PAUL LEE TAN, ANDREW LIUSON, ESTHER WONG, STEPHEN CO, JAMES TAN, JUDITH TAN, ERNESTO TANCHI JR., EDWIN NGO, VIRGINIA KHOO, SABINO PADILLA JR., EDUARDO P. LIZARES AND GRACE CHRIS...

G.R. NO. 153468. August 17, 2006

Ponente: PANGANIBAN, CJ.

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PANGANIBAN, CJ.:

For stock corporations, the "quorum" referred to in Section 52 of the Corporation Code is based on the number of outstanding voting stocks. For nonstock corporations, only those who are actual, living members with voting rights shall be counted in determining the existence of a quorum during members' meetings. Dead members shall not be counted.

The Case

The present Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeks the reversal of the January 23[2] and May 7, 2002,[3] Resolutions of the Court of Appeals (CA) in CA-GR SP No. 68202. The first assailed Resolution dismissed the appeal filed by petitioners with the CA. Allegedly, without the proper authorization of the other petitioners, the Verification and Certification of Non-Forum Shopping were signed by only one of them -- Atty. Sabino Padilla Jr. The second Resolution denied reconsideration.

The Facts

Petitioner Grace Christian High School (GCHS) is a nonstock, non-profit educational corporation with fifteen (15) regular members, who also constitute the board of trustees.[4] During the annual members' meeting held on April 6, 1998, there were only eleven (11)[5] living member-trustees, as four (4) had already died. Out of the eleven, seven (7)[6] attended the meeting through their respective proxies. The meeting was convened and chaired by Atty. Sabino Padilla Jr. over the objection of Atty. Antonio C. Pacis, who argued that there was no quorum.[7] In the meeting, Petitioners Ernesto Tanchi, Edwin Ngo, Virginia Khoo, and Judith Tan were voted to replace the four deceased member-trustees.

When the controversy reached the Securities and Exchange Commission (SEC), petitioners maintained that the deceased member-trustees should not be counted in the computation of the quorum because, upon their death, members automatically lost all their rights (including the right to vote) and interests in the corporation.

SEC Hearing Officer Malthie G. Militar declared the April 6, 1998 meeting null and void for lack of quorum. She held that the basis for determining the quorum in a meeting of members should be their number as specified in the articles of incorporation, not simply the number of living members.[8] She explained that the qualifying phrase "entitled to vote" in Section 24[9] of the Corporation Code, which provided the basis for determining a quorum for the election of directors or trustees, should be read together with Section 89.[10]

The hearing officer also opined that Article III (2)[11] of the By-Laws of GCHS, insofar as it prescribed the mode of filling vacancies in the board of trustees, must be interpreted in conjunction with Section 29[12] of the Corporation Code. The SEC en banc denied the appeal of petitioners and affirmed the Decision of the hearing officer in toto.[13] It found to be untenable their contention that the word "members," as used in Section 52[14] of the Corporation Code, referred only to the living members of a nonstock corporation.[15]

As earlier stated, the CA dismissed the appeal of petitioners, because the Verification and Certification of Non-Forum Shopping had been signed only by Atty. Sabino Padilla Jr. No Special Power of Attorney had been attached to show his authority to sign for the rest of the petitioners.

Hence, this Petition.[16]

Issues

Petitioners state the issues as follows:

> "Petitioners principally pray for the resolution of the legal question of whether or not in NON-STOCK corporations, dead members should still be counted in determination of quorum for purposed of conducting the Annual Members' Meeting.
>
> "Petitioners have maintained before the courts below that the DEAD members should no longer be counted in computing quorum primarily on the ground that members' rights are "personal and non-transferable" as provided in Sections 90 and 91 of the Corporation Code of the Philippines.
>
> "The SEC ruled against the petitioners solely on the basis of a 1989 SEC Opinion that did not even involve a non-stock corporation as petitioner GCHS.
>
> "The Honorable Court of Appeals on the other hand simply refused to resolve this question and instead dismissed the petition for review on a technicality – the failure to timely submit an SPA from the petitioners authorizing their co-petitioner Padilla, their counsel and also a petitioner before the Court of Appeals, to sign the petition on behalf of the rest of the petitioners.
>
> "Petitioners humbly submit that the action of both the SEC and the Court of Appeals are not in accord with law particularly the pronouncements of this Honorable Court in Escorpizo v. University of Baguio (306 SCRA 497), Robern Development Corporation v. Quitain (315 SCRA 150,) and MC Engineering, Inc. v. NLRC, (360 SCRA 183). Due course should have been given the petition below and the merits of the case decided in petitioners' favor."[17]

In sum, the issues may be stated simply in this wise: 1) whether the CA erred in denying the Petition below, on the basis of a defective Verification and Certification; and 2) whether dead members should still be counted in the determination of the quorum, for purposes of conducting the annual members' meeting.

