Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:

SEC En Banc Case No. 11-06-91

THE METROPOLITAN CLUB, INC.

Antonio L. Cardiño, Vicente T. Verdadero, and Mario Villacorta, Jr.

Appellants.

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DECISION

This is an Appeal seeking reversal of the Corporate Finance Department's ("CFD," for brevity) letters dated 15 March 2005 and 09 October 2006.

Castillo Laman Tan Panteleon & San Jose, The Metropolitan Club, Inc.'s ("TMCI," for brevity) counsel, sent a letter dated 07 March 2005 seeking the CFD's confirmation on the following:

> "1. That the Club[1] can enter into a joint venture with a property developer whereby the Club will contribute a 2,267 sq. m. lot, a part of a parcel of land owned by the Club, in consideration of which, it will receive as its share in the joint venture, units and parking lots in the joint venture condominium project. The proceeds of sale of which will be used primarily to fund the improvements of the Club's facilities and for payment of obligations;
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> 2. The approval of the members of the Club of the action of its Board to enter into the said venture to raise funds for the Club's redevelopment pursuant to the primary purpose of the Club will not be necessary considering that the property to be contributed to the joint venture and/or to be sold is less than eighteen (18%) percent of its total properties."

[1] Referring to The Metropolitan Club, Inc.

In response, the CFD issued its 15 March 2005 letter confirming the statements:

> "We confirm that said proposed Board Action involving said property does not require the approval of the Club members. It is however advised that the Club shall comply with the requirements of SRC Rule 14 on the Amendments to its Registration Statements and Prospectus."

Subsequently or on 29 March 2005, without its members' approval, TMCI, through its Chairman and President, entered into a Joint Venture Agreement ("JVA," for brevity) with Philippine Townships, Inc. for the development of a condominium project.

Thus, on 23 November 2005, Appellant Cardiño and other similar TMCI members, sent a letter asking the CFD to reconsider its 15 March 2005 letter.

In reply, the CFD issued its 09 October 2006 letter denying the reconsideration and upholding its earlier opinion that subject Board action did not require the members' approval. The CFD ratiocinated:

> "We find no cogent reason to change our previous opinion considering that the property involved in said JVA is only 18% of Metroclub's total assets. Section 40 of the Corporation Code provides, in part:
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> > 'Section 40. Sale or other disposition of assets. - Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose. xxx
> >
> > **A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.** xxx'
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> It is clear from the afore-cited provision that to determine if the disposition requires the authorization of 2/3 vote of the members, the test is whether it involves a sale or other disposition of all or substantially all of the corporate assets, the phrase being defined as such which would render the

corporation incapable of continuing the business or accomplishing the purpose for which it was incorporated."

Hence, Appellant Cardiño submitted this Appeal to the Commission *En Banc* on 03 November 2006. Subsequently Appellants T. Verdadero and Villacorta, Jr., who are also TMCI members, intervened in this Appeal.

The Commission has no jurisdiction over this Appeal.

The Securities Regulation Code[2] ("SRC," for brevity) transferred the Commission's jurisdiction over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A[3] to the courts of general jurisdiction, or the appropriate regional trial court.[4]

An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar

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[2] Republic Act No. 8799, effective since 08 August 2000.
[3] Presidential Decree No. 902-A (issued on March 11, 1976), Section 5 provides:

> "Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.
>
> a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.
>
> *b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;*
>
> c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations;"

[4] SRC, Section 5.2 provides:

> "5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed."

as the former's franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[5]

In this Appeal, appellants assail the subject JVA since their membership in TMCI means that they stand to be benefitted or injured from the JVA's implementation. They raise the twin issues of: (1) whether or not its charter authorizes TMCI to enter into the subject JVA, and (2) whether or not TMCI can validly enter into the JVA without the approval of two thirds (2/3) of its members. Obviously, these issues are intra-corporate in nature since they arise from the relationships between the corporation, its officers and its members as defined by the corporation's charter and the Corporation Code. The resolution of these issues will necessarily entail an adjudication on the members' rights and privileges with respect to the corporation and its officers – in particular, the members' right to vote on certain corporate acts, and their right to be assured that the corporation does not stray from the purpose for which it was organized. Hence, this case is clearly an intra-corporate dispute, which is now within the exclusive jurisdiction of the courts.

Moreover, appellants do not attack TMCI's corporate act of entering into the JVA for being *void ab initio,* that is, for being wrong in itself, or against public policy. Rather, appellants question the subject corporate act for being an *ultra vires* act, which is a corporate act that is outside the scope of the articles of incorporation, or defective from a failure to observe in its execution a requirement of law enacted for the benefit or protection of its members.[6] *Ultra vires* acts are merely voidable, meaning that such acts are valid and binding unless they are annulled by a proper action in court.[7] The annulment of contracts is a legal or judicial question that requires the exercise of judicial function, which is vested in the courts. The law does not grant judicial functions to the Commission enabling it to rule on the validity or nullity of contracts. Hence, it is the regular courts that have the exclusive jurisdiction and power to annul the subject JVA.

Plainly, the Commission *En Banc* cannot take cognizance of this Appeal since although it is purportedly an appeal seeking reversal of the CFD's issuances, it is actually a complaint seeking the nullification of the subject JVA. Indeed, Appellants Verdadero and Villacorta, Jr. expressly pray that "the opinion of Dir. Callangan be reversed and set aside and a new one entered nullifying or otherwise abrogating the Joint Venture Agreement and the accompanying Memorandum of Agreement."[8]

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[5] *Yujuico v. Quiambao,* supra note 87; *Embassy Farms, Inc. v. Court of Appeals,* G.R. No. 80682, 13 August 1990, 188 SCRA 492, 499; *Union Glass & Container Corporation v. Securities and Exchange Commission,* 211 Phil. 222, 230-231 (1983); *Mainland Construction Co., Inc. v. Movilla,* G.R. No. 118088, 23 November 1995, 250 SCRA 290, 294.
[6] Pirovano v. De la Rama Steamship Co., L-53-7, 96 Phil. 335, December 29, 1954.
[7] Civil Code, Article 1390
[8] Memorandum-on-Appeal-in-Intervention, dated 16 November 2006, page 6.

Apparently, the Appellants misjudged the significance of the CFD's 15 March 2005 and 09 October 2006 letters. These CFD issuances are not, in anyway whatsoever, determinative or conclusive on the validity or nullity of the subject JVA.

WHEREFORE, premises considered, this Appeal is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Mandaluyong City, 22 April 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner