

women, indigenous groups, and others. Any legislative or executive act that affect these different sectors can be brought to the Supreme Court to determine if they abide by the specific provisions of the Constitution.

Jurisdiction - Securities and Exchange Commission

JURISDICTION OVER INTRA-CORPORATE DISPUTES: SECURITIES AND EXCHANGE COMMISSION OR THE REGULAR COURTS?

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INTRODUCTION.

To paraphrase a legal dictum, hard cases make bad law, but bad laws likewise make for hard cases. This is particularly true when the law has as its subject the jurisdiction of judicial and quasi-judicial tribunals. For then, the confusion that arises from the vagueness of the law delays the resolution of the actual controversy and wastes the time and money of the parties and the Government.

A case in point is Presidential Decree No. 902-A¹ which places upon the Securities and Exchange Commission (hereinafter referred to as "SEC") the original and exclusive jurisdiction over intra-corporate controversies. As will be shown in this study, the overinclusive definition of the term "intra-corporate controversy" has given rise to confusing decisions as to which, between the SEC and the regular courts, has jurisdiction over a case involving corporations and their stockholders. The application of the rules established in these cases can be difficult to say the least. In some instances, a preliminary hearing on certain issues is even necessary. This inquiry on jurisdiction delays the disposition of the main controversy. It defeats the purpose of the law in submitting intra-corporate disputes to the expertise of an administrative body for speedy resolution.

It is in this light that the researchers, after weighing the advantages and disadvantages of retaining administrative jurisdiction over intra-corporate disputes, recommend its transfer to the courts.

¹ March 11, 1976 as amended by Pres. Decree Nos 1653, 1758 and 1799.

I. HOW JURISDICTION OVER AN INTRA-CORPORATE CONTROVERSY IS DETERMINED

A. *The Matrix Of An Intra-Corporate Dispute*

The law that grants the Securities and Exchange Commission original and exclusive jurisdiction to hear and decide cases involving intra-corporate controversies is Presidential Decree No. 902-A. Section 5(b) thereof provides:

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

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

Construing the above-quoted provision, the Supreme Court, in *Philex Mining Corporation v. Reyes*² considered the nature of the relationship of the parties as the pivotal issue in determining whether an intra-corporate controversy exists as to vest SEC with jurisdiction over a case.

In said case, Mr. Huenefeld, a stockholder of Philex Mining Corporation filed in the Court of First Instance an action for specific performance with damages. He sought to compel Philex Mining Corporation to replace his stock certificates which were lost in the mails. The corporation moved to dismiss the case contending that the CFI has no jurisdiction inasmuch as the case involves an intra-corporate controversy. Huenefeld filed an Opposition claiming that the refusal of Philex Mining Corporation to issue replacement certificates resulted in actual damages to him, and thus, the case cannot be classified as intra-corporate, but one which is civil or tortious in

² 118 SCRA 602 (1982).

nature.

Huenefeld attempted to limit the scope of intra-corporate controversies to cases among and between stockholders and the corporation involving either the exercise of stockholders' privileges, rights, and benefits or their duties to the corporation or the existence in law of the corporation. The examples he gave included: (1) contesting or vying for a seat in the Board of Directors; (2) questions on voting by proxy; (3) election and tenure of office and qualifications of directors; (4) removal and resignation of directors; (5) repeal and amendment of the corporate charter and the by-laws; and (6) questions on corporation meetings and increase of capital stocks. Rejecting Huenefeld's contention, the Supreme Court said that Section 5(b) of Presidential Decree No. 902-A is broad enough to cover all kinds of controversies between stockholders and corporations. The law, the Court said, does not provide for any distinction, qualification or exemption whatsoever.³ The Court added that the interpretation given by Huenefeld "does not square with the intent of the law, which is to segregate from the general jurisdiction of regular courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution... and not to the courts."⁴

The Supreme Court had applied the Philex ruling in an earlier case to negate SEC jurisdiction. In *Sunset View Condominium Corp. v. Campos, Jr.*,⁵ the Supreme Court ruled that the regular courts, not the SEC, had jurisdiction over a collection case filed by a corporation against a non-stockholder. The Court said that the purchaser of the condominium unit who had not fully paid the purchase price and consequently had not, according to the Master Deed, acquired title over the condominium unit, was not yet a member or stockholder of the condominium corporation.

The existence or non-existence of an intra-corporate relationship was also made the basis of the ruling in *Union Glass and Container Corp. v. SEC*.⁶ The case is noteworthy in that it mandated the separate determination of related controversies when not all the parties maintained intra-corporate relationship with each other.

In this case, Carolina Hofileña, a stockholder of Pioneer Glass

³ *Id.* at 605.

⁴ *Id.* at 606.

⁵ 104 SCRA 295 (1981).

⁶ 126 SCRA 31 (1983).

Manufacturing Corporation (Pioneer), filed a suit before the SEC and impleaded Union Glass and Container Corporation under a cause of action. She alleged the illegality of a *dacion en pago* between Pioneer Glass Manufacturing Corporation and the Development Bank of the Philippines (DBP) and the subsequent sale of the property subject matter of the *dacion* to Union Glass Corporation. The Supreme Court ruled in the following manner:

In the ordinary course of things, petitioner Union Glass, as transferee and possessor of the glass plant covered by the *dacion en pago* agreement, should be joined as party-defendant under the general rule which requires the joinder of every party who has an interest in or lien on the property subject matter of the dispute. Such joinder of parties avoids multiplicity of suits as well as ensures the convenient, speedy and orderly administration of justice.

But since petitioner Union Glass has no intra-corporate relation with either the complainant or DBP, its joinder as party-defendant in the SEC (case) brings the cause of action asserted against it outside the jurisdiction of the respondent SEC.⁷

Thereupon, the Supreme Court enumerated the types of relationships covered by Sec. 5(b) of Presidential Decree No. 902-A. They are relationships: (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and stockholders, partners, members or officers; (c) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners or associates themselves.⁸

Subsequent cases involving conflicts in the jurisdiction of the SEC and the regular courts followed the doctrine laid down in *Sunset View* and *Philex*.

