NATIONWIDE DEVELOPMENT CORPORATION, rep. by ATTY. DEOGRACIAS G. CONTRERAS, JR.,
Appellant,

- versus – **SEC En Banc Case No. 04-14-327**

ATTY. CYNTHIA CORAZON G. ROXAS,
Appellee.

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DECISION

Before this Commission is the *Memorandum on Appeal* dated 15 April 2014 (the "Appeal") filed by *Appellant* Nationwide Development Corporation ("NADECOR") on 15 April 2014 praying for the reversal of the *Order* dated 18 March 2014 of the Company Registration and Monitoring Department ("CRMD"), and the issuance of a new judgment recalling and cancelling the registration of Volume IX of the Stock and Transfer Book (STB) procured on 12 August 2013.

THE PARTIES

Appellant NADECOR is a corporation duly organized and validly existing under Philippine laws having been issued a Certificate of Incorporation bearing SEC Registration No. 11636, and with principal office at Suite 203, Jollibee Centre Building, San Miguel Avenue, Ortigas Center, Pasig City. Appellant is represented by its counsel of record, Zamora Poblador Vasquez & Bretana Law Office.

Appellee Atty. Cynthia Corazon G. Roxas ("Atty. Roxas") is a Filipino citizen, of legal age, and is represented by her counsel of record, Villaraza and Angangco Law Office.

RELEVANT FACTS

On 14 September 1977, Volumes I to III of the Stock and Transfer Book ("STB") of NDC were registered with the Commission, while Volumes IV to

VIII were simultaneously registered on 21 June 2011 in anticipation of a planned public offering.

On 15 August 2011, NADECOR held its Annual Stockholders' Meeting (the "2011 ASM") where Luis Manuel Gatmaitan, the Corporate Secretary, attested to the presence of a quorum, and which resulted in the election of the new members of the Board of Directors (BOD), Conrado Calalang, Jose G. Ricafort, Jose P. De Jesus, Roberto P. Romulo, Alfredo I. Ayala, Victor P. Lazatin, Ethelwoldo E. Fernandez, Leocadio Nitorreda and John Engle (the "New Board").[1]

On 20 October 2011, Corazon Ricafort, Jose Manuel Ricafort, Marie Grace Ricafort and Maria Teresa Flora Santos, who all claimed to be stockholders of record of NADECOR, filed a complaint with the Regional Trial Court (the "RTC") seeking the nullification of the 2011 ASM and the election of the New Board. In its Order dated 21 December 2011 (the "RTC Order"), the RTC upheld the complaint and declared void and of no force and effect the 2011 ASM.[2]

The RTC Order resulted in the filing by NADECOR and the New Board of four (4) separate petitions for certiorari before the Court of Appeals (the "CA") which granted the application for Writ of Preliminary Injunction (WPI) enjoining the implementation of the RTC Order, and which subsequently made permanent the WPI and nullified the said RTC Order.[3]

In a letter dated 20 June 2012, Mr. Calalang informed Atty. Deogracias G. Contreras, Jr. (Atty. Contreras) and Atty. Lemuel Santos that the BOD recognized by the CA has removed them from their respective positions as Corporate Secretary and Assistant Corporate Secretary during the special meeting held on 16 June 2012. Mr. Calalang, then demanded from Atty. Contreras the immediate turn over of all documents and records of NADECOR in his possession, including the STB within forty-eight (48) hours from receipt of the letter.[4]

On 22 August 2012, NADECOR held its 2012 ASM where the members of the Romulo-Calalang Group[5] were elected as members of the BOD and Appellee Atty. Roxas was elected as the corporate secretary. On even date, the Ricafort-de Jesus Group also held another ASM wherein they and Appellant Atty. Contreras were elected as members of the BOD and corporate secretary, respectively.