The Court's Ruling

The present Petition is partly meritorious.

Procedural Issue:Verification and Certificationof Non-Forum Shopping

The Petition before the CA was initially flawed, because the Verification and Certification of Non-Forum Shopping were signed by only one, not by all, of the petitioners; further, it failed to show proof that the signatory was authorized to sign on behalf of all of them. Subsequently, however, petitioners submitted a Special Power of Attorney, attesting that Atty. Padilla was authorized to file the action on their behalf.[18]

In the interest of substantial justice, this initial procedural lapse may be excused. [19] There appears to be no

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intention to circumvent the need for proper verification and certification, which are aimed at assuring the truthfulness and correctness of the allegations in the Petition for Review and at discouraging forum shopping.[20] More important, the substantial merits of petitioners' case and the purely legal question involved in the Petition should be considered special circumstances[21] or compelling reasons that justify an exception to the strict requirements of the verification and the certification of non-forum shopping.[22]

Main Issue:Basis for Quorum

Generally, stockholders' or members' meetings are called for the purpose of electing directors or trustees[23] and transacting some other business calling for or requiring the action or consent of the shareholders or members,[24] such as the amendment of the articles of incorporation and bylaws, sale or disposition of all or substantially all corporate assets, consolidation and merger and the like, or any other business that may properly come before the meeting.

Under the Corporation Code, stockholders or members periodically elect the board of directors or trustees, who are charged with the management of the corporation.[25] The board, in turn, periodically elects officers to carry out management functions on a day-to-day basis. As owners, though, the stockholders or members have residual powers over fundamental and major corporate changes.

While stockholders and members (in some instances) are entitled to receive profits, the management and direction of the corporation are lodged with their representatives and agents -- the board of directors or trustees.[26] In other words, acts of management pertain to the board; and those of ownership, to the stockholders or members. In the latter case, the board cannot act alone, but must seek approval of the stockholders or members.[27]

Conformably with the foregoing principles, one of the most important rights of a qualified shareholder or member is the right to vote -- either personally or by proxy -- for the directors or trustees who are to manage the corporate affairs.[28] The right to choose the persons who will direct, manage and operate the corporation is significant, because it is the main way in which a stockholder can have a voice in the management of corporate affairs, or in which a member in a nonstock corporation can have a say on how the purposes and goals of the corporation may be achieved.[29] Once the directors or trustees are elected, the stockholders or members relinquish corporate powers to the board in accordance with law.

In the absence of an express charter or statutory provision to the contrary, the general rule is that every member of a nonstock corporation, and every legal owner of shares in a stock corporation, has a right to be present and to vote in all corporate meetings. Conversely, those who are not stockholders or members have no right to vote.[30] Voting may be expressed personally, or through proxies who vote in their representative capacities.[31] Generally, the right to be present and to vote in a meeting is determined by the time in which the meeting is held.[32]

Section 52 of the Corporation Code states:

> "Section 52. Quorum in Meetings. – Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations."

In stock corporations, the presence of a quorum is ascertained and counted on the basis of the outstanding capital stock, as defined by the Code thus:

> "SECTION 137. Outstanding capital stock defined. – The term "outstanding capital stock" as used in this Code, means the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares." (Underscoring supplied)

The Right to Vote inStock Corporations

The right to vote is inherent in and incidental to the ownership of corporate stocks.[33] It is settled that unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting, or whether a requisite proportion of the stock of the corporation is voted to adopt a certain measure or act. Only stock actually issued and outstanding may be voted.[34] Under Section 6 of the Corporation Code, each share of stock is entitled to vote, unless otherwise provided in the articles of incorporation or declared delinquent[35] under Section 67 of the Code.