In *Bañez vs. Dimensional Construction Trade and Development Corporation*,⁹ the corporation issued promissory notes in favor of the petitioner for sums of money received. It was indicated in the promissory notes that such sums of money were in the nature of investments. The agreement, however, was for the corporation to return the money to the

⁷ *Id.* at 37.

⁸ *Id.* at 38.

⁹ 140 SCRA 249 (1985).

corporation upon the maturity of the promissory notes. The Supreme Court ruled that because the money received did not constitute payment for subscription of shares, the petitioners did not become members of the respondent corporation. Therefore, the regular courts, and not the SEC, have jurisdiction over the action for collection filed by the petitioners against the corporation.

In a case involving the refusal of an alleged vendor to endorse shares of stocks sold and the refusal of the corporation to register the same, the Supreme Court held that there was no intra-corporate relationship as the petition was filed by non-shareholders.¹⁰

In another case, however, a daughter was allowed to sue a corporation for accounting and distribution of shares of stock owned by her deceased father, a shareholder. The Supreme Court saw an intra-corporate relationship between the heir and the corporation. The Court held that compelling the defendant corporation to render an accounting and distribution of shares of stocks, with dividends due thereon, constitutes an intra-corporate controversy.¹¹

In *Boman Environmental Development Corporation v. Mendoza*,¹² the president of the corporation tendered his resignation to the board and made it effective "as soon as my shares and interests (in the corporation) are sold and fully paid (by the corporation)." The board accepted his offer and executed a promissory note for the payment of his shares in installments. Upon failure of the corporation to pay an installment, he filed with the regular courts an action for recovery of a sum of money based on the promissory note. The Supreme Court ruled that the SEC, not the regular courts, has jurisdiction. The Court stated that the perfection of the agreement and the execution of the promissory note did not remove the dispute from the jurisdiction of the SEC. The Court noted that his resignation was to be effective as soon as his shares and interests are fully paid by the corporation. While he might have been replaced as a president, he did not cease to be a stockholder. The Court further noted that the suit to compel the corporation to pay for his shareholdings was cognizable by the SEC alone, which should determine whether the payment would constitute a distribution of corporate assets to a stockholder in preference over the creditors of the corporation.

¹⁰ *Rivera v. Florendo*, 144 SCRA 644 (1986).

¹¹ *Malayan Integrated Industries Corporation v. Mendoza*, 154 SCRA 548 (1987)

¹² 127 SCRA 540 (1984).

B. The Incidents Of The Relationship

In cases involving conflicts in the jurisdiction of the National Labor Relations Commission (hereinafter referred to as the "NLRC") and the SEC, the Supreme Court determined the existence of an intra-corporate controversy not merely on the basis of the relationship between the contending parties, but also on the basis of the incident or the nature of the question involved in the controversy. In other words, the existence of an intra-corporate relationship is not sufficient to vest jurisdiction upon the SEC. It is required that the controversy arising from such intra-corporate relationship be, in itself, essentially intra-corporate.

In *Philippine School of Business Administration v. Leaño*,¹³ the Supreme Court viewed the complaint of Tan (former vice-president and stockholder of PSBA) for illegal dismissal as involving a corporate office which was declared vacant and to which Tan was not subsequently elected. The Supreme Court thus held that the SEC and not the NLRC had jurisdiction. The main issue in the case was the validity of the election of officers which was allegedly conducted in violation of the by-laws of the corporation. This question was considered to be essentially intra-corporate.

Admittedly, the *PSBA* case falls under section 5(b) of Presidential Decree 902-A. It is, however, significant that it went farther than the simple rule applied in *Sunset View*, *Philex* and *Union Glass*. Instead of applying the single-tiered test - "Is Tan a stockholder of PSBA?," the Court went further to inquire whether the controversy itself was intra-corporate. The Court said:

... the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

A year later, the Supreme Court affirmed the *PSBA* ruling in *Dy v. NLRC*.¹⁴ The real question determined by the court in this case concerned the validity of the board meeting where the corporate officers involved were not re-elected, resulting in the termination of their services. The Court held that the case was not a simple labor problem but a matter that fell within the scope of corporate affairs and management, and was thus within the jurisdiction of the SEC.

¹³ *Id.* at 783 (citing *Bruce v. Travelers Ins. Co.*, 266 F2d 781).

¹⁴ 145 SCRA 211 (1985).

A further distinction was made in *Gregorio Araneta University Foundation v. Teodoro*.¹⁵ Here, the vice president-treasurer who alleged that he was illegally dismissed, sued for reinstatement and monetary awards before the labor arbiter. The Supreme Court sustained the jurisdiction of the labor arbiter and held that unlike in *PSBA* and *Dy*, no intra-corporate controversy existed in the present case. The Court held that the controversies in *PSBA* and *Dy* were intra-corporate in nature because the real issue was the validity of the board meetings. This issue was not raised in the case of *Teodoro*. Instead, only the questioned illegal dismissal was brought before the Court for resolution.

Initially, the two-step test in determining the existence of an intra-corporate controversy was applied only in labor cases. Later cases, however, indicate that this test has begun to assume significance in resolving even a conflict of jurisdiction between the SEC and the regular courts. As this developed, the Supreme Court tried to evolve guidelines in characterizing a dispute where several issues - some intra-corporate and the others, non-intra-corporate - are involved.

The simplistic solution would seem to be for the SEC to exercise jurisdiction over the purely intra-corporate aspects of a controversy and dismiss those which are not intra-corporate for resolution by the regular courts. This, however, would run counter to the avowed judicial policy of avoiding multiplicity of suits. A single body should take cognizance of the entire case.

The characterization of the main action, which should be distinguished from mere incidents thereof, appears to be the better solution.