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[1] See *Ricafort, et. al. vs Dicdican, et. al.* (G.R. Nos. 202647-50, March 9, 2015)
[2] Pars. 3.2 and 3.4 of the Verified Answer *Ad Cautelam*
[3] Pars. 3.6 to 3.10 of the Answer
[4] Annex "D" of the Petition; Par. 3.11 of the Answer
[5] As per 2013 GIS of NDC, received by the Commission on 18 September 2013, with the following information: Principal Office Address: Unit 1401 14/F Pearl Bank Centre 146 Valero Street, Salcedo Village, Makati City / President: Conrado T. Calalang, Chief Operating Officer: Leocadio Nitorreda, Corporate Secretary: Cynthia Corazon G. Roxas.

Thus, in 2012 and 2013, NADECOR filed two (2) General Information Sheets (GIS) with the Commission. The GIS filed on 15 June 2012 and 22 August 2013 indicated that Jose G. Ricafort and Jose P. de Jesus (the "Ricafort Group") were the Chairman and President, respectively, of the corporation with Atty. Contreras as the Corporate Secretary; while the one filed on 21 September 2012 and 18 September 2013, indicated that Roberto R. Romulo and Conrado T. Calalang (the "Calalang Group") were the Chairman and President, respectively, of the corporation, with Atty. Roxas as the Corporate Secretary.

On 12 August 2013, herein Appellee Atty. Roxas, representing herself as the duly elected Corporate Secretary of NADECOR, applied for the registration of Volume IX of the STB of NADECOR which was intended to be an additional volume to the preceding registrations. Appellee represented that NADECOR is not in possession of any other copy of the volume being registered. On the basis thereof, the application was granted by the CRMD which registered Volume IX of the STB.

On 16 August 2013, Atty. Contreras, also representing himself as the corporate secretary of NADECOR, filed a Petition to Cancel and Void Stock and Transfer Book (the "Petition"), therein alleging that the registration of Volume IX was obtained through fraud. In support thereof, Atty. Contreras alleged that (a) Volume VIII of the STB was not completely filled-up; (b) Volume VIII and all the other volumes of the STB are not lost and are in the custody of NADECOR; and (c) Volume IX was registered under false pretexts thru Appellee's claim that NADECOR does not possess any other copy of the volume.

Appellant Atty. Contreras also maintained that the CRMC committed reversible error in registering Volume IX because the irregularity of the application was apparent i.e. Atty. Roxas' declaration that NADECOR is not in possession of any other copy of the volume being registered was false because she allegedly knew that the Ricafort Group was in possession of Volumes I-VIII as she personally demanded for the same. Atty. Contreras thus insisted that the CRMD should have required Appellee to submit the previous volumes or present an affidavit of loss as a condition for the registration of Volume IX of the STB.

On 6 November 2013, NADECOR, through Counsel Molo Sia Velasco Dy Tuazon Ty & Coloma Law Office, and acting through the Calalang Group, filed a Motion to Withdraw Petition dated 31 October 2013, where it manifested that its incumbent BOD did not authorize the filing of the Petition by Atty. Contreras, and prayed that the Commission deems the Petition to have been withdrawn.

On 13 November 2013, Appellee filed her Verified Answer *Ad Cautelam* dated 2 November 2013 (the "Answer") praying for the dismissal of the Petition on the ground, among others, that Atty. Contreras had no authority to file the same and that the registration of Volume IX of the STB was in order as the other volumes were allegedly inaccessible.

On 25 November 2014, NADECOR, through Counsel Zamora, Poblador, Vasquez & Bretaña, and acting through the Ricafort Group, filed an Opposition and Reply reiterating its prayer for the issuance of an order cancelling and declaring void Volume IX of the STB. It maintained that the Petition which was filed by the Ricafort Group represented by Atty. Contreras, cannot be withdrawn by Atty. Roxas who represents the Calalang Group.

In its Decision promulgated on 9 March 2016, the Supreme Court dismissed the petitions in G.R. Nos. 202647-50 and G.R. Nos. 205921-24, and held, among others that the RTC erred in nullifying NADECOR's 15 August 2011 ASM. Appellant thereafter filed a Motion for Reconsideration which is yet to be resolved by the Supreme Court.

ISSUE

Did the CRMD commit reversible error in approving the application and registering Volume IX of the STB of NADECOR?

