

SANTIAGO CUA, JR., SOLOMON S. CUA AND EXEQUIEL D. ROBLES, IN THEIR CAPACITY AS DIRECTORS OF PHILIPPINE RACING CLUB, INC., PETITIONERS, VS. MIGUEL OCAMPO TAN, JEMIE U. TAN AND AT...*G.R. Nos. 181455-56. December 04, 2009*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-181455-56/>**CHICO-NAZARIO, J.:**

Before this Court are two Petitions: (1) a Petition for Review on Certiorari [1] under Rule 45 of the Rules of Court filed by petitioners Santiago Cua, Jr. (Santiago Jr.), Solomon S. Cua (Solomon), and Exequiel D. Robles (Robles), in their capacity as directors of the Philippine Racing Club, Inc. (PRCI), with Miguel Ocampo Tan (Miguel), Jemie U. Tan (Jemie) and Atty. Brigido J. Dulay (Dulay) as respondents, docketed as G.R. No. 181455-56; and (2) a Petition for Certiorari and Prohibition[2] under Rule 65 of the Rules of Court filed by petitioner Santiago Cua, Sr. (Santiago Sr.), also in his capacity as PRCI director, likewise naming Miguel, Jemie, and Dulay as respondents, together with the Court of Appeals and Presiding Judge Cesar Untalan (Judge Untalan) of the Regional Trial Court (RTC), Branch 149 of Makati City, docketed as G.R. No. 182008.

Both Petitions assail the Decision[3] dated 6 September 2007 and Resolution[4] dated 22 January 2008 of the Court of Appeals in the consolidated cases CA-G.R. SP No. 99769 and No. 99780. In its 6 September 2007 Decision, the Court of Appeals dismissed for lack of merit, mootness, and prematurity, the Petition for Certiorari of petitioners Santiago Jr., Solomon, and Robles (Santiago Jr., et al.); and the Petition for Certiorari and Prohibition of petitioner Santiago Sr., which sought the nullification of the Resolution[5] dated 16 July 2007 of the RTC in Civil Case No. 07-610 granting the Temporary Restraining Order (TRO) prayed for by respondents Miguel, Jemie, and Dulay (Miguel, et al.). In its 22 January 2008 Resolution, the appellate court denied the Motions for Reconsideration of petitioners and the Motion to Admit Supplemental Petition for Certiorari of petitioner Santiago Jr, et al. The same Resolution did not consider the Supplemental Petition for Certiorari and Prohibition filed by petitioner Santiago Sr. for the latter's failure to seek leave of court for its filing and admittance. Petitioners would have wanted to challenge in their Supplemental Petitions the Resolution[6] dated 8 October 2007 of the RTC in Civil Case No. 07-610 granting the issuance of a "permanent injunction" against petitioners and the other PRCI directors until the said case was resolved.

I

FACTUAL AND PROCEDURAL ANTECEDENTS

PRCI is a corporation organized and established under Philippine laws to: (1) carry on the business of a race course in all its branches and, in particular, to conduct horse races or races of any kind, to accept bets on the results of the races, and to construct grand or other stands, booths, stabling, paddocks, clubhouses, refreshment rooms and other erections, buildings, and conveniences, and to conduct, hold and promote race meetings and other shows and exhibitions; and (2) promote the breeding of better horses in the Philippines, lend all possible aid in the development of sports, and uphold the principles of good sportsmanship and fair play.[7] To pursue its

avowed purposes, PRCI holds a franchise granted under Republic Act No. 6632, as amended by Republic Act No. 7953, to operate a horse racetrack and manage betting stations. Under its franchise, PRCI may operate only one racetrack.

In 1999, the Articles of Incorporation of PRCI was amended to include a secondary purpose, viz:

To acquire real properties and/or develop real properties into mix-use realty projects including but not limited to leisure, recreational and memorial parks and to own, operate, manage and/or sell these real estate projects.[8]

PRCI is publicly listed with the Philippine Stock Exchange (PSE). In 2006, PRCI had an authorized capital stock of P1,000,000,000.00 divided into 1,000,000,000 shares, with a par value of P1.00 each; of which a total of P569,857,749.00, representing 569,857,749 shares, had been subscribed and paid up.[9]

PRCI owns only two real properties, each covered by several transfer certificates of title. One is known as the Sta. Ana Racetrack, located along A. P. Reyes Avenue, Makati City (Makati property), measuring around 21.2 hectares; and the other is located in the towns of Naic and Tanza in the province of Cavite (Cavite property).

Following the trend in the development of properties in the same area,[10] PRCI wished to convert its Makati property from a racetrack to urban residential and commercial use. Given the location and size of its Makati property, PRCI believed that said property was severely under-utilized. Hence, PRCI management decided to transfer its racetrack from Makati to Cavite. PRCI began developing its Cavite property as a racetrack, scheduled to be completed by April 2008.

Now as to its Makati property, PRCI management decided that it was best to spin off the management and development of the same to a wholly owned subsidiary, so that PRCI could continue to focus its efforts on pursuing its core business competence of horse racing. Instead of organizing and establishing a new corporation for the said purpose, PRCI management opted to acquire another domestic corporation, JTH Davies Holdings, Inc. (JTH).[11]

JTH was then owned by Jardine Matheson Europe B.V. (JME).[12] It had an authorized capital stock of P25,000,000.00, divided into 50,000,000 common shares with a par value of P0.50 each. JTH was publicly listed with the PSE. Its tangible assets substantially consisted of cash. To determine the value of JTH, PRCI engaged the services of the accounting firm Sycip Gorres Velayo & Co. (SGV) to conduct a due diligence study.[13]

Using the results of the SGV study, PRCI management determined that PRCI could initially acquire 41,928,290 shares, or 95.55% of the outstanding capital stock of JTH, for the price of P10.71 per share, or for a total of P449,250,000.00; in this case, PRCI would be paying a premium of P42,410,450.00 for the said JTH shares, computed as follows:

Total price for all of the issued and subscribed JTH

shares (at P10.71/share)

P 470,418,848.00

Less: Unaudited net worth of JTH (purely cash)

- 426,010,000.00

Total premium for 100% of JTH

44,408,848.00

Multiply: Interest in JTH to be initially acquired by

PRCI (95.5%)

x 0.955

Premium for the 95.5% interest in JTH to be acquired

by PRCI

P 42,410,450.00

The PRCI Board of Directors held a meeting on 26 September 2006. Among the directors present were petitioners Santiago Sr., Santiago Jr., and Solomon, as well as respondent Dulay. After discussing and deliberating on the matter of the acquisition of JTH by PRCI, all the directors present, except respondent Dulay, voted affirmatively to pass and approve the following resolutions:

1. Declaration of Intention to Acquire and Purchase Shares of Stock of Another Company -

RESOLVED, as it is hereby resolved, that the Corporation intends to acquire up to one hundred percent (100%) of the common shares of stock of JTH Davies Holdings, Inc. by way of negotiated sale;

RESOLVED FURTHER, That Management and the Corporate Secretary shall prepare and submit the Tender Offer, as well as, to file all the necessary disclosures and notices in compliance with the Securities Regulation Code, its implementing rules, and other prevailing regulations;

RESOLVED FURTHERMORE, That the Corporation authorizes its President, Mr. Solomon S. Cua, to sign and execute any purchase agreements, memoranda, and such other deeds, and to deliver any documents and papers, perform any acts, necessary and incidental to implement the foregoing, as well as to source the funds to implement the same.

2. Special Stockholders' Meeting -

RESOLVED, That a Special Stockholders' Meeting of PRCI shall be held on October 26, 2006 at 10:00 A.M., or at such later date as may be practicable under the circumstances, in the principal place of business of PRCI at Santa Ana Park, A.P. Reyes Avenue, Makati City;

RESOLVED FURTHER, That only those stockholders of record as of end of business day of October 11, 2006 shall be entitled to notice, to vote and/or to be voted upon, in accordance with the laws, regulations and by-laws of PRCI;

RESOLVED FURTHERMORE, That the Corporate Secretary shall be authorized to issue the required notices, set the time for the submission of, and to receive and validate proxies, as well as, to order publication of notices and undertake such appropriate and necessary steps, including the filing of the required disclosures to the regulating agencies, to effect the foregoing.

3. Authorized Attorney-In-Fact and Proxy -

In the event of a successful acquisition of the shares of JTH Davies Holdings, Inc., the Board passed and approved the following resolutions:

RESOLVED, that the Corporation shall hereby authorize SANTIAGO CUA, or in his absence, EXEQUIEL ROBLES, or in his absence, SOLOMON S. CUA, or in his absence, SANTIAGO CUA, JR., or in his absence, DATUK SURIN UPATKOON, or in his absence, Laurence Lim Swee Lim, or in his absence, LIM TEONG LEONG, to act as its attorney-in-fact/proxy and to vote all shares as may be registered in the name of the Corporation/lodged with the PCD System, and to exercise all rights appurtenant thereto during the Annual

Stockholders' Meeting/s and all regular/special meeting/s of JTH DAVIES HOLDINGS, INC. (formerly JARDINE DAVIES, INC.);

RESOLVED FURTHER, That these Directors, in the said order of priority, shall have full power and authority and discretion to nominate, appoint, and/or vote into office such directors and/or officers during the said Annual Stockholders' Meeting/s and regular/special meeting/s of JTH HOLDINGS, INC. (formerly JARDINE DAVIES, INC.);

RESOLVED FINALLY, That these Directors be, as they are hereby granted full power and authority whatsoever requisite or necessary or proper to be done in these matters.[14]

The next day, 27 September 2006, PRCI entered into a Sale and Purchase Agreement for the acquisition from JME of 41,928,290 common shares or 95.55% of the outstanding capital stock of JTH. Among the principal terms of the Sale and Purchase Agreement were:

- (a) The consideration for the acquisition was P10.71 per share or P449,250,000.00;
- (b) Upon the signing of the [A]greement, the [PRCI] shall pay P20 Million to an Escrow Agent as deposit; and
- (c) The sale and purchase transaction contemplated in the Agreement shall be consummated at a closing not later than November 30, 2006 or the 50[th] day from the start of the JTH Offer or such date which shall in no case be later than December 11, 2006.[15]

PRCI also made a tender offer for the remaining 4.45% or 1,954,883 issued and outstanding common shares of JTH at P10.71 each.

In the Special Stockholders' Meeting held on 7 November 2006, attended by stockholders with 481,045,887 shares or 84.42% of the outstanding capital stock of PRCI, the acquisition by PRCI of JTH was presented for approval. The events during said meeting were duly recorded in the Minutes, to wit:

V. APPROVAL OF THE ACQUISITION OF THE SHARES OF STOCK OF JTH DAVIES HOLDINGS, INC.

Thereafter, the Corporate Secretary informed that the President will present to the stockholders the rationale for the acquisition of the shares of JTH Davies Holdings, Inc.

According to the President PRCI is intending to acquire up to 100% of the shares of JTH Davies Holdings, Inc. another listed company in the PSE. For reference, the President informed that the latest Annual Report of JTH has been appended to the Information Statement for guidance. Also copies of the Board's resolution presented for approval and ratification by the stockholders has been posted in the room for convenient reading of the stockholders.

The President explained that JTH is one of the oldest holdings company and the name JTH Davies is an internationally acclaimed name with a reputation for solid and sound financial standing. With PRCI's acquisition of JTH, it gives PRCI the necessary vehicle within which to enlarge and broaden the business and operational alternatives or options of our company. PRCI believes that this JTH will complement the direction of PRCI in fast tracking the development of PRCI's plans and provide it investment opportunities. It is for this reason that we call this special meeting so you may know soonest the present opportunity faced by PRCI without need for you to wait until next year's annual meeting.

The Vice-Chairman then informed that the resolution approving the purchase of JTH Davies Holdings, Inc. as presented in the Information Statement which were furnished to the stockholders is presented for approval to the body. A stockholder thereafter moved that the the (sic) resolution be approved which was duly seconded by another stockholder. The Vice-Chairman declared the resolution approved. Thereafter, Atty. Pagunsan took the

floor and informed that he is the proxy of various stockholders (10%) and would like to manifest his vote as "NO" which the Vice-Chairman duly noted. Notwithstanding the objection of Atty. Pagunsan, considering the more than 2/3 of the outstanding capital stock of PRCI has approved and ratified the resolution, (74%) the Corporate Secretary declared the resolution as duly approved and ratified.

Thereafter, another stockholder, Mr. Ngo, asked the President what are the plans of PRCI on the assets of JTH. The President informed that as of now, JTH has no material hard assets other than its retained earnings. Mr. Ngo asked again what will be the direction of PRCI on the substantial retained earnings of JTH to which the President replied that there are several options being considered once the purchase is complete one of which is the declaration of cash dividend.

Another stockholder took the floor and informed the Management that he is happy with the transaction of PRCI and the purchase by PRCI of the JTH shares is a gooddeal since the value of the goodwill of JTH is substantial by his estimate. He proceeded to thank the President and shook hands with him.[16]

By 22 November 2006, PRCI was able to additionally acquire 1,160,137 common shares of JTH from the minority stockholders of the latter, giving PRCI ownership of 98.19% of the outstanding capital stock of JTH.

PRCI prepared consolidated financial statements for itself and for JTH for the fiscal year ending 31 December 2006. The financial statements were audited by the accounting firm Punongbayan & Araullo which gave the following unqualified opinion of the same: "In our opinion, based on our audit and the report of other auditors, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Philippine Racing Club, Inc. and Subsidiary as of December 31, 2006, and their consolidated financial performance and their cash flows for the year then ended in accordance with Philippine Financial Reporting Standards." The audited financial statements of PRCI and JTH for 2006 were presented to the stockholders of PRCI and submitted to the Securities and Exchange Commission (SEC), the Bureau of Internal Revenue (BIR), and the Philippine Stock Exchange (PSE).

Thereafter, PRCI again engaged the assistance of SGV in executing its intended spin-off to JTH of the management and development of PRCI's Makati property. It was then determined that the Makati property, with a total zonal value of P3,817,242,000.00, could be transferred to JTH in exchange for the unissued portion of the latter's recently increase authorized capital stock,[17] amounting to P397,908,894.50, divided into 795,817,789 shares with a par value of P0.50 per share. The difference of P3,419,333,105.50 between the total zonal value of the Makati property and the aggregate par value of the JTH shares to be issued in exchange for the same, would be reflected as additional paid-in capital of PRCI in JTH.

The matter of the proposed exchange was taken up and approved by the PRCI Board of Directors in its meeting held on 11 May 2007, again with the lone dissent of respondent Dulay. According to the Minutes of the said meeting, the following occurred:

A. Exchange of the Corporation's Makati Property with Shares of JTH Davies Holdings, Inc.

President Cua reported on certain essential matters regarding the Corporation's Makati Property. After doing so, President Cua proposed the exchange of this Property with shares of JTH Davies Holdings, Inc. He then presented to the Board financial facts and figures heavily favoring the transaction.

After due discussion and deliberation, all the Directors present approved and passed the following resolution, except Director Brigido Dulay who registered a negative vote:

RESOLVED, That the Corporation hereby approves and authorizes the exchange of its Makati property with shares of JTH Davies Holdings, Inc.;

RESOLVED FURTHER, That, for this purpose, the Corporation hereby authorizes its Executive Committee to determine and approve the terms and conditions governing the exchange as it shall consider for the best interest of the Corporation subject to approval by the stockholders in compliance with the Corporation Code;

RESOLVED FURTHER, That the Executive Committee, be, as it is hereby granted full power and authority whatsoever requisite or necessary or proper to accomplish these;

RESOLVED FINALLY, That SOLOMON CUA, President & CEO, be, as he is hereby authorized to negotiate with JTH Davies Holdings, Inc. and to execute, sign, and/or deliver any and all documents covering the exchange in accordance with the terms and conditions of the Executive Committee.[18]

Subsequently, the Annual Stockholders' Meeting of PRCI was scheduled on 17 July 2007, the Agenda for which is reproduced below:

- I. Call to Order;
- II. Proof of Notice;
- III. Certification of Quorum;
- IV. Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and of the Special Stockholders' Meeting held last November 7, 2006;
- V. Report of the President;
- VI. Approval of the Audited Financial Statement for the year ended December 31, 2006;
- VII. Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of the Corporation for the Fiscal Year 2006;
- VIII. Approval of the Planned Exchange of PRCI's Makati property for shares of stock;
- IX. Approval of the Amendments of the By-Laws to conform with the Manual of Corporate Governance;
- X. Election of the members of the Board of Directors;
- XI. Appointment of Independent External Auditors;
- XII. Other Matters;
- XIII. Adjournment.[19]

The 11 May 2007 Resolution of the PRCI Board of Directors on the property-for-shares exchange between PRCI and JTH was supposed to be presented for approval by the stockholders under the afore-quoted Items No. VII and No. VIII of the Agenda.

However, on 10 July 2007, respondents Miguel, et al., as minority stockholders of PRCI, with the following shareholdings:

Stockholder
No. of Shares
Percentage
Miguel Ocampo-Tan
16,380,000

2.87

Jemie U. Tan

15,972,720

2.80

Atty. Brigido J. Dulay[20]

1

0.00

Total

32,352,721

5.67

filed before the RTC a Complaint, denominated as a Derivative Suit with prayer for Issuance of TRO/Preliminary Injunction, against the rest of the directors of PRCI and/or JTH. The Complaint was docketed as Civil Case No. 07-610.

The Complaint was based on three causes of action: (1) the approval by the majority directors of PRCI of the Board Resolutions dated 26 September 2006 and 11 May 2007 -- with undue haste and deliberate speed, despite the absence of any disclosure and information -- was not only anomalous and fraudulent, but also extremely prejudicial and inimical to interest of PRCI, committed in violation of their fiduciary duty as directors of the said corporation; (2) respondent Solomon, as PRCI President, with the acquiescence of the majority directors of PRCI, maliciously refused and resisted the request of respondents Miguel, et al., for complete and adequate information relative to the disputed Board Resolutions, brazenly and unlawfully violating the rights of the minority stockholders to information and to inspect corporate books and records; and (3) without being officially and formally nominated, the majority directors of PRCI illegally and unlawfully constituted themselves as members of the Board of Directors and/or Executive Officers of JTH, rendering all the actions they have taken as such null and void ab initio. In the end, respondents Miguel, et al., prayed to the RTC, after notice and hearing, that:

1. A temporary restraining order and/or writ of preliminary injunction be issued restraining and enjoining the holding of the Annual Stockholders' Meeting scheduled on 17 July 2007 and restraining and enjoining the defendants [PRCI directors] from enforcing, implementing, "railroading", or taking any further action in reliance upon or in substitution or in furtherance of the Disputed Resolutions, which would inflict grave and irreparable injury in fraud of the Corporation.
2. A receiver and/or management committee be constituted and appointed to undertake the management and operations of the Corporation and to take over its assets to prevent its further loss, wastage and dissipation.
3. To compel the defendant Majority Directors to render a complete and adequate disclosure of all documents and information relating to the subject matter of the Disputed Resolutions as well as the business and affairs of the Corporation and its wholly-owned subsidiary from the time of the latter's acquisition until final judgment.
4. After trial on the merits, that judgment be rendered in favor of the plaintiffs and against the defendants, as follows:
 - (a) Permanently enjoining and prohibiting defendants from enforcing, implementing, or taking any action in reliance upon the Disputed Resolutions.

(b) Declaring the Disputed Resolutions dated 26 September 2006 and 11 May 2007 and the approval by the Executive Committee of the exchange of the Corporation's Makati Property for JTH shares, as well as any and all actions taken in reliance upon or pursuant to or in furtherance of the Disputed Resolutions and/or approval of the Executive Committee, as null and void ab initio.

(c) Declaring the assumption by defendant Majority Directors as Directors and/or officers of JTH, including all acts done by defendant Majority Directors as such Directors and/or officers of JTH, as null and void ab initio.

(d) Ordering defendants to pay plaintiffs the sum of P500,000.00, and by way of attorney's fees, plus P10,000.00 per court appearance, plus costs of suit.

Other reliefs just and equitable under the premises are likewise prayed for.[21]

After conducting hearings on the prayer for the issuance of a TRO, RTC Judge Untalan issued a Resolution on 16 July 2007, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby partially grants the prayer of PRCI for the issuance of Temporary Restraining Order upon the herein defendants subject to the posting of Php100,000.00 bond on condition that such bond shall answer to any damage that the Defendants may sustain by reason of this TRO if the court should finally decide that the applicants are not entitled thereto. This TRO shall be effective for TWENTY (20) DAYS only from service of the same upon the Defendants after posting of the bond.

Therefore, the Defendants, their agents, proxies and representatives are hereby enjoined, prohibited and forbidden to present to, discuss, much more to approve the same, at the 2007 Annual Stockholders' Meeting of PRCI to be held on July 17, 2007 at 8:00 A.M. at the VIP Room, Santa Ana Park, A.P. Reyes Ave., Makati City, the following Agenda included in the Notice of said stockholders' meeting:

- Agenda Roman No. IV - Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and the Special Stockholders' meeting held last November 7, 2006.

- Agenda Roman No. VII - Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of the Corporation for the Fiscal Year 2006.

- Agenda Roman No. VIII - Approval of the Planned Exchange of PRCI's Makati property for shares of stock.

Thus, in order that these subject matters and items of the Agenda of the aforesaid Stockholders' Meeting shall not be taken up, the herein Defendants, their agents, proxies and representatives, jointly and severally, are hereby ordered to delete and remove from the Agenda said three (3) above stated items of the Agenda before the start and conduct of the said stockholders' meeting. Therefore, in case herein Defendants, their agents, proxies and representatives defy and disobey this mandate, they have committed already four (4) distinct contemptuous acts: delete, present, discuss and approve.

This Court appealed to the Corporate Secretary as Officer of the Court, to please make sure that this mandate is obeyed and observed by the Defendants, their agents, proxies and representatives, before and during the conduct of said stockholders' meeting.

Let the hearing of the main injunction be set on July 23 and 24, 2007 and August 2, 2007, all at two o'clock in the afternoon.[22]

The Annual Stockholders' Meeting of PRCI scheduled the next day, 17 July 2007, failed to push through for lack of quorum.

On 19 July 2007, petitioners Santiago Jr., et al., as PRCI directors filed a Petition for Certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 99769. On 20 July 2007, Santiago Sr., also as PRCI director, filed his own Petition for Certiorari and Prohibition, docketed as CA-G.R. SP No. 99780. Both Petitions assailed the RTC

Resolution dated 16 July 2007, granting the issuance of a TRO, for being rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. CA-G.R. SP No. 99769 and No. 99780 were subsequently consolidated.

The Court of Appeals promulgated its Decision on 6 September 2007 dismissing the Petitions in CA-G.R. SP No. 99769 and No. 99780 for lack of merit, mootness, and prematurity.

According to the Court of Appeals, the TRO issued by the RTC enjoined the presentation, discussion, and approval of only three of the 13 items on the Agenda of the 2007 Annual Stockholders' Meeting. There is no evidence that the TRO issued by the RTC legally impaired the holding of the scheduled stockholders' meeting. Indeed, the lack of quorum during the said meeting was due to the absence of petitioners themselves who comprised the majority interest in PRCI. Consequently, the appellate court found no grave abuse of discretion in the issuance by the RTC of the TRO.

The Court of Appeals also noted that the Petitions in CA-G.R. SP No. 99769 and No. 99780 as regards the issuance of the TRO already became moot when the 20-day period of effectivity of said restraining order expired on 5 August 2007, even before the Petitions were submitted for resolution.

Lastly, the Court of Appeals held that the issues raised by petitioners were factual and evidentiary in nature which must be threshed out before the RTC as the designated commercial court in Makati. The appellate court would not interfere with the proceedings a quo considering that Civil Case No. 07-610 had not yet gone to trial and had not yet been resolved or terminated by the RTC. Therefore, for being premature, the Court of Appeals could not prohibit the continuance of the RTC proceedings in Civil Case No. 07-610.

The Court of Appeals ruled that there was no reason to dismiss the Complaint in Civil Case No. 07-610. Although the Complaint contained mere allegations, which had yet to be supported by evidence, it was sufficient in form and substance, and the RTC properly took cognizance of the same. The Court of Appeals reasoned that:

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) provides:

"SECTION 1. Derivative action. - A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

- (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
- (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
- (3) No appraisal rights are available for the act or acts complained of; and
- (4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case."

A reading of the Complaint reveals that the same sufficiently alleges the foregoing requirements. Complainants essentially allege that they are PRCI stockholders, that they have opposed the issuance and approval of the questioned resolutions during the board stockholders' (sic) meetings, that prior resort to intra-corporate remedies are futile, that nevertheless, they have asked for copies of the pertinent documents pertaining to the questioned transactions which the board has declined to furnish, that they have instituted the derivative suit in the name of the corporation, that they are questioning the acts of the majority of the board of directors believing that the herein petitioners have committed a wrong against the corporation and seeking a nullification of the questioned board

resolutions on the ground of wastage of the corporate assets.