The Supreme Court had an opportunity to apply this solution in *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*¹⁶

DMRC Enterprises filed an action before the regular court to recover unpaid equipment rentals payable partly in cash and partly in the lessee-corporation's shares. The lessee questioned the jurisdiction of the regular court claiming that "to compel a corporation to issue its shares of stocks in the name of the subscribers involves controversies arising out of intra-corporate affairs ..."¹⁷ On the other hand, DMRC Enterprises maintained that the complaint was simply an action for collection of a sum of money and delivery of personal property representing unpaid obligations within the competence

SCRA 82 (1988).

SCRA 293 (1984).

296-97.

of the regular courts.

The Supreme Court held that the fact that shares of stock were to be used as part payment for lease rentals did not convert it into an intra-corporate controversy. To pass upon a money claim under a lease contract would be beyond the competence of the SEC and to separate the claim for money from the claim for shares of stock would be splitting a single cause of action resulting in multiplicity of suits.

The Court further ruled that:

Nowhere in said decree do we find even so much as an intimation that absolute jurisdiction and control is vested in the Securities and Exchange Commission in all matters affecting corporations. To uphold the respondent's argument would remove without legal imprimatur from the regular courts all conflicts over matters involving or affecting corporations, regardless of the nature of the transactions which give rise to such disputes. The courts would then be divested of jurisdiction not by reason of the nature of the dispute submitted to them for adjudication but solely for the reason that the dispute involves a corporation. This cannot be done. To do so would not only be to encroach on the legislative prerogative to grant and revoke jurisdiction of the courts but such a sweeping interpretation may suffer constitutional infirmity. Neither can we reduce jurisdiction of the courts by judicial fiat. (Article X, Section 1, the 1973 Constitution).¹⁸

A case exemplifying the intra-corporate relationship as merely incidental to the main action is *Peneyra v. Intermediate Appellate Court*.¹⁹ The Supreme Court held that the management of a canteen, even if awarded to a stockholder, was outside or merely incidental to the central operation of an educational institution. The controversy could not qualify as an intra-corporate dispute since "its root is a contractual breach separate and distinct from the corporate relationship."²⁰

In *Apodaca v. NLRC*,²¹ the Supreme Court, before characterizing the dispute to determine whether it was the NLRC or the SEC that should

¹⁸ *Id.* at 299-300.

¹⁹ 181 SCRA 244 (1990).

²⁰ *Id.* at 249.

²¹ 172 SCRA 442 (1989).

assume jurisdiction, identified the main issue involved in the case. The petitioner was employed in the respondent corporation and was also a shareholder of the corporation. He made partial payments for his shares before he resigned from the company. The unpaid balance of his subscription was offset against his money claim, consisting of unpaid wages, from the corporation. The main issue was whether there had been a valid call to render the unpaid portion of his subscription due and demandable. The Court held that this was primarily an intra-corporate dispute between the stockholder and the corporation and was within the exclusive jurisdiction of the SEC.

C. Actions For Rescission Of Contracts Giving Rise To An Intra-Corporate Relationship

An action for rescission of a contract giving rise to an intra-corporate relationship is, as a general rule, cognizable by the ordinary courts. Where, however, such action is resorted to for the purpose merely of questioning the right of directors to hold office and where it impinges on corporate operations, the Securities and Exchange Commission shall have jurisdiction.²²

In *Development Bank of the Philippines vs. Ilustre Jr.*,²³ an action to annul a memorandum agreement whereby one of parties was made a stockholder of a corporation was held to involve an intra-corporate dispute.

The Development Bank of the Philippines (DBP) acquired 91% of the equity of Isarog Pulp and Paper Co., Inc. after the debt of the latter was restructured and converted into equity. Said restructuring was embodied in a memorandum agreement. This enabled Development Bank of the Philippines to elect a substantial number of the members of the Board of Directors although the Silverios (original owners) continued to occupy the President and Executive Vice-President positions. The Board of Directors in order to prevent the continuing losses of the company, created an executive committee and contracted Philippine Investment Management, Inc. (PHINMA) as its management consultant. And in the subsequent annual stockholders' meeting, a new set of directors was elected. The Silverios, who were not re-appointed to their positions, instituted a civil case against DBP and PHINMA praying that the Memorandum Agreement be rescinded and that they be restored to their former positions. DBP filed a motion to dismiss claiming that the case falls within the jurisdiction of the SEC. Holding that SEC had jurisdiction over the complaint, the Court said:

²² *Development Bank of the Philippines v. Ilustre, Jr.*, 138 SCRA (1985).

²³ *Id.*

... while the case was instituted in the guise of a complaint for rescission, it is clear that the action is essentially for recovery from DBP and PHINMA of the control and management of Isarog. Thus, the Silverios seek in their complaint to set aside the election of directors and officers of Isarog, as well as the appointment of PHINMA as its manager.²⁴

The ruling in *DBP* was further clarified in *Abejo vs. dela Cruz*.²⁵ Here, the Abejo spouses, principal stockholders of Pocket Bell Philippines, Inc., sold and transferred 56% of the majority stock of the company to Telectronic Systems, Inc. The Bragas, the other principal stockholders, filed a suit in the Court of First Instance for the rescission and annulment of the sale by the Abejos in favor of Telectronics on the ground that it violated the Bragas' alleged pre-emptive right over the Abejos' shareholdings. The Abejos moved to dismiss the case alleging that the SEC has exclusive jurisdiction over the controversy since it involved stockholders. Holding that the SEC has jurisdiction, the Court, speaking through the late Chief Justice Claudio Teehankee, said:

Such dispute clearly involves controversies "between and among shareholders," as to the Abejos' right to sell and dispose of their shares to Telectronics, the validity of the latter's acquisition of Virginia Braga's shares, who between the Bragas (sic) and Abejos' transferee should be recognized as the controlling shareholders of the corporation, with a right to elect the corporate officers and the management and control of its operations. Such a dispute and case clearly fall (sic) within the original and exclusive jurisdiction of the SEC to decide, under Section 5 of P.D. No. 902-A.²⁶

However, the Supreme Court in this case departed from the doctrine enunciated in *Philex* and *Sunset View* that a party-litigant must be a registered stockholder of the corporation. Although the Bragas contended that Telectronics, as buyer-transferee of the 56% majority shares, is not a registered stockholder, the court still considered the matter within the jurisdiction of the SEC because the corporate secretary, who is the son of the Bragas, refused to register the transfer of shares. The court said:

²⁴ *Id.* at 16.

²⁵ 149 SCRA 654 (1987).

²⁶ *Id.* at 664.

... as to the sale and transfer of the Abejos' shares, the Bragas cannot oust the SEC of its original jurisdiction to hear and decide the case, by blocking through the corporate secretary, their son, the due recording of the transfer and sale of the shares in question and claiming that Telectronics is not a stockholder of the corporation-- which is the very issue that the SEC is called upon to resolve.²⁷

The reasoning of the Court, however, is nebulous. The Court simply invoked the general jurisdiction of the SEC to exercise supervision and control over all corporations and to enforce the provisions of the Corporation Code which include the stock purchaser's right to secure the corresponding certificate of stock in his name.

In the subsequent case of *Saavedra, Jr. v. SEC*,²⁸ the Supreme Court likewise sustained the jurisdiction of SEC over an action for rescission of a Memorandum of Agreement and a Deed of Assignment of Shares of stocks. The Court ruled en banc that "the present case involves an intra-corporate dispute as to who has the right to remain and act as owners-stockholders of the corporation."²⁹

In this case, a group of stockholders sold all their shares in the corporation to another group of stockholders. This was covered in a Memorandum of Agreement and a Deed of Assignment. The Memorandum of Agreement clearly provided that the agreement would be automatically rescinded upon failure of the buyers to pay any of the installments. Upon failure of the buyers to pay an installment, the seller rescinded the sale under an instrument called "Rescission of Memorandum of Agreement," and filed with the SEC a petition to have the rescission declared as having been made and executed pursuant to the provisions of the Memorandum of Agreement. The buyers then questioned the jurisdiction of the SEC. In resolving the dispute, the Court relied upon the ruling in the Abejo case.

Finally came the case of *Viray v. Court of Appeals*.³⁰ Magpayo entered into a Memorandum of Agreement with Viray for the sale of 99.9% of the shares of stock of the corporation. Magpayo then unilaterally rescinded the Memorandum of Agreement and asked for the return to him of the control management and assets of the corporation. Viray refused. Magpayo sued in

²⁷ *Id.* at 668.

²⁸ 159 SCRA 57 (1988).

²⁹ *Id.* at 60.

³⁰ G.R. No. 92481, November 9, 1990.

the regular courts for judicial confirmation of rescission and the enforcement of his demands. The *Boman*, *DBP* and *Saavedra* cases were cited in the decision. The Court ruled, however, that the situation in *Saavedra* was different, and the ruling in the cited cases are inapplicable.

The Court pointed out that in *Saavedra*, which is an action for delivery of shares of stocks, specific performance and damages, the petitioners pleaded the issue of control over the corporation which was clearly a matter falling under Presidential Decree No. 902-A. The issue raised in *Saavedra*, the Court said, called for the enlistment of the expertise and technical knowhow of the SEC.³¹ The Court further noted that the Memorandum of Agreement in *Saavedra* clearly provided for automatic rescission while this was not the case in *Viray*. Thus, the Court concluded:

The difference between *Saavedra* and the case before us is that in the former, the status of the defendants as stockholders of the corporation was not in issue and was in fact admitted by both parties... In the present case, the only concern of the private respondents is the judicial confirmation of their rescission of the MOA, which would not need the expertise of the SEC to resolve.³²

D. Other Factors Determining Jurisdiction

1. THE COMPLAINT AS THE PRIMARY DETERMINING FACTOR

It is axiomatic that the jurisdiction of a court is conferred by the Constitution and by the laws existing at the time of the commencement of the action. However, whether a court has jurisdiction over the subject of a case is determined from the allegations of the complaint.³³

So long as parties to a civil action come within the jurisdiction of the SEC as evidenced by the allegations of the complaint, then the administrative body should take cognizance of the action. Thus, the judicial inquiry must center on the allegations made in the complaint in relation to prevailing doctrines on jurisdiction.

³¹ *Id.* at 12.

³² *Id.* at 14.

³³ *Ganadin v. Ramon*, 99 SCRA 613, 621 (1980) (citing 1 MORAN, COMMENTS ON THE RULES OF COURT 37 (1970)).

2. JOINDER OF PROPER PARTIES

The joinder of causes of action in one complaint is subject to the rules of jurisdiction, venue, and joinder of parties.³⁴

In *Union Glass*, the Supreme Court inquired into the existence of an intra-corporate relation between Union Glass and Container Corporation and the complainant, Hofileña, on the one hand, and Union Glass and Container Corporation and Development Bank of the Philippines, on the other. Since Union Glass and Container Corporation had no intra-corporate relationship with the complainant, the former could not be joined as party defendant in the case. To do otherwise would violate the rule on jurisdiction.

In *Desa Enterprises, Inc. v. SEC*,³⁵ the inclusion of Benjamin Vergara and Eleuterio Lagrisola as additional defendants was likewise held to be violative of the rule on proper joinder of parties. Being merely hired workers in the Lian Ice Plant, Vergara and Lagrisola could not be held liable for the resulting damages after the iceplant ceased its operations in 1975. The Supreme Court said that their inclusion as party defendants was an apparent attempt to circumvent the provisions of Presidential Decree No. 902-A.³⁶

Following the ruling in the foregoing cases, the Supreme Court held that the SEC had jurisdiction over corporations only, not private individuals, except stockholders in an intra-corporate dispute. The term "parties-in-interest" in Section 6, Rule 3 of the New Rules of Procedure of the SEC contemplates only private individuals sued or suing as stockholders, directors, or officers of a corporation.³⁷

3. ALLEGATIONS IN A MOTION TO DISMISS NOT CONTROLLING

A motion to dismiss based on failure to state a cause of action hypothetically admits the truth of the facts alleged in the complaint. The hypothetical admission of the truth of material and relevant facts pleaded in a complaint does not extend to inferences or conclusions drawn from such facts, mere inferences or conclusions drawn from facts not stated, matters of

³⁴ RULES OF COURT, Rule 2, Sec. 5.