Neither the stockholders nor the corporation can vote or represent shares that have never passed to the ownership of stockholders; or, having so passed, have again been purchased by the corporation.[36] These shares are not to be taken into consideration in determining majorities. When the law speaks of a given proportion of the stock, it must be construed to mean the shares that have passed from the corporation, and that may be voted.[37]

Section 6 of the Corporation Code, in part, provides:

> "Section 6. Classification of shares. – The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: Provided, further, that there shall always be a class or series of shares which have complete voting rights.
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> "Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:
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> - Amendment of the articles of incorporation;
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> - Adoption and amendment of by-laws;
>
> - Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporation property;
>
> - Incurring, creating or increasing bonded indebtedness;
>
> - Increase or decrease of capital stock;
>
> - Merger or consolidation of the corporation with another corporation or other corporations;
>
> - Investment of corporate funds in another corporation or business in accordance with this Code; and
>
> - Dissolution of the corporation.
>
> "Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights."

Taken in conjunction with Section 137, the last paragraph of Section 6 shows that the intention of the lawmakers was to base the quorum mentioned in Section 52 on the number of outstanding voting stocks.[38]

The Right to Vote inNonstock Corporations

In nonstock corporations, the voting rights attach to membership.[39] Members vote as persons, in accordance with the law and the bylaws of the corporation. Each member shall be entitled to one vote unless so limited, broadened, or denied in the articles of incorporation or bylaws.[40] We hold that when the principle for determining the quorum for stock corporations is applied by analogy to nonstock corporations, only those who are

actual members with voting rights should be counted.

Under Section 52 of the Corporation Code, the majority of the members representing the actual number of voting rights, not the number or numerical constant that may originally be specified in the articles of incorporation, constitutes the quorum.[41]

The March 3, 1986 SEC Opinion[42] cited by the hearing officer uses the phrase "majority vote of the members"; likewise Section 48 of the Corporation Code refers to 50 percent of 94 (the number of registered members of the association mentioned therein) plus one. The best evidence of who are the present members of the corporation is the "membership book"; in the case of stock corporations, it is the stock and transfer book.[43]

Section 25 of the Code specifically provides that a majority of the directors or trustees, as fixed in the articles of incorporation, shall constitute a quorum for the transaction of corporate business (unless the articles of incorporation or the bylaws provide for a greater majority). If the intention of the lawmakers was to base the quorum in the meetings of stockholders or members on their absolute number as fixed in the articles of incorporation, it would have expressly specified so. Otherwise, the only logical conclusion is that the legislature did not have that intention.

Effect of the Deathof a Member or Shareholder

Having thus determined that the quorum in a members' meeting is to be reckoned as the actual number of members of the corporation, the next question to resolve is what happens in the event of the death of one of them.

In stock corporations, shareholders may generally transfer their shares. Thus, on the death of a shareholder, the executor or administrator duly appointed by the Court is vested with the legal title to the stock and entitled to vote it. Until a settlement and division of the estate is effected, the stocks of the decedent are held by the administrator or executor.[44]

On the other hand, membership in and all rights arising from a nonstock corporation are personal and non-transferable, unless the articles of incorporation or the bylaws of the corporation provide otherwise.[45] In other words, the determination of whether or not "dead members" are entitled to exercise their voting rights (through their executor or administrator), depends on those articles of incorporation or bylaws.

Under the By-Laws of GCHS, membership in the corporation shall, among others, be terminated by the death of the member.[46] Section 91 of the Corporation Code further provides that termination extinguishes all the rights of a member of the corporation, unless otherwise provided in the articles of incorporation or the bylaws.

Applying Section 91 to the present case, we hold that dead members who are dropped from the membership roster in the manner and for the cause provided for in the By-Laws of GCHS are not to be counted in determining the requisite vote in corporate matters or the requisite quorum for the annual members' meeting. With 11 remaining members, the quorum in the present case should be 6. Therefore, there being a quorum, the annual members' meeting, conducted with six[47] members present, was valid.

Vacancy in theBoard of Trustees

As regards the filling of vacancies in the board of trustees, Section 29 of the Corporation Code provides:

> "SECTION 29. Vacancies in the office of director or trustee. — Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office."

Undoubtedly, trustees may fill vacancies in the board, provided that those remaining still constitute a quorum. The

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phrase "may be filled" in Section 29 shows that the filling of vacancies in the board by the remaining directors or trustees constituting a quorum is merely permissive, not mandatory.[48] Corporations, therefore, may choose how vacancies in their respective boards may be filled up -- either by the remaining directors constituting a quorum, or by the stockholders or members in a regular or special meeting called for the purpose.[49]

The By-Laws of GCHS prescribed the specific mode of filling up existing vacancies in its board of directors; that is, by a majority vote of the remaining members of the board.[50]

While a majority of the remaining corporate members were present, however, the "election" of the four trustees cannot be legally upheld for the obvious reason that it was held in an annual meeting of the members, not of the board of trustees. We are not unmindful of the fact that the members of GCHS themselves also constitute the trustees, but we cannot ignore the GCHS bylaw provision, which specifically prescribes that vacancies in the board must be filled up by the remaining trustees. In other words, these remaining member-trustees must sit as a board in order to validly elect the new ones.