RULING

At the outset, it should be emphasized that what is being assailed in the instant Appeal is the Order of the CRMD which held that the registration of Vol. IX of the STB of NADECOR did not result in the creation of a new STB of NADECOR and/or a duplication thereof, and dismissed the Petition on the basis thereof.

In the Appeal, Atty. Contreras and the Ricafort Group of NADECOR insist that the CRMD seriously erred in registering Vol. IX of the STB of NADECOR which was a second and different set of STB, procured and separately kept by Appellee and the Calalang Group of NADECOR. Citing the case of *Provident International Resources Corporation vs. Venus*, Appellants maintained that by allowing the registration of Vol. IX of the STB, this Commission was remiss in performing its duty to ensure that a corporation has only one set of STB because the CRMD was aware that Volumes I-VIII were existing and in their possession.[6] Appellants also maintained that CRMD should have required Appellee to submit an affidavit of loss as a condition for the registration of Vol. IX of the STB.[7]

Appellee countered by arguing that the CRMD correctly granted the application and registered Vol. IX of the STB because the same was merely

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[6] Par. No. 2 (Page 9) of the Appeal
[7] Par. No. 18 (Page 15) of the Appeal

an additional volume of NADECOR's STB, and not a new and separate STB. The application was necessitated by the alleged refusal of Atty. Contreras, who admitted to be in possession of the first eight (8) volumes of the STB, to turn over possession of the same notwithstanding his removal as corporate secretary.[8]

In its Order, the CRMD justified the dismissal of the Petition by holding that the registration of Vol. IX of the STB did not create a new STB. In support thereof, the CRMD stated that the records on file with the Commission which it verified show that NADECOR has only one (1) STB, and pointed out that the application submitted by Appellee contained a certification that the stock and transfer book that was being registered i.e. Vol. IX is an additional volume to the existing eight (8) volumes.

Section 74 of Batas Pambansa Blg. 68 (the "Corporation Code"), the law in effect when the Petition was filed, requires all stock corporations to keep and maintain a stock and transfer book at its principal office or at the office of its stock and transfer agent, which should be open for inspection by any director or shareholder, thus:

> "SECTION 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.
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> xxx xxx xxx
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> **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 stock 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.** xxx" (Emphasis supplied)

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[8] Pars. 4.32 and 4.32 of the Verified Answer

A stock and transfer book is the quintessential record of all stockholders and their corresponding shareholdings in the corporation.[9] In *Lanuza v. Court of Appeals*[10] (the "Lanuza Case"), the Supreme Court defined a stock and transfer book in the context of the afore-quoted provision, and emphasized that it is a private document intended to be an accurate repository of the ownership of stocks, among others, which can be conveniently resorted to, accessed or relied upon by stockholders and directors:

> "On the other hand, a stock and transfer book is the book which records the names and addresses of all stockholders arranged alphabetically, the installments paid and unpaid on all stock for which subscription has been made, and the date of payment thereof; 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 may be prescribed by law. **A stock and transfer book is necessary as a measure of precaution, expediency and convenience since it provides the only certain and accurate method of establishing the various corporate acts and transactions and of showing the ownership of stock and like matters.**" (Emphasis supplied)

In relation to its duty of ensuring that every corporation should have only one (1) STB under Sec. 74 of the Corporation Code, the Guidelines for the Verification of the Paid-up Capital of Corporations[11] require all corporations to register their STB with the Commission within thirty (30) days from the registration of their Articles of Incorporation.

The importance of a stock and transfer book cannot be overemphasized. Until and unless the transfer of the shares of stock is duly recorded in the stock and transfer book of the corporation, the same remains a private transaction and does not bind the corporation. Consequently, the transferee is unable to exercise his/her rights as stockholder.[12] Moreover, considering that the STB is intended to be a record of the various corporate acts and transactions and the ownership of stock, it is not unusual for a corporation to secure and maintain multiple volumes which are all part of a single STB. Thus, what is prohibited is the registration of another/new STB and not the registration of another/new volume of the same STB; the first will violate the rule of keeping only one STB while the second will not.

