

**JULIO E. T. SALES AND GEORGE V. AGONIAS, IN THEIR OWN
BEHALF, AND IN BEHALF OF SIPALAY MINING EXPLORATION
CORPORATION, AS MINORITY STOCKHOLDERS THEREOF, AND
SIPALAY MINING EXPLO...**

G.R. No. 54330. January 13, 1989

Ponente: CORTES, J.

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CORTES, J.:

Alleging grave abuse of discretion amounting to lack of jurisdiction, petitioners, in this petition for certiorari and prohibition with preliminary injunction, seek to have this Court set aside the orders of respondent Securities and Exchange Commission (hereinafter referred to as SEC) dated June 13, 1980 and July 17, 1980, and the issuance of an order: (1) restraining the SEC, its officers and agents from enforcing its order to create the committee to supervise and control the conduct of the proceedings in the annual stockholders' meeting of Sipalay Mining Exploration Corporation and from stopping the Board of Directors and officers of Sipalay Mining from calling and conducting said meeting; and (2) restraining private respondent Vulcan Industrial and Mining Corporation (hereinafter referred to as VULCAN), its successors, assigns, representatives, nominees or substitutes from voting the disputed 198,500,000 shares of the capital stock of Sipalay Mining at the forthcoming regular annual stockholders' meeting.

The undisputed facts, as culled from the numerous pleadings filed by the parties, are as follows:

On or about June 13, 1974, respondent State Investment House, Inc. (formerly State Financing Center, Inc.) entered into a sales agreement with Sipalay Mining whereby the latter sold to the former 200,000,000 common shares of its capital stock in the amount of P2,600,000.00. The sales agreement between Sipalay Mining and State Investment contained the following terms and conditions:

1. That we shall dispose, sell or assign these shares to the general public through a duly licensed stockbroker after the approval of the registration and/or licensing of shares of the Corporation under terms and conditions and at the price determined by us;
2. That the stockbroker shall not sell more than 1,000,000 shares per buyer, to the extent practicable;
3. In the event you decide to make a public offering [of] additional shares in the future, whether with Sipalay Mining and Exploration Corporation or any other corporation organized by Sipalay Mining Exploration Corporation, you hereby grant us a right of first refusal to undertake the same;
4. The Corporation shall as soon as practicable after the offering period of our shares, apply for listing in the Stock Exchange in accordance with the rules and regulations of the Securities and Exchange Commission. The timing of the date of listing shall be mutually decided by us.
5. That State Financing Center, Inc. shall issue a voting trust in favor of the Board of Directors of Sipalay Mining

Exploration Corporation which shall only be good up to the time the sale to the public of said shares has been effected. [Rollo, pp. 47-48.]

The 200,000,000 shares of stock of Sipalay Mining, covered by ten certificates of stock, were delivered to State Investment. Subsequently, the restriction on the sale of the shares was modified. On October 19, 1974, the Board of Directors of Sipalay Mining approved the amendment of the sales agreement by allowing sale in blocks of 5,000,000 shares per buyer.

On December 22, 1975, State Investment addressed a letter to Sipalay Mining requesting that the latter transfer the 200,000,000 shares to Anselmo Trinidad & Co., Inc. (hereinafter referred to as ATCO), to which it had sold the shares. Sipalay Mining complied with this request.

During the time that ATCO held the shares, it voted them in the stockholders' meetings of Sipalay Mining.

On July 17, 1978, or some two and a half years later, ATCO in turn sold 198,500,000 of the shares to respondent VULCAN. Sipalay Mining was requested by ATCO to transfer the 198,500,000 shares to the name of VULCAN. By resolution of the Board of Directors of Sipalay Mining, its President was directed to sign the certificate of stock that would effect the transfer.

Eight days prior to the scheduled annual stock-holders' meeting of Sipalay Mining on July 18, 1979, petitioners filed before the SEC a petition to nullify the sale of the shares to VULCAN, with a prayer for the issuance of a writ of preliminary injunction to enjoin VULCAN from voting the shares.