Indeed, there is a well-defined distinction between a corporate act to be done by the board and that by the constituent members of the corporation. The board of trustees must act, not individually or separately, but as a body in a lawful meeting. On the other hand, in their annual meeting, the members may be represented by their respective proxies, as in the contested annual members' meeting of GCHS.

WHEREFORE, the Petition is partly GRANTED. The assailed Resolutions of the Court of Appeals are hereby REVERSED AND SET ASIDE. The remaining members of the board of trustees of Grace Christian High School (GCHS) may convene and fill up the vacancies in the board, in accordance with this Decision. No pronouncement as to costs in this instance.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

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[1] Dated June 25, 2002; rollo, pp. 10-24.

[2] Annex "A" of the Petition; rollo, p. 35. Penned by Justice B.A. Adefuin-de la Cruz (Division chair) and concurred in by Justices Wenceslao I. Agnir Jr. and Josefina Guevara-Salonga.

[3] Annex "B" of the Petition; rollo, p. 37.

[4] Art. II (1), Amended By-Laws of GCHS, provides:

> "1. Number - The regular members of the Corporation shall be fifteen (15) in number and they shall constitute the Board of Trustees. Associate, non-voting members may be admitted upon such terms as the Board of Trustees may determine." (Memorandum for petitioners, p. 2; rollo, p. 92.)

[5] Petitioners James Tan, Paul Lee Tan, Andrew Liuson, Esther Wong, Stephen Co; Respondents Paul Sycip and Merritto Lim and four others not parties in this Petition – John Tan, Claro Ben Lim, Wang Ta Peng and Anita So. (Memorandum for petitioners, p. 2; rollo, p. 92.)

[6] Wang Ta Peng, Esther Wong, Stephen Co and James L. Tan, represented by Atty. Sabino Padilla; Paul Lee Tan and Andrew Liuson, represented by Atty. Eduardo P. Lizares; and Anita So, represented by Atty. Antonio C. Pacis. (Id.; id. at 92-93)

[7] See Decision dated June 21, 2000, SEC Case No. 08-98-6065, p. 2; rollo, p. 40.

[8] Id. at 4-6; id. at 42-43.

[9] "Section 24. Election of directors or trustees. – At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. x x x. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not sine die or indefinitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the member entitled to vote." (Underscoring supplied)

[10] "Section 89. Right to vote. – The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote."

"Unless otherwise provided in the articles of incorporation or the by-laws, a member may vote by proxy in accordance with the provisions of this Code.

"Voting by mail or other similar means by members of non-stock corporations may be authorized by the by-laws of non-stock corporations with the approval of, and under such conditions which may be prescribed by, the Securities and Exchange Commission."

[11] "Article III (2). Vacancies – Any vacancy in the Board of Trustees shall be filled by a majority vote of the remaining members of the Board." (Cited in Decision, SEC Case No. 08-98-6065, p. 6; rollo, p. 43.)

[12] "Section 29. Vacancies in the office of director or trustee. – Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. x x x." (Underscoring supplied)

[13] See SEC Order dated July 6, 2001, Annex "D" of Petition; rollo, pp. 46-51.

[14] "Section 52. Quorum in meetings. – Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations." (Underscoring supplied)

[15] SEC Order dated July 6, 2001, p. 3; rollo, p. 48.

[16] To resolve old cases, the Court created the Committee on Zero Backlog of Cases on January 26, 2006. Consequently, the Court resolved to prioritize the adjudication of long-pending cases by redistributing them among all the justices. This case was recently re-raffled and assigned to the undersigned ponente for study and report.

[17] Petitioner's Memorandum, pp. 6-7; rollo, pp. 96-97.

[18] Ateneo De Naga University v. Manalo, 458 SCRA 325, May 9, 2005; Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation, 456 SCRA 588, April 22, 2005; Alternative Center for Organizational Reforms and Development, Inc. (ACORD) v. Zamora, 459 SCRA 578, June 8, 2005.