³⁵ 117 SCRA 321 (1982).

³⁶ *Id.* at 331.

³⁷ *Traders Royal Bank v. Court of Appeals*, 177 SCRA 788, 791-92 (1989).

evidence, surplusage, and irrelevant matters.³⁸

In *Viray*, the private respondents denied the claimed status of the petitioners as stockholders of Ocean Terminal Services, Inc. (OTSI) on the basis of their interpretation of the provisions of the Memorandum of Agreement. The status of the petitioners as stockholders of OTSI was disputed and a hearing had to be conducted for the purpose of resolving the same. Their status could not be assumed without any hearing.

4. COMPETENCE OF THE JUDGES

The need to submit controversies involving technical matters to bodies with special knowledge and experience has given rise to a trend favoring the assumption of jurisdiction by administrative agencies. As early as 1954, the Supreme Court in *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*³⁹ held that under the doctrine of primary jurisdiction,

... the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity in ruling is essential to comply with the purposes of the regulatory state administered.

In the 1987 *Abejo* case, the court reiterated that "[i]n this era of clogged court dockets, the need for specialized administrative boards or commissions... has become well-nigh indispensable."⁴⁰

In *Saavedra*, the Supreme Court said that "the trend has been to refer the [specialized disputes] to an administrative agency of special competence."⁴¹

However, in the 1990 case of *Viray*, the First Division of the Supreme

³⁸ *De Dios v. Bristol Laboratories (Phils), Inc.*, 55 SCRA 349, 354 (1974); *See* 1 F. REGALADO, REMEDIAL LAW COMPENDIUM 50-51 (5d 1988).

³⁹ 94 Phil. 932, 941 (1954).

⁴⁰ *Abejo*, 149 SCRA at 61.

⁴¹ *Saavedra*, 159 SCRA at 61.

Court deviated from this trend. It noted that "the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution."⁴² The regular courts did not lack the ability to interpret an ordinary contract such as a Memorandum of Agreement. The document was not so complicated that its referral to the SEC for a more definitive interpretation was justified. The fact that the subject of the Memorandum of Agreement was shares of stock did not matter as no complicated question of corporation law was involved. Hence, the controversy was deemed an ordinary civil litigation.

5. ESTOPPEL

Parties may not renege on admissions made in the complaint. The Supreme Court had occasion to rule on this point in *Metro Manila Transit Corporation vs. Morales*.⁴³ In this case, petitioner Metro Manila Transit Corporation (MMTC) and private respondents are the stockholders of CBL Transit, Inc. (CBLT). In 1982, the parties entered into a Voting Trust Agreement whereby petitioner became private respondents' trustees of their shares in CBLT. As a result, MMTC possessed all the voting rights, as well as other rights, pertaining to these shares. Said agreement was still in force when private respondents commenced a "derivative suit" against MMTC in 1987. They contended that the take-over in 1982 was without their consent, and that petitioner was an intruder. They claimed that any dispute between the CBLT stockholders and an intruder could never be considered as intra-corporate to bring the case within the competence of the SEC. The Supreme Court noted that the respondents took no direct action to promptly disavow or disaffirm the takeover and the election of the MMTC nominees into the board of directors of CBLT which followed as a natural consequence. The Court, speaking through Chief Justice Marcelo Fernan, ruled:

Parties must take the consequence of the position they assume. They are estopped to deny the reality of the state of things which they have made to appear to exist and upon which others have been led to rely. Sound ethics require that the apparent in its effects and consequences should be as if it were real and law properly so

⁴² *Viray*, G.R. No. 92481 at 19.

⁴³ 173 SCRA 629 (1989).

regards.⁴⁴

Despite a disclaimer, therefore, the Supreme Court found that the Metro Manila Transit Corporation was a stockholder in CBL Transit Inc. The dispute between Metro Manila Transit Corporation and the other stockholders of CBL Transit Inc. was regarded as intra-corporate in nature. Thus,

From the allegations of the complaint in (this case) and as amply demonstrated by private respondents themselves, the Court is convinced that there is an intra-corporate relationship between the parties, thus bringing their dispute under the preclusive ambit of the SEC. Both petitioners and private respondents are stockholders of CBLT; the action admittedly derivative sought to retain from the MMTC-dominated board of directors the control and management of CBLT; and while the takeover of 10 November 1982, might have been without the conformity of private respondents, the same has become insignificant in the light of the latter's acquiescence and silence which call for the application of the doctrine of estoppel, with the end result that the "interlopers" are regarded as bonafide directors.⁴⁵

II. RE-EXAMINATION OF SECTION 5 (B) OF PRESIDENTIAL DECREE NO. 902-A

The jurisdictional problems spawned by Section 5(b) of Presidential Decree No. 902-A require its re-examination to determine if, in spite of these problems, the law continues to fulfill its legislative purpose.

A. The Case For SEC Jurisdiction

There are many reasons for the continuing trend of allowing administrative agencies to handle justiciable controversies. The main reasons will be considered briefly below to make a case for allowing SEC to continue exercising jurisdiction over intra-corporate controversies.

1. EXPERTISE AND FLEXIBILITY

⁴⁴ *Id.* at 633-34.

⁴⁵ *Id.* at 634.

