

## FIRST DIVISION

[ G.R. No. 187702, October 22, 2014 ]

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.  
THE HONORABLE COURT OF APPEALS, OMICO CORPORATION,  
EMILIO S. TENG AND TOMMY KIN HING TIA, RESPONDENTS.**

**[G.R. NO. 189014]**

**ASTRA SECURITIES CORPORATION, PETITIONER, VS. OMICO  
CORPORATION, EMILIO S. TENG AND TOMMY KIN HING TIA,  
RESPONDENTS.**

### D E C I S I O N

#### **SERENO, C.J.:**

G.R. No. 187702 is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision<sup>[1]</sup> dated 18 March 2009 in CA-G.R. SP No. 106006. G.R. No. 189014 is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the same Decision, as well as the CA Resolution<sup>[2]</sup> dated 9 July 2009. On 12 October 2009, the Court resolved to consolidate the two cases. <sup>[3]</sup>

The CA Decision ruled that because controversies involving the validation of proxies are considered election contests under the Interim Rules of Procedure Governing Intra-Corporate Controversies, they are properly cognizable by the regular courts, not by the Securities and Exchange Commission. The CA Resolution denied the motion for reconsideration filed by Astra Securities Corporation.

### **FACTS**

**Omico Corporation (Omico) is a company whose shares of stock are** listed and traded in the Philippine Stock Exchange, Inc.<sup>[4]</sup> Astra Securities Corporation (Astra) is one of the stockholders of Omico owning about 18% of the latter's outstanding capital stock.<sup>[5]</sup>

Omico scheduled its annual stockholders' meeting on 3 November 2008.<sup>[6]</sup> It set the deadline for submission of proxies on 23 October 2008 and the validation of proxies on 25 October 2008.

Astra objected to the validation of the proxies issued in favor of Tommy Kin Hing Tia (Tia), representing about 38% of the outstanding capital stock of Omico.<sup>[7]</sup> Astra also objected to the inclusion of the proxies issued in favor of Tia and/or Martin Buncio, representing about 2% of the outstanding capital stock of Omico.<sup>[8]</sup>

Astra maintained that the proxy issuers, who were brokers, did not obtain the required express written authorization of their clients when they issued the proxies in favor of Tia. In so doing, the issuers were allegedly in violation of SRC Rule 20(11)(b)(xviii)<sup>[9]</sup> of the Amended Securities Regulation Code (SRC or Republic Act No. 8799) Rules.<sup>[10]</sup> Furthermore, the proxies issued in favor of Tia exceeded 19, thereby giving rise to the presumption of solicitation thereof under SRC Rule 20(2) (B)(ii)(b)<sup>[11]</sup> of the Amended SRC Rules. Tia did not comply with the rules on proxy solicitation, in violation of Section 20.1<sup>[12]</sup> of the SRC.

Despite the objections of Astra, Omico's Board of Inspectors declared that the proxies issued in favor of Tia were valid.<sup>[13]</sup>

On 27 October 2008, Astra filed a Complaint<sup>[14]</sup> before the Securities and Exchange Commission (SEC) praying for the invalidation of the proxies issued in favor of Tia. Astra also prayed for the issuance of a cease and desist order (CDO) enjoining the holding of Omico's annual stockholders' meeting until the SEC had resolved the issues pertaining to the validation of proxies.

On 30 October 2008, SEC issued the CDO enjoining Omico from accepting and including the questioned proxies in determining a quorum and in electing the members of the board of directors during the annual stockholders' meeting on 3 November 2008.<sup>[15]</sup>

Attempts to serve the CDO on 3 November 2008 failed, and the stockholders' meeting proceeded as scheduled with 52.3% of the outstanding capital stock of Omico present in person or by proxy.<sup>[16]</sup> The nominees for the board of directors were elected upon motion.<sup>[17]</sup>

Astra instituted before the SEC a Complaint<sup>[18]</sup> for indirect contempt against Omico for disobedience of the CDO. On the other hand, Omico filed before the CA a Petition for Certiorari and Prohibition<sup>[19]</sup> imputing grave abuse of discretion on the part of the SEC for issuing the CDO.

### **RULING OF THE CA**

In the assailed Decision dated 18 March 2009, the CA declared the CDO null and void.<sup>[20]</sup>

The CA held that the controversy was an intra-corporate dispute.<sup>[21]</sup> The SRC expressly transferred the jurisdiction over actions involving intra-corporate controversies from the SEC to the regional trial courts.<sup>[22]</sup> Furthermore, Section 2, Rule 6<sup>[23]</sup> of the Interim Rules of Procedure Governing Intra-Corporate Disputes,<sup>[24]</sup> provides that any controversy or dispute involving the validation of proxies is an election contest, the jurisdiction over which has also been transferred by the SRC to the regular courts.<sup>[25]</sup>

Thus, according to the CA, the SEC committed grave abuse of discretion in taking cognizance of Astra's complaint.<sup>[26]</sup> The CDO was a patent nullity, for an order

issued without jurisdiction is no order at all.

Aggrieved by the CA Decision, the SEC filed before us the instant Petition for Certiorari docketed as G.R. No. 187702.<sup>[27]</sup> Meanwhile, Astra filed a Motion for Reconsideration before the CA,<sup>[28]</sup> which subsequently denied the motion in the assailed Resolution dated 9 July 2009.

On 14 September 2009, Astra filed the instant Petition for Review on Certiorari docketed as G.R. No. 189014.<sup>[29]</sup> The Court consolidated the two petitions on 12 October 2009.<sup>[30]</sup>

## ISSUE

Whether the SEC has jurisdiction over controversies arising from the validation of proxies for the election of the directors of a corporation.

## OUR RULING

About a month after the CA issued the assailed Decision, this Court promulgated *GSIS v. CA*,<sup>[31]</sup> which squarely answered the above issue in the negative.

In that case, we observed that Section 6<sup>[32]</sup> (g) of Presidential Decree No. (P.D.) 902-A dated 11 March 1976 conferred on SEC the power “[t]o pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members.” Section 6, however, opens thus: “In order to effectively exercise such jurisdiction x x x.” This opening clearly refers to the preceding Section 5.<sup>[33]</sup> The Court pointed out therein that the power to pass upon the validity of proxies was merely incidental or ancillary to the powers conferred on the SEC under Section 5 of the same decree. With the passage of the SRC, the powers granted to SEC under Section 5 were withdrawn, together with the incidental and ancillary powers enumerated in Section 6.

While the regular courts now had the power to hear and decide cases involving controversies in the election of directors, it was not clear whether the SRC also transferred to these courts the incidental and ancillary powers of the SEC as enumerated in Section 6 of P.D. 902-A. Thus, in *GSIS v. CA*, it was necessary for the Court to determine whether the action to invalidate the proxies was intimately tied to an election controversy. Hence, the Court pronounced:

Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to “controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations.” **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5 (c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.**

This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. 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.**

The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies**, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5 (c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases.<sup>[34]</sup> x x x.

The ruling harmonizes the seeming conflict between the Amended SRC Rules promulgated by the SEC and the Interim Rules of Procedure Governing Intra-Corporate Disputes promulgated by the Court.

SRC Rule 20(11)(b)(xxi) of the Amended SRC Rules provides:

#### SRC RULE 20.

Disclosures to Stockholders Prior to Meeting  
(formerly, SRC Rule 20 – The Proxy Rule)

x x x x

## 11. Other Procedural Requirements

x x x x

### b. Proxy

x x x x

xxi. **In the validation of proxies**, a special committee of inspectors shall be designated or appointed by the Board of Directors which shall be empowered to pass on the validity of proxies. **Any dispute that may arise pertaining thereto, shall be resolved by the Securities and Exchange Commission upon formal complaint filed by the aggrieved party, or by the SEC officer supervising the proxy validation process.** (Emphasis supplied)

On the other hand, these are the provisions of Section 1, Rule 1; and Section 2, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Disputes:

### RULE 1 General Provisions

SECTION 1. (a) *Cases Covered* – **These Rules shall govern the procedure to be observed in civil cases involving the following:**

a) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

b) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

**c) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;**

d) Derivative suits; and

e) Inspection of corporate books.

x x x x

### RULE 6 Election Contests