[19] Estares v. Court of Appeals, 459 SCRA 604, June 8, 2005; Torres v. Specialized Packaging Development Corporation, 433 SCRA 455, July 6, 2004; National Steel Corp. v. CA, 436 Phil. 656, August 29, 2002; Sy Chin v. Court of Appeals, 399 Phil. 442, November 23, 2000.

[20] Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc., GR No. 159831, October 14, 2005.

[21] In certain exceptional circumstances, the Court has allowed the relaxation of the rule requiring verification and certification of non-forum shopping. LDP Marketing, Inc., v. Monter, GR No. 159653, January 25, 2006 citing Uy v. Land Bank of the Philippines, 336 SCRA 419, July 24, 2000, Roadway Express, Inc. v. Court of Appeals, et al., 264 SCRA 696, November 21, 1996, and Loyola v. Court of Appeals, et al., 245 SCRA 477, June 29, 1995; Ateneo De Naga University v. Manalo, 458 SCRA 325, May 9, 2005.

[22] Uy v. Land Bank of the Philippines, supra.

[23] Corporation Code, Sec. 24.

[24] See Corporation Code, Secs. 6, 16, 24, 28-30, 32, 34, 38, 40, 42-44, 46, 48, 77, 118-120.

[25] Corporation Code, Sec. 23.

> "Sec. 23. The board of directors or trustees. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation x x x."

[26] J. Campos, Jr. and M.C. Campos, The Corporation Code 341, Vol. I (1990); see also Ramirez v. Orientalist Co., 38 Phil. 634 (1918).

[27] J. Campos, Jr. and M.C. Campos, supra at 490.

[28] 5 Fletcher Cyclopedia of the Law of Private Corporations 116 (1976).

[29] J. Campos, Jr. and M.C. Campos, supra note 26 at 436.

[30] 5 Fletcher Cyclopedia of the Law of Private Corporations 127 (1976).

[31] Id.

[32] Id.

[33] R. Lopez, The Corporation Code of the Phils. 396, Vol. I (1994).

[34] 5 Fletcher Cyclopedia of the Law of Private Corporations 77 (1976).

[35] "Section 71. Effect of delinquency. – No delinquent stock shall be voted for or be entitled to vote or to representation at any stockholders' meeting. x x x."

[36] "Section 9. Treasury shares. – Treasury shares are shares of stock which have been issued and fully paid for but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means. x x x."

"Section 57. Voting right for treasury shares. – Treasury shares shall have no voting right as long as such stock remains in the Treasury."

[37] 90 ALR 316.

[38] J. Campos, Jr. and M.C. Campos, supra note 26 at 423.

[39] R. Lopez, supra note 33 at 965.

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[40] Corporation Code, Sec. 89.

[41] In Noremac, Inc. v. Centre Hill Court, Inc., (178 SE 877, March 14, 1935) the management and control of the corporation were vested in lot owners who were members of the corporation, by virtue of their ownership; and the bylaws provided that a quorum should consist of members representing a majority of the lots, numbered from 1 to 30, inclusive; but the number of lots was later reduced to 29 so the Court said that the majority of members representing actual number of lots was a quorum.

The landmark case Avelino v. Cuenca (83 Phil. 17, March 4, 1949) can be used by analogy. In that case, the Supreme Court said that "[t]here is a difference between a majority of "all the members of the House" and a majority of "the House," which requires less number than the first.

In this case, the law refers to the "majority of the members" and not the "majority of all the members." Thus, we can use the same reasoning that the "majority of the members" requires a lesser number than the "majority of all the members."

[42] See the Decision dated June 21, 2000, SEC Case No. 08-98-6065, pp. 3-4; rollo, pp. 41-42.

[43] R. Lopez, supra note 33 at 973.

[44] SEC Letter-Opinion to Ms. Rosevelinda E. Calingasan, et al., (R. Lopez) May 14, 1993; Corporation Code, Sec. 55.

[45] Corporation Code, Sec. 90.

[46] See Petition, p. 11 (citing Art. III, Amended By-Laws of GCHS on Termination of Membership); rollo, p. 20.

[47] Excluding Atty. Antonio C. Pacis (proxy for Anita So), who left the meeting in protest of the alleged lack of quorum.

[48] SEC Letter-Opinion to Mr. Noe S. Andaya (R. Lopez) September 20, 1990.

[49] J. Campos, Jr. and M.C. Campos, supra note 26 at 465.

[50] Article III (2), By-laws of GCHS (cited in the Decision dated June 21, 2000, SEC Case No. 08-98-6065, p. 6); rollo, p. 43.

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