The touchstones for preference of the jurisdiction of administrative agencies over that of regular courts are expertise and uniformity.⁴⁶ An agency's expertise is acquired from the interplay of the concentration upon it of powers to regulate a particular area and of the experience acquired in the exercise of these powers.⁴⁷ Administrative agencies are expected to have specialized knowledge on a particular area, as well as skills in public administration.⁴⁸ These knowledge and skills are outside the domain of legal expertise.⁴⁹

A necessary adjunct to the powers of administrative agencies is the rule that prior resort must be made to these agencies in all actions which fall within their areas of competence. Otherwise, the purpose of the legislature in creating these administrative agencies would be rendered inutile. This is also required in order to instill a degree of uniformity and consistency in the decisions of administrative agencies.⁵⁰ The regular courts and the administrative agency could well render conflicting opinions on the same matter involving the same parties.

2. SPEED AND FLEXIBILITY

Administrative agencies are known for the speed with which they render their decisions. This is as much due to their flexibility in handling the matter, as to their expertise in the area. Technical rules of procedure are often applicable only in a suppletory manner.⁵¹ In some agencies, such as

⁴⁶ BOIES & VERKUIL, PUBLIC CONTROL OF BUSINESS 808 (1977).

⁴⁷ PHILIPPS, O. HOOD PHILIPPS'S CONSTITUTIONAL AND ADMINISTRATIVE LAW 637-38 (1987).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Pambuyan*, 94 Phil. 932.

⁵¹ LABOR CODE OF THE PHILIPPINES, Republic Act 875 (1974) *Amended by Pres. Decrees Nos. 570-A, 626, 643, 823, 849, 850, 865-A, 891, 1367, 1368, 1391, 1412, 1641, 1691, 1692, 1693, 1920, 1921 and 2018; Exec. Order No. 797; Batas Pambansa Blg. 32, 70, 130 and 227; Exec. Order Nos. 74, 111, 126, 180, 247 and 251; Republic Acts Nos. 6715, 6725 and 6727; SECURITIES AND EXCHANGE COMMISSION RULES OF PROCEDURE.*

those enforcing agrarian reform laws, they are not even applicable. Thus, the cases that would otherwise go to the clogged dockets are instead diverted into administrative boards and commissions.⁵²

Administrative agencies are not as rigorous as the courts in applying precedents. This likewise allows more flexibility in decision-making.⁵³

3. RULE MAKING AND ADJUDICATORY FUNCTIONS

An administrative agency is characterized by broad functional areas.⁵⁴ However, these functions are not seen as working at cross purposes, but are generally seen to be complementary. An administrative agency mixes adjudicative with administrative and rule-making functions. This helps to adopt or harmonize adjudication to the regulatory process.

4. POLITICAL ACCOUNTABILITY

While administrative agencies exercising quasi-judicial powers are independent from the executive, the President still possesses general powers of supervision to ensure that the laws are being adequately enforced.⁵⁵ Less formally, the President sets the overall direction of the government. This

⁵² *NFLU v. Ersma*, 127 SCRA 419, 428 (1984).

⁵³ PHILIPPS, *supra* note 47 at 637-38.

⁵⁴ See Presidential Decree No. 902-A, Sec. 3; CORPORATION CODE OF THE PHILIPPINES, Batas Pambansa Blg. 68 (1980); REVISED SECURITIES ACT, Batas Pambansa Blg. 178 (1982); Loeringer, *The Administrative Agency as a Paradigm of Government - a Survey of the Administrative Process*, 40 IND. L.J. 288, 292 (Spring 1965). The Author suggests that the following characteristic functions are common to all major regulatory agencies:

- a) to regulate economic conduct by issuing an order or license to individual enterprise;
- b) to regulate economic conduct by promulgating rules specifying prohibited and permissible conduct;
- c) to investigate and initiate proceeding rather than merely to respond to actions of other as courts do;
- d) to promote and encourage economic and technological progress by cooperation and leadership within their respective areas of activity.

⁵⁵ PHIL. CONST. OF 1987, Art. VII, Sec. 17.

affects the priorities of the administrative agencies themselves. Moreover, public pressure can be more easily brought to bear on the executive branch than on the judiciary. Judges tend to be more self-effacing and are less often the subject of public scrutiny.

5. JUDICIAL REVIEW

The Supreme Court has always wielded a strong supervisory arm over administrative agencies. Thus, it has allowed a review of decisions by voluntary arbitrators even as these decisions are in the nature of compromise agreements and are generally non-reviewable.⁵⁶ In the case of the SEC, the law itself specifically provides for an appellate review process.⁵⁷

An independent review process promotes fairness and prevents arbitrariness or the pursuit of a political agenda. Thus, the delegation by Congress of justiciable questions to quasi-judicial agencies is adequately safeguarded because of the process of appellate review.⁵⁸

B. The Case For The Transfer Of Jurisdiction To The Regular Courts

The case for the transfer of jurisdiction to the regular courts is built on the problem areas arising from the text of Presidential Decree No. 902-A as well as from the application of the law.

1. THE STATUTE SUFFERS FROM OVERINCLUSIVENESS

A scrutiny of the definition of intra-corporate controversy under Presidential Decree No. 902-A shows that it suffers from overinclusiveness. Overinclusiveness is defined by Professor Cass Sunstein as an approach in statutory construction wherein "the best interpretation of a word as used in the text, when all things considered, sometimes calls for a restriction of

⁵⁶ *Oceanic Bic v. Romero*, 130 SCRA 392 (1984).

⁵⁷ *Batas Pambansa No. 129* (1981).

⁵⁸ Fallon, *Legislative Courts, Administrative Agencies and Art. III*, 101 HARV. L. REV. (March 1988).

departure from a word's dictionary meaning.⁵⁹ Sunstein illustrates this with a text from the Austrian language philosopher Ludwig Wittgenstein. Here, a man asks another to teach a child a game and the other man proceeds to teach him a game of dice. The man says that this is not what he meant.⁶⁰

Presidential Decree No. 902-A defines intra-corporate dispute in Section 5(b) thereof as any dispute involving corporations and stockholders. As shown in *Philex*, *Sunset View* and *Union Glass*, once this relationship between the disputants is shown to exist the controversy is deemed intra-corporate and therefore, within the jurisdiction of the SEC.

