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

E.M. RAMOS & SONS, INC.
JANUARIO B. RAMOS,
VICTORIA R. TANJUATCO and
ROGERIO H. CRISTOBAL,
Petitioners,

SEC En Banc Case No. 12-05-70

- versus -

DIRECTOR BENITO A. CATARAN IN HIS CAPACITY AS DIRECTOR OF THE COMPANY REGISTRATION AND MONITORING DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION,
Respondent.

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DECISION

Before the Commission is a Petition for Review filed by E.M. Ramos & Sons, Inc. ("EMRASON" for brevity), Januario B. Ramos, Victoria R. Tanjuatco, and Rogerio H. Escobal (hereinafter collectively referred to as "Petitioners") assailing the letter of respondent, Company Registration and Monitoring Department ("CRMD", for brevity) Director Benito A. Cataran dated 22 November 2005.

Alleging violations of the Corporation Code[1], petitioners wrote a letter to respondent "invoking the power of the Commission to regulate, investigate or supervise activities of persons to ensure compliance with the provisions of the Corporation Code and/or to penalize any violations thereof."[2]

The controversy arose when petitioners received a Notice of Pre-Emptive Rights to subscribe to additional shares from the Travellers Insurance & Surety Corporation[3] ("TISCO", for brevity) following TISCO's Annual Stockholders' meeting on 22 July 2005 wherein members of the Board of Directors were elected and the stockholders approved

[1] Batas Pambansa Bilang 68 (1980)
[2] Letter of Petitioner to Respondent Benito Cataran, November 18, 2005, p. 2.
[3] SEC Registration No. 25369

the proposed increase in capital stock from Fifty Million Pesos (P50,000,000.00) to Three Hundred Million Pesos (P300,000,000.00).[4] Based on the minutes of the said meeting, the increase in capital stock was to comply with the requirements of the proposed Department Order No. 1-2005 for requiring all non-life insurance companies to have authorized capital stock of Three Hundred Million Pesos as required by the Insurance Commission.

Petitioners assailed the proceedings of the Stockholders' Meeting, claiming that they own at least Two Hundred Seventy Four Thousand One Hundred Twenty Four (274,124) shares out of the Five Hundred Thousand (500,000) shares of TISCO, and thus, there could not have been enough stockholders to constitute a quorum at the stockholders' meeting, much less meet the two-thirds requirement under the law to approve the increase of TISCO's capital stock.

Petitioners also raised issues regarding the unauthorized transfer of the Two Hundred Thousand (200,000) shares of stocks in Trade Expositions Center, Inc.[5] ("TECI", for brevity) in the name of EMRASON[6], and assert that TECI, the transferee of the shares is not authorized to manage or control TISCO. Petitioners prayed that respondent issue a cease and desist order directing TISCO to refrain from acting upon the assignment of shares from EMRASON to TECI.[7]

In the letter dated 22 November 2005, respondent replied:

> "Upon perusal, we found out that the issues involve a determination of the legality of the election of the members of the Board of Directors held during the stockholders meeting and the approval of the increase in authorized capital stock, which are intra-corporate controversies -- within the purview of Section 5 of PD 902-A xxx thus, the Securities and Exchange Commission cannot take cognizance of, as the same was transferred to the regular courts pursuant to the Securities Regulation Code (SRC) and Presidential Decree 902-A."

Respondent also clarified that the CRMD cannot grant petitioners' request to deny TISCO's application for amendment of the articles of incorporation and increase of authorized capital stock because it is "ministerial upon the Commission to accept the filing of any document submitted before it and to approve the same if found to be compliant with the requirements of the law."[8] Anent the third request for the issuance of a cease and desist order directing TISCO to refrain from acting upon the assignment to TECI of EMRASON's shares in TISCO, respondent informed petitioners that the matter had been referred to the Compliance and Enforcement Department[9] for proper evaluation and investigation.

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[4] Petition, Annex "B."
[5] SEC Registration No. A200204103
[6] The management and control of EMRASON is the subject of a pending dispute in E.M. Ramos & Sons, Inc. et al. vs Emerito Ramos, Jr., et al (Civil Case No. 00-15432) pending before the Regional Trial Court of Makati City, Branch 138.
[7] Letter to Respondent, 18 November 2005.
[8] Letter to Petitioner, 22 November 2005.
[9] Now Enforcement and Prosecution Department

Hence, the instant Petition for Review.

The main issue to be resolved is whether or not Respondent Cataran erred in ruling that the Commission cannot take cognizance of the alleged violations committed by the members of TISCO's Board of Directors.

We rule in favor of respondent.

An intra-corporate dispute involves "any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers, or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission."[10]

To determine which body has jurisdiction over the present controversy, we rely on the sound judicial principle that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[11]

Section 5 of Presidential Decree 902-A, as amended, or the "SEC Reorganization Act" is worth revisiting for clarity. Prior to the enactment of the Securities and Regulation Code[12], the Commission was vested with original and exclusive jurisdiction over complaints and to hear and decide cases involving the following:

> "(a) Devices or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or stockholders, partners, members of associations or organizations registered with the Commission;
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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 associations, 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;
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> (c) Controversies in the election or appointment of directors, trustees, officers or managers of such corporations, partnership or associations;
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> (d) Petition of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree."

