

## FIRST DIVISION

[ G.R. Nos. 163356-57, July 01, 2015 ]

**JOSE A. BERNAS, CECILE H. CHENG, VICTOR AFRICA, JESUS B. MARAMARA, JOSE T. FRONDOSO, IGNACIO T. MACROHON, JR., AND PAULINO T. LIM, ACTING IN THEIR CAPACITY AS INDIVIDUAL DIRECTORS OF MAKATI SPORTS CLUB, INC., AND ON BEHALF OF THE BOARD OF DIRECTORS OF MAKATI SPORTS CLUB, PETITIONERS, VS. JOVENCIO F. CINCO, VICENTE R. AYLLON, RICARDO G. LIBREA, SAMUEL L. ESGUERRA, ROLANDO P. DELA CUESTA, RUBEN L. TORRES, ALEX Y. PARDO, MA. CRISTINA SIM, ROGER T. AGUILING, JOSE B. QUIMSON, CELESTINO L. ANG, ELISEO V. VILLAMOR, FELIPE L. GOZON, CLAUDIO B. ALTURA, ROGELIO G. VILLAROSA, MANUEL R. SANTIAGO, BENJAMIN A. CARANDANG, REGINA DE LEON-HERLIHY, CARLOS Y. RAMOS, JR., ALEJANDRO Z. BARIN, EFRENILO M. CAYANGA AND JOHN DOES, RESPONDENTS.**

[G.R. NOS. 163368-69]

**JOVENCIO F. CINCO, RICARDO G. LIBREA AND ALEX Y. PARDO, PETITIONERS, VS. JOSE A. BERNAS, CECILE H. CHENG AND IGNACIO A. MACROHON, RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

Before us are two consolidated Petitions for Review on *Certiorari*<sup>[1]</sup> assailing the 28 April 2003 Decision and the 27 April 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 62683,<sup>[2]</sup> which declared the 17 December 1997 Special Stockholders' Meeting of the Makati Sports Club invalid for having been improperly called but affirmed the actions taken during the Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000. The dispositive portion of the assailed decision reads:

**WHEREFORE**, foregoing considered, the instant petition for review is hereby **GRANTED**. The appealed Decision dated December 12, 2000 of the SEC en banc is **SET ASIDE** and the Decision dated April 20, 1998 of the Hearing Officer is **REINSTATED** and **AMENDED** as follows:

1. The supposed Special Stockholders' Meeting of December 17, 1997 was prematurely or invalidly called by the [Cinco Group]. It therefore failed to produce any legal effects and did not effectively remove [the Bernas Group] as directors of the Makati Sports Club,

Inc.;

2. The expulsion of petitioner Jose A. Bernas as well as the public auction of his share[s] is hereby declared void and without legal effect;
3. The ratification of the removal of [the Bernas Group] as directors, the expulsion of petitioner Bernas and the sale of his share by the defendants and by the stockholders held in their Regular Stockholders' Meeting held in April of 1998, 1999 and 2000, is void and produces no effects as they were not the proper party to cause the ratification;
4. All other actions of the [Cinco Group] and stockholders taken during the Regular Stockholders' Meetings held in April 1998, 1999 and 2000, including the election of the [Cinco Group] as directors after the expiration of the term of office of petitioners as directors, are hereby declared valid;
5. No awards for damages and attorney's fees.<sup>[3]</sup>

### ***The Facts***

Makati Sports Club (MSC) is a domestic corporation duly organized and existing under Philippine laws for the primary purpose of establishing, maintaining, and providing social, cultural, recreational and athletic activities among its members.

Petitioners in G.R. Nos. 163356-57, Jose A. Bernas (Bernas), Cecile H. Cheng, Victor Africa, Jesus Maramara, Jose T. Frondoso, Ignacio T. Macrohon and Paulino T. Lim (Bernas Group) were among the Members of the Board of Directors and Officers of the corporation whose terms were to expire either in 1998 or 1999.

Petitioners in G.R. Nos. 163368-69 Jovencio Cinco, Ricardo Librea and Alex Y. Pardo (Cinco Group) are the members and stockholders of the corporation who were elected Members of the Board of Directors and Officers of the club during the 17 December 1997 Special Stockholders Meeting.