In *Philex*, the Court noted that the law did not make any distinction or qualification. However, in *PSBA* and other cases, the Supreme Court took the extra step of inquiring into whether the controversy itself was intra-corporate. Subsequently, in the *DMRC* case, the Supreme Court had to make a further distinction between the main action and its incidents.

These are all logical interpretations of the statute, but they clearly apply statutory construction rules. The departure in later rulings indicates the overinclusiveness of the interpretations made by the Supreme Court in earlier cases. Thus, the Court filled in the gaps for the legislature by applying the oft-quoted rule of Hart and Sacks that to solve hard cases the court "should assume, unless the contrary unmistakably appears, that the legislature was made up of reasonable persons pursuing reasonable purposes reasonably."⁶¹ In a similar vein, Karl Llewellyn counselled courts to "strive to make sense [as a whole] out of our law as a whole."⁶²

Such a rationalist approach may not be all that persuasive. It is more reasonable to suspect that the statute was purposely left vague to enable one man to acquire a malleable tool which will allow him to intervene into whatever aspect of the corporate controversy that suits him.

The laws decreed under Martial Law powers were less an instrument of order than an extension of one man and his cronies. Thus, numerous decrees were issued to benefit the deposed President Ferdinand Marcos and his cronies. This attack on the economy was two-pronged. One aspect was aptly described by a United States Embassy Report as a creeping state

⁵⁹ Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 419 (December 1989).

⁶⁰ *Id.*

⁶¹ *Id.* at 434 (citing H. HART & A. SACKS, *THE LEGAL PROCESS* (1958)).

⁶² *Id.*

capitalism, a label for the numerous decrees that allowed the government to gradually control the economy. During the Martial Law years, former President Ferdinand Marcos issued 688 Presidential Decrees and 283 Letters of Instruction which injected the government into the economy in one form or another.⁶³ Another aspect allowed the Marcos cronies to establish monopolies over sugar and coconut, which are vital cash crops.⁶⁴ Letter of Instruction No. 1255 even established a monopoly over the importation of peroxide.

Presidential Decree No. 902-A was enacted on March 11, 1976 by virtue of the legislative powers of the President under Martial Rule. It had the force and effect of law. The basis for the proclamation of Martial Law was Article VII, Par.(2) in the 1935 Constitution.

There are indications that Presidential Decree No. 902-A, which expanded the jurisdiction of the SEC, was part of a comprehensive plan to gain a stranglehold on the economy. Putting intra-corporate disputes under SEC jurisdiction was one way of placing within the ambit of the executive additional powers of control. This was part of the legalistic approach of former President Marcos aimed at gaining power, since he wanted to leave a historical legacy and needed the law to legitimize his actions.⁶⁵ It was also his way of taking care of friends. Significantly, the massive powers of the SEC were decreed by deposed President Marcos when he appointed Angel Limjoco, his classmate, as SEC chairman.⁶⁶

2. THE EROSION OF JUDICIAL POWER

Judicial power refers to the power of the court to hear, decide and pronounce judgment and carry it into effect between parties who bring a case before it for decision. Judicial power is not only a right, but a duty of the court to decide.

However, in the local judicial system, the role of quasi-judicial bodies is acknowledged. As earlier mentioned, there is a tendency to vest administrative bodies with adjudicative powers as a necessary adjunct of their

⁶³ R. BONNER, WALTZING WITH A DICTATORSHIP AND THE MAKING OF AMERICAN FOREIGN POLICY 8 (1987).

⁶⁴ Pres. Decree No. 276 (1973).

⁶⁵ See F. MARCOS, NOTES FOR A NEW SOCIETY IN THE PHILIPPINES (1974).

⁶⁶ SEC wants to Surrender Vast Powers, TIMES JOURNAL, December 18, 1988 at 1

regulatory role.⁶⁷

Regulatory agencies flourished after President Roosevelt's New Deal when the role of government was expanded beyond its traditional confines to confront larger societal problems.⁶⁸ This concomitantly required a break from the neat definition of what constituted executive and judicial powers and what constituted constituent or ministrant functions.⁶⁹

The question of jurisdiction over intra-corporate controversies is therefore part of a large challenge to the jurisdiction of the courts posed by quasi-judicial bodies. This challenge is delineated in an article of Professor Fallon.⁷⁰

It is submitted that in this case the challenge is unwarranted. The courts remain competent to understand corporate law and its principles.

The Supreme Court's interpretation of Section 5(b) since *Philex, Sunset View* and *Union Glass* has been increasingly in favor of the jurisdiction of the regular courts because the issues involved not only intra-corporate controversies, but also issues within the competence of the regular courts.

In saying that not every controversy between a corporation and its stockholders involves only matters the SEC can resolve, Justice Isagani Cruz said:

A contrary interpretation would dissipate the powers of the regular courts and distort the meaning and the intent on PD No. 902-A.... But as expedient as this policy (of giving administrative bodies adjudicative powers) is, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary impotent in the discharge of the duties assigned to it by the Constitution.⁷¹

The Court, in gradually defining the extent of Presidential Decree No.

⁶⁷ See *supra* pp. 109-110.

⁶⁸ Sunstein, *supra* note 59 at 409.

⁶⁹ See *Bacani v. NACOCO*, 100 Phil. 47 (1956).

⁷⁰ Fallon, *supra* note 58.

⁷¹ *Viray*, G.R. No. 92481 at 19.

902-A, was as much protecting its jurisdiction as defining that of the SEC. However, this need to constantly redefine the limits of jurisdiction wastes the time of the judiciary, the SEC, and the parties to the case. Many of the issues raised in all the cases discussed in this study would have been avoided had the rules on jurisdiction been simplified and clarified by putting such disputes within the competence of the regular courts.

3. MULTIPLICITY OF SUITS

A principal argument in support of the jurisdiction of the SEC over intra-corporate disputes is that administrative proceedings are necessarily speedier. However, all it takes is for a smart lawyer to ensure that proceedings are delayed by a multiplicity of suits.