In an order dated July 16, 1979, the SEC temporarily restrained VULCAN from voting its 198,500,000 shares at the 1979 annual stockholders' meeting pending resolution of petitioners' petition for the issuance of a writ of preliminary injunction.

The annual stockholders' meeting of Sipalay Mining proceeded on July 18, 1979 without the participation of VULCAN's 198,500,000 shares and the members of the Board of Directors were elected.

Meanwhile, hearings on petitioners' petition for injunction continued.

In the March 10, 1980 issue of the Bulletin Today, a Notice of Call was published, calling for the payment of twenty percent (20%) of unpaid subscriptions in Sipalay Mining on or before April 15, 1980. VULCAN immediately petitioned the SEC to issue a writ of injunction.

On April 16, 1980, the SEC issued a temporary restraining order suspending the effects and implementation of the call.

On June 13, 1980, the SEC issued the first of the questioned orders, the dispositive portion of which reads as follows:

WHEREFORE, finding petitioners' application for the issuance of the writ of preliminary injunction and respondents' motion to dismiss to be both without merit, the same are hereby DENIED and, accordingly, the Restraining Order dated July 16, 1979 LIFTED and DISSOLVED. Considering that the annual stockholders' meeting of Sipalay for the year 1980 is forthcoming as prescribed in its By-laws, the Board of Directors and officers of the corporation are directed to call and hold said regular meeting as mandated in the corporation's By-laws. At said meeting, let the 198,500,000 shares in question be counted for quorum and allowed to vote and be voted for.

To ensure an orderly stockholders' meeting and forestall possible controversy in the sending of notices, processing and validation of proxies and closing of the stock and transfer book, a Committee composed of one representative

of the Securities and Exchange Commission, as Chairman, and one representative each from the respondents and the petitioners, as members, is hereby formed to supervise and control the conduct of the proceedings and perform the functions of the Corporate Secretary, including but not limited to, the following acts:

- a) closing of the stock and transfer book;
- b) sending of notices of the stockholders' meeting;
- c) validation of proxies;
- d) certification of proper notice to stockholders;
- e) determination of presence of quorum;
- f) supervision of the casting and canvassing of the elections, including the determination of all issues related thereto;
- g) certification of the results of the elections; and
- h) such other acts and functions as the Committee may perform for the orderly and peaceful conduct of the stockholders' meeting.

Accordingly, Atty. EUGENIO E. REYES, Supervising S.E. Specialist, is hereby appointed to act as Chairman of the Committee. The petitioners, as well as the respondents are hereby given a period of three (3) days upon receipt of this Order to submit to the Commission their respective representatives to the Committee. [Rollo, pp. 119-120.]

On June 20, 1980, the SEC issued an order lifting its previous order dated April 16, 1980 which suspended the effect and implementation of the call. To this, VULCAN filed a motion for reconsideration.

On July 17, 1980, the SEC issued the second questioned order, the dispositive portion of which states:

WHEREFORE, the motion of respondent Vulcan seeking reconsideration of the Order of the Commission dated June 20, 1980 should be, as it is hereby DENIED and the Motion for Reconsideration filed by petitioners, through counsel, is likewise DENIED.

Let the stockholders' meeting set by Sipalay Mining Exploration Corporation for July 18, 1980 be cancelled and the Committee created under the Order dated June 13, 1980 be constituted. Petitioner is hereby directed to submit the name of its representative within five (5) days from receipt of this Order, otherwise, they shall be considered to have waived their right to be represented in said Committee. [Rollo, p. 124.]

As the appeal of the assailed orders to the SEC en banc was not allowed under the rules of the Commission*, petitioners on July 23, 1980 filed the instant petition before this Court.

On August 1, 1980, the Court issued a temporary restraining order enjoining the SEC from enforcing its orders dated June 13, 1980 and July 17, 1980, particularly from enforcing its order to create the committee to supervise and control the conduct of the proceeding in the annual stockholders' meeting of Sipalay Mining and from stopping the Board of Directors and officers of Sipalay Mining from calling and conducting said meeting; and respondent VULCAN from voting the questioned 198,500,000 shares of capital stock of Sipalay Mining at the forthcoming regular annual stockholders' meeting [Rollo, pp. 129-30.]

