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

LILIBETH D. ANGLO
Complainant-Appellant,

- versus -

SEC En Banc Case No. 01-10-198

HOWARD M. CALLEJA
Respondent-Appellee.

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DECISION

Complainant-Appellant Lilibeth D. Anglo (hereinafter referred to as "Appellant") appeals[1] to the Commission the order issued by Director Hubert B. Guevara of the Enforcement and Prosecution Department (EPD) dismissing the complaint filed by Appellant[2] instituted against Respondent-Appellee Howard M. Calleja (hereinafter referred to as "Appellee") for lack of jurisdiction in view of Section 5.2 of the Securities and Regulation Code (SRC) which "transferred the Commission's original and exclusive jurisdiction over controversies in the election or appointment of directors of corporations to courts of general jurisdiction or appropriate Regional Trial Court."[3]

The Facts of the Case

Appellant alleges to be a stockholder of VYD Holdings, Inc. while Appellee is a proxy of Violeta Domingo, allegedly another stockholder of the VYD Holdings, Inc.[4]

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[1] Manifestation dated 25 March 2010 stating to the effect that the Notice of Appeal and Memorandum on Appeal were filed and paid for on 24 March 2010 via money order and an advance copy was submitted on 25 March 2010 to the Commission.
[2] Annex "A" of the Memorandum on Appeal.
[3] Letter from Director Guevara of the EPD to Complainant-appellant dated 01 March 2010.
[4] Par. 4, Memorandum on Appeal, p. 2.

A special stockholders' meeting of VYD Holdings, Inc. was held on 10 November 2009 at Makati City, called by Francisco Domingo, Fritzie Domingo and Violeta Domingo, majority stockholders of the corporation.[5] Appellant appointed five (5) proxies[6] to attend the meeting on her behalf.[7] At the meeting, her proxies inquired as to the whereabouts of Violeta Domingo, Chairman of the Board and President, and were informed that Violeta was represented by her proxy, Appellee Calleja.[8] When Appellant's proxies perused the proxy form of Violeta authorizing the Appellee to represent her, it was indicated that the proxy was executed in California.[9] Appellant's proxies objected to the validity of the proxy form on the ground that it did not conform to the requirements of the Securities and Exchange Commission that proxy forms executed abroad should be authenticated and validated by the Philippine Embassy or the Philippine Consulate abroad.[10]

Appellant filed a complaint with the EPD on 21 January 2010, alleging that Appellee committed a violation of SEC Memorandum Circular No. 5-1996 in relation to Memorandum 5-2001 during the stockholders' meeting of VYD Holdings, Inc. when he accepted the unauthenticated proxy of Violeta Domingo.[11]

The EPD dismissed the Appellant's complaint for lack of jurisdiction over the case, citing Section 5.2 of the Securities and Regulation Code[12] transferring jurisdiction of the Commission over intra-corporate matters to the regular courts and the case of GSIS vs. Court of Appeals[13] where the Supreme Court ruled that "when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts."

Appellant maintains that the SEC has the power and jurisdiction over the imposition of fines and/or penalties upon Appellee for violations of the Corporation Code[14] or any other laws being implemented by this Commission, the pertinent rules and regulations, its orders, decisions and/or rulings as provided in Section 6 of PD 902-A.[15] In particular, Appellant reiterates the rule[16] that proxies executed abroad shall be duly authenticated by the Philippine Embassy or Consular Office[17] which she alleges the Appellee violated by accepting the unauthenticated proxy of Violeta Domingo and thus opens him to administrative sanctions.