Thus, contrary to petitioners' averment, the Complaint does state a cause of action.[23]

Petitioners in CA-G.R. SP No. 99769 and No. 99780 filed their respective Motions for Reconsideration of the foregoing Decision of the Court of Appeals.

In the meantime, upon the expiration of the TRO issued by RTC Judge Untalan in Civil Case No. 07-610, the Annual Stockholders' Meeting of PRCI was again scheduled on 10 October 2007. However, Judge Untalan issued on 8 October 2007 a Resolution with the following decree:

WHEREFORE, premises considered, this court hereby GRANTS the issuance of PERMANENT INJUNCTION against the defendants until the instant case is finally resolved, subject to the posting by plaintiffs of a Php 100,000.00 bond, on condition that such bond shall answer to any damage that the Defendants may sustain by reason of this injunction if the court should finally decide that the applicants are not entitled thereto. This injunction shall be effective from service of the same upon the Defendants after posting of the bond.

Therefore, the Defendants, their agents, proxies and representatives are hereby enjoined, prohibited and forbidden to present to, discuss, much more to approve the same, at any stockholders' meeting, whatsoever kind and nature, of PRCI of the following Agenda:

- Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and the Special Stockholders' meeting held last November 7, 2006 of PRCI.
- Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of PRCI for the Fiscal Year 2006, as far as the acquisition of JTH and the planned exchange of PRCI's Makati property for shares of stock of JTH are concerned.
- Approval of the Planned Exchange of PRCI's Makati property for shares of stock of JTH.[24]

As a result, the Annual Stockholders' Meeting of PRCI proceeded as scheduled on 10 October 2007 without taking up the matters covered by the permanent injunction issued by the RTC.

Petitioners Santiago Jr., et al. filed in CA-G.R. SP No. 99769 their Motion to Admit Supplemental Petition for Certiorari with the attached Supplemental Petition for Certiorari;[25] and petitioner Santiago Sr. filed in CA-G.R. SP No. 99780 a Supplemental Petition for Certiorari and Prohibition,[26] to be followed shortly thereafter by a Motion to Admit (Supplemental Petition).[27] Petitioners intended to additionally assail in their Supplemental Petitions the 8 October 2007 Resolution of the RTC granting the issuance of the permanent injunction.

In its Resolution dated 22 January 2008, the Court of Appeals denied the Motions for Reconsideration of petitioners and the Motion to Admit Supplemental Petition for Certiorari of petitioners Santiago Jr., et al.

The Court of Appeals found that petitioners' Motions for Reconsideration merely reiterated the issues and arguments which were raised in the Petitions and/or which the appellate court already discussed and passed upon. The Court of Appeals reiterated its ruling that it was premature to prohibit the continuance of the proceedings in Civil Case No. 07-610 before the RTC; and that the Complaint therein sufficiently stated a cause of action.

The Court of Appeals likewise refused to admit petitioners' Supplemental Petitions for Certiorari. It noted that Santiago Sr. filed his Supplemental Petition without asking for leave to file the same. Apparently, the appellate court disregarded the Motion to Admit (Supplemental Petition) which petitioner Santiago filed separately from and at a later date than his Supplemental Petition. In addition, the Court of Appeals adjudged that the Supplemental Petitions which petitioners hoped to be admitted involved a subject matter not covered in their

original Petitions. Although the TRO and the permanent injunction were both issued by the RTC in Civil Case No. 07-610, the two issuances were independent of each other, and only the TRO was the subject of the original Petitions. Hence, the Supplemental Petitions assailing the permanent injunction granted by the RTC could not be considered as merely augmenting the matters, issues, and causes of action of the original Petitions; and should be challenged in a separate petition for certiorari.

Failing to obtain any relief from the Court of Appeals, petitioners turned to this Court.

Petitioners Santiago Jr., et al., filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court, docketed as G.R. No. 181455-56; while petitioner Santiago Sr. filed a Petition for Certiorari under Rule 65 of the Rules of Court, docketed as G.R. No. 182008. According to petitioners, the appellate court committed reversible errors of law and grave abuse of discretion in its Decision dated 6 September 2007 and Resolution dated 22 January 2008 in CA-G.R. SP No. 99769 and No. 99780.

Petitioners insisted that Civil Case No. 07-610 pending before the RTC did not constitute a valid derivative suit. Respondents Miguel, et al., failed to allege in their Complaint that they had no appraisal rights for the acts they were complaining of. In fact, the very allegations made by respondents Miguel, et al. in their Complaint supported the availability of appraisal rights to them. The Complaint in Civil Case No. 07-610 was nothing more than a nuisance or harassment suit against petitioners and the other PRCI directors.

Petitioners averred that, by finding no grave abuse of discretion on the part of the RTC in issuing the TRO against petitioners and the other PRCI directors, the Court of Appeals substituted its own judgment for that of the PRCI Board of Directors, arbitrarily and capriciously disregarding the business judgment made by the said Board and approved by PRCI stockholders. The TRO issued by the RTC was not for the benefit of the PRCI stockholders. Furthermore, the expiration of the 20-day TRO did not make their Petitions for Certiorari in CA-GR SP No. 99769 and No. 99780 moot. Said Petitions included the prayer that the RTC be restrained from proceeding with Civil Case No. 07-610 in view of the fatally defective Complaint, the grant or denial of which the appellate court should have still determined despite the expiration of the TRO.

Petitioners also challenged the refusal by the Court of Appeals to admit their Supplemental Petitions in CA-GR SP No. 99769 and No. 99780. They asserted that the issues in their Supplemental Petitions were closely intertwined with those in their original Petitions.

The prayer of petitioners Santiago Jr., et al., in their Petition in G.R. No. 181455-56 reads:

PRAYER

WHEREFORE, in view of the foregoing and in the interest of justice, it is most respectfully prayed of the Honorable Supreme Court that:

- The Decision of the Court of Appeals dated 06 September 2007 (Annex "I") and the Resolution of the Court of Appeals dated 22 January 2008 (Annex "M") be NULLIFIED, REVERSED and SET ASIDE for having been issued on the basis of reversible error of law and with grave abuse of discretion amounting to lack of jurisdiction.
- The Resolutions of Judge Cesar Untalan of Makati Regional Trial Court, Branch 149 dated 16 July 2007 (Annex "F") and 08 October 2007 (Annex "G") be accordingly NULLIFIED, REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack of jurisdiction.
- The complaint of Respondents be DISMISSED outright for lack of jurisdiction and cause of action.
- Such further reliefs just and equitable under the circumstances be GRANTED.[28]

Petitioners Santiago Jr., et al., subsequently filed in G.R. No. 181455-56 an Urgent Motion for Issuance of a Temporary Restraining Order (Status Quo Ante) and/or Writ of Preliminary Injunction, in which they additionally asked the Court that "a Temporary Restraining Order (Status Quo Ante) and/or Writ of Preliminary Injunction be immediately issued restraining the implementation (sic) Judge Cesar Untalan's Resolutions dated 16 July 2007 and 08 October 2007 so as not to render inutile this Most Honorable Court's exercise of jurisdiction over this action and to prevent the decision on this case from being rendered ineffectual and academic." [29]

Meanwhile, petitioner Santiago Sr. sought the following reliefs from this Court in his Petition in G.R. No. 182008:

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the petition be given due course, and that:

1. Upon the filing of this petition, a temporary restraining order and/or writ of preliminary injunction be immediately issued restraining and enjoining the enforcement or execution of the assailed Court of Appeals' Decision and Resolution, and the assailed trial court's resolutions, particularly that which mandates the continued enforcement of the Writ of PERMANENT Injunction issued by the trial, which prevents the stockholders of the corporation from acting on matters that have to be submitted to them for approval and/ratification at the regular annual stockholders' meetings.
2. Thereafter, a writ of prohibition be issued and/or the preliminary injunction be made permanent and continuing, during the pendency of the instant case before the Honorable court.
3. After due hearing, that the Honorable Court:
 - (a) Declare null and void the Honorable Court of Appeals' 06 September 2007 Decision and 22 January 2008 Resolution, in CA-G.R. SP No. 99780, as well as the Trial Court's 16 July 2007 and 8 October 2007 Resolutions in Civil Case No. 07-610 of the Makati Regional Trial Court, and
 - (b) Order the dismissal of the Complaint filed by the private respondents against petitioner, et al., docketed as Civil Case No. 07-610 of the RTC of Makati City.

Other reliefs just and equitable in the premises are likewise prayed for. [30]

In a Resolution dated 9 April 2008 in G.R. No. 182008, the Court granted petitioner Santiago Sr.'s prayer for the issuance of a TRO, to wit:

Acting on the prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction dated 24 March 2008, the Court likewise resolves to ISSUE a TEMPORARY RESTRAINING ORDER enjoining respondents from enforcing or executing the assailed Court of Appeals' decision and resolution and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court, and to require petitioner to POST a CASH BOND or a SURETY BOND from a reputable bonding company of indubitable solvency with terms and conditions acceptable to the Court, in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), within five (5) days from notice, otherwise, the temporary restraining order herein issued shall automatically be lifted. Unless and until the Court directs otherwise, the bond shall be effective from its approval by the Court until this case is finally decided, resolved or terminated. [31]

Accordingly, the Court issued the TRO [32] on even date, directed against the respondents of G.R. No. 182008, namely, respondents Miguel, et al., and Judge Untalan.

On 21 April 2008, respondents Miguel, et al. filed with the Court their Comment with Prayer for the Immediate Lifting or Dissolution of the Temporary Restraining Order in G.R. No. 182008.

Respondents Miguel, et al., argued that the Petition for Certiorari in G.R. No. 182008 was dismissible due to several procedural errors. Petitioner Solomon, who signed the Petition in G.R. No. 182008 on behalf of Santiago Sr., was guilty of forum shopping for failing to inform the Court of the Petition for Review in G.R. No. 181455-56, of which he was one of the petitioners. Both Petitions involved the same transactions, essential facts, and circumstances, as well as identical causes of action, subject matter, and issues. The Petition for Certiorari in G.R. No. 182008 was also not personally verified by petitioner Santiago Sr. as required by rules and jurisprudence. Moreover, the Petition for Certiorari was not a proper remedy, since it was only proper when there was no other plain, speedy, and adequate remedy in the ordinary course of law. Petitioner Cua himself admitted the availability of other remedies, except that he was "avoiding the tortuous manner offered by other remedies." In fact, petitioners Santiago Jr., et al., filed a Petition for Review in G.R. No. 181455-56. Lastly, errors of judgment could not be remedied by a Petition for Certiorari. Petitioner Santiago Sr.'s Petition in G.R. No. 182008 raised issues that were factual and evidentiary in nature, on which the RTC has yet to make finding.

On substantial grounds, respondents Miguel, et al., explained that their Complaint in Civil Case No. 07-610 was comprised of several causes of action. It was not merely a derivative suit, but was also an intra-corporate action arising from devices or schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation and were detrimental to the interest of the PRCI stockholders. Additionally, the fraudulent acts and breach of fiduciary duties by the PRCI directors had already been established by prima facie factual evidence, which warranted the continuation of the proceedings in Civil Case No. 07-610 before the RTC for adjudication on the merits. It was also established that there were no appraisal rights available for the acts complained of, since (1) the PRCI directors were being charged with mismanagement, misrepresentation, fraud, and breach of fiduciary duties, which were not subject to appraisal rights; (2) appraisal rights would only obtain for acts of the Board of Directors in good faith; and (3) appraisal rights may be exercised by a stockholder who had voted against the proposed corporate action, and no corporate action had yet been taken herein by PRCI stockholders, who still had not voted on the intended property-for-shares exchange between PRCI and JTH. Furthermore, the Court of Appeals correctly denied admission of the Supplemental Petitions in CA-GR SP No. 99769 and No. 99780. A new and independent cause of action could not be set by supplemental complaint. The issues raised in the original Petitions pertain to the grave abuse of discretion committed by the RTC in issuing the TRO and in taking cognizance of Civil Case No. 07-610, by setting the same for hearing on the main injunction; in contrast, the issues in the Supplemental Petitions referred to the issuance of the Writ of Preliminary Injunction.

In support of their prayer for the immediate lifting or dissolution of the TRO issued by this Court, respondents Miguel, et al., contended that:

I

THE TEMPORARY RESTRAINING ORDER ISSUED BY THIS HONORABLE COURT HAS IMPELLED HEREIN PETITIONER AND HIS CO-MAJORITY DIRECTORS TO SCHEDULE A STOCKHOLDERS' MEETING WITH THE VIEW TO RENDER MOOT AND ACADEMIC THE ACTION AND PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 149.

II

THE PETITIONER HEREIN, HAVING BEEN IMPEADED AS DIRECTOR AND FIDUCIARY OF PRCI, DOES NOT STAND TO SUFFER ANY IRREPARABLE INJURY.