Thereafter, respondent VULCAN filed its comment, which was adopted in toto by respondents Walter W. Brown, Annabelle P. Brown and Alfredo C. Ramos. Respondent Augusto B. Sunico filed a comment adopting VULCAN'S comment but which included supplementary comments.

On August 18, 1980, respondent VULCAN filed a manifestation alleging that it had received a Notice of Stockholders' Meeting from Sipalay Mining notifying its stockholders that the annual stockholders' meeting shall be held on August 21, 1980 and praying that the restraining order issued by the Court be lifted or that the annual stockholders' meeting of Sipalay Mining be enjoined pending resolution of the case.

Accordingly, the Court on August 20, 1980 issued a temporary restraining order enjoining petitioners from holding the annual stockholders' meeting on August 21, 1980 [Rollo, pp. 202-03.]

Thereafter, respondents ATCO, State Investment and the SEC filed their respective comments. Replies were filed by petitioners to the comments of respondents VULCAN and the SEC, to which rejoinders were filed by the latter.

In a resolution dated July 27, 1987, the Court resolved to give due course to the petition and to consider the case submitted for decision on the basis of the pleadings already on file [Rollo, p. 407.]

The question to be resolved by the Court is whether or not the SEC acted with grave abuse of discretion when it issued the two (2) questioned orders. However, for purposes of clarity, it may be divided into two (2) issues:

(1) Whether or not the SEC acted arbitrarily and with grave abuse of discretion, tantamount to lack of jurisdiction, when it ordered the creation of the committee composed of the SEC representative, as chairman, and one representative each from petitioners and private respondents, as members, to supervise and control the conduct of the proceedings and perform the functions of the Corporate Secretary in relation to the regular annual stockholders' meeting of Sipalay Mining; and

(2) Whether or not the SEC acted with grave abuse of discretion when it found that petitioners have not sufficiently shown that they are entitled to the injunctive relief prayed for in their petition and denied their prayer for the issuance of a writ of preliminary injunction.

Each issue shall be discussed separately.

A. Petitioners claim that the SEC acted arbitrarily and with grave abuse of discretion when it ordered the creation of the committee, on the grounds: (1) that the controversy is not one of those mentioned in Presidential Decree No. 902-A; and (2) that P.D. No. 902-A specifies that only in appropriate cases may the SEC compel officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision [Rollo, p. 4.]

1. The Court finds that the order of the SEC creating the committee is fully supported by P.D. No. 902-A.

P.D. No. 902-A, as amended by P.D. No. 1653 (1979), provides:

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Sec. 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued, by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military.

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Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

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b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

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As correctly pointed out by the Solicitor General, the case before the SEC involves a controversy regarding the election of directors of a corporation:

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It should be pointed out that in their amended petition in S.E.C. Case No. 1751, herein petitioners prayed, among other things, that a restraining order be issued enjoining Vulcan from exercising the rights of a stockholder over 198,500,000 shares of capital stock in Sipalay Mining, particularly, the right to vote in the then forthcoming regular annual stockholders' meeting of Sipalay Mining on July 18, 1979. Pursuant to said application of petitioners, respondent Commission issued a restraining order enjoining Vulcan from voting the questioned 198,500,000 shares at said meeting (Annex "B" Petition). In its answer to the petition in SEC Case No. 1751, Vulcan alleged, as first compulsory counterclaim, that by reason of the restraining order issued by the Commission, it was prevented from voting its shares in the stockholders' meeting of Sipalay Mining held on July 18, 1979, and petitioners, thus, caused the "election" of a new set of members of the board of directors in the corporation.

