalidating the questioned entries in the stock and transfer book, simply because he initially made those entries (they were later affirmed by an acting corporate secretary) and because the stock and transfer book was in his possession instead of the elected corporate secretary, if the background facts herein-before narrated and the serious animosities that then reigned between the deceased Judge and his relatives are to be taken into account;

xxx.

10.12. Indeed it was a practice in the corporate respondent, a family corporation with only a measly number of stockholders, for the late judge to have personal custody of corporate records; as president, chairman and majority stockholder, he had the prerogative of designating an acting corporate secretary or to himself make the needed entries, in instances where the regular secretary, who is a mere subordinate, is unavailable or intentionally defaults, which was the situation that obtained immediately prior to the 1987 annual stockholders meeting of Tormil, as the late Judge Torres had so indicated in the stock and transfer book in the form of the entries now in question;

10.13. Surely, it would have been futile nay foolish for him to have insisted under those circumstances, for the regular secretary, who was then part of a group ranged against him, to make the entries of the assignments in favor of his nominees; [24]

Petitioners’ contentions lack merit.

It is precisely the brewing family discord between Judge Torres and private respondents--his nephew and nieces that should have placed Judge Torres on his guard. He should have been more careful in ensuring that his actions (particularly the assignment of qualifying shares to his nominees) comply with the requirements of the law. Petitioners cannot use the flimsy excuse that it would have been a vain attempt to force the incumbent corporate secretary to register the aforestated assignments in the stock and transfer book because the latter belonged to the opposite faction. It is the corporate secretary’s duty and obligation to register valid transfers of stocks and if said corporate officer refuses to comply, the transferor-stockholder may rightfully bring suit to compel performance.[25] In other words, there are remedies within the law that petitioners could have availed of, instead of taking the law in their own hands, as the cliché goes.

Thus, we agree with the ruling of the SEC en banc as affirmed by the Court of Appeals:

We likewise sustain respondent SEC when it ruled, interpreting Section 74 of the Corporation Code, as follows (Rollo, p. 45):

In the absence of (any) provision to the contrary, the corporate secretary is the custodian of corporate records. Corollarily, he keeps the stock and transfer book and makes proper and necessary entries therein.

Contrary to the generally accepted corporate practice, the stock and transfer book of TORMIL was not kept by Ms. Maria Cristina T. Carlos, the corporate secretary but by respondent Torres, the President and Chairman of the Board of Directors of TORMIL. In contravention to the above cited provision, the stock and transfer book was not kept at the principal office of the corporation either but at the place of respondent Torres.

These being the obtaining circumstances, any entries made in the stock and transfer book on March 8, 1987 by respondent Torres of an alleged transfer of nominal shares to Pabalan and Co. cannot therefore be given any valid effect. Where the entries made are not valid, Pabalan and Co. cannot therefore be considered stockholders of record of TORMIL. Because they are not stockholders, they cannot therefore be elected as directors of TORMIL. To rule otherwise would not only encourage violation of clear mandate of Sec. 74 of the Corporation Code that stock and transfer book shall be kept in the principal office of the corporation but would likewise open the flood gates of confusion in the corporation as to who has the proper custody of the stock and transfer book and who are the real stockholders of records of a certain corporation as any holder of the stock and transfer book, though not the corporate secretary, at pleasure would make entries therein.

The fact that respondent Torres holds 81.28% of the outstanding capital stock of TORMIL is of no moment and is not a license for him to arrogate unto himself a duty lodged to (sic) the corporate secretary. [26]

All corporations, big or small, must abide by the provisions of the Corporation Code. Being a simple family corporation is not an exemption. Such corporations cannot have rules and practices other than those established by law.

WHEREFORE, premises considered, the petition for review on certiorari is hereby DENIED.
SO ORDERED.

Bellosillo, (Acting Chairman), Vitug, and Hermosisima, Jr., JJ., concur.

[1] Rollo pp. 6-7.

[2] Id., at 59

[3] Id., at 60.

[4] Deed of Revocation, Rollo, pp. 230-231.

[5] Id., at 11.

[6] Ibid.

[7] Id., at 16-17.

[8] Id., at 57-58; 104-105.

[9] Id., at 119-120.

[10] Id., at 113.

[11] Id., at 112.

[12] Id., at 64.

[13] Id., at 66-67.

[14] Id., at 23-24.

[15] *Id.*, at 26.

[16] Moran, Manuel V., *Comments on the Rules of Court*, Vol. I, 1979, p. 214, citing *Ferreria v. Vda. de Gonzales*, 104 Phil. 143.

[17] Rollo, pp. 225-229.

[18] 250 SCRA 305 (1995).

[19] SEC. 16. Duty of attorney upon death, incapacity or incompetency of party.--Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

[20] The above-mentioned principle is provided in Art. 2144 of the Civil Code, which states, thus:

ART. 2144. Whoever voluntarily takes charge of the agency or management of the business or property of another, without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so. This juridical relation does not arise in either of these instances:

(1) When the property or business is not neglected or abandoned:

(2) If in fact the manager has been tacitly authorized by the owner.

In the first case, the provisions of articles 1317, 1403, No. 1, and 1404 regarding unauthorized contracts shall govern.

In the second case, the rules on agency in Title X of this Book shall be applicable.

[21] Rollo, pp. 62-63.

[22] *Id.*, at 107.

[23] *Id.*, at 359.

[24] *Id.*, at 49-50.

[25] Lopez, Rosario N., *The Corporate Code of the Philippines Annotated*, Vol. Two, 1994, pp. 816-187.

[26] Rollo, pp. 63-64.

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