III

TO THE CONTRARY, IT IS PRCI WHO STAND TO SUFFER GRAVE AND IRREPARABLE INJURY IF THE TRO IS NOT LIFTED AND/OR DISSOLVED.

IV

THE PETITIONER HEREIN HAS FAILED TO ESTABLISH ANY CLEAR LEGAL RIGHT THAT ENTITLES HIM TO THE ISSUANCE OF A TRO AND/OR WRIT OF PRELIMINARY INJUNCTION.

V

THE TRO WAS IMPROPERLY ISSUED AS PETITIONER HAS FAILED TO SHOW ANY EXTREME URGENCY TO NECESSITATE THE ISSUANCE THEREOF.[33]

In the end, respondents Miguel, et al., prayed:

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Supreme Court that the Temporary Restraining Order be LIFTED or DISSOLVED IMMEDIATELY, and that the instant Petition be DISMISSED.

Other just and equitable reliefs are likewise prayed for.[34]

Only two days later, on 23 April 2008, respondents Miguel, et al., again urgently moved[35] for the lifting and/or dissolution of the TRO issued by this Court. They informed the Court that the PRCI Board of Directors passed and approved on 22 April 2008 a Resolution setting the Annual Stockholders' Meeting of PRCI on 18 June 2008, including in the proposed Agenda therefor the following items:

(d) Approval of the Minutes of the Special Stockholders' Meeting held on 7 November 2006, and the Minutes of the Annual Stockholders' Meeting held on 10 October 2007;

x x x x

(g) Approval and ratification of the acts of the Board of Directors, the Executive Committee, and Management of the Corporation for Fiscal Years 2006 and 2007;

(h) Approval of the Planned Exchange of PRCI's Makati Property for shares of stock of JTH Davies Holdings, Inc.[36]

On the same day, 23 April 2008, the Court issued a Resolution[37] consolidating G.R. No. 181455-56 and No. 182008.

Thereafter, on 16 June 2008, Aris Prime Resources, Inc. (APRI), a minority stockholder of PRCI - with 5,000,000.00 shares or 0.88% of the outstanding capital stock of PRCI - filed a Very Respectful Motion for Leave to Intervene as Co-Respondent in the Petition with the attached Very Respectful Urgent Motion to Lift Restraining Order.[38] It relayed to the Court that it received Notice of the Annual Stockholders' Meeting of PRCI set on 18 June 2008, where the items on the property-for-shares exchange between PRCI and JTH were included in the Agenda.

Considering that the validity of the acts of the PRCI Board of Directors concerning the property-for-shares exchange are the very issues raised in the Petitions presently before the Court, while the factual issues relating to the same are still being litigated before the RTC in Civil Case No. 07-610, the submission of the exchange to the PRCI stockholders for their approval will render the aforementioned proceedings before this Court and the RTC moot and academic. It will amount to a denial of the right of APRI and of respondents Miguel, et al., to be heard before the RTC where they are still to present their evidence on the factual issues. It will likewise unduly pave the way for the validation of the abuse committed by the majority directors of PRCI in denying the right of the minority directors and stockholders of the corporation to information, and for the sanction of the blatant disregard

by the majority directors of their duties of fidelity and transparency. Unless the TRO is lifted forthwith, APRI, respondents Miguel, et al., and all other minority stockholders stand to suffer prejudice. Expectedly, petitioners seek the dismissal, while respondents Miguel, et al., pray for the grant of the motion to intervene of APRI.

Pending action on the foregoing incidents, petitioners Santiago Jr., et al., filed before the Court a Manifestation and Motion to Set Case for Oral Arguments.[39]

In their Manifestation, petitioners Santiago Jr., et al., admitted that the PRCI Board of Directors had already called and set the Annual Stockholders' Meeting on 18 June 2008, and among the items on the Agenda for confirmation and approval by the stockholders was the property-for-shares exchange between PRCI and JTH.

Petitioners Santiago Jr., et al., brought to the attention of the Court the fact that on 5 June 2008, another set of minority stockholders of PRCI, namely, Jalane Christie U. Tan, Marilou U. Pua, Aristeo G. Puyat, and Ricardo S. Parreno (Jalane, et al.) filed with the RTC of Makati a Complaint against petitioners and the other directors of PRCI and/or JTH, docketed as Civil Case No. 08-458. Jalane, et al., have the following shareholdings in PRCI:

Stockholder

No. of Shares

Percentage

Jalane Christie U. Tan

16,927,560

2.97

Marilou U. Pua

3,884,400

0.68

Aristeo G. Puyat

1,633,666

0.29

Ricardo S. Pareño

5,850

0.00

Total

22,451,476

3.94

Jalane, et al., claimed in their Complaint in Civil Case No. 08-458 that "[a]part from being a derivative suit, this suit is also filed based on devices or schemes employed by the Board of Directors amounting to fraud or misrepresentation which is detrimental to the interest of the corporation, the public and/or stockholders as provided for under Section 1(a)(1) of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC)."[40] The Complaint was based on four causes of action: (1) the acquisition of JTH by PRCI; (2)

sale of 29.92% of JTH shares by PRCI;[41] (3) exchange of the Makati property of PRCI for JTH shares; and (4) interlocking of Directors of PRCI and JTH. The Complaint of Jalane, et al., contained the following prayer:

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court, after due notice and hearing, that:

- A Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction be issued enjoining the presentation, discussion and ratification of portions of the Agenda of the Annual Stockholders Meeting of PRCI scheduled on June 18, 2008, particularly items IV, VII and VIII;
- An order be issued nullifying the Sale and Purchase Agreement dated September 27, 2006 for the acquisition of JTH Davies Holdings, Inc.
- An order be issued nullifying the sale of PRCI shares in JTH in April 2007 and May 7, 2007;

[Paragraph crossed-out.]

- An order be issued directing defendants to pay plaintiffs the sum of P500,000.00 as and by way of attorney's fees, plus cost of suit.

Other reliefs, just and equitable under the premises are likewise prayed for.[42]

Acting on the Complaint of Jalane, et al. in Civil Case No. 08-458, Executive Judge Winlove Dumayas (Executive Judge Dumayas) of the Makati City RTC issued a 72-hour TRO, enjoining PRCI directors from presenting, discussing, and ratifying the items in the Agenda for the Annual Stockholders' Meeting set on 18 June 2008 related to the property-for-shares exchange between PRCI and JTH. However, upon being apprised of the TRO issued by this Court on 9 April 2008 in G.R. No. 182008, in relation to Civil Case No. 07-610 pending before the Makati City RTC, Branch 149, Executive Judge Dumayas gave verbal advice that the Annual Stockholders' Meeting of PRCI should proceed on 18 June 2008 as if the 72-hour TRO had not been issued. Consequently, the Annual Stockholders' Meeting of PRCI proceeded on 18 June 2008.

The Annual Stockholders' Meeting of PRCI, held on 18 June 2008, was attended by stockholders with a total of 493,017,509 shares or 86.52% of the outstanding capital stock of PRCI, more than the necessary 2/3 to constitute a quorum. Discussed in the meeting were the same items, whose presentation to the stockholders was sought to be enjoined by respondents Miguel, et al., in Civil Case No. 07-610 and by Jalane, et al., in Civil Case No. 08-458. The actions taken by the stockholders on the controversial items were duly recorded in the Minutes of the meeting, as follows:

IV. APPROVAL OF THE MINUTES OF THE PREVIOUS STOCKHOLDERS' MEETINGS

Before the next agenda was tackled in the meeting, a stockholder, Atty. Benjamin Santos asked to be recognized on the floor. The Chairman gave Atty. Santos permission to speak. Atty. Santos inquired from the Corporate Secretary if there has already been official notice of service on him regarding a 72-hour temporary restraining order which was issued by the Executive Judge of the Makati Regional Trial Court (RTC). The Corporation (sic) Secretary answered in the negative.

For the information of the stockholders present, Atty. Santos mentioned that a case has been filed by certain minority shareholders, namely, Jalane Christie U. Tan, Marilou U. Pua, Aristeo G. Puyat and Ricardo S. Parreno, against the Board of Directors of PRCI (Civil Case No. 08-458, Makati RTC), and a 72-hour TRO was issued on 17 June 2008 "enjoining defendants (directors of PRCI), their representatives, employees and/or all those acting for and in their behalf to refrain from the presentation, discussion and ratification of portions of the Agenda of the Annual Stockholders' Meeting of PRCI scheduled on June 18, 2008 particularly items IV, VII and VIII." x x x.

x x x x

According to Atty. Santos, the TRO enjoins them in their capacity as Directors of PRCI. He further stated that the attendance of all the directors present in the stockholders' meeting, is in their capacity as stockholders of PRCI and not as directors of PRCI. The Chairman is present merely to preside over the meeting, and the Corporate Secretary is not a member of the Board of Directors. Atty. Santos likewise informed the stockholders present of the existence of a temporary restraining order issued by the Supreme Court dated 09 April 2008 (in SC G.R. No. 182008) which "enjoin(ed) respondents from enforcing or executing the assailed Court of Appeals' decision and resolution, and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court." Thereafter, Atty. Santos moved that Agenda Item IV as well as the rest of the items to be taken up since the TRO of the Makati RTC is defective and should not prevail over the TRO of the Supreme Court.

Atty. Santos added that the case recently filed by the abovementioned minority shareholders is a duplicate of another pending case filed by other minority shareholders also in the Makati RTC. It was pointed out that the shareholders in the recent case are guilty of forum shopping since they primarily have the same interests as those who had earlier filed a suit against PRCI. Atty. Santos clarified that the pending case is currently the subject of a Petition to the Supreme Court wherein the aforementioned TRO was issued. With this Comment, the Corporate Secretary took note of the Petition filed with the Supreme Court and the TRO issued by the Supreme Court.

x x x x

x x x With all the foregoing comments, Atty. Santos moved that the stockholders proceed with the meeting and that the item under Agenda IV be approved, which are the following: the Minutes of the Annual Stockholders' Meeting held on June 19, 2006, the Minutes of the Special Stockholders' Meeting held on November 7, 2006 and the Minutes of the Annual Stockholders' Meeting held on October 10, 2007.

Thereafter, Atty. Alexander Carandang asked to be given permission to speak. The Chairman asked Atty. Carandang his name and authority to speak, to which, he answered his name and said he was stockholder of record and a proxy of Aristeo Puyat and Jose L. Santos. After Atty. Carandang was recognized, he stated that, contrary to Atty. Santos' earlier actuations, the recent complaint filed is different from the complaint earlier filed by the Dulay group. He also mentioned that the case which Puyat earlier filed is different because it is a case for inspection and photocopying of PRCI documents. He thereafter warned against the tackling of Agenda Item No. 4.

Atty. Brigido Dulay, as a stockholder and proxy to the Tan group (Miguel Ocampo Tan, Jemie U. Tan, JUT Holdings, Inc., Jalane Christie U. Tan, etc.) likewise took the floor to manifest his continuing objection to the proceedings.

Atty. Amado Paolo Dimayuga also took the floor as a proxy to Marilou Pua and manifested that the complainants in the recent case filed are not guilty of forum shopping and also manifested his objection to the taking up of Item IV in the agenda and the continuance of the proceedings in the stockholders' meeting. Atty. Pelagio Ricalde also took the floor as proxy for Aries Prime Resources, Inc. and also manifested objection to the proceedings. Both Atty. Dimayuga and Atty. Ricalde manifested continuing objections.

Atty. Dimayuga also mentioned that he received word that a Motion to Lift was just filed by the PRCI Directors regarding the recent TRO issued by the Makati RTC. As a reply, the Corporate Secretary asked that the counsel for the PRCI directors be allowed to explain such allegations. Atty. Garbriel Q. Enriquez, the counsel for PRCI Directors Cua, Cua, Jr., De Villa and Robles informed the stockholders of the wrong information being given by Atty. Dimayuga. They had filed a manifestation before the Executive Judge of the RTC which issued the TRO and informed him of the facts mentioned by Atty. Santos. The Executive Judge

said that today's meeting should proceed because the plaintiffs therein suppressed the existing TRO in the Supreme Court, and the TRO of the RTC cannot rise above the Supreme Court TRO. There is therefore no legal obstacle to holding the Annual Stockholders' Meeting, which should proceed so as not to prejudice the stockholders.