It is apparent from the foregoing that a controversy in the election of directors of Sipalay Mining came about because it was petitioners themselves who had asked the Commission not to allow the disputed 198,500,000 shares to be voted on at the July 18, 1979 annual stockholders' meeting of the corporation. Since said 198,500,000 shares of stock were not allowed to vote due to the restraining order of the Commission, petitioners were able to elect candidates from their group. It is this election of members of the board of directors on July 18, 1979, which is being questioned by respondent Vulcan in its answer in SEC Case No. 1751 wherein it prays that the stockholders' meeting on the aforementioned date be declared null and void. The controversy regarding the election of directors in Sipalay Mining was, thus, a natural consequence of the relief sought by petitioners themselves that the shares of stocks of Vulcan aforementioned be barred from voting. Respondent Commission had to address itself to the controversy by issuing its questioned order dated June 13, 1980, directing the holding of the annual stockholders' meeting of Sipalay Mining for the year 1980 as mandated in its by-laws, and creating a committee to supervise and control the conduct of the proceedings to insure an orderly stockholders' meeting and forestall possible controversy in the sending of notices, processing and validation of proxies and closing of the stock and transfer book. Certainly, the Commission cannot be faulted, much less can it be said that it exceeded its jurisdiction, for having taken all proper measures to insure that an orderly meeting and election are held in Sipalay Mining in the light of the issues raised in SEC Case No. 1751 pending before the Commission.

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[Rollo, pp. 400-401.]

Sec. 5(c) of P.D. No. 902-A would, therefore, clothe the SEC with jurisdiction over the matter.

From another vantage point, since petitioners, in their petition before the SEC, pray for the exclusion of the 198,500,000 shares of VULCAN from the annual stockholders' meeting, the controversy may be considered either as one arising out of intra-corporate relations or one between and among the stockholders of the corporation.

In *Union Glass & Container Corporation v. Securities and Exchange Commission* [G.R. No. 64013, November 28, 1983, 126 SCRA 31], the Court explained the jurisdiction of the SEC:

This grant of jurisdiction must be viewed in the light of the nature and function of the SEC under the law. Section 3 of P.D. No. 902-A confers upon the latter "absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines x x x." The principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.

It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.

Otherwise stated, in order that the SEC can take cognizance of a case, the contro-versy must pertain to any of the following relationships: [a] between the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stock-holders, partners, members, or officers; [c] between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves. (at p. 38.)

In a later decision, the Court expounded on what constitutes an intra-corporate controversy:

It has already been settled that an intra-corporate controversy would call for the jurisdiction of the Securities and Exchange Commission. (*Philippine School of Business Administration v. Lanao*, 127 SCRA 781, February 24, 1984). On the other hand, an intra-corporate controversy has been defined as "one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever." (*Philex Mining Corporation v. Reyes*, 118 SCRA 605, November 19, 1982). This Court has also ruled that cases of private respondents who are not stockholders of the corporation, cannot be a "controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association, of which they are stockholders, members or associates, respectively." (*Sunset View Condominium Corporation v. Campos, Jr.*, 104 SCRA 303, April 27, 1981). [*Rivera v. Florendo*, G.R. No. 57586, October 8, 1986, 144 SCRA 643, 656.]

But more recently, in a case where the respondents therein likewise sought to ultimately annul a transfer of shares of stock and, in the meantime, to prevent the shares from being registered in the name of the transferee, the Court held that the controversy fell within the jurisdiction of the SEC, to wit:

The very complaint of the Bragas for the annulment of the sales and transfers as filed by them in the regular court questions the validity of the transfer and endorsement of the certificates of stock, claiming alleged pre-emptive rights in the case of the Abejos' shares and alleged loss of the certificates and lack of consent and consideration in the case of Virginia Braga's shares. Such dispute clearly involves controversies "between and among stockholders," as to the Abejos' right to sell and dispose of their shares to Teletronics, the validity of the latter's acquisition of Virginia Braga's shares, who between the Bragas and the Abejos' transferee should be recognized as the controlling shareholders of the corporation, with the right to elect the corporate officers and the management and control of its operations. Such a dispute and case clearly fall within the original and exclusive jurisdiction of the SEC to decide, under Section 5 of P.D. 902-A, above quoted. (*Abejo v. De la Cruz*, G.R. No. 63558 and *Pocket Bell Phils., Inc. v. Securities and Exchange Commission*, G.R. Nos. 68450-51, May 19, 1987, 149 SCRA 654, 664.)