The antecedent events of the meeting and its results, follow:

Alarmed with the rumored anomalies in handling the corporate funds, the MSC Oversight Committee (MSCOC), composed of the past presidents of the club, demanded from the Bernas Group, who were then incumbent officers of the corporation, to resign from their respective positions to pave the way for the election of new set of officers.<sup>[4]</sup> Resonating this clamor were the stockholders of the corporation representing at least 100 shares who sought the assistance of the MSCOC to call for a special stockholders meeting for the purpose of removing the sitting officers and electing new ones.<sup>[5]</sup> Pursuant to such request, the MSCOC called a Special Stockholders' Meeting and sent out notices<sup>[6]</sup> to all stockholders and members stating therein the time, place and purpose of the meeting. For failure of the Bernas Group to secure an injunction before the Securities Commission (SEC),

the meeting proceeded wherein Jose A. Bernas, Cecile H. Cheng, Victor Africa, Jesus Maramara, Jose T. Frondoso, Ignacio T. Macrohon, Jr. and Paulino T. Lim were removed from office and, in their place and stead, Jovencio F. Cinco, Ricardo G. Librea, Alex Y. Pardo, Roger T. Aguilin, Rogelio G. Villarosa, Armando David, Norberto Maronilla, Regina de Leon-Herlihy and Claudio B. Altura, were elected.<sup>[7]</sup>

Aggrieved by the turn of events, the Bernas Group initiated an action before the Securities Investigation and Clearing Department (SICD) of the SEC docketed as SEC Case No. 5840 seeking for the nullification of the 17 December 1997 Special Stockholders Meeting on the ground that it was improperly called. Citing Section 28 of the Corporation Code, the Bernas Group argued that the authority to call a meeting lies with the Corporate Secretary and not with the MSCOC which functions merely as an oversight body and is not vested with the power to call corporate meetings. For being called by the persons not authorized to do so, the Bernas Group urged the SEC to declare the 17 December 1997 Special Stockholders' Meeting, including the removal of the sitting officers and the election of new ones, be nullified.

For their part, the Cinco Group insisted that the 17 December 1997 Special Stockholders' Meeting is sanctioned by the Corporation Code and the MSC by-laws. In justifying the call effected by the MSCOC, they reasoned that Section 25<sup>[8]</sup> of the MSC by-laws merely authorized the Corporate Secretary to issue notices of meetings and nowhere does it state that such authority solely belongs to him. It was further asseverated by the Cinco Group that it would be useless to course the request to call a meeting thru the Corporate Secretary because he repeatedly refused to call a special stockholders' meeting despite demands and even filed a suit to restrain the holding of a special meeting.<sup>[9]</sup>

Meanwhile, the newly elected directors initiated an investigation on the alleged anomalies in administering the corporate affairs and after finding Bernas guilty of irregularities,<sup>[10]</sup> the Board resolved to expel him from the club by selling his shares at public auction.<sup>[11]</sup> After the notice<sup>[12]</sup> requirement was complied with, Bernas' shares was accordingly sold for P902,000.00 to the highest bidder.

Prior to the resolution of SEC Case No. 5840, an Annual Stockholders' Meeting was held on 20 April 1998 pursuant to Section 8 of the MSC bylaws.<sup>[13]</sup> During the said meeting, which was attended by 1,017 stockholders representing 2/3 of the outstanding shares, the majority resolved to approve, confirm and ratify, among others, the calling and holding of 17 December 1997 Special Stockholders' Meeting, the acts and resolutions adopted therein including the removal of Bernas Group from the Board and the election of their replacements.<sup>[14]</sup>

Due to the filing of several petitions for and against the removal of the Bernas Group from the Board pending before the SEC resulting in the piling up of legal controversies involving MSC, the SEC *En Banc*, in its Decision<sup>[15]</sup> dated 30 March 1999, resolved to supervise the holding of the 1999 Annual Stockholders' Meeting. During the said meeting, the stockholders once again approved, ratified and confirmed the holding of the 17 December 1997 Special Stockholders' Meeting.

The conduct of the 17 December 1997 Special Stockholders' Meeting was likewise

ratified by the stockholders during the 2000 Annual Stockholders' Meeting which was held on 17 April 2000.<sup>[16]</sup>

On 9 May 2000, the SICD rendered a Decision<sup>[17]</sup> in SEC Case No. 12-97-5840 finding, among others, that the 17 December 1997 Special Stockholders' Meeting and the Annual Stockholders' Meeting conducted on 20 April 1998 and 19 April 1999 are invalid. The SICD likewise nullified the expulsion of Bernas from the corporation and the sale of his share at the public auction. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing considerations this Office, through the undersigned Hearing Officer, hereby declares as follows:

(1) The supposed Special Stockholders' Meeting of December 17, 1997 was prematurely or invalidly called by the [the Cinco Group]. It therefore failed to produce any legal effects and did not effectively remove [the Bernas Group] as directors of the Makati Sports Club, Inc.