The Corporate Secretary stated that all the objections are duly noted. There being an earlier motion for the approval of the Minutes, a stockholder seconded said motion. The motion having been duly seconded, the Chairman declared all the minutes for approval as duly approved.

x x x x

VI. RATIFICATION OF THE ACTS OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE AND THE MANAGEMENT OF THE CORPORATION FOR FISCAL YEARS 2006 AND 2007

The Chairman then proceeded by stating that the next item on the agenda is the ratification by the Stockholders of the acts of the Board of Directors, the Executive Committee, and the Management during the last fiscal years 2006 and 2007. The Chairman then explained that as to all other matters and action affecting the operations, financial performance and strategic posture of the Corporation, all have been subsumed and discussed in the Annual Report of the President and likewise reflected in the Information Statement sent to all stockholders of record and to the SEC.

Once more, Atty. Dulay, Atty. Carandang, Atty. Dimayuga and Atty. Ricalde all took the floor successively and objected to this item in the agenda and the Corporate Secretary duly noted these objections.

A stockholder later moved that all the acts of the Board of Directors, the Executive Committee, and the corporate management be confirmed, ratified and approved by the stockholders. The said motion was duly seconded, thus, the stockholders thereafter approved and ratified all the said acts.

At this juncture, Atty. Dulay requested that the stockholders who moved and seconded the aforementioned acts be named and their authority to speak be made known. Atty. Carandang likewise inquired about the same information about a lady stockholder who earlier seconded the motion. With this, Atty. Jose Miguel Manalo stated his name and said he was a stockholder of record. The other stockholders stated that they were proxies of Mr. Santiago Cualoping III.

VII. APPROVAL OF THE EXCHANGE OF PRCI'S MAKATI PROPERTY FOR SHARES OF STOCK OF JTH DAVIES HOLDINGS, INC.

When asked by the Chairman as to the next item in the agenda, the Corporate Secretary informed all present that the next item is the approval of the exchange of PRCI's Makati property for shares of stock of JTH Davies Holdings which was duly approved by the Board of Directors during its 11 May 2007 meeting. The exchange was duly reported and disclosed to the SEC and the information thereof was included in the Information Statements mailed to all stockholders of PRCI.

Yet again, Atty. Dulay, Atty. Carandang, Atty. Dimayuga and Atty. Ricalde all took the floor successively and objected to this item in the agenda which were duly noted by the Corporate Secretary.

The Chairman then called the President of PRCI, Mr. Solomon Cua to officiate on this matter. At this point, one stockholder moved that the exchange of PRCI's Makati property for JTH shares be approved by the stockholders, which was duly seconded by another stockholder. President Cua then asked that the total percentage of those who are in favor of the exchange be taken. Mr. Santiago Cua, Jr., a stockholder and a proxy of approximately 31.39% of the shareholdings voted in favor of the exchange. Then, Mr. Lawrence Lim Swee Lin, representing Magnum Investment Ltd. and Leisure Management Ltd. who own 39.15% of the shareholdings, also voted in favor of the exchange. Mr. Exequiel D. Robles also voted in favor of the exchange, as proxy of Sta. Lucia Realty & Development, Inc. owning 4.19% of the shares. Lastly, Atty. Santos

also wanted his vote of approval be counted whi his shares of stock of 117 shares.

With 75.23% of the outstanding capital stock of PRCI voting in favor of the exchange of its Makati property for shares of stock of JTH Davies, the Chairman then declared said motion as carried and approved.[43]

Hence, at their annual meeting on 18 June 2008, the PRCI stockholders had already confirmed and approved the actions and resolutions of the PRCI Board of Directors, which were to subject matters of Civil Cases No. 07-610 and No. 08-458. Resultantly, on 7 July 2008, PRCI and JTH duly signed and executed a Deed of Transfer with Subscription Agreement, covering the exchange of the Makati property of PRCI for shares of stock of JTH. Paragraph 4 of said Deed expressly provides:

4. The parties understand, acknowledge and agree that this Deed is executed with the intention of availing of the benefits of Sections 40(C)(2) of the National Internal Revenue Code of 1997 (NIRC), as amended, where, upon subscription of shares hereunder, the Subscriber shall gain further control of the Company. The parties obtained a ruling from the Bureau of Internal Revenue to the effect that no gain or loss will be recognized on the part of each of the parties, pursuant to this Deed, in accordance with Sections 40(C)(2) of the NIRC, as amended. The ruling confirmed that the transfer of the Subscriber's parcels of land to the Company in exchange for the shares of stock of the latter is not subject to income tax, capital gains tax, donor's tax, value-added tax and documentary stamp tax, except for documentary stamp tax on the original issuance of the Company's shares of stock to the Subscriber. [44] (Emphases ours.)

However, in a letter dated 15 July 2008, the BIR reversed/revoked its earlier ruling that the property-for-shares exchange between PRCI and JTH was a tax-free transaction under Section 40(C)(2) of the National Internal Revenue Code of 1997; and subjected the exchange to value-added tax. As a result, PRCI and JTH executed on 22 August 2008 a Disengagement Agreement,[45] by virtue of which, effective immediately, PRCI and JTH would disengaged and would no longer implement the Deed of Transfer with Subscription Agreement dated 7 July 2008. For all intents and purposes, the said Deed of Transfer with Subscription Agreement was rescinded. PRCI disclosed the Disengagement Agreement to the SEC on 26 August 2008.

Civil Case No. 08-458 was eventually also assigned to the only commercial court of Makati City, i.e., RTC, Branch 149, presided over by Judge Untalan. Petitioners Santiago Jr., et al. averred that Judge Untalan refused to dismiss Civil Case No. 08-458 on the ground of forum shopping, even when it was no different from Civil Case No. 07-610. They further asserted that Judge Untalan showed evident partiality in favor of Jalane, et al., during the hearings in Civil Case No. 08-458, openly making hasty conclusions as to certain marked exhibits and demonstrating his pre-judgment of the case. On 25 September 2008 and 30 September 2008, the PRCI directors filed before the RTC a Motion to Inhibit[46] and a Supplemental Motion to Inhibit,[47] respectively, urging Judge Untalan to inhibit himself from Civil Case No. 08-458, since he had revealed in several instances his utter bias and prejudice against the PRCI directors and admitted his being a relative by affinity of Atty. Amado Paulo Dimayuga,[48] the initial counsel of Jalane, et al. Judge Untalan has yet to act on such motions.

At the end of their Manifestation, petitioners Santiago Jr., et al., asked that this Court grant them the following reliefs:

PRAYER

WHEREFORE, it is respectfully prayed that the foregoing Manifestation be noted, and that the First Suit [Civil Case No. 07-610] as well as the Second Suit [Civil Case No. 08-458] should now be dismissed for being moot and academic, without need of remand to the trial (sic) Court for further proceedings.

It is further respectfully prayed that should the Honorable Court find it proper and necessary, the instant cases be set for oral arguments on such date and time as it may deem convenient to its calendar.

Herein petitioners furthermore pray for such other reliefs as may be just and equitable in the premises.[49]

Petitioner Santiago Sr. also filed his own Manifestation (To Update the Honorable Court on Relevant Supervening Proceedings and Incidents) with Motion to Resolve Merits of Petition and of the Case in the Lower Court (In View of Supervening Proceedings and Incidents),[50] essentially recounting the same events in the Manifestation of petitioners Santiago Jr., et al. The prayer of Santiago Sr. in his Manifestation and Motion reads:

P R A Y E R

WHEREFORE, it is respectfully prayed that the Honorable Court:

1. TAKE COGNIZANCE of the instant Manifestation on relevant supervening proceedings and incidents in this case, especially and specifically, after the issuance by the Honorable Court on 09 April 2008 of a temporary restraining order, addressed to the Court of Appeals, the presiding judge of the Regional Trial Court, Branch 149, Makati City, and the private respondents, and their agents, representatives and/or any person or persons acting upon their orders or in their place of stead, who are:

"ENJOINED from enforcing or executing the assailed Court of Appeals' decision and resolution, and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court."

2. ORDER the dismissal of the complaint below on the ground that the same is not a legitimate and valid derivative suit.

3. ORDER the dismissal of the complaint below, in any case, on the ground that the issues raised in the complaint, specifically with respect to the so-called "disputed" resolutions, have been mooted and/or no longer subsist.

4. ORDER the private respondents to explain why they should not be cited for contempt of court for violation of the temporary restraining order issued by the Court on 09 April 2008.

5. ORDER the private respondents to explain why they should not be cited for contempt of court for engaging in forum-shopping.

6. ORDER that the temporary restraining order issued by the Court on 09 April 2008 be made PERMANENT.

Other reliefs just and equitable in the premises are likewise prayed for.[51]

II ISSUES

The Court identifies the following fundamental issues for its resolution in the Petitions at bar:

- (1) Whether the Petition of Santiago Sr. in G.R. No. 180028 should be dismissed for its procedural infirmities?
- (2) Whether Civil Case No. 07-610 instituted by respondents Miguel, et al. before the RTC should be ordered dismissed?
- (3) Whether Civil Case No. 08-458 instituted by Jalane, et al., before the RTC should be ordered dismissed?
- (4) Whether APRI should be allowed to intervene in the instant Petitions?

III RULING OF THE COURT

Procedural infirmities of Petition in G.R. No. 180028

Respondents Miguel, et al., call attention to two procedural infirmities of the Petition for Certiorari of petitioner Santiago Sr. in G.R. No. 180028: (1) the failure to inform the Court of the pendency of the Petition in G.R. No. 181455-56, thus, violating the rule against forum-shopping; and (2) its being the wrong mode of appeal.

The Verification and Certification of Non-Forum Shopping attached to the Petition for Certiorari of petitioner Santiago Sr. in G.R. No. 180028 was actually signed by his attorney-in-fact, Solomon,[52] who is also a petitioner in G.R. No. 181455-56. It contains the following paragraph:

4. In compliance with the 1997 Rules of Civil Procedure, I hereby certify that the petitioner, by himself personally and/or acting through his attorneys-in fact, has not heretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, and that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, Court of Appeals, or different Divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Court, the aforesaid courts and other tribunal or agency within five (5) days therefrom.[53]

Respondents Miguel, et al., maintain that the failure of Solomon, as petitioner Santiago Sr.'s attorney-in-fact, to inform the Court as regards the pendency of the Petition for Review in G.R. No. 181455-56, of which Solomon is one of the petitioners, is in violation of the rule against forum-shopping and warrants the summary dismissal of the Petition in G.R. No. 182008.

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes. In determining whether or not there is forum shopping, what is important is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative bodies to rule on the same or related causes and/or grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different bodies upon the same issues.[54]

Forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for, and (3) the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[55]

It is evident that Santiago Sr., the petitioner in G.R. No. 182008, is not a party to G.R. No. 181455-56. Even though Solomon is admittedly a petitioner in G.R. No. 181455-56, he is only acting in G.R. No. 182008 as the attorney-in-fact of Santiago Sr., the actual petitioner in the latter case. Thus, the very first element for forum shopping, identity of parties, is lacking.

Respondents Miguel, et al., cannot insist on identity of interests between petitioner Santiago Sr. in G.R. No. 182008 and petitioners Santiago Jr., et al., in G.R. No. 181455-56, when the Complaint itself of respondents Miguel, et al., before the RTC, docketed as Civil Case No. 07-610, impleads the petitioners Santiago Sr. and Santiago Jr., et al., as defendants a quo in their individual capacities as PRCI directors, and not collectively as the PRCI Board of Directors. Each individual PRCI director, therefore, is not precluded from hiring his own counsel, presenting his own arguments and defenses, and resorting to his own procedural remedies, apart and independent from the other PRCI directors. In addition, the consolidation of G.R. No. 181455-56 and G.R. No. 182008 has already eliminated the danger of conflicting decisions being issued in said cases.

Assuming arguendo that Solomon did have the legal obligation to inform the Court in G.R. No. 182008 of the pendency of G.R. No. 181455-56, his failure to do so does not necessarily result in the dismissal of the former. Although the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional.[56] Hence, in this case in which such a certification was in fact submitted - only, it was defective -- the Court may still refuse to dismiss and may, instead, give due course to the Petition in light of attendant exceptional circumstances.[57]

Santiago Sr. committed another procedural faux pas by filing before this Court a Petition for Certiorari under Rule 65 of the Rules of Court to assail the Decision dated 6 September 2007 and Resolution dated 22 January 2008 of the Court of Appeals in CA-G.R. SP No. 99769 and No. 99780.