Viewed from any angle, there is no denying that the controversy over the sale of the shares to VULCAN and the right to vote them in the annual stockholders' meeting squarely falls within the original and exclusive jurisdiction of the SEC.

2. The Court likewise finds that it was within the powers of the SEC to compel the officers of Sipalay Mining to call a stockholders' meeting under its supervision.

P.D. No. 902-A states:

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Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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f) To compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision;

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As discussed above, under Section 5 of P.D. No. 902-A, the SEC had original and exclusive jurisdiction over the controversy. It was "in order to effectively exercise such jurisdiction", to borrow the language of P.D. No. 902-A, that the SEC ordered the creation of the committee, in the exercise of its broad powers of control and supervision over corporations and its more specific power to compel the officers of a corporation to call meetings of stockholders under its supervision.

The Court finds the functions delegated to the committee to be in accordance with the SEC's mandate. The powers delegated to the committee were all confined to the holding of the stockholders' meeting and the conduct of the election of directors in connection therewith [See pp. 5-6 of this Decision.] This displays the circumspect and cautious manner in which the SEC exercised its broad powers under P.D. No. 902-A.

The Court, therefore, finds no basis to sustain petitioners' contention that the SEC acted arbitrarily and gravely abused its discretion when it ordered the creation of a committee to supervise the stockholders' meeting and election of directors.

B. Petitioners assail the SEC for finding that they have not shown convincingly that they are entitled to the injunctive relief and for denying their petition for the issuance of a writ of preliminary injunction.

Petitioners raise two grounds for the invalidity of the sale of the 198,500,000 shares to VULCAN, which they contend should bar the shares from being voted, namely: (1) that the sale was violative of the condition in the sales agreement that the stockbroker shall not sell more than 5,000,000 shares per buyer; and (2) that VULCAN's ownership of the shares is contrary to the provisions of Section 13 (5-A) of the old Corporation Law.

1. Petitioners argue that 5,000,000 shares constitute the maximum number that may be sold to a single buyer, without any qualification, and consequently the sale to VULCAN is null and void for violating this proviso. They assert that, originally, the sales agreement provided that the stockbroker shall not sell more than 1,000,000 shares per buyer, to the extent practicable, but this condition was modified in a resolution of Sipalay Mining's Board of Directors increasing the maximum to 5,000,000 shares per buyer, thus indicating the intent to make 5,000,000 shares the absolute maximum. Stated otherwise, the increase of the maximum number of shares that can be sold to a single buyer to 5,000,000 manifested the clear intent to limit the number of shares that may be sold to a single buyer to only 5,000,000, without any exception or qualification.

Thus, in the letter of Sipalay Mining to State Financing Center, Inc. dated October 22, 1974, it is stated:

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Also please be informed that by resolution of the Board of Directors of this Corporation, approved on October 19, 1974, it was agreed that the restriction on sales to the public of a maximum of 1-million shares be modified to make the maximum five (5) million shares per buyer. (Rollo, p. 49.)

It will be noted that the letter precisely used the term "five (5) million shares per buyer" without restating the previous qualification of "to the extent practicable".

However, despite these facts, the SEC has found that petitioners have not established a clear right to the issuance of a writ of preliminary injunction:

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From the pleadings on record, the Commission is convinced that petitioners have failed to show clearly that they are entitled as a matter of right to the injunctive relief prayed for. The fact remains that the questioned sales of stock had, as early as July 17, 1978, been perfected and afford the buyer thereof the presumption of validity until otherwise declared invalid and void. At this stage of the proceedings, it is but logical and reasonable to apply that presumption. It will be noted also that the questioned 198,500,000 shares while in the hands of respondent ATCO, were voted in previous stockholders' meetings which right was merely transferred to respondent Vulcan. Likewise, it would appear that to sustain the restraining order further or the issuance of preliminary injunction would necessarily cause greater damage to the respondents, particularly Vulcan, compared to the alleged injury which may be caused the petitioners. In the absence of clear and convincing evidence to merit the issuance of the preliminary injunction prayed for, the Commission is constrained to deny the same.