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[10] Fabia vs Court of Appeals, G.R. No. 132684, August 20, 2001.
[11] Saura, et al. v. Saura, et al., G.R. No. 135159, September 1, 1999.
[12] Republic Act No. 8799 (2000).

In resolving these disputes, the Supreme Court has stated on occasion: "The doctrine of primary jurisdiction exhorts us to refer the instant case to the SEC for its resolution of the matter in dispute. However, it should be noted that RA 8799, the Securities Regulation Code, has amended PD 902-A, and transferred the jurisdiction of the SEC over intra-corporate cases to the courts of general jurisdiction or the appropriate Regional Trial Courts."[13]

To determine whether a case involves an intra-corporate controversy, to be heard and decided by the Branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.[14]

The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership or association of which they are 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 franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation.[15]

Clearly, the issues raised by petitioners are intra-corporate in nature. To recapitulate, petitioners are questioning the legality of the quorum constituting the stockholders' meeting that not only elected the members of the Board of Directors, but also approved the increase of TISCO's authorized capital stock. Petitioners claim that the requirement to constitute a quorum could not have been possible as EMRASON and petitioners did not participate in the meeting. Petitioners further question the assignment of EMRASON's shares to TECI, claiming it is a circumvention of a pending civil case.

A perusal of TISCO's General Information Sheet ("GIS")[16] reveals that petitioner EMRASON does not appear among the company's stockholders while TECI owns 423,433 shares. On the other hand, the other petitioners' total stockholdings amount to only 53,510 shares or 10.7% of TISCO's total outstanding stock.

As respondent correctly pointed out: "Indirectly, Petitioners' letter presented an issue on ownership of shares of stock, a matter which is intra-corporate in nature, and over which the Commission has no jurisdiction."[17]

The determination of who the legitimate owners of the shares of stock are should be threshed out in the appropriate proceeding before the Regional Trial Court.

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[13] Fabia vs. Court of Appeals, et al., G.R. No. 132684, August 20, 2001.
[14] Speed Distributing Corp., et al. vs Court of Appeals, G.R. No. 149351, March 17, 2004.
[15] The Intestate Estate of Alexander T. Ty vs. Court of Appeals, G.R. No. 112872, April 19, 2001.
[16] Attachment "6" of Comment on the Petition, dated August 19, 2005.
[17] Comment on the Petition, p. 7.

Petitioners likewise invoke the principle of exhaustion of administrative remedies. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.[18] However, the doctrine of exhaustion of administrative remedies is not applicable in this case, as the law is very clear on where jurisdiction lies.

While petitioners claim that they are only invoking the supervisory, regulatory, and investigative powers of the Commission, their efforts to reframe or mask the intra-corporate nature of the controversy must fail.

Respondent cites the provisions of SEC Memorandum Circular No. 11-2003 (Supervision Over Registered Corporations)[19] which clarifies the "extent of the supervisory powers of the Securities and Exchange Commission (SEC) over all registered corporations."

> "2. For all other business operations of companies with certificates of registration with the SEC as corporations but not requiring a secondary license from the SEC, the extent of its supervision and monitoring shall be limited to their compliance with the Corporation Code, i.e.:
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> a. submission of financial statements;
> b. submission of General Information Sheets (GIS);
> c. compliance with the provisions in their by-laws on:
> i. number of directors
> ii. qualifications, compensation of directors
> iii. holding of meetings
>
> xx xx xx
> f. other provisions of the Code requiring submission of documents to effect compliance."

In other words, pursuant to the changes introduced by the Securities Regulation Code, the powers of the Commission are now limited to the enumerated items. Moreover, as Respondent clarified, it becomes a ministerial duty on the part of the Commission to give due course to any filing or application which is regular on its face.

The CRMD cannot go beyond the four corners of any applications submitted for its approval. There is a presumption of regularity of the documents presented to or of the dealings of the public with this Commission.[20] While the CRMD has to pass upon and exercise its discretionary power for determining the legitimacy of the purpose of the amendment or to ensure that the amendment does not fall under any of the grounds for disallowance in Section 17 of the Corporation Code, such exercise of discretionary power does not hold when the documents that are presented to the Commission are complete and regular on their face.

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[18] University of the Philippines v. Catungal, Jr., et al., G.R. No. 121863, May 5, 1997.
[19] Attachment "3", Comment on the Petition.
[20] Comment on the Petition, p. 5.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED for LACK OF MERIT**. Let a copy of this **DECISION** be furnished to the **Company Registration and Monitoring Department** for its information and appropriate action.

SO ORDERED.

Mandaluyong City, 6 May 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL B. GAITE
Commissioner

ELADIO M. JALA
Commissioner