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not similar to a petition for certiorari under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.[58]

Accordingly, when a party adopts an improper remedy, as in this case, his Petition may be dismissed outright. However, in the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of this case on the merits. Thus, while the instant Petition is one for certiorari under Rule 65 of the Rules of Court, the assigned errors are more properly addressed in a petition for review under Rule 45.[59]

The merits of the Petitions in both G.R. No. 181455-56 and No. 182008 compel this Court to give more weight to substantive justice, instead of technical rules. Indeed, where, as here, there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, the Court will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation.[60]

Derivative suits, in general

A corporation, such as PRCI, is but an association of individuals, allowed to transact under an assumed corporate name, and with a distinct legal personality. In organizing itself as a collective body, it waives no constitutional immunities and perquisites appropriate to such body. As to its corporate and management decisions, therefore, the State will generally not interfere with the same. Questions of policy and of management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their 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 the courts.[61]

The governing body of a corporation is its board of directors. Section 23 of the Corporation Code provides that "[u]nless 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 x x x." The concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.[62]

The following discourse on the corporate powers of the board of directors under Section 23 of the Corporation Code establishes the extent thereof:

Under the above provision, it is quite clear that, except in the instances where the Code expressly grants a specific power to the stockholders or member, the board has the sole power and responsibility to decide whether a corporation should sue, purchase and sell property, enter into any contract, or perform any act. Stockholders' or members' resolutions dealing with matters other than the exceptions are not legally effective nor binding on the board, and may be treated by it as merely advisory, or may even be completely disregarded. Since the law has vested the responsibility of managing the corporate affairs on the board, the stockholders must abide by its decisions. If they do not agree with the policies of the board, their remedy is to wait for the next election of the directors and choose new ones to take their place. The theory of the law is that although stockholders are to have all the profit, the complete management of the enterprise shall be with the board.[63]

The board of directors of a corporation is a creation of the stockholders. The board of directors, or the majority thereof, controls and directs the affairs of the corporation; but in drawing to itself the power of the corporation, it occupies a position of trusteeship in relation to the minority of the stock. The board shall exercise good faith, care, and diligence in the administration of the affairs of the corporation, and protect not only the interest of the majority but also that of the minority of the stock. Where the majority of the board of directors wastes or dissipates the funds of the corporation or fraudulently disposes of its properties, or performs ultra vires acts, the court, in the exercise of its equity jurisdiction, and upon showing that intracorporate remedy is unavailing, will entertain a suit filed by the minority members of the board of directors, for and in behalf of the corporation, to prevent waste and dissipation and the commission of illegal acts and otherwise redress the injuries of the minority stockholders against the wrongdoing of the majority. The action in such a case is said to be brought derivatively in behalf of the corporation to protect the rights of the minority stockholders thereof.[64]

It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust -- not of mere error of judgment or abuse of discretion -- and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.[65]

A derivative suit must be differentiated from individual and representative or class suits, thus:

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be

violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[66]

The afore-quoted exposition is relevant considering the claim of respondents Miguel, et al., that its Complaint in Civil Case No. 07-610 is not just a derivative suit, but also an intracorporate action arising from devices or schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation.[67] A thorough study of the said Complaint, however, reveals that the distinction is deceptive. The supposed devices and schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation are the very same bases for the derivative suit. They are the very same acts of the PRCI Board of Directors that have supposedly caused injury to the corporation. From the very beginning of their Complaint, respondents have alleged that they are filing the same "as shareholders, for and in behalf of the Corporation, in order to redress the wrongs committed against the Corporation and to protect or vindicate corporate rights, and to prevent wastage and dissipation of corporate funds and assets and the further commission of illegal acts by the Board of Directors." Although respondents Miguel, et al., also aver that they are seeking "redress for the injuries of the minority stockholders against the wrongdoings of the majority," the rest of the Complaint does not bear this out, and is utterly lacking any allegation of injury personal to them or a certain class of stockholders to which they belong.[68]

Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, viz:

As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets." [Citations.] (Jones, supra, 1 Cal.3d 93, 106, 81 Cal.Rptr. 592, 460 P.2d 464.) In contrast, "a direct action [is one] filed by the shareholder individually (or on behalf of a class of shareholders to which he or she belongs) for injury to his or her interest as a shareholder. ... [¶] ... [T]he two actions are mutually exclusive: i.e., the right of action and recovery belongs to either the shareholders (direct action) *651 or the corporation (derivative action)." (Friedman, Cal. Practice Guide: Corporations, supra, ¶ 6:598, p. 6-127.)

Thus, in *Nelson v. Anderson* (1999) 72 Cal.App.4[th] 111, 84 Cal.Rptr.2d 753, the **289 minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. (Id. at p. 125, 84 Cal.Rptr.2d 753) The appellate court concluded that the plaintiff could not maintain the suit as a direct action: "Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action. [Citation.] A derivative

action would have been appropriate if its responsible officials had refused or failed to act." (Id. at pp. 125-126, 84 Cal.Rptr.2d 753) The court went on to note that the damages shown at trial were the loss of corporate profits. (Id. at p. 126, 84 Cal.Rptr.2d 753) Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation." [69]

Based on allegations in the Complaint of Miguel, et al., in Civil Case No. 07-610, the Court determines that there is only a derivative suit, based on the devices and schemes employed by the PRCI Board of Directors that amounts to mismanagement, misrepresentation, fraud, and bad faith.

At the crux of the Complaint of respondents Miguel, et al., in Civil Case No. 07-610 is their dissent from the passage by the majority of the PRCI Board of Directors of the "disputed resolutions," particularly: (1) the Resolution dated 26 September 2006, authorizing the acquisition by PRCI of up to 100% of the common shares of JTH; and (2) the Resolution dated 11 May 2007, approving the property-for-shares exchange between PRCI and JTH.

Derivative suit (re: acquisition of JTH)

It is important for the Court to mention that the 26 September 2006 Resolution of the PRCI Board of Directors not only authorized the acquisition by PRCI of up to 100% of the common stock of JTH, but it also specifically appointed petitioner Santiago Sr. [70] to act as attorney-in-fact and proxy who could vote all the shares of PRCI in JTH, as well as nominate, appoint, and vote into office directors and/or officers during regular and special stockholders' meetings of JTH. It was by this authority that PRCI directors were able to constitute the JTH Board of Directors. Thus, the protest of respondents Miguel, et al., against the interlocking directors of PRCI and JTH is also rooted in the 26 September 2006 Resolution of the PRCI Board of Directors.

After a careful study of the allegations concerning this derivative suit, the Court rules that it is dismissible for being moot and academic.

That a court will not sit for the purpose of trying moot cases and spend its time in deciding questions, the resolution of which cannot in any way affect the rights of the person or persons presenting them, is well settled. Where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value. [71]

The Resolution dated 26 September 2006 of the PRCI Board of Directors was approved and ratified by the stockholders, holding 74% of the outstanding capital stock in PRCI, during the Special Stockholders' Meeting held on 7 November 2006. [72]

Respondents Miguel, et al., instituted Civil Case No. 07-610 only on 10 July 2007, against herein petitioners Santiago Sr., Santiago Jr., Solomon, and Robles, together with Renato de Villa, Lim Teong Leong, Lawrence Lim Swee Lin, Tham Ka Hon, and Dato Surin Upatsoon, in their capacity as directors of PRCI and/or JTH. Clearly, the acquisition by PRCI of JTH and the constitution of the JTH Board of Directors are no longer just the acts of the majority of the PRCI Board of Directors, but also of the majority of the PRCI stockholders. By ratification, even an unauthorized act of an agent becomes the authorized act of the principal. [73] To declare the Resolution dated 26 September 2006 of the PRCI Board of Directors null and void will serve no practical use or value, or affect any of the rights of the parties, because the Resolution dated 7 November 2006 of the PRCI stockholders -- approving and ratifying said acquisition and the manner in which PRCI shall constitute the JTH Board of Directors -- will still remain valid and binding.

In fact, if the derivative suit, insofar as it concerns the Resolution dated 26 September 2006 of the PRCI Board of

Directors, is not dismissible for mootness, it is still vulnerable to dismissal for failure to implead indispensable parties, namely, the majority of the PRCI stockholders.

Under Rule 3, Section 7 of the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. The interests of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as a party to the proceeding is an absolute necessity. As a rule, an indispensable party's interest in the subject matter is such that a complete and efficient determination of the equities and rights of the parties is not possible if he is not joined.[74]

The majority of the stockholders of PRCI are indispensable parties to Civil Case No. 07-610, for they have approved and ratified, during the Special Stockholders' Meeting on 7 November 2006, the Resolution dated 26 September 2006 of the PRCI Board of Directors. Obviously, no final determination of the validity of the acquisition by PRCI of JTH or of the constitution of the JTH Board of Directors can be had without consideration of the effect of the approval and ratification thereof by the majority stockholders.

Respondents Miguel, et al., cannot simply assert that the majority of the PRCI Board of Directors named as defendants in Civil Case No. 07-610 are also the PRCI majority stockholders, because respondents Miguel, et al., explicitly impleaded said defendants in their capacity as directors of PRCI and/or JTH, not as stockholders.

Derivative suit (re: property-for-shares exchange)

The derivative suit, with respect to the Resolution dated 11 May 2007 of the PRCI Board of Directors, is similarly dismissible for lack of cause of action.

The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection. The basis of a stockholder's suit is always one of equity. However, it cannot prosper without first complying with the legal requisites for its institution.[75]

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (IRPICC) lays down the following requirements which a stockholder must comply with in filing a derivative suit:

Sec. 1. Derivative action. - A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

- (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
- (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
- (3) No appraisal rights are available for the act or acts complained of; and
- (4) The suit is not a nuisance or harassment suit. (Emphasis ours.)

In their Complaint before the RTC in Civil Case No. 07-610, respondents Miguel, et al., made no mention at all of appraisal rights, which could or could not have been available to them. In their Comment on the Petitions at bar,

respondents Miguel, et al., contend that there are no appraisal rights available for the acts complained of, since (1) the PRCI directors are being charged with mismanagement, misrepresentation, fraud, and breach of fiduciary duties, which are not subject to appraisal rights; (2) appraisal rights will only obtain for acts of the Board of Directors in good faith; and (3) appraisal rights may be exercised by a stockholder who shall have voted against the proposed corporate action, and no corporate action has yet been taken herein by PRCI stockholders, who still have not voted on the intended property-for-shares exchange between PRCI and JTH.

The Court disagrees.

It bears to point out that every derivative suit is necessarily grounded on an alleged violation by the board of directors of its fiduciary duties, committed by mismanagement, misrepresentation, or fraud, with the latter two situations already implying bad faith. If the Court upholds the position of respondents Miguel, et al. - that the existence of mismanagement, misrepresentation, fraud, and/or bad faith renders the right of appraisal unavailable - it would give rise to an absurd situation. Inevitably, appraisal rights would be unavailable in any derivative suit. This renders the requirement in Rule 8, Section 1(3) of the IPRICC superfluous and effectively inoperative; and in contravention of an elementary rule of legal hermeneutics that effect must be given to every word, clause, and sentence of the statute, and that a statute should be so interpreted that no part thereof becomes inoperative or superfluous.[76]

The import of establishing the availability or unavailability of appraisal rights to the minority stockholder is further highlighted by the fact that it is one of the factors in determining whether or not a complaint involving an intra-corporate controversy is a nuisance and harassment suit. Section 1(b), Rule 1 of IRPICC provides:

(b) Prohibition against nuisance and harassment suits. - Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

- (1) The extent of the shareholding or interest of the initiating stockholder or member;
 - (2) Subject matter of the suit;
 - (3) Legal and factual basis of the complaint;
 - (4) Availability of appraisal rights for the act or acts complained of; and
 - (5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.
- [Emphasis ours.]

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

The availability or unavailability of appraisal rights should be objectively based on the subject matter of the complaint, i.e., the specific act or acts performed by the board of directors, without regard to the subjective conclusion of the minority stockholder instituting the derivative suit that such act constituted mismanagement, misrepresentation, fraud, or bad faith.

The *raison d'être* for the grant of appraisal rights to minority stockholders has been explained thus:

x x x [Appraisal right] means that a stockholder who dissented and voted against the proposed corporate action, may choose to get out of the corporation by demanding payment of the fair market value of his shares. When a person invests in the stocks of a corporation, he subjects his investment to all the risks of the business and cannot just pull out such investment should the business not come out as he expected. He will have to wait until the corporation is finally dissolved before he can get back his investment, and even then, only if sufficient assets are left after paying all corporate creditors. His only way out before dissolution is to sell his shares

should he find a willing buyer. If there is no buyer, then he has no recourse but to stay with the corporation. However, in certain specified instances, the Code grants the stockholder the right to get out of the corporation even before its dissolution because there has been a major change in his contract of investment with which he does not agree and which the law presumes he did not foresee when he bought his shares. Since the will of two-thirds of the stocks will have to prevail over his objections, the law considers it only fair to allow him to get back his investment and withdraw from the corporation. x x x,[77] (Emphasis ours.)