Jurisdiction over the case is determined by the allegations of the complaint. The nature of the controversy may be gleaned from the allegations in it. As illustrated in the cases of *Viray* and *Saavedra*, it is important to determine whether the status of a party as a stockholder is controverted or not.

In the *Viray* case, this led to prolonged litigation. After the petitioners questioned the jurisdiction of the Regional Trial Court, the Supreme Court held:

[T]he status of petitioners as stockholders of OTSI has yet to be clarified at the trial of the said complaint. That status cannot be assumed without hearing. The petitioners could not divest the Regional Trial Court of jurisdiction by simply asserting that they are stockholders of OTSI and their dispute with the private respondent is intra-corporate in nature.⁷²

Whether petitioners were indeed stockholders and directors of the corporation and whether their differences constitute an intra-corporate controversy would have to be resolved by the regular courts after a hearing.⁷³

This determination, however, is far from definitive. The Court said that this determination is subject to further review by the Supreme Court. Thus, without any resolution yet as to the heart of the controversy, the question of jurisdiction over the case would already have gone up to the Supreme Court twice. First, the original case would have gone to the Supreme Court on certiorari with a prayer for a writ of injunction. Then, a petition for

⁷² *Id.* at 18.

⁷³ *Id.* at 20.

review on a question of law as to the nature of the dispute would have been filed after an adverse ruling by the lower court.

While these procedures are allowed under the Rules of Court, it is submitted that there is needless hairsplitting over this jurisdictional issue. The ends for which administrative bodies are created are also in the process subverted. Instead of promoting speedier justice, delay results.

4. ADMINISTRATIVE OVERREACH

The SEC regulates various aspects of corporate activities. It is tasked with, among others, the duty to enforce various provisions of the Corporation Code and the Revised Securities Act. Because of the scope of its regulatory powers, the SEC has been criticized for its mediocre performance.

In 1988, Senator Teofisto T. Guingona initiated a senate inquiry on alleged widespread irregularities in the SEC. The Senator said that "no less than the World Bank has urged the Philippine government to institute immediate changes in the Commission and in the overall security market to give added protection to investors." Resolution No. 282 dated 2 November 1988, cited the following alleged irregularities in the SEC: a) delays and railroading of cases filed before the SEC; b) suspicious withholding of sanctions against erring corporations; c) approval of the relisting of securities in the stock exchange by corporations without the required audit; d) allowance of insider trading; and e) inability of the SEC to act expeditiously on corporate controversies or the lack of will to properly regulate the securities industry.

Lawyers also complain of the delays. Litigation of corporate intramurals filed with the SEC takes longer because of the tedious processes and appeals involved.⁷⁴ A decision of the Securities Investigation and Clearing Department is appealable to the SEC Commission before this goes to the Court of Appeals and finally to the Supreme Court.

Several former commissioners believe that the powers of the SEC should be clipped so that the SEC can concentrate on its regulatory functions. Associate Commissioner Jose Laureta noted that this will also help reduce graft and corruption.⁷⁵

While a majority of Philippine corporations have their principal

⁷⁴ *Why SEC Litigation Takes Time*, Philippine Daily Inquirer, August 2, 1987 at 6.

⁷⁵ *SEC Officers Face Cut in Powers*, Philippine Daily Inquirer, December 25, 1988 at 13.

addresses in Metro Manila, a significant number are being set up in various provinces. The SEC, however, has provincial offices only in Cebu and Davao.⁷⁶

Intra-corporate disputes which occur in areas where the SEC does not have offices would have to be brought to Manila or the two provincial offices. In comparison, there are 683 Regional Trial Courts spread evenly throughout the archipelago.

The regular courts can also adequately handle the relatively small number of intra-corporate cases. In 1987, the SEC resolved 136 cases involving intra-corporate disputes, while in 1988 it resolved 176 cases of such nature.⁷⁷ A total of 210 intra-corporate cases were filed in 1988.⁷⁸ In 1989, the SEC resolved 353 intra-corporate controversies.⁷⁹

CONCLUSION

Justiciable controversies are submitted to administrative bodies for speedy and authoritative determination. This laudable objective, which justifies preference for administrative jurisdiction over judicial jurisdiction, is not achieved by Presidential Decree No. 902-A. As shown in this study, the jurisdictional problems arising from the said statute have, instead, delayed the resolution of intra-corporate disputes. More problems are bound to arise especially now that the Supreme Court, expressing concern over the erosion of judicial power, has signaled the adoption of the policy of narrowing the scope of the term "intra-corporate controversy" in order to uphold the jurisdiction of regular courts. It is, therefore, imperative to reassess the propriety of allowing the Securities and Exchange Commission to retain jurisdiction over intra-corporate controversies.

In recognition, perhaps, of the weakness of the present system, the Government has done its own reassessment. A closer examination should be made of the recommendations of the Presidential Commission for Government Reorganization (PCGR) which has proposed the removal from the SEC's Securities Investigation and Clearance Department the power to

⁷⁶ *The Power of the SEC*, Manila Bulletin, December 10, 1986 at 7.

⁷⁷ *Id.*

⁷⁸ *Fookien Times Yearbook* 138 (1989).

⁷⁹ *Fookien Times Yearbook* 140 (1990).

hear and decide intra-corporate disputes.⁸⁰ In its place, the PCGR proposed the creation of a special court - the Court of Corporate Disputes - which would have the same rank as the Court of Appeals. The proposed new court will be a collegial body composed of a presiding justice and four associate justices. This proposed reorganization will allow the SEC to concentrate on the supervision and monitoring of the corporate sector and the promotion of the capital market. At the same time, it would allow for the selection of justices with proven expertise in commercial law and with broad knowledge of civil law which, in many of the cases discussed in this paper, was found to be of extensive application.

⁸⁰ Presidential Commission for Government Reorganization Report (1987).