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(Rollo, p. 118.)

That the issuance of the writ was not forthcoming was reiterated by the SEC in the other questioned order dated July 17, 1980:

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The Commission is not bent to reconsider its ruling earlier issued and denying the issuance of a writ of preliminary injunction. The issue principally on the defect of transfer of said shares from ATCO to Vulcan is not sufficient basis to enjoin said shares from being voted in a stockholders' meeting. Considering that the questioned shares constitute the majority, it is more equitable that the same be allowed to vote rather than be enjoined.

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(Rollo, p. 123.)

After considering the facts and the arguments of the parties, the Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction attributable to the respondent SEC.

As stated in the first assailed resolution, the sale of the shares of stock had long been perfected and is presumed valid until declared otherwise. As against this presumption, petitioners' prayer for the issuance of a writ of preliminary injunction cannot prevail as the issue of the validity of the sale of the shares is still to be resolved by the SEC. Further, the directive of the Board of Directors of Sipalay Mining to its President to sign the stock certificate that would evidence the ownership of the shares by VULCAN militates against a finding that petitioners have established a case for injunction. Hence, it cannot be said that petitioners have established their right to the relief demanded, the whole or part of which consists in restraining the SEC of the act complained of, as would entitle them to the issuance of a writ of preliminary injunction. (See Sec. 3(c), Rule 58, Revised Rules of

Court.)

The Court is not at liberty to review whether or not the decision of the board to direct its President to sign the stock certificate was to the best interest of the corporation:

. . . It is a well-known rule of law that questions of policy or of management are left solely to the honest decision of officers and directors of a corporation, and the court is without authority to substitute its judgment for the judgment of the board of directors; the board is the business manager of the corporation, and so long as it acts in good faith its orders are not reviewable by courts. [Montelibano v. Bacolod-Murcia Milling Co., Inc., G.R. No. L-15092, May 18, 1962, 5 SCRA 36, 42; Board of Liquidators v. Kalaw, G.R. No. L-18805, August 14, 1967, 20 SCRA 987, 1011, citing Fletcher on Corporations, Vol. 2, p. 390.)

Moreover, there is legal basis to support the SEC's view that "considering that the questioned shares constitute the majority, it is more equitable that the same be allowed to vote rather than be enjoined" (Rollo, p. 123.) The Court has stated before that "the removal of a [majority] stockholder from the management of the corporation and/or the dissolution of a corporation in a suit filed by a minority stockholder is a drastic measure. It should be resorted to only when the necessity is clear" [Chase v. Buencamino, Sr., G.R. No. L-20395, May 13, 1985, 136 SCRA 365, 385.] With more reason, the Court will not deprive a stockholder of his right to vote his shares in the annual stockholders' meeting, except upon a clear showing of its lawful denial under the articles of incorporation or by-laws of the corporation, as it is a right inherent in stock ownership.

2. With regard to their second ground, the alleged violation of Section 13 (5-A) of the Corporation Law, this Court finds that petitioners have not satisfactorily shown how respondent VULCAN committed the violation.

Petitioners allege that VULCAN, by holding 198,500,000 shares of Sipalay Mining, has violated the following provision of Section 13 (5-A):

Any domestic or foreign corporation, and its stockholders organized for the purpose of engaging in mining may acquire and hold not more than forty per centum of the capital stock then outstanding and entitled to vote of only one other corporation organized for the purpose of engaging in mining in the Philippines; Provided, that it shall likewise be unlawful for said latter corporation to be in any wise interested in any other corporation organized for the purpose of engaging in mining

In their petition filed before this Court, petitioners merely made the general allegation that:

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5.10. While being the owner of 20% equity of Sipalay Mining, Vulcan Mining was likewise the holder of shares of stock outstanding and entitled to vote of some other corporations organized for the purpose of engaging in mining, in contravention of the injunction that as a corporation engaged in mining, it may acquire or hold not more than 40% of the capital stock outstanding and entitled to vote of only one other corporation organized for the purpose of engaging in mining.

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(Rollo, p. 15.)

which is but a restatement of the allegation in petitioners' amended petition filed before the SEC:

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15. During almost the whole length of time that the series of prohibited sales from STATE INVESTMENT to ATCO and from ATCO to VULCAN MINING took place, respondent VULCAN MINING was already an existing corporation organized for the purpose of engaging in mining. Consequently, its acquisition of the twenty

per cent (20%), more or less, of the capital stock then outstanding and entitled to vote of SIPALAY MINING is subject to the statutory restrictions prescribed in Section 13 (5-a) of the Corporation Law; that as the records of VULCAN MINING would show, it appears that during said period when it acquired by purchase in July, 1978, almost twenty per cent (20%) of the total equity outstanding and entitled to vote of SIPALAY MINING, said VULCAN MINING was already the owner and holder of shares of stock outstanding and entitled to vote of some other corporations organized for the purpose of engaging in mining, in contravention of the aforementioned provision of the Corporation Law

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(Rollo, pp. 36-37.)

Petitioners, however, have failed to even annex to their pleadings any document that would show the violation. Undoubtedly, a mere allegation, in the absence of any support in the record, does not meet the standard of proof that would warrant the issuance of the injunctive writ. Again, on this point, petitioners had failed to establish that they are entitled to the relief demanded [See Sec. 3(a), *supra*.]

At this juncture, it would be helpful to review some basic principles underlying the issuance of a writ of preliminary injunction, if only to underscore why the SEC, given the circumstances, was virtually without any recourse but to deny the petition for the issuance of the writ.

In the recent case of *Buayan Cattle Co., Inc. v. Quintillan* [G.R. No. L-26970, March 19, 1984, 128 SCRA 276], the Court summarized these principles, to wit:

Two requisites are necessary if an injunction is to issue, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. In particular, for a writ of preliminary injunction to issue, the existence of the right and the violation must appear in the allegation of the complaint. And We recall that the complaint for injunctive relief must be construed strictly against the pleader.

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There is no power the exercise of which is more delicate which requires greater caution, deliberation and sound discretion, or (which is) more dangerous in a doubtful case than the issuing of an injunction; it is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. (Underscoring in the original). [at pp. 286--287.]

As discussed above, petitioners have not only failed to establish a threatened violation of a right, but they have also failed to discharge the burden of clearly showing the right to be protected.

Moreover, as pointed out by the SEC, the issuance of a writ of preliminary injunction "would necessarily cause greater damage to the respondents, particularly VULCAN, compared to the alleged injury which may be caused the petitioners" [Rollo, p. 118] considering that VULCAN would be deprived of its right to vote the shares it purchased from ATCO without the sale even being nullified. This is precisely the kind of mischief that is contemplated in the Court's caveat in the Buayan decision.

In view of the facts, the law and established jurisprudence, the Court is fully convinced that the SEC did not gravely abuse its discretion amounting to lack or excess of jurisdiction when it found that petitioners were not entitled to the writ. The rule is well established that the grant or denial of an injunction rests upon the sound discretion of the lower tribunal, in the exercise of which this Court will not interfere except in a clear case of abuse of [Rodulfa v. Alfonso, 76 Phil. 225 (1946); Gregorio v. Mencias, G.R. No. L-16227, September 29, 1962,

6 SCRA 114; Yaptinchay v. Torres, G.R. No. L-26462, June 9, 1969, 28 SCRA 489.]

WHEREFORE, the petition is hereby DISMISSED and the temporary restraining orders issued by the Court on August 1, 1980 and on August 20, 1980 are LIFTED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*]Rule XVI of the New Rules of Procedure in the Securities and Exchange Commission provides:

Sec. 1. Judgment, Order or Ruling Subject to Appeal. – Only final judgments, orders or rulings shall be subject to appeal to the Commission en banc.

No interlocutory or incidental judgment, order or ruling shall stay the progress of an action nor shall it be subject of appeal until final judgment, order or ruling is rendered for one party or the other.

A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law.

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