The Corporation Code expressly made appraisal rights available to the dissenting stockholder in the following instances:

Sec. 42. Power to invest corporate funds in another corporation or business or for any other purpose. - Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two-thirds (2/3) of the members in case of non-stock corporations, at a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally; Provided, That any dissenting stockholder shall have appraisal right as provided in this Code: Provided, however, That where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.

Sec. 81. Instances of appraisal right. - Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and
3. In case of merger or consolidation. (Emphasis ours.)

Respondents Miguel, et al., themselves admitted that the property-for-shares exchange between PRCI and JTH, approved by majority of the PRCI Board of Directors in the Resolution dated 11 May 2007, involved all or substantially all of the properties and assets of PRCI. They alleged in their Complaint in Civil Case No. 07-610 that:

49. The Corporation's Makati Property, consisting of prime property in the heart of Makati City worth billions of pesos in its current value constitutes substantially all of the assets of the Corporation and is the sole and exclusive location on which it conducts its business of a race course.

50. The exchange of the Corporation's property for JTH shares would therefore constitute a sale of substantially all of the assets of the corporation. (Emphasis ours.)

Irrefragably, the property-for-shares exchange between PRCI and JTH, involving as it did substantially all of the properties and assets of PRCI, qualified as one of the instances when dissenting stockholders, such as respondents Miguel, et al., could have exercised their appraisal rights.

The Court finds specious the averment of respondents Miguel, et al., that appraisal rights were not available to them, because appraisal rights may only be exercised by stockholders who had voted against the proposed

corporate action; and that at the time respondents Miguel, et al., instituted Civil Case No. 07-610, PRCI stockholders had yet to vote on the intended property-for-shares exchange between PRCI and JTH. Respondents Miguel, et al., themselves caused the unavailability of appraisal rights by filing the Complaint in Civil Case No. 07-610, in which they prayed that the 11 May 2007 Resolution of the Board of Directors approving the property-for-shares exchange between PRCI and JTH be declared null and void, even before the said Resolution could be presented to the PRCI stockholders for approval or rejection. More than anything, the argument of respondents Miguel, et al., raises questions of whether their derivative suit was prematurely filed for they had failed to exert all reasonable efforts to exhaust all other remedies available under the articles of incorporation, by-laws, laws, or rules governing the corporation or partnership, as required by Rule 8, Section 1(2) of the IRPICC. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought have failed.[78]

Personal action for inspection of corporate books and records

Respondents Miguel, et al., allege another cause of action, other than the derivative suit -- the violation of their right to information relative to the disputed Resolutions, i.e., the Resolutions dated 16 September 2006 and 11 May 2007 of the PRCI Board of Directors.

Rule 7 of the IRPICC shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation, under Sections 74[79] and 75[80] of the Corporation Code.[81]

Rule 7, Section 2 of IRPICC enumerates the requirements particular to a complaint for inspection of corporate books and records:

Sec. 2. Complaint. - In addition to the requirements in section 4, Rule 2 of these Rules, the complaint must state the following:

- (1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines;
- (2) A demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff upon defendant;
- (3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusals, if any; and
- (4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof. (Emphasis ours.)

As has already been previously established herein, the right to information, which includes the right to inspect corporate books and records, is a right personal to each stockholder. After a closer reading of the Complaint in Civil Case No. 07-610, the Court observes that only respondent Dulay actually made a demand for a copy of "all the records, documents, contracts, and agreements, emails, letters, correspondences, relative to the acquisition of JTH x x x." There is no allegation that his co-respondents (who are his co-plaintiffs in Civil Case No. 07-610) made similar demands for the inspection or copying of corporate books and records. Only respondent Dulay complied then with the requirement under Rule 7, Section 2(2) of IRPICC.

Even so, respondent Dulay's Complaint should be dismissed for lack of cause of action, for his demand for copies of pertinent documents relative to the acquisition of JTH shares was not denied by any of the defendants named in the Complaint in Civil Case No. 07-610, but by Atty. Jesulito A. Manalo (Manalo), the Corporate Secretary of PRCI, in a letter dated 17 January 2006. Section 74 of the Corporation Code, the substantive law on which

respondent Dulay's Complaint for inspection and copying of corporate books and records is based, states that:

Sec. 74. Books to be kept; stock transfer agent. -

x x x x

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: x x x (Emphasis ours.)

Based on the foregoing, it is Corporate Secretary Manalo who should be held liable for the supposedly wrongful and unreasonable denial of respondent Dulay's demand for inspection and copying of corporate books and records; but, as previously mentioned, Corporate Secretary Manalo is not among the defendants named in the Complaint in Civil Case No. 07-610. There is also utter lack of any allegation in the Complaint that Corporate Secretary Manalo denied respondent Dulay's demand pursuant to a resolution or order of the PRCI Directors, so that the latter (who are actually named defendants in the Complaint) could also be held liable for the denial.

Supervening events

During the pendency of the cases at bar, supervening events took place that further justified the dismissal of Civil Case No. 07-610 for already being moot and academic.

First, during the 2008 Annual Stockholders' Meeting of PRCI, held on 18 June 2008, the following agenda items were finally presented to the stockholders, who approved and ratified the same by a majority vote: (1) the Minutes of the Special Stockholders' Meeting dated 7 November 2006, during which the majority of the stockholders approved and ratified the acquisition of JTH by PRCI; (2) the acts of the Board of Directors, the Executive Committee, and the Management of PRCI for 2006, which included the acquisition of JTH by PRCI; and (3) the planned property-for-shares exchange between PRCI and JTH. Even respondents Miguel, et al., themselves admitted in their Comment with Prayer for the Immediate Lifting or Dissolution of the Temporary Restraining Order in G.R. No. 182008 that:

12. Indeed, the approval and/or ratification of the transfer of PRCI's Sta. Ana racetrack property to JTH during the upcoming stockholders' meeting would render nugatory, moot and academic the action and proceedings before the Regional Trial Court of Makati, Branch 149, inasmuch as the acts assailed by private respondents would have already been consummated by such approval and/or ratification.

13. In the same vein, such approval and/or ratification during the forthcoming PRCI stockholder's (sic) meeting would likewise render moot and academic the proceedings before this Honorable Court in that it would have effectively granted the reliefs sought by herein petitioner even before this Honorable Court could finally rule on the propriety of the Court of Appeals' Decision/Resolution by herein petitioners.[82]

Second, although already approved and ratified by majority vote of the PRCI stockholders, and PRCI and JTH executed a Deed of Transfer with Subscription Agreement on 7 July 2008 to effect the property-for-shares exchange between the two corporations, the controversial transaction will no longer push through. A major consideration for the exchange is that it will be tax-free; but the BIR ruled that such transaction shall be subject to VAT. Resultantly, PRCI and JTH executed on 22 August 2008 a Disengagement Agreement, by virtue of which, both corporations rescinded the Deed of Transfer with Subscription Agreement dated 7 July 2008 and immediately disengaged from implementing the said Deed.

Civil Case No. 08-458

The very nature of Civil Case No. 07-610 as a derivative suit bars Civil Case No. 08-458 and warrants the latter's dismissal.

In *Chua v. Court of Appeals*,^[83] the Court stresses that the corporation is the real party in interest in a derivative suit, and the suing stockholder is only a nominal party:

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.

x x x x

x x x For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. It is a condition sine qua non that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring subsequent suit against the same defendants for the same cause of action. In other words, the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a res adjudicata against it. (Emphases ours.)

The more extensive discussion by the Court of the nature of a derivative suit in *Asset Privatization Trust v. Court of Appeals*^[84] is presented below:

Settled is the doctrine that in a derivative suit, the corporation is the real party in interest while the stockholder filing suit for the corporation's behalf is only a nominal party. The corporation should be included as a party in the suit.

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. x x x.

It is a condition sine qua non that the corporation be impleaded as a party because-

x x x. Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation and in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporations must be joined as party because it is its cause of action that is being litigated and because judgment must be a res adjudicata against it.

The reasons given for not allowing direct individual suit are:

(1) x x x "the universally recognized doctrine that a stockholder in a corporation has no title legal or equitable to the corporate property; that both of these are in the corporation itself for the benefit of the stockholders." In other words, to allow shareholders to sue separately would conflict with the separate corporate entity principle;

(2) x x x that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that "the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the

dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law xxx;"

(3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;

(4) it would produce wasteful multiplicity of suits; and

(5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.

As established in the foregoing jurisprudence, in a derivative suit, it is the corporation that is the indispensable party, while the suing stockholder is just a nominal party. Under Rule 7, Section 3 of the Rules of Court, an indispensable party is a party-in-interest, without whom no final determination can be had of an action without that party being impleaded. Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. "Interest," within the meaning of this rule, should be material, directly in issue, and to be affected by the decree, as distinguished from a mere incidental interest in the question involved. On the other hand, a nominal or pro forma party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.[85]

With the corporation as the real party-in-interest and the indispensable party, any ruling in one of the derivative suits should already bind the corporation as *res judicata* in the other. Allowing two different minority stockholders to institute separate derivative suits arising from the same factual background, alleging the same causes of action, and praying for the same reliefs, is tantamount to allowing the corporation, the real party-in-interest, to file the same suit twice, resulting in the violation of the rules against a multiplicity of suits and even forum-shopping. It is also in disregard of the separate-corporate-entity principle, because it is to look beyond the corporation and to give recognition to the different identities of the stockholders instituting the derivative suits.

It is for these reasons that the derivative suit, Civil Case No. 08-458, although filed by a different set of minority stockholders from those in Civil Case No. 07-610, should still not be allowed to proceed.

Furthermore, the highly suspicious circumstances surrounding the institution of Civil Case No. 08-458 are not lost upon the Court. To recall, on 9 April 2008, the Court already issued in G.R. No. 182008 a TRO enjoining the execution and enforcement of the writ of permanent injunction issued by the RTC in Civil Case No. 07-610, which prevented the PRCI Board of Directors from presenting to the PRCI stockholders at the Annual Stockholders' Meeting, for approval and ratification, the agenda items on the acquisition by PRCI of JTH shares and the property-for-shares exchange between PRCI and JTH. The Complaint in Civil Case No. 08-458 was filed with the RTC on 16 June 2008, just two days before the scheduled Annual Stockholders' Meeting on 18 June 2008, where the items subject of the permanent injunction were again included in the agenda. The 72-hour TRO issued by the RTC in Civil Case No. 08-458 enjoined the very same acts covered by the writ of permanent injunction issued by the RTC in Civil Case No. 07-610, the execution and enforcement of which, in turn, was already enjoined by the TRO dated 9 April 2008 of this Court. Considering that it is PRCI which is the real party-in-interest in both Civil Cases No. 07-610 and No. 08-458, then its acquisition in the latter of a TRO exactly similar to the writ of permanent injunction in the former is but an obvious attempt to circumvent the TRO of this Court enjoining the execution and enforcement of the permanent injunction.

Intervention of APRI

It is also the nature of a derivative suit that prompts the Court to deny the intervention by APRI in Civil Case No. 07-610. Once more, the Court emphasizes that PRCI is the real party-in-interest in Civil Case No. 07-610, not respondents Miguel, et al., whose participation therein is deemed nominal. APRI, moreover, merely echoes the position of respondents Miguel, et al., and, hence, renders the participation of APRI in Civil Case No. 07-610 redundant.

Also, the main concern of APRI was the lifting of the TRO issued by this Court on 9 April 2008 and the execution and enforcement of the permanent injunction issued by the RTC, enjoining the presentation by the PRCI Board of Directors -- at the Annual Stockholders' Meeting scheduled on 18 June 2008, for approval and ratification by the stockholders - of the agenda items on the acquisition by PRCI of JTH shares and the property-for-shares exchange between PRCI and JTH. Given that the Annual Stockholders' Meeting already took place on 18 June 2008, during which the subject agenda items were presented to and approved and ratified by the stockholders, the intervention of APRI is already moot.

As a final note, respondent Miguel, et al. made repeated allegations that foreigners were taking over PRCI, and that this must be stopped to protect the Filipino stockholders. They even invoked the ruling of this Court in *Manila Prince Hotel v. Government Service Insurance System (GSIS)*.^[86]

Respondents Miguel, et al., however, cannot rely on *Manila Prince Hotel* as judicial precedent, for the facts therein are far different from those in the cases at bar. The Government, through GSIS, owned Manila Hotel Corporation (MHC), which, in turn, owned the historic Manila Hotel. The case arose from the efforts of GSIS at privatizing MHC by holding a public bidding for 30-51% of the issued and outstanding shares of MHC. The Court ruled that since the Filipino corporation was able to match the higher bid made by a foreign corporation, then preference should be given to the former, considering that Manila Hotel had become a landmark, a living testimonial to Philippine heritage, and part of Philippine economy and patrimony. This was in accord with the Filipino-first policy in the 1987 Constitution.

