

FIRST DIVISION

[G.R. No. 120138, September 05, 1997]

**MANUEL A. TORRES, JR., (DECEASED), GRACIANO J. TOBIAS,
RODOLFO L. JOCSON, JR., MELVIN S. JURISPRUDENCIA,
AUGUSTUS CESAR AZURA AND EDGARDO D. PABALAN,
PETITIONERS, VS. COURT OF APPEALS, SECURITIES AND
EXCHANGE COMMISSION, TORMIL REALTY & DEVELOPMENT
CORPORATION, ANTONIO P. TORRES, JR., MA. CRISTINA T.
CARLOS, MA. LUISA T. MORALES, AND DANTE D. MORALES,
RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

In this petition for review on certiorari under Rule 45 of the Revised Rules of Court, petitioners seek to annul the decision of the Court of Appeals in CA-G.R. SP. No. 31748 dated 23 May 1994 and its subsequent resolution dated 10 May 1995 denying petitioners' motion for reconsideration.

The present case involves two separate but interrelated conflicts. The facts leading to the first controversy are as follows:

The late Manuel A. Torres, Jr. (Judge Torres for brevity) was the majority stockholder of Tormil Realty & Development Corporation while private respondents who are the children of Judge Torres' deceased brother Antonio A. Torres, constituted the minority stockholders. In particular, their respective shareholdings and positions in the corporation were as follows:

Name of Stockholder	Number of Shares	Percentage	Position(s)
Manuel A. Torres, Jr.	100,120	57.21	Dir./Pres./Chair
Milagros P. Torres	33,430	19.10	Dir./Treasurer
Josefina P. Torres	8,290	4.73	Dir./Ass. Cor-Sec.
Ma. Cristina T. Carlos	8,290	4.73	Dir./Cor-Sec.
Antonio P. Torres, Jr.	8,290	4.73	Director
Ma. Jacinta P. Torres	8,290	4.73	Director
Ma. Luisa T. Morales	7,790	4.45	Director

Dante D. Morales	500	.28	Director ^[1]
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In 1984, Judge Torres, in order to make substantial savings in taxes, adopted an "estate planning" scheme under which he assigned to Tormil Realty & Development Corporation (Tormil for brevity) various real properties he owned and his shares of stock in other corporations in exchange for 225,972 Tormil Realty shares. Hence, on various dates in July and August of 1984, ten (10) deeds of assignment were executed by the late Judge Torres:

ASSIGNMENT DATE PROPERTY ASSIGNED LOCATION SHARES TO
BE ISSUED

1. July 13, 1984	TCT 81834	Quezon City 13,252
TCT 144240	Quezon City	
2. July 13, 1984	TCT 77008	Manila
TCT 65689	Manila 78,493	
TCT 109200	Manila	
3. July 13, 1984	TCT 374079	Makati 8,307
4. July 24, 1984	TCT 41527	Pasay
TCT 41528	Pasay 9,855	
TCT 41529	Pasay	
5. Aug. 06, 1984	El Hogar Filipino Stocks 2,000	
6, Aug. 06, 1984	Manila Jockey Club Stocks 48,737	
7. Aug. 07, 1984	San Miguel Corp. Stocks 50,283	
8. Aug. 07, 1984	China Banking Corp. Stocks 6,300	
9. Aug. 20, 1984	Ayala Corp. Stocks 7,468	
10. Aug. 29, 1984	Ayala Fund Stocks 1,322	

225,972 ^[2]

Consequently, the aforelisted properties were duly recorded in the inventory of assets of Tormil Realty and the revenues generated by the said properties were correspondingly entered in the corporation's books of account and financial records.

Likewise, all the assigned parcels of land were duly registered with the respective

Register of Deeds in the name of Tormil Realty, except for the ones located in Makati and Pasay City.

At the time of the assignments and exchange, however, only 225,000 Tormil Realty shares remained unsubscribed, all of which were duly issued to and received by Judge Torres (as evidenced by stock certificates Nos. 17, 18, 19, 20, 21, 22, 23, 24 & 25).^[3]

Due to the insufficient number of shares of stock issued to Judge Torres and the alleged refusal of private respondents to approve the needed increase in the corporation's authorized capital stock (to cover the shortage of 972 shares due to Judge Torres under the "estate planning" scheme), on 11 September 1986, Judge Torres revoked the two (2) deeds of assignment covering the properties in Makati and Pasay City.^[4]

Noting the disappearance of the Makati and Pasay City properties from the corporation's inventory of assets and financial records private respondents, on 31 March 1987, were constrained to file a complaint with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 3153 to compel Judge Torres to deliver to Tormil Corporation the two (2) deeds of assignment covering the aforementioned Makati and Pasay City properties which he had unilaterally revoked and to cause the registration of the corresponding titles in the name of Tormil. Private respondents alleged that following the disappearance of the properties from the corporation's inventory of assets, they found that on October 24, 1986, Judge Torres, together with Edgardo Pabalan and Graciano Tobias, then General Manager and legal counsel, respectively, of Tormil, formed and organized a corporation named "Torres-Pabalan Realty and Development Corporation" and that as part of Judge Torres' contribution to the new corporation, he executed in its favor a Deed of Assignment conveying the same Makati and Pasay City properties he had earlier transferred to Tormil.