(2) The April 20, 1998 meeting was not attended by a sufficient number of valid proxies. No quorum could have been present at the said meeting. No corporate business could have been validly completed and/or transacted during the said meeting. Further, it was not called by the validly elected Corporate Secretary Victor Africa nor presided over by the validly elected president Jose A. Bernas. Even if the April 20, 1998 meeting was valid, it could not ratify the December 17, 1997 meeting because being a void meeting, the December 17, 1997 meeting may not be ratified.

(3) The April 1998 meeting was null and void and therefore produced no legal effect.

(4) The April 1999 meeting has not been raised as a defense in the Answer nor assailed in a supplemental complaint. However, it has been raised by [the Cinco Group] in a manifestation dated April 21, 1999 and in their position paper dated April 8, 2000. Its legal effects must be the subject of this Decision in order to put an end to the controversy at hand. In the first place, by [the Cinco Group's] own admission, the alleged attendance at the April 1999 meeting amounted to less than 2/3 of the stockholders entitled to vote, the minimum number required to effect a removal. No removal or ratification of a removal may be effected by less than 2/3 vote of the stockholders. Further, it cannot ratify the December 1997 meeting for failure to adhere to the requirement of the By-laws on notice as explained in paragraph (2) above, even if it was accompanied by valid proxies, which it was not.

(5) The [the Cinco Group], their agents, representatives and all persons acting for and conspiring on their behalf, are hereby permanently enjoined from carrying into effect the resolutions and actions adopted during the 17 December 1997 and April 20, 1998 meetings and of the Board of Directors and/or other stockholders' meetings resulting therefrom, and from performing acts of control and management of the

club.

(6) The expulsion of complainant Jose A. Bernas as well as the public auction of his share is hereby declared void and without legal effect, as prayed for. While it is true that [the Cinco Group] were not restrained from acting as directors during the pendency of this case, their tenure as directors prior to this Decision is in the nature of de facto directors of a de facto Board. Only the ordinary acts of administration which [the Cinco Group] carried out de facto in good faith are valid. Other acts, such as political acts and the expulsion or other disciplinary acts imposed on the [the Bernas Group] may not be appropriately taken by de facto officers because the legality of their tenure as directors is not complete and subject to the outcome of this case.

(7) No awards for damages and attorney's fees.<sup>[18]</sup>

On appeal, the SEC *En Banc*, in its 12 December 2000 Decision<sup>[19]</sup> reversed the findings of the SICD and validated the holding of the 17 December 1997 Special Stockholders' Meeting as well as the Annual Stockholders' Meeting held on 20 April 1998 and 19 April 1999.

On 28 April 2003, the Court of Appeals rendered a Decision<sup>[20]</sup> declaring the 17 December 1997 Special Stockholders' Meeting invalid for being improperly called but affirmed the actions taken during the Annual Stockholders' Meeting held on 20 April 1998, 19 April 1999 and 17 April 2000.

In a Resolution<sup>[21]</sup> dated 27 April 2004, the appellate court refused to reconsider its earlier decision.

Aggrieved by the disquisition of the Court of Appeals, both parties elevated the case before this Court by filing their respective Petitions for Review on *Certiorari*. While the Bernas Group agrees with the disquisition of the appellate court that the Special Stockholders' Meeting is invalid for being called by the persons not authorized to do so, they urge the Court to likewise invalidate the holding of the subsequent Annual Stockholders' Meetings invoking the application of the holdover principle. The Cinco Group, for its part, insists that the holding of 17 December 1997 Special Stockholders' Meeting is valid and binding underscoring the overwhelming ratification made by the stockholders during the subsequent annual stockholders' meetings and the previous refusal of the Corporate Secretary to call a special stockholders' meeting despite demand. For the resolution of the Court are the following issues:

### ***The Issues***

#### **I.**

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE 17 DECEMBER 1997 SPECIAL STOCKHOLDERS' MEETING IS INVALID; AND