In the instant case, Appellant Atty. Contreras is assailing the act of the CRMD in registering Vol. IX of the STB which was applied for by Appellee Atty. Roxas, alleging that the same resulted in the creation of a new STB of NADECOR. The Commission however notes that except for its allegations

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[9] SEC OGC Opinion No. 15-03, dated 3 July 2015, addressed to Mr. Zandro O. Babol.
[10] G.R. No. 131394, [March 28, 2005], 494 PHIL 51-67
[11] dated June 25, 1975
[12] "In *Ponce v. Alsons Cement Corporation,* the Court stated that "[f]rom the corporation's point of view, the transfer is not effective until it is recorded. Unless and until such recording is made[,] the demand for the issuance of stock certificates to the alleged transferee has no legal basis. x x x [T]he stock and transfer book is the basis for ascertaining the persons entitled to the rights and subject to the liabilities of a stockholder. Where a transferee is not yet recognized as a stockholder, the corporation is under no specific legal duty to issue stock certificates in the transferee's name." (Teng vs SEC, G.R. No. 184332, February 17, 2016)

relating to the irregularities committed by the CRMD in registering Vol. IX of the STB i.e. failure to require presentation of the other volumes and submission of an affidavit of loss[13], Atty. Contreras failed to present any evidence showing that Vol. IX of the STB was a completely new STB of NADECOR which is what the law prohibits.

On account thereof, and in the context of the rule that allegations of violations of law, rules or regulations unsupported by proof is not evidence,[14] the Commission does not find any cogent reason to disturb the Order of the CRMD which sustained the legality and validity of the registration of Vol. IX of the STB on the basis of a finding that the same was an addition to the existing volumes and not a different STB. In support thereof, the CRMD went to the extent of verifying the records of the Commission where it was able to confirm that NADECOR has only one (1) STB on file.[15]

Moreover, we find no merit in the argument of Appellants that the CRMD erred in not requiring the production of the first eight (8) volumes and the submission of an affidavit of loss as the same has no basis in law. As admitted by Appellants, the first eight (8) volumes are existing and in their possession. In her application, Appellee declared that NADECOR "*is not in possession of any other copy of the volume being registered under this application or under previous registrations*" which means that prior to its registration, Vol. IX was inexistent and not in her possession. Given these circumstances, the CRMS was thus correct in not requiring the production of the first eight (8) volumes and the submission of an affidavit of loss as there was no allegation that the STB of NADECOR or any of the volumes thereof, was lost or destroyed. What was being sought from the CRMD was merely the registration of a new volume i.e. Vol. IX which was certified by Appellant as inexistent and not in her possession at the time of the application.

Appellant Atty. Contreras however insists that CRMD erroneously registered Vol. IX of the STB because it was made aware through the pleadings filed that Vols. 1-XIII are existing, intact and were in his custody at the principal office of NDC[16], and that Vol. VIII of the STB was not yet completely filled up[17]. Appellant is in effect saying that corporations cannot secure new volumes of their STBs, and the Commission cannot issue such new volumes until the latest volume is completely filled-up.

Appellant Atty. Contreras' position and argument have no basis in law.

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[13] see Par. Nos. 14 & 15 (page 5) of the Appeal
[14] "The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit." (Morales, Jr.vs Carpio-Morales. G.R. No. 208086, July 27, 2016)
[15] See Par. 2 (page 11) of the Order
[16] Par. No. 15 (page 15) of the Appeal
[17] Par. 7 (page 2) of the Petition

It should be emphasized that what the law prohibits is the procurement, use and maintenance by a single corporation of more than one (1) STB. There is however no law which requires corporations to fill-up and complete the latest volume of their STBs before they can secure additional volumes. Corollarily, the Commission can approve and register new volume(s) of the same STB sans completion of the existing volumes. Relative thereto, We noted that the feigned lament of Appellant Atty. Contreras was negated by his own admission that NADECOR applied for the simultaneous registration of four (4) volumes which was approved by the Commission on 21 June 2011.[18] This shows that corporations can apply for, and the Commission can register new volumes of the same STB even before the latest volume is filled-up simply because they all form part of one (1) STB. From the perspective of the Commission which implements the law, the single STB which may or may not comprise of multiple volumes, is owned by only one (1) corporation and all entries therein necessarily bind the corporation as owner of such records and the persons affected thereby.