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[5] Par. 5, Memorandum on Appeal, p. 2.
[6] Annex "A," Memorandum on Appeal.
[7] Par. 6, Memorandum on Appeal, p. 3.
[8] Par. 7, Memorandum on Appeal, p. 3.
[9] Par. 8, Memorandum on Appeal, p. 3.
[10] Par. 8.1, Memorandum on Appeal, p. 3.
[11] Letter from Dir. Hubert Guevara to appellant, 1 March 2010.
[12] Republic Act No. 8799 (2000).
[13] G.R. No. 183905, April 16, 2009.
[14] As provided in Section 144, Batas Pambansa Blg. 80 (1980).
[15] Par. 11, Memorandum on Appeal, p. 4.
[16] Citing Section 16 of SEC Memorandum Circular No. 5, series of 1996.
[17] Rule 20, 11(b)(xvii) of the Amended Implementing Rules and Regulations of the Securities Regulation Code which took effect on 28 February 2004.

Appellee on the other hand, asserts that the Commission has no jurisdiction over him.[18] Appellee further asserts that the case is intra-corporate in nature and thus outside the jurisdiction of the Commission.[19]

The Issue

The issue is whether or not the Commission has jurisdiction over the instant controversy.

Ruling

We uphold the ruling of the EPD.

The jurisdiction over the instant controversy lies with the proper court. We quote relevant portions of the decision of the Supreme Court in GSIS vs. CA, et al.:

> "There is an interesting point, which neither party raises, and it concerns Section 6(g) of Presidential Decree No. 902-A, which states:
>
> > SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
> >
> > xxx
> >
> > (g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members;
> >
> > xxx
>
> As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC.
>
> ***Yet a closer reading of the provision indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction."*** Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. ***Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers.***" (emphasis supplied)

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[18] Par. 3, Reply Memorandum Ad Cautelam, received on 29 April 2010.
[19] Par. 4, Reply Memorandum Ad Cautelam.

In fine, as correctly pointed out by Director Hubert M. Guevara of the EPD, the SEC no longer has jurisdiction over the issues raised by Appellant which are intimately tied to an election controversy,[20] the jurisdiction over which now lies with the proper court by virtue of Sec. 5.2 of Republic Act No. 8799 (Securities and Regulation Code).

Appellant tried to reframe the issue differently by stating it in this wise: "In this case, the SEC is not being called upon to determine the validity of the proxy since clearly, the proxy is invalid, lacking the proper authentication by the Philippine Embassy or Consular Office."[21]

Appellant also asserts[22] that in Fabia vs. CA[23], the Supreme Court ruled that:

> "[T]he filing of the civil/intra-corporate case before the SEC does not preclude the simultaneous and concomitant filing of a criminal action before the regular courts; such that, a fraudulent act may give rise to liability for violation of the rules and regulations of the SEC cognizable by the SEC itself, as well as criminal liability for violation of the Revised Penal Code cognizable by the regular courts, both charges to be filed and proceeded independently, and may be simultaneously with the other."

However:

> "The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, ***even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts*** by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A." (emphasis supplied)[24]

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[20] It is also worth noting that in the Verification and Certification Against Forum Shopping attached to the Memorandum of Appeal, it is stated:

> "3. There is a similar pending case in the Regional Trial Court Branch 53 of Bacolod City entitled Lilibeth D. Anglo v. Francisco Domingo III, et al. with Commercial Case No. 09-075 on Intra-Corporate Dispute and Election Contest filed on 26 November 2009." (p.8)

[21] Par. 21, Memorandum on Appeal, p. 7.
[22] Par. 23, Memorandum on Appeal, p. 7.
[23] G.R. No. 132684, September 11, 2002.
[24] *GSIS vs. CA*, G.R. No. 183905, April 16, 2009.

Therefore, even if Appellant tried to present the issue as solely about the imposition of penalties for a violation of the Commission's rules and regulations when Appellee accepted the unauthenticated proxy of Violeta Domingo, the inescapable conclusion is that the resolution of the instant controversy lies with the proper regional trial court and not this Commission.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of jurisdiction. Let a copy of this **DECISION** be furnished to the Enforcement and Prosecution Department for information.

SO ORDERED.

Mandaluyong City, 17 June 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

**on leave of absence*