In contrast, PRCI is a publicly listed corporation. Its shares can be freely sold and traded to the public, subject to regulation by the PSE and the SEC. Without any legal basis therefor, the Court cannot be expected to allocate or impose limitations on ownership of PRCI shares by foreigners. What is more, PRCI, which operates and maintains a horse racetrack and conducts horse racing and betting, can hardly claim to be "a living testimonial of Philippine heritage," like Manila Hotel, that would justify judicial intervention to protect the interests of Filipino stockholders as against foreign stockholders.

WHEREFORE, the Court renders the following judgment:

- (1) The Court GRANTS the Petitions of petitioners Santiago, et al., and petitioner Santiago Sr. in G.R. No. 181455-56 and G.R. No. 182008, respectively. It REVERSES and SETS ASIDE the Decision dated 6 September 2007 and Resolution dated 22 January 2008 of the Court of Appeals in CA-G.R. SP No. 99769 and No. 99780;
- (2) The Court LIFTS the TRO issued on 9 April 2008 in G.R. No. 180028 and CANCELS and RETURNS the cash bond posted by petitioner Santiago Sr. The permanent injunction issued by the RTC on 8 October 2007, the execution and enforcement of which the TRO dated 9 April 2008 of this Court enjoins, has been rendered moot, since the agenda items subject of said permanent injunction were already presented to, and approved and ratified by a majority of the PRCI stockholders at the Annual Stockholders' Meeting held on 18 June 2008;
- (3) The Court ORDERS the DISMISSAL of the Complaint of respondents Miguel, et al., in Civil Case No. 07-610 before the RTC for lack of cause of action, failure to implead indispensable parties, and mootness;
- (4) The Court ORDERS the DISMISSAL of the Complaint of Jalane, et al., in Civil Case No. 08-458, for being in

violation of the rules on the multiplicity of suits and forum shopping; and

(5) The Court DENIES the Very Respectful Motion for Leave to Intervene as Co-Respondent in the Petition with the attached Very Respectful Urgent Motion to Lift Restraining Order of APRI, for redundancy and mootness.

No costs.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo of G.R. 181455-56, pp. 45-115

[2] Rollo of G.R. No. 182008, pp. 3-94.

[3] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon, concurring, rollo of G.R. No. 181455-56, pp. 20-42; rollo of G.R. No. 182008, pp. 95-116.

[4] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon, concurring, rollo of G.R. No. 181455-56, pp. 11-19; rollo of G.R. No. 182008, pp. 118-126.

[5] Penned by Presiding Judge Cesar O. Untalan, rollo of G.R. No. 181455-56, pp. 216-223; rollo of G.R. No. 182008, pp. 159-166.

[6] Penned by Presiding Judge Cesar O. Untalan, rollo of G.R. No. 181455-56, pp. 482-486; rollo of G.R. No. 182008, pp. 318-322.

[7] Rollo of G.R. No. 181455-56, p. 166; rollo of G.R. No. 182008, p. 199.

[8] Rollo of G.R. No. 182008, p. 445.

[9] Of the subscribed and paid-up capital of PRCI, P335,817,485.00 (335,817,485 shares) is owned by Filipinos and P234,040,264.00 (234,040,264 shares) is owned by foreigners. (rollo of G.R. No. 181455-56, p. 175; rollo of G.R. No. 182008, p. 207).

[10] Such as the old Rockwell Power Plant and the former campus of the International School of Manila.

[11] JTH was formerly engaged in a range of activities such as the distribution of agri-chemical products, construction supplies and middle income housing through former wholly owned units, subsidiaries and affiliates. After undergoing an internal reorganization, the company amended its primary purpose in October 2004 from wholesale distribution to that of a holding company. [http://jthdavies.com/index.php?option=com_content&task=view&id=12&Itemid=26].

A holding company is a corporation that limits its business to the ownership of stock in and the supervision of management of, other corporations. It is organized specifically to hold the stock of other companies and ordinarily owns such a dominant interest in the other company or companies that it can dictate policy. [[http://legal-dictionary.thefreedictionary.com/Holding+ Company](http://legal-dictionary.thefreedictionary.com/Holding+Company)]. It has also been defined as a company that earns income from the payment of dividends, rent or interest. The investment holding company does not produce goods or offer services itself, and instead acts as a holding company by owning shares of other companies. [[http://www.businessdictionary.com/ definition/investment-holding-company.html](http://www.businessdictionary.com/definition/investment-holding-company.html)].

[12] A corporation organized and established according to the laws of the Netherlands. It is one of the principal subsidiaries of Jardine Matheson Holdings Limited, an international group of companies with operations mainly

in Asia, centered around Hong Kong and China.[<http://companies.jrank.org/pages/2216/Jardine-Matheson-Holdings-Limited.html>]

[13] Involved the examination of books, records, documents, assets, liabilities, and equity of JTH.

[14] Rollo of G.R. No. 181455-56, pp. 122-123; rollo of G.R. No. 182008, pp. 233-234.

[15] Rollo of G.R. No. 181455-56, pp. 56-57.

[16] Rollo of G.R. No. 181455-56, pp. 126-127.

[17] The authorized capital stock of JTH was increased from P25,000,000.00 (divided into 50,000,000 common shares with a par value of P0.50 each) to P551,000,000.00 (divided into 1,103,000,000 common shares with a par value of P0.50 per share). Out of the increase, P131,649,519.00 (consisting of 263,299,038 shares) were subscribed and paid in full by way of stock dividends. The remaining unissued portion of the increased authorized capital stock of JTH would be subscribed and paid for by PRCI using its Makati property.

[18] Rollo of G.R. No. 181455-56, pp. 129-130; rollo of G.R. No. 182008, pp. 464-465.

[19] Rollo of G.R. No. 181455-56, p. 277; rollo of G.R. No. 182008, pp. 21.

[20] Also in his capacity as PRCI director.

[21] Rollo of G.R. No. 181455-56, pp. 160-163; rollo of G.R. No. 182008, pp. 194-196.

[22] Rollo of G.R. No. 181455-56, pp. 222-223; rollo of G.R. No. 182008, pp. 165-166.

[23] Rollo of G.R. No. 181455-56, pp. 36-37; rollo of G.R. No. 182008, pp. 111-112.

[24] Rollo of G.R. No. 181455-56, pp. 485-486; rollo of G.R. No. 182008, pp. 321-322.

[25] Rollo of G.R. No. 181455-56, pp. 442-481.

[26] Rollo of G.R. No. 182008, pp. 268-314.

[27] Ibid., pp. 323-326.

[28] Rollo of G.R. No. 181455-56, p. 109.

[29] Id. at 502.

[30] Rollo of G.R. No. 182008, pp. 86-88.

[31] Id. at 327.

[32] Id. at 329-331.

[33] Id. at 428-429.

[34] Id. at 441.

[35] Id. at 517-538.

[36] Id. at 523.

[37] Rollo of G.R. No. 181455-56, p. 499; rollo of G.R. No. 182008, p. 352.

[38] Rollo of G.R. No. 182008, pp. 557-569.

[39] Rollo of G.R. No. 181455-56, p. 673-724.

[40] Rollo of G.R. No. 181455-56, p. 732.

[41] As regards the second cause of action, Jalane, et al. alleged that after PRCI acquired 41,928,290 shares or 98.19% of the outstanding capital stock of JTH for P10.71 per share, the PRCI Board of Directors suddenly authorized the following sales: (1) the sale to undisclosed persons of 2,271,508 shares or 5.18% of the outstanding capital stock of JTH in April 2007 for P6.60 per share; and (2) the sale again to undisclosed persons of 10,726,000 shares or 24.44% of the outstanding capital stock of JTH on 7 May 2007 for P6.65 per share. As a result of such sales, the ownership of PRCI in JTH was reduced to only 69.57%; the remaining 31.43% interest in JTH now belonged to "other" stockholders.

[42] Rollo of G.R. No. 181455-56, p. 748.

[43] Rollo of G.R. No. 182008, pp. 632-637.

[44] Id. at 672.

[45] Id. at 678-679.

[46] Rollo of G.R. No. 181455-56, pp. 765-772.

[47] Id. at 773-781.

[48] Atty. Dimayuga is related to Judge Untalan's daughter-in-law.

[49] Rollo of G.R. No. 181455-56, p. 691.

[50] Rollo of G.R. No. 182008, pp. 594-626.

[51] Id. at 622-623.

[52] By virtue of a Special Power of Attorney executed by petitioner Santiago Sr. in favor of petitioners Santiago Jr. and/or Solomon, notarized on 25 August 2007.

[53] Rollo of G.R. No. 182008, p. 89.

[54] *MSF Tire and Rubber, Inc. v. Court of Appeals*, 370 Phil. 824, 832 (1999).

[55] *La Campana Development Corporation v. See*, G.R. No. 149195, 26 June 2006, 492 SCRA 584, 588-589.

[56] *See Ateneo de Naga University v. Manalo*, G.R. No. 160455, 9 May 2005, 458 SCRA 325, 336-337.

[57] *In-N-Out Burger, Inc. v. Sehwan, Incorporated*, G.R. No. 179127, 24 December 2008, 575 SCRA 535, 559.

[58] *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

[59] Id.

[60] *Coronel v. Desierto*, 448 Phil. 894, 903 (2003).

[61] *Philippine Stock Exchange v. Court of Appeals*, 346 Phil. 218, 234 (1997).

[62] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, 16 March 2007, 518 SCRA 453, 464.

[63] Jose Campos, Jr. and Maria Clara L. Campos, *The Corporation Code: Comments, Notes and Selected Cases* (1990 ed.), Vol. I, p. 341.

[64] Angeles v. Santos, 64 Phil. 697, 707 (1937).

[65] Id.

[66] Jose Campos, Jr. and Maria Clara L. Campos, The Corporation Code: Comments, Notes and Selected Cases (1990 ed.), Vol. I, pp. 819-820.

[67] The Interim Rules of Procedure on Intra-Corporate Controversies (IRPICC) shall apply to the following cases:

Rule 1.

Section 1. (a) Cases covered. - These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

[69] Oakland Raiders v. National Football League, 131 Cal.App.4th 621, 32 Cal.Rptr.3d 266, Cal.App. 6 Dist., 2005, 28 July 2005.

[70] Followed by several other individuals as his substitute, in case he is not available.

[71] Delgado v. Court of Appeals, G.R. No. 137881, 19 August 2005, 467 SCRA 418, 428.

[72] Only the approval of the Minutes of the Special Stockholders' Meeting on 7 November 2006 was to be included in the Agenda for the Annual Stockholders' Meeting for 2007, which respondents Miguel, et al. sought to enjoin in Civil Case No. 07-610.

[73] "Ratification" means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf. It is this voluntary choice, knowingly made, that amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. (Yasuma v. Heirs of Cecilio S. De Villa, G.R. No. 150350, 22 August 2006, 499 SCRA 466, 471-472.)

[74] Galicia v. Mercado, G.R. No. 146744, 6 March 2006, 484 SCRA 131, 136-137.

[75] Bitong v. Court of Appeals, 354 Phil. 516, 545 (1998).

[76] Manila Lodge No. 761 v. Court of Appeals, 165 Phil. 161, 180 (1976).

[77] Jose Campos, Jr. and Maria Clara L. Campos, The Corporation Code: Comments, Notes and Selected Cases (1990 ed.), Vol. I, pp. 501-502.

[78] Yu v. Yukayguan, G.R. No. 177549, 18 June 2009.

[79] Sec. 74. Books to be kept; stock transfer agent. - Every corporation shall, at its principal office, keep and carefully preserve a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to the inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stocks for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection of any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfer of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: Provided, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable. (51a and 32a; B. P. No. 268.)

[80] Sec. 75. Right to financial statements. - Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

At the regular meeting of stockholders or members, the board of directors or trustees shall present to such stockholders or members a financial report of the operations of the corporation for the preceding year, which shall

include financial statements, duly signed and certified by an independent certified public accountant.

However, if the paid-up capital of the corporation is less than P50,000.00, the financial statements may be certified under oath by the treasurer or any responsible officer of the corporation. (n)

[81] Rule 7, Section 1 of IPRICC.

[82] Rollo of G.R No. 182008, p. 366.

[83] G.R. No. 150793, 19 November 2004, 443 SCRA 259, 266-268.

[84] 360 Phil. 768, 804-806 (1998).

[85] *Samaniego v. Aguila*, 389 Phil. 782, 787 (2000).

[86] 335 Phil. 82 (1997).

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