The second controversy--involving the same parties--concerned the election of the 1987 corporate board of directors.

The 1987 annual stockholders meeting and election of directors of Tormil corporation was scheduled on 25 March 1987 in compliance with the provisions of its by-laws.

Pursuant thereto, Judge Torres assigned from his own shares, one (1) share each to petitioners Tobias, Jocson, Jurisprudencia, Azura and Pabalan. These assigned shares were in the nature of "qualifying shares," for the sole purpose of meeting the legal requirement to be able to elect them (Tobias and company) to the Board of Directors as Torres' nominees.

The assigned shares were covered by corresponding Tormil Stock Certificates Nos. 030, 029, 028, 027, 026 and at the back of each certificate the following inscription is found:

The present certificate and/or the one share it represents, conformably to the purpose and intention of the Deed of Assignment dated March 6, 1987, is not held by me under any claim of ownership and I acknowledge that I hold the same merely as trustee of Judge Manuel A. Torres, Jr. and

for the sole purpose of qualifying me as Director;

(Signature of Assignee) [5]

The reason behind the aforestated action was to remedy the "inequitable lopsided set-up obtaining in the corporation, where, notwithstanding his controlling interest in the corporation, the late Judge held only a single seat in the nine-member Board of Directors and was, therefore, at the mercy of the minority, a combination of any two (2) of whom would suffice to overrule the majority stockholder in the Board's decision making functions." [6]

On 25 March 1987, the annual stockholders meeting was held as scheduled. What transpired therein was ably narrated by Attys. Benito Cataran and Bayani De los Reyes, the official representatives dispatched by the SEC to observe the proceedings (upon request of the late Judge Torres) in their report dated 27 March 1987:

xxx.

The undersigned arrived at 1:55 p.m. in the place of the meeting, a residential bungalow in Urdaneta Village, Makati, Metro Manila. Upon arrival, Josefina Torres introduced us to the stockholders namely: Milagros Torres, Antonio Torres, Jr., Ma. Luisa Morales, Ma. Cristina Carlos and Ma. Jacinta Torres. Antonio Torres, Jr. questioned our authority and personality to appear in the meeting claiming subject corporation is a family and private firm. We explained that our appearance there was merely in response to the request of Manuel Torres, Jr. and that SEC has jurisdiction over all registered corporations. Manuel Torres, Jr., a septuagenarian, argued that as holder of the major and controlling shares, he approved of our attendance in the meeting.

At about 2:30 p.m., a group composed of Edgardo Pabalan, Atty. Graciano Tobias, Atty. Rodolfo Jocson, Jr., Atty. Melvin Jurisprudencia, and Atty. Augustus Cesar Azura arrived. Atty. Azura told the body that they came as counsels of Manuel Torres, Jr. and as stockholders having assigned qualifying shares by Manuel Torres, Jr.

The stockholders' meeting started at 2:45 p.m. with Mr. Pabalan presiding after verbally authorized by Manuel Torres, Jr., the President and Chairman of the Board. The secretary when asked about the quorum, said that there was more than a quorum. Mr. Pabalan distributed copies of the president's report and the financial statements. Antonio Torres, Jr. requested time to study the said reports and brought out the question of auditing the finances of the corporation which he claimed was approved previously by the board. Heated arguments ensued which also touched on family matters. Antonio Torres, Jr. moved for the suspension of the meeting but Manuel Torres, Jr. voted for the continuation of the proceedings.

Mr. Pabalan suggested that the opinion of the SEC representatives be asked on the propriety of suspending the meeting but Antonio Torres, Jr. objected reasoning out that we were just observers.

When the Chairman called for the election of directors, the Secretary refused to write down the names of nominees prompting Atty. Azura to initiate the appointment of Atty. Jocson, Jr. as Acting Secretary.

Antonio Torres, Jr. nominated the present members of the Board. At this juncture, Milagros Torres cried out and told the group of Manuel Torres, Jr. to leave the house.

Manuel Torres, Jr., together with his lawyers-stockholders went to the residence of Ma. Jacinta Torres in San Miguel Village, Makati, Metro Manila. The undersigned joined them since the group with Manuel Torres, Jr. the one who requested for S.E.C. observers, represented the majority of the outstanding capital stock and still constituted a quorum.

At the resumption of the meeting, the following were nominated and elected as directors for the year 1987-1988:

1. Manuel Torres, Jr.
2. Ma. Jacinta Torres
3. Edgardo Pabalan
4. Graciano Tobias
5. Rodolfo Jocson, Jr.
6. Melvin Jurisprudencia
7. Augustus Cesar Azura
8. Josefina Torres
9. Dante Morales

After the election, it was resolved that after the meeting, the new board of directors shall convene for the election of officers.

xxx. [7]

Consequently, on 10 April 1987, private respondents instituted a complaint with the SEC (SEC Case No. 3161) praying in the main, that the election of petitioners to the Board of Directors be annulled.

Private respondents alleged that the petitioners-nominees were not legitimate stockholders of Tormil because the assignment of shares to them violated the minority stockholders' right of pre-emption as provided in the corporation's articles and by-laws.

Upon motion of petitioners, SEC Cases Nos. 3153 and 3161 were consolidated for