Moreover, the argument of Appellant that the registration of the new volume runs counter to the intent of the law as this will enable Appellee to make separate, independent and distinct entries, and result in confusion[19] is not relevant to the determination of the issue in the instant case because it has already been ascertained and established that NADECOR has only one (1) STB consisting of nine (9) volumes. It bears emphasis that corporations are given wide latitude of discretion in relation to the entries made in their respective STBs which are essentially considered as their private records. Hence, contrary to the position and argument of Appellant, the maintenance of only one (1) volume of STB will not guarantee the absence of erroneous and/or conflicting entries therein which may result in confusion because this is expected in a set up where the person(s) tasked to maintain and keep the same, changes from time to time. The foregoing finds support in the Lanuza Case where the Supreme Court, being cognizant of the possible conflicts that may arise relating to entries in the STB, held that parties are not left without recourse or remedy because such entries are not conclusive and may be impeached or contradicted by competent evidence, thus:

> "**However, a stock and transfer book, like other corporate books and records, is not in any sense a public record, and thus is not exclusive evidence of the matters and things which ordinarily are or should be written therein**. In fact, it is generally held that the records and minutes of a corporation are not conclusive even against the corporation but are prima facie evidence only, **and may be impeached or even contradicted by other competent evidence**. Thus, parol evidence may be admitted to supply omissions in the records or explain ambiguities, or to contradict such records."[20]

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[18] Par. Nos. 3 and 5 (page 3) of the Appeal
[19] Par. Nos. 3 to 5 (page 11) of the Appeal
[20] *Lanuza*, *supra* note 11,

More importantly, considering that Vol. IX of the STB which has been registered by CRMD is part of the STB of NADECOR, the determination of the validity of the authority of the person who caused the filing and registration thereof is a matter that need not be resolved by this Commission because the same relates to the issue on the legitimacy of the source of the said authority which is pending with the Supreme Court. Stated differently, the Commission cannot act on the matter relating to the allegation that Atty. Contreras acted without authority in filing the Petition because the same will involve passing upon the legitimacy of the Calalang Group who allegedly authorized such filing. This is an intra-corporate controversy that is currently pending with the Supreme Court who is yet to resolve the Motion for Reconsideration filed by Appellant. To do otherwise would render moot the matters pending with the Supreme Court which relates to the validity of the ASM and the legitimacy of the directors elected therein, in violation of the principle of judicial courtesy which was explained in *Oca vs Custodio*[21], to wit:

> "**Judicial courtesy is exercised by suspending a lower court's proceedings although there is no injunction or an order from a higher court. The purpose is to avoid mooting the matter raised in the higher court. It is exercised as a matter of respect and for practical considerations.**
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> However, this principle applies only if the continuation of the lower court's proceedings will render moot the issue raised in the higher court." (Emphasis supplied)

However, while the Commission cannot determine the validity of the Petition as the same requires a determination of the validity of the authority of Atty. Conteras, which is ultimately dependent on the legitimacy of its source i.e. the authority of the Calalang Group, the matter relating to the validity of the registration of Volume IX of the STB effected by CRMD is clearly within the regulatory authority of the Commission as the agency tasked with the implementation of the RCC, and can thus be acted upon in the instant case. The first issue goes into the very heart of the election contest, an intra-corporate dispute which is already pending with the Supreme Court. The second issue on the other hand is administrative in nature and can thus proceed independently of the former as held in the case of *Provident International Resources Corporation vs. Venus*[22], thus:

> "From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and

[21] G.R. No. 199825, July 26, 2017
[22] G.R. No. 167041, June 17, 2008

associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.

Going to the particular facts of the instant case, we find that **the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC** as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. **Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.**

As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the August 6, 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC." (Emphasis supplied)

In view of the foregoing, this Commission finds no cogent reason to cancel the registration of Volume IX of the STB of NDC.

WHEREFORE, premises considered, the Memorandum on Appeal is hereby **DENIED** for lack of merit. The Order dated 18 March 2014 of CRMD is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 6 May 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner