A CRITICAL ANALYSIS OF THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION

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In the past few years, the Securities and Exchange Commission (SEC) has by reason of amendments to its principal enabling statute, Presidential Decree 902-A[1] grown into a very powerful administrative agency. In addition to powers originally conferred under the old Securities Act[2] in 1936, and subsequently reiterated and expanded pursuant to the Revised Securities Act[3] in 1982—that of regulating the issuance of and traffic in securities—the SEC today has the task of implementing the provisions of no less than twenty-five additional statutes.[4] Of these and in addition to the Revised Securities Act, the more significant include the Corporation Code,[5] the provisions of Partnership in the New Civil Code,[6] the Omnibus Investments Code,[7] the Investment Company Act[8] and the Financing Company Act.[9]

Be that as it may, it remains the provisions of P.D. 902-A which are the subject of not a little controversy. Section three of that decree in part provides that

> "[t]he [SEC] shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines;"

Furthermore, section five of the same decree states that

> "[in] addition to the regulatory and adjudicative functions of the [SEC] over corporations, partnerships and other forms of associations

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1 Dated March 11, 1976 and amended by Pres. Decree Nos. 1653 (1979), 1758 and 1799 (1981), by Executive Order No. 708 (1981) and by Batas Pambansa Blg. 129 (1981).

2 Com. Act No. 83 (1936).

3 Batas Pambansa Blg. 178 (1982).

4 *See* Com. Act No. 137 (1936) as amended; Rep. Act No. 265 (1948) as amended; Rep. Act No. 337 (1948) as amended; Rep. Act No. 386 (1950), secs. 1767-1867; Rep. Act 387 (1949) as amended; Rep. Act No. 720 (1952) as amended; Rep. Act No. 1143 (1954); Rep. Act No. 1180 (1954) as amended; Rep. Act No. 2629 (1960); Rep. Act No. 3720 (1963) as amended; Rep. Act No. 3779 (1963); Rep. Act No. 4093 (1964) as amended; Rep. Act No. 4726 (1966); Rep. Act No. 5980 (1969) as amended; Rep. Act No. 6055 (1969); Rep. Act No. 6141 (1970); Pres. Decree No. 114 (1973); Pres. Decree No. 129 (1973) as amended; Pres. Decree No. 167 (1973); Pres. Decree No. 194 (1973); Pres. Decree No. 218 (1973) as amended; Pres. Decree No. 270 (1973); Pres. Decree No. 1460 (1978); Batas Pambansa Blg. 68 (1980); Pres. Decree No. 1789 (1981) as amended; Pres. Decree No. 2029 (1985).

5 Batas Pambansa Blg. 68 (1980).

6 Rep. Act No. 386 (1950) as amended; Arts. 1767-1867.

7 Pres. Decree No. 1789 (1981) as amended.

8 Rep. Act No. 2629 (1960).

9 Rep. Act No. 5980 (1969) as amended.

registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

"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 of the stockholders, partners, members of associations or organizations registered with the Commission;

"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 corporations, 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 franchise or right to exist as such entity;

"c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations;

"d) Petitions 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 a Management Committee created pursuant to this Decree."

Finally, under section six of P.D. 902-A, the SEC "in order to effectively exercise such jurisdiction . . . shall exercise the following powers":

"1. To issue preliminary or permanent injunctions whether prohibitory or mandatory in all cases in which it has jurisdiction;

"2. To issue writs of attachment in cases in which it has jurisdiction, in order to preserve the rights of the parties;

"3. To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the [SEC] in accordance with the pertinent provisions of the Rules of Court and in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors;" "x x x (p)rovided . . . (t)hat upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to (this Decree), all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly."

"4. To issue subpoena duces tecum and summon witnesses to appear in any proceedings of the [SEC] and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, notwithstanding the provisions of any law to the contrary;

"5. To punish for contempt, direct or indirect, of the [SEC] in accordance with the Rules of Courts;

"6. To impose fines and/or penalties for violation of (this Decree), or any other laws being implemented by the [SEC], its rules, regulations, orders, decisions and/or rulings."

In view of such sweeping powers, it becomes relevant to question whether the grant thereof is tainted with Constitutional infirmity in view of Presidential Proclamation No. 3, dated March 25, 1986, adopting a provisional Constitution, among others, and incorporating as part of such Constitution section one of Article X of the 1973 Constitution which provides that "[j]udicial power shall be vested in one Supreme Court and in such inferior courts as may be created by law." Otherwise stated, it might be asked if the P.D. 902-A does not amount to an undue delegation of power.

Aside from the aforesaid Constitutional considerations, there exist other uncertainties and problematicals attendant to the P.D. 902-A. For example, what becomes of the provisions of Act No. 1956[10] otherwise known as the Insolvency Law? Or of the 1964 Rules of Court on receivership?[11] Granting the aforementioned jurisdiction of the SEC as set forth in sections five and six of the P.D. 902-A, to what extent may the SEC afford a remedy? To what extent will the SEC's findings be binding, if at all, on other administrative agencies and the regular courts of law in cases involving interlinked causes of action not all of which are cognizable by any one forum? What are the possible policy considerations involved in vesting a single administrative agency with such wide-ranging powers, to the exclusion of the regular courts? How has the Supreme Court interpreted the provisions of the P.D. 902-A in the light of existing laws?

The guiding principle upon which a Constitution by definition rests is separation of powers, although this concept has undergone radical metamorphosis since its embodiment in the 1935 Constitution. Under the latter, the concept closely resembled that embodied in the United States Constitution, what with its distinctions between executive, legislative and judicial power.[12] Under the 1973 Constitution and its myriad amendments, the concept assumed a new face. The delineation between the three forms of governmental power became indistinct. If this last statement is too sweeping, suffice to say that the hitherto discrete vessels of executive and legislative power were obliterated by the terms of 1976 Amendment No. 6. For their part, the keepers of judicial power remained independent, at least by the terms of the 1973 Constitution. Under the 1986 Provisional Constitution, this *status quo* has been preserved.

If the doctrine of separation of powers seems to be a fluid concept and hence, not the sort of foundation one would deem desirable for what ought to be an enduring institution like the Constitution, it is because separation of powers is but one side of the proverbial coin. The obverse is individual liberty, and together the two embody the essence of a Constitution. Even before Amendment No. 6—and even before the 1973 Constitution

[10] Enacted May 20, 1909.
[11] RULES OF COURT, Rule 59.
[12] *See* SINCO, PHILIPPINE POLITICAL LAW, 128 (1962).

was declared to be in effect[13]— the concept of separation of powers was not an unchanging dogma. It was precisely the advent of the administrative agency that carved out a significant modification of, if not exception to, the once unqualified rule.

The so-called "Great Depression" or "Great Contraction" of the 1930's in the United States provided the impetus for the legislative creation of various administrative agencies designed to alleviate widespread economic hardship.[14] Whether or not such agencies succeeded, the upshot of their creation was to increase the amount of governmental intervention in the American economy.

At first, the American courts were slow to lend judicial imprimatur to what was then perceived to be a transgression of one of the basic tenets of orthodox Constitutional law. In the case of *Panama Refining Co. v. Ryan*,[15] the U.S. Supreme Court, speaking through Mr. Chief Justice Hughes, struck down as unconstitutional a law empowering the President to regulate the interstate and foreign commerce in petroleum products for want of an "ascertainable standard."[16] In his lone dissent to the majority's ruling, Mr. Justice Cardozo stated in explicit terms the legal framework for rationalizing the delegation of legislative power to the executive in the said instant case. In effect, he disputed head-on the majority's conclusion that it could find no ascertainable standard by which the executive could calibrate his response to different sets of circumstances foreseen by the legislature as necessitating some immediate action which was beyond the latter's power to take. Mr. Justice Cardozo would validate the legislative grant of discretion, circumscribed as it was by subject matter, i.e., petroleum and its by-products; and purpose, to wit, the elimination of unfair competition, the conservation of natural resources, and the efficient use of existing refining capacity.

If Mr. Justice Cardozo was a voice in the wilderness at the time *Panama* was decided, his opinion later became the standard for determining the validity of a delegation of legislative power,[17] a standard that was also adopted in the Philippines.

In the Philippine case law, *Calalang v. Williams*[18] is the counterpart of Mr. Justice Cardozo's *Panama* dissent. There, a standard of "safe transit upon the roads" was upheld as a valid legislative delegation. While under the 1935 Constitution regime a number of legislative delegations were

[13] *See* Javellana v. The Executive Secretary, G.R. No. 36142, March 31, 1973, 50 SCRA 30 (1973).
[14] *See* 23 ENCYCLOPEDIA AMERICANA, *Roosevelt, Franklin Delano* 680, 681 (1962).
[15] 293 U.S. 388 (1935).
[16] *See* CORTES, PHILIPPINE ADMINISTRATIVE LAW 90 (1984).
[17] *Id.* at 85.
[18] 70 Phil. 726 (1940).

struck down by the Supreme Court as impermissible,[19] to the credit of the President/Prime Minister and/or the Batasan Pambansa, not one presidential issuance or Batas Pambansa was ever declared invalid by the Supreme Court on grounds of impermissible delegation under the 1973 Constitution regime.[20]

In *People v. Rosenthal and Osmeña*,[21] the Securities Act of 1936 withstood a judicial scrutiny of its provisions which authorized the Insular Treasurer (later, SEC) to require that a permit be first obtained from him (it) before any speculative securities could be offered to the public for sale. Said Act also empowered the Insular Treasurer to revoke the permit "in the public interest." Here, the standard of public interest was held to be a sufficient justification for the delegation of legislative power; that is, the buying public should be protected from its own gullibility in purchasing securities "which have no more basis than a few feet of blue sky."

Under section sixteen of the Revised Securities Act the grounds for revocation of the permit to sell speculative securities were expanded and elaborated beyond a general requirement that the same be in the public interest.

It is to be noted however, that said Act "does not intend to control or regulate the . . . business of corporations (*as such*) but only the sale of, and trading in, . . . securities."[22] The statute which does in fact control and regulate the business of corporations, partnerships and other associations *as such* is P.D .902-A. Its stated objectives are found in its preamble and include the following: (1) encouragement of domestic and foreign investment, (2) encouragement of more active public participation in the affairs of private corporations in order to promote economic development and a more meaningful equitable distribution of wealth, and (3) the protection of such investment and the public. While the enactment of this particular type of legislation can in part be explicitly justified by section four of Article XIV of the 1973 Constitution[23] as reiterated in the 1986 Provisional Constitution, to be strictly consistent with the latter, such legislation must conform to certain standards contained therein.

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[19] *See, for instance,* People v. Vera, 65 Phil. 56 (1937) and Pelaez v. Auditor General, G.R. No. 23825, December 24, 1965; 15 SCRA 569 (1965). *Vera* dealt with the Probation Act and the discretionary power granted provincial boards to implement the same; *Pelaez*, with the questioned power of the President to create municipalities.

[20] In fact, under the 1973 Constitution, the only instance where the Supreme Court declared a statute (or more accurately, a portion thereof) void was in the case of Dumlao vs. COMELEC, G.R. No. 52245, Jan. 22, 1980; 95 SCRA 392 (1980) — but not for undue delegation of legislative power.

[21] 68 Phil. 328 (1939).

[22] MARTIN, COMMENTARIES AND JURISPRUDENCE ON THE PHILIPPINE COMMERCIAL LAWS 388 (1981).

[23] ". . . The [President] shall not, except by general law, provide for the formation, organization, or *regulation* of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof." (Emphasis supplied). Note that only corporations, not other personalities, are mentioned here.

It is submitted that the purposes or standards of P.D. 902-A find reflection in the subsisting provisions of the defunct 1973 Constitution as adopted in the 1986 Provisional Constitution. Section six of Article II of the 1973 Constitution provided that:

> "The State shall promote social justice to ensure the dignity, welfare and security of all the people. Towards the end, the State shall *regulate* the acquisition, ownership, use, enjoyment and disposition of private property, and equitably diffuse private property and ownership." (Emphasis supplied)

There being this congruence between the aforestated purposes of the SEC and those of the Constitution, one can not claim that P.D. 902-A amounts in effect to an undue delegation of legislative power. After all, if a standard—social justice—is good enough for the Constitution, it is definitely good enough for a mere statute.

Gone forever is the classic, delineated tripartite system of government where one branch executes the law, the other says what the law is, and the last says what the Constitution is. "Commission"-type entities clothed with executive, legislative and judicial powers, such as the SEC, and lately, the Presidential Commissions on Good Government and on Human Rights, have over time proliferated.

This of course does not mean that an interested person will be left without any recourse within the eight corners of the Constitution against laws whose standards or purposes may be so vague as to amount to no standard at all that as a result, his private property is taken "without due process of law."[24] Administrative agencies like the SEC may work within their admittedly broad but nevertheless ascertainable standards, but always subject in the final analysis to judicial review.[25]

If one accepts the idea of permissible delegation of legislative power premised on an ascertainable standard in order to justify the rule-making and regulatory powers of the SEC, how does one justify the legislative grant of judicial power to the SEC in the face of the aforequoted Constitutional provision of section one, Article X? It is obvious that the SEC is more than a mere court, what with its other, non-judicial powers. Does this fact militate against the validity in particular of sections five and six of P.D. 902-A?

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[24] *See* section one of Article IV of the 1973 Constitution as incorporated by section one of the 1986 Provisional Constitution.

[25] *See* section one of Article X of the 1973 Constitution as amended. By virtue of the last paragraph of section six of P.D. 902-A as amended by section 9 (3) of Batas Pambansa Blg. 129 as amended, the aggrieved party may appeal the order, decision or ruling of the SEC sitting en banc to the Intermediate Appellate Court, and from thence to the Supreme Court on certiorari. But see the discussion of *Gimenez v. SEC, infra.*

It is submitted that notwithstanding the literal wording of the Constitutional provision in question, the grant of judicial power to the SEC is valid. This stance can be supported by at least two different legal approaches.

The first of these would draw a distinction between judicial power as is used in the abovementioned Constitutional provision, and so-called quasi-judicial power, or judicial power exercised by an administrative agency. The obvious weakness of this approach is that the distinction it seeks to make is more apparent than real, more formal than substantial. No one can plausibly argue that the SEC's powers to pass upon a petition to appoint a receiver or to declare a suspension of payments or to appoint a management committee or to issue writs of injunction and of attachment are anything but judicial powers.

An alternative approach would construe section one of Article X in the following vein: The conferment by the legislature of judicial power on any other duly constituted entity, be it a body, board, commission or officer makes that body, board, commission or officer an "inferior court" whenever it/he exercises such judicial powers granted him by statute. This approach, which might be called a functional approach, forthrightly admits that an administrative agency can exercise judicial powers and that it acts as an "inferior court" in so doing. Being an "inferior court", it would be subject to the irreducible jurisdiction of the Supreme Court provided in section five of Article X of the 1973 Constitution. That this is so ensures that the interested person, who feels himself deprived of a fair hearing before the SEC, can as a last resort bring this case to the Supreme Court where presumably the highest degree of impartiality and adherence to due process of law can be obtained. In the final analysis at least, fealty is rendered to the doctrine of separation of powers.

The effect of P.D. 902-A has been not so much to make public participation more active in the affairs of corporations as it has been to make such participation more uncertain. In the days before P.D. 902-A, original jurisdiction over intra-corporate controversies, corporate insolvency and receivership was vested in the regular courts of general jurisdiction; back then, the pertinent operative laws were the provisions of the Judiciary Act of 1948,[26] the 1964 Rules of Court (in particular, Rule 59 on Receivers) and Act No. 1956, otherwise known as the Insolvency Law. Similarly, such courts had jurisdiction over petitions for involuntary dissolution[27] and volun-

[26] Rep. Act No. 296 (1948), as amended.

[27] RULES OF COURT, Rule 66, sec. 2; Rep. Act No. 5050 (1967). In Rule 66, it is the Solicitor General or fiscal who files the petition for *quo warranto*, i.e., involuntary dissolution; in Rep. Act No. 5050, the SEC filed the petition. While Rep. Act No. 5050 has been cleadly superseded by section 6(1) of Pres. Decree No. 902-A as amended, a pair of distinguished commentators have voiced some doubt as to the propriety of the implied repeal of section 2 of Rule 66 by section 121 of the Corporation Code [Batas Pambansa Blg. 68 (1980)] and the last part of section 5 (b) of Pres. Decree No. 902-A as amended. They ask: "[I]f the SEC has exclusive power over *quo warranto* proceedings involving corporations, would this not make it a special court rather

tary dissolution where creditors of the corporation were affected.[28] In contrast, the SEC's jurisdiction was at the time limited to disposing of cases of voluntary dissolution where no creditors of the corporation were affected.[29] Anent involuntary dissolution of corporations, the power of the SEC consisted in merely filing a petition to this effect with the Court of First Instance.[30]

With the enactment of the P.D. 902-A, the SEC obtained original, exclusive jurisdiction over controversies as described in section five. Under section six, the SEC likewise obtained original, exclusive jurisdiction over petitions for the appointment of a rehabilitation receiver. The reason for this expanded SEC jurisdiction seems to be one of specialization and expediency;[31] otherwise stated, it was perhaps felt that the regular courts had neither the requisite technical-legal expertise to pass upon and decide complex corporation law cases, nor did they have immediate access to corporate records which the SEC itself possesses pursuant to its regulatory powers.[32]

Prescinding from such considerations, it is submitted that there is nothing to stop a corporation from going to the regular courts and obtaining relief under the Insolvency Law, which may consist either in suspension of payments,[33] or a judicial declaration of voluntary insolvency[34] followed by the appointment of an assignee.[35] So long as no rehabilitation receiver or management committee has been appointed by the SEC either *motu*

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than a regulatory body exercising judicial functions?" (*See* CAMPOS & CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES 903 (1981).) For a suggested answer, see discussion, *supra*.

It is interesting to note that the question posed by the Camposes presupposes a distinction between a "special court", by which is meant the power to adjudicate what might be called *extra-corporate* controversies, i.e., those involving the corporation itself and an outsider, such as the State or a person, and a "regulatory agency exercising judicial functions", by which is meant the power to adjudicate *"intra-corporate* controversies", i.e., those mentioned in part of subsection (b) and in subsection (c) of section 5 of Pres. Decree No. 902-A as amended.

Even assuming that the SEC had no jurisdiction over *quo warranto* proceedings to revoke a certificate of incorporation, the SEC would still be a "special court" by virtue of subsection (a) of section 5 which gives the SEC jurisdiction over acts of the board of directors or officers amounting to fraud or misrepresentation which may be detrimental to the public or to stockholders or members of entities, *other than those* to which such directors or officers whose acts are complained of belong, that are registered with the SEC. Subsection (d), on suspension of payments, involves creditors of the SEC-registered firm.

[28] RULES OF COURT, Rule 104 (now repealed and substantially reproduced as section 119 of the Corporation Code with the qualificaton that a petition for voluntary dissolution where creditors are affected shall now be filed in the SEC).

[29] Act No. 1459 (1906), Sec. 62 (now repealed and substantially reproduced as section 118 of the Corporation Code).

[30] Rep. Act No. 5050 (1967) (now superseded by section 121 of the Corporation Code).

[31] *See* Dionisio v. Court of First Instance of South Cotabato, Branch II, G.R. No. 61048, August 17, 1983, 124 SCRA 222, 227 (1983).

[32] Section 6(1) (6) of Pres. Decree No. 902-A as amended provides that the SEC can suspend/revoke a corporation's certificate of registration for "(f)ailure to file required reports in appropriate forms as determined by the Commission."

[33] Act No. 1956 (1909) as amended, Chapter II.

[34] *Id.*, Chapter III.

[35] *Id.*, Chapter V.

proprio or pursuant to a petition,[36] such petitions as described in the aforequoted subsection (d) of section five of the P.D. 902-A can still be validly filed with the Regional Trial Courts. It is to be noted that while the terminology of said subsection (d) of section five is similar to that of the Insolvency Law, its usage is partly inconsistent with that of the latter.

Where the said subsection (d) speaks of petitions for "suspension of payments in cases where the corporation. . . . possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due. . . ," it coincides with the way the phrase "suspension of payments" is used in section two of the Insolvency Law. However, when it refers to the same kind of petitions as being applicable "in cases where the corporation . . . has no sufficient assets to cover its liabilities,. . . " it diverges from the distinction embodied in the Insolvency Law between "suspension of payments" and "insolvency", a distinction which makes a petition for one inconsistent with the other.[37] Under the Insolvency Law, a petition for judicial declaration of insolvency, whether voluntary or involuntary, presupposes exactly the same situation contemplated by the last-quoted portion of subsection (d). This "misuse" of the terminology of the Insolvency Law implies that insofar as entities over which the SEC has jurisdiction are concerned and to the extent that a rehabilitation receiver or management committee has been appointed, the Insolvency Law is inapplicable.

Given the rather awkward configuration of said subsection (d), it is submitted that "petitions to be declared in the state of suspension of payments" will never arise because a rehabilitation receiver or management committee will have necessarily been already appointed, whether on petition to, or *motu proprio* by, the SEC. The grounds for the appointment of such receiver/committee are stated in paragraph (d) of section six of the Law, and include "imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralysis of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public."[38]

The SEC having already acquired "original and exclusive jurisdiction" through the appointment of a rehabilitation receiver or management committee, it is both redundant and futile to expect a petition to suspend payments, in view of the power of the rehabilitation receiver or management committee "to take custody of, and control over, all the existing assets and property of such entities under management; . . . The management

[36] See the last part of subsection (d) of section six of Pres. Decree No. 902-A as amended by Pres. Decree No. 1758 (1981).

[37] 2 AGBAYANI, COMMENTARIES AND JURISPRUDENCE OF THE PHILIPPINE COMMERCIAL LAWS 558 (1978) citing decisions of the Supreme Court of Spain dated October 4, 1899 and June 4, 1891, and section thirteen of Act No. 1956 (1909) as amended.

[38] Pres. Decree No. 902-A (1976), section 6 (d) first paragraph, as amended by Pres. Decree No. 1758 (1981).

committee or rehabilitation receiver ... may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary."[39]

Thus, if only to save P.D. 902-A from such incongruity, it should be construed to say that a petition to suspend payments *must* be accompanied by a prayer for the appointment of a rehabilitation receiver.

Similarly, a corporation's creditors are not inhibited from filing a petition pursuant to the Insolvency Law for involuntary insolvency[40] or from judicially or extrajudicially foreclosing mortgages executed by the corporation in their favor,[41] although such courses of action may be suspended by the SEC.[42]

Concomitant with a principal action instituted before the regular courts of justice, a corporation or its creditors may also avail of the ancillary, provisional remedy of receivership under Rule fifty-nine of the 1964 Rules of Court.

As far as a corporation is concerned, it would be more practicable to file such actions with the SEC, if only for the reason that should a "controversy" as that term is used in section five of P.D. 902-A arise during the course of any of the aforementioned actions before a regular court, the latter would be justified in dismissing the action for lack of jurisdiction. Moreover, unlike the SEC, the regular courts have no power to suspend "pending actions for claims."

It should be noted that the "Receiver" provided for in the Rules of Court and reiterated in P.D. 902-A is different from the so-called "Rehabilitation Receiver" mentioned in the latter. The difference between the two lies in the fact that the rehabilitation receiver has all the powers of an "ordinary" receiver[43] in addition to other powers provided in the second paragraph of subsection (d) of section six.[44] However, the fate of the

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39 *Id.*, section 6 (d), second paragraph.

40 Act No. 1956 (1909) as amended, Chapter IV.

41 RULES OF COURT, Rule 68 (Judicial Foreclosure of Real Estate or Chattel Mortgages); Act No. 3135 (1924), (Extrajudicial Foreclosure of Real Estate Mortgage); Act No. 1508 (1906), (Extrajudicial Foreclosure of Chattel Mortgage).

42 Pres. Decree No. 902-A (1976), section 6(c) as amended by Pres. Decree No. 1799 (1981).

43 RULES OF COURT, Rule 59, sec. 7.

44 The rest of the paragraph reads "... to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure asd rehabilitate such entities if determined to be feasible by the (SEC). It shall report and be responsible to the (SEC) until dissolved by order of the (SEC)."

In addition, the third and last paragraph of subsection (d) provides that "[t]he management committee, or rehabilitation receiver ... shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred."

corporation so placed under receivership will ultimately depend on the SEC itself.[45] In the instances where the SEC sees fit to appoint a receiver pursuant to the Rules of Court, said receiver will in addition enjoy the privilege set forth in the last proviso of subsection (c) of section six — namely, the suspension of pending actions for claims in other fora.

The uncertainty wrought by the 1981 amendments to Presidential Decree No. 902-A stems not from the retention, at least on paper, by the regular courts of original if not exclusive jurisdiction over petitions for a receiver or for suspension of payments or insolvency, but from certain *lacunae* in the law. For one thing, the "suspension-of-pending-actions-for-claims" proviso by its terms takes effect only upon the appointment of the rehabilitation receiver, management committee, board or body. Does this indicate an intention of the lawmaker to allow actions for claims to be instituted during the interval between the filing of a petition to appoint a rehabilitation receiver and the grant, if any, of such petition?[46] Apparently, yes. If so, it would seem that the end of orderly administration of justice would be better served if the suspension took effect upon the filing of such petition, subject to appropriate sanctions for any *mala fide* filing thereof or of an action for a claim, e.g., collection of an outstanding debt.[47] This way, a petitioning corporation will be spared the welter of actions brought by its creditors in different fora as well as prevented from colluding with some of its creditors at the expense of the others.[48]

The meaning of "actions for claims" has also been the subject of different opinions. One view holds that "actions" as used in the Law means both judicial and extrajudicial proceedings, and that the appointment of a rehabilitation receiver suspends them. In contrast, the opposing view contends that notwithstanding the appointment of any receiver, rehabilitation or otherwise, judicial foreclosure proceedings cannot be stayed by either the pendency of a petition for the appointment of a rehabilitation receiver or the appointment of one, for that matter. The basis of this view rests by analogy on the Insolvency Law where pending judicial foreclosure proceedings can not be suspended by the appointment of an assignee.[49] However, as has already been pointed out, the Insolvency Law has no application to situations where a rehabilitation receiver has previously been

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[45] The proviso of the second paragraph of subsection (d) in part provides "That the (SEC) may, on the basis of the findings and the recommendation of the management committee, rehabilitation receiver, board or body, or on its own findings, determine that the continuance of in the business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation or entity and its remaining assets liquidated accordingly."

[46] Balgos, *Corporate Rehabilitation: Should Secured Creditors Queue?*, 8 PHIL. L. GAZ. 1, 2 (1984).

[47] *Id.* at 9.

[48] *Id.* at 7-8.

[49] *Id.* at 3.

appointed.[50] Furthermore, a recent decision of the Intermediate Appellate Court held that the SEC has jurisdiction to restrain foreclosures of mortgages constituted by corporations under a SEC receiver.[51] In substance, it is argued that if these judicial proceedings are not suspended, the power of the SEC-appointed receiver over the affairs of the corporation to be rehabilitated, and with it the intent of section six (c) and (d) of the Law, will have been frustrated.[52] All this tends to weigh heavily in favor of the first view. For its part, the Supreme Court has yet to confront squarely this question although in the *Philippine Blooming Mills Cases*,[53] it "enjoined the SEC from enforcing its restraining order earlier issued temporarily enjoining the execution sale of the *properties of the President* of the Corporation which [had] been placed under receivership by the SEC."

A problem arises where a "controversy" cannot be neatly accommodated by the SEC's "original and exclusive" jurisdiction. In the case of *Union Glass & Container Corporation v. The Securities and Exchange Commission*,[54] a stockholder of Pioneer Glass Manufacturing Corporation, Carolina Hofileña, filed an action in the SEC against petitioner *Union Glass* and the Development Bank of the Philippines (DBP) to annul a *dacion en pago* agreement between Pioneer and the DBP, which occupied a dominant position on Pioneer's board of directors, whereby the former ceded to the latter in settlement of its monetary obligations to the DBP all its properties which had been previously mortgaged to the DBP. It was alleged that DBP took advantage of its position in Pioneer to obtain such *dacion en pago* agreement, that Pioneer's properties were actually worth more than its debt to the DBP and that in selling said properties to *Union Glass*, the DBP passed up a more advantageous offer.

The SEC, in denying *Union Glass*' motion to dismiss for lack of jurisdiction, held that the latter was an indispensable party to the case, albeit not a party to the *dacion en pago* agreement nor the alleged undervaluation by the DBP of Pioneer's properties. Nevertheless, Union would certainly be affected by a judgment invalidating the *dacion en pago* since Union had possession of Pioneer's properties.

The Supreme Court, with three Justices dissenting, granted the petition for certiorari and prohibition filed by Union to compel the SEC to exclude Union as a party to the instant case for want of jurisdiction over its person. Speaking for the majority, Mr. Justice Escolin averred that although as a

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[50] *See supra* text accompanying notes 31-36.

[51] Bagong Bayan Corporation v. Executive Judge of the Regional Trial Court of Makati, et al., AC-G.R. No. SP-05616, July, 1985. *See also* Filinvest Credit Corporation v. Ejercito, et al., AC-G.R. No. SP-03629, October 31, 1984.

[52] Balgos, *supra* note 46, at 8.

[53] Ayala Investment & Development Corp. v. SEC, G.R. No. 61133; PNB v. Sheriff, G.R. No. 62307; Bank of America v. C.A., G.R. No. 64765; PBM v. C.A., G.R. No. 64700 *cited in* Balgos, *supra* note 46, at 3.

[54] G.R. No. 64013, Nov. 28, 1983, 126 SCRA 31 (1983).

general principle multiplicity of suits should be avoided and that "(t)he Rules of Court, which apply suppletorily to proceedings before the SEC, allows joinder of causes of action in one complaint, such procedure however is subject to the rules regarding jurisdiction, venue and joiner of parties."[55] It being the case that Union has no intra-corporate relationship with either Pioneer or the DBP, the SEC can have no jurisdiction over the person of Union, subsection (b) of section five of P.D. 902-A not being applicable. Although the SEC may have "absolute jurisdiction and control" over Union pursuant to section three of said decree, the SEC does so only to the extent that Union is a corporation and not the transferee of property subject of a *dacion en pago* agreement in which it had no part. As stated in the majority opinion:

> "The principal functions of the SEC is the supervision and control over corporations, partnerships or associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic benefit. (Footnote omitted.)
>
> "It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus, the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.
>
> "Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the (S)tate insofar as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves."[56]

It concludes:

> "The case (i.e., the liability of Union with respect to Pioneer, if any) should be tried and decided by the court of general jurisdiction, the Regional Trial Court. This view is in accord with the rudimentary principle that administrative agencies, like the SEC, are tribunals of limited jurisdiction and, as such, could wield only such powers as are specifically granted to them by their enabling statutes."[57]

For their part, three dissenting members of the Court in an opinion by Mr. Justice Aquino would affirm the acquisition of jurisdiction by the SEC over Union for purposes of the instant case in part to avoid multiplicity of suits. It was argued that Union's defenses were tied up those of the DBP's and that the SEC was more competent than the Regional Trial Court

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[55] *Id.* at 39, citing RULES OF COURT, Rule 2, sec. 5.

[56] Union Glass & Container Corporation v. SEC, G.R. No. 64013, November 28, 1983, 126 SCRA 31, 38. Note that no mention is made of subsection (d) of section five, added by Pres. Decree No. 1758 to Pres. Decree No. 902-A in 1981.

[57] *Id.* at 39.

to decide the intra-corporate dispute.[58] This argument however, seems to have been well met by that expressed in the main *ponencia.*

Incidentally, it is to be noted that the Court seemed to adopt a restrictive interpretation of section five, to wit, that the parties to a "controversy" must necessarily be only those mentioned in the law, e.g., stockholders, directors, officers, etc. — an interpretation which is not expressly suggested by the wording of the said section.[59] Such interpretation it seems is grounded upon the proposition, inferred from the contents of the preamble and of section three, that the adjudicative function of the SEC must be construed in harmony with its regulatory function. Yet again, there is nothing express in section three specifically limiting the SEC's power over corporations to regulation; in fact, the word "control" (a much stronger word) is used.[60] Neither does the preamble suggest that the sole, essential task of the SEC is regulation; indeed, it might be argued that the cause of economic development would be better served by expediting the litigation process rather than following a course of strict constructionism.[61] Perhaps if Hofileña had made more than just a bare prayer that Union share with the DBP in the payment of any attorney's fees due her, the

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[58] *Id.* at 44.

[59] Note that while subsection (b) of section five of Pres. Decree No. 902-A as amended defines what constitute "intra-corporate relations", it does not expressly define "controversy" other than to indicate that the latter must "arise out" of the former.

Taken as a whole, section five covers controversies which involve parties inside as well as outside the corporation or other SEC-registered organization. Subsection (a) can involve the officers or directors of one such organization and the stockholders or members of another. Subsection (d), on suspension of payments, can involve the creditors of the organization. Part of subsection (b) involves the corporation as it relates to the State. On the other hand, the rest of subsection (b) and subsection (c) deal with parties "inside" the organization, e.g., stockholders, directors, officers, members, business associates or partners.

[60] The use of the word "control" in section three of Pres. Decree 902-A as amended seems unconstitutional in the light of section four of Article XIV of the 1973 Constitution insofar as it limits the ambit of a general corporation law to "regulation". To avoid any taint of unconstitutionality, it is submitted that such "control" can be justified in the context of the power of the President to vest "judicial power in such inferior courts as may be provided by law." (Section one, Article X, 1973 Constitution) Such control manifests itself through the person of the rehabilitation receiver or management committee which can be appointed by the SEC in aid of its adjudicatory jurisdiction.

[61] It is not here suggested that the factual situation of *Union Glass* should have been covered by subsection (a), and not subsection (b), of section five of Pres. Decree No. 902-A as amended. It is true that subsection (a) does not speak of a "controversy arising out of intra-corporate relations"; nevertheless, while the DBP may have been the controlling force on the "board of directors" of Pioneer and Hofilena a "stockholder . . . of (an) organization registered with the (SEC)", it is fairly obvious from a reading of the *entire* section that the "organization" contemplated by subsection (a) is one *other* than that whose "board of directors" stands accused of employing "(d)evices and schemes . . . or any acts . . . amounting to fraud or misrepresentation. . . ." To hold otherwise would nullify the distinction between subsection (a) and that part of subsection (b) dealing with an intra-corporate controversy between the stockholders of a corporation.

In corporation law parlance, subsection (a) involves "piercing the corporate veil or fiction" where the corporate vehicle is used to perpetrate fraud or other wrongdoing; subsections (b) and (c) on the other hand, encompass what are known as derivative suits. In *Union Glass,* the suit was brought by a stockholder, Hofilena, on behalf of the corporation, Pioneer, against the alleged fraudulent acts of another stockholder, the DBP.

Supreme Court might have been persuaded to sustain the SEC's jurisdiction over Union in the instant case. As it was however, there was no allegation that Union knew of, much less actively participated in, the purported fraud committed by the DBP. If Hofileña had succeeded in establishing the fraudulent complicity of Union, the SEC would have had jurisdiction over the latter by virtue of subsection (a) of section five, and of course, over the DBP by virtue of subsection (b). Nevertheless, given the factual situation in *Union Glass,* for reasons already stated, it is submitted that subsection (b) by itself is broad enough to cover the stockholders Hofilena and the DBP, as well as the corporate outsider, Union, assuming *arguendo* that no fraud can be imputed to the latter by virtue of its being the possessor of property subject of the *dacion en pago* agreement. In sum, it is sufficient that a controversy has its roots in intra-corporate relations for the SEC to possess adjudicatory jurisdiction over the same, over all corporations, partnerships and associations registered with it, whether or not the latter have any intra-corporate relationship among each other.

In his concurring opinion,[62] Mr. Justice Teehankee clarified the majority's statement that only in the event Hofilena obtained a favorable judgment from the SEC would her complaint against Union prosper. He pointed out that the latter could raise all possible defenses "in its favor as a buyer in good faith" when Hofilena brought her complaint in the Regional Trial Court.[63] This is not as easy or as neat as it sounds. As one perceptive observer has pointedly asked: In passing upon such complaint, to what extent will the Regional Trial Court be bound, if at all, by the findings of fact of the SEC? Otherwise stated, will Union be bound by the SEC's findings, notwithstanding the fact that it was not a party to the SEC proceeding?

Under recognized principles of administrative law, in the absence of fraud or grave abuse of discretion, the findings of fact of administrative agencies are entitled to great respect by the regular courts.[64] On the other hand, the non-participation of *Union Glass* in the SEC proceeding, justified as it was by a Supreme Court decision, militates against the application of the aforementioned principle. For reasons of due process, the Regional Trial Court cannot automatically adopt the findings of fact of the SEC without giving Union the opportunity to contest the same. This holds true even if the regular court finds that the SEC's conclusions of fact are substantially supported by the evidence on record. It thus becomes possible that one forum may arrive at findings of fact different from those obtained by another. What then? In such situation, the Supreme Court will probably be left in the unenviable position of playing referee to two sets of facts

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[62] Union Glass & Container Corporation v. SEC, G.R. No. 64013, November 28, 1983, 126 SCRA 31, 40-41.

[63] *Id.* at 41.

[64] *See* Gokongwei, Jr. v. SEC, et al., G.R. No. 52129, April 21, 1980, 97 SCRA 78, 82 (1980).

and at least two sets of relief. This is the "multiplicity of suits" argument of the dissent in *Union Glass* carried to its logical extreme.

To what extent may the SEC in the exercise of its adjudicative powers afford a remedy to a party? It is to be noted that section six of P.D. 902-A specifically delineates the various powers which the SEC may exercise pursuant to its adjudicatory jurisdiction. While the express, comprehensive listing of such powers implies that the lawmaker may not have intended to give the SEC other powers by not so mentioning the same, the effect of subsection (m)[65] is an indication to the contrary. While it is true as stated in Mr. Justice Escolin's *Union Glass* opinion that "administrative agencies, like the SEC, are tribunals of limited jurisdiction and, as such, could wield only such powers as are *specifically* granted to them by their enabling statutes,"[66] a strict application of such "rudimentary principle"[67] will seriously undermine the manifest intent of section five of P.D. 902-A. Say that the SEC finds the DBP guilty of fraud; does this mean that the former will be unable to assess the latter damages? In other words, is the SEC proscribed from granting certain kinds of ancillary relief not expressly enumerated in section six? The *Union Glass* decision seems to answer this question in the affirmative, passing as it does without comment over respondent Hofilena's claim for damages against the DBP.[68] Contrast this liberal construction of section six by the Supreme Court with its restrictive interpretation of section five. Is there any justification for such different treatment? It is respectfully submitted that there is none.

The case of *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*[69] is another example of the Supreme Court's coming to grips with the same jurisdictional issues posed by the *Union Glass* case. In *DMRC*, what was involved was an action for a sum of money and delivery of personal property which plaintiff-petitioner DMRC (a partnership) had filed against defendant-respondent Este Del Sor (a corporation) in the now-defunct Court of First Instance. The latter had dismissed the action apparently on the ground interposed by Este Del Sor that it was being compelled to issue shares of its stock as part of the consideration for its leading of DMRC's equipment. This, it was further alleged, made DMRC a stockholder of Este Del Sol and therefore the ensuing dispute fell squarely within the adjudicatory jurisdiction of the SEC. The Supreme Court speaking thru Mr. Justice Gutierrez reversed and set aside the Court of First Instance's

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[65] "To exercise such other powers as implied, necessary or incidental to the carrying out of express powers granted to the (SEC) or to achieve the objectives and purposes of this Decree."

[66] Union Glass & Container Corporation v. SEC, G.R. No. 64013, November 28, 1983, 126 SCRA 31, 39 (1983).

[67] *Ibid.*

[68] In the earlier case of Philex Mining Corporation v. Reyes, G.R. No. 57707, November 19, 1982; 118 SCRA 602, *0* (1982), the Supreme Court expressly ruled that the SEC can award damages in cases falling within its adjudicatory jurisdiction.

[69] G.R. No. 57936, September 28, 1984, 132 SCRA 293 (1984).

(C.F.I.) order of dismissal on the ground that there being no fraud or misrepresentation present, subsection (a) of section five of the Law did not apply. Furthermore, it was stated that the jurisdiction of the SEC over corporations did not extend to cases which, there being no fraud or misrepresentation, did not involve intra-corporate controversies. Obviously, no intra-corporate relation existed between DMRC and Este Del Sol. Neither was it bruited that there was any controversy *within* DMRC or Este Del Sol which might have been a logical antecedent to the present action.[70] At the time the latter was filed, DMRC was not yet a stockholder of Este Del Sol; only after the C.F.I. had determined the rights and obligations of the parties to the lease, and had determined that DMRC was indeed entitled to be paid partly in Este Del Sol shares would the SEC have jurisdiction in the event a controversy arose regarding DMRC's status as a stockholder in Este Del Sol.

While the Supreme Court's resolution of the jurisdictional issues in *DMRC* cannot be faulted, it bears pointing out that the Court in so doing elucidated what in the light of the *Union Glass* decision appears to be a significant interpretation of the scope of the Law. It said:

> "Considering the announced policy of PD 902-A, the expanded jurisdiction of the respondent (SEC) under said decree extends only and exclusively to *matters arising from contracts involving investments* in private corporations, partnerships, and association. Jurisdiction over all other claims remains with the regular courts."[71] (Emphasis supplied)

Such characterization of the adjudicatory jurisdiction of the SEC is significant because it lends support to the view, earlier expressed, that what is determinative of the acquisition by the SEC of adjudicative jurisdiction over certain parties to a controversy is that the latter *arises* from intra-corporate relations. Note that the Court speaks of "matters arising from contracts involving investments" as being within the adjudicatory jurisdiction of the SEC. While the Court in the same context reiterates its restrictive interpretation of P.D. 902-A, i.e., that the adjudicative function of the SEC must be subordinated to and harmonized with its primary regulatory function, its elucidation in *DMRC* indicates at the very least a recognition by the court of broad scope of the SEC's adjudicatory jurisdiction.

In the case of *PAIC Securities v. Securities and Exchange Commission and Pedro Ong*,[72] the Supreme Court upheld the jurisdiction of the SEC

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[70] In contrast, in *Union Glass*, the controversy had its *origins* in the intra-corporate relations between two stockholders of the corporation, albeit later, an outsider (Union) became enmeshed in the controversy. It was submitted previously that the SEC had jurisdiction over Union for purposes of the said case even if the latter had no intra-corporate relation with Pioneer Glass or its stockholers, Hofilena or the DBP. See discussion, *supra*.

[71] DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc., G.R. No. 57936, September 28, 1984, 132 SCRA 293, 298 (1984).

[72] G.R. No. 53981, June 11, 1980, *cited in* DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.

over an action for specific performance arising out of contractual relations between a stockbroker (PAIC) and its client (Pedro Ong). Subsection (a) of section five of P.D. 902-A was found to be applicable in view of certain evidence that had been adduced showing that there was a scheme (presumably fraudulent) to hide the credit balance of PAIC's agent, Eugene Ong, from possible claims of other brokers against the latter.[73] In affirming *in toto* the decision of the SEC to assume jurisdiction over this controversy, the Supreme Court as well as the SEC made no mention of the applicability of the old Securities Act (Commonwealth Act No. 83 as amended), the then subsisting law. All that was said was that the stockbroker-client/customer relation is coupled with public interest and that the SEC has absolute jurisdiction over the operations of stockbrokers.[74] It is to be noted however that section three of P.D. 902-A speaks of "absolute jurisdiction over corporations" and makes no specific reference to corporations engaged in a particular line of business, e.g., stockbrokering. This is significant because the Revised Securities Act itself, like its predecessor, does not invest its primary implementing agency, i.e., the SEC, with adjudicatory jurisdiction over cases involving the stockbroker-client relationship. As a result, cases of this sort must necessarily fall under subsection (a) of section five of P.D. 902-A if the SEC is to have jurisdiction over the same. Otherwise, in the absence of a "fraudulent scheme" or "misrepresentation" by directors or officers of a corporation, the regular courts and not the SEC shall have jurisdiction over such cases.

In the case of *Philippine School of Business Administration, et al. v. Leaño and Tan,*[75] the adjudicatory jurisdiction of the SEC was likewise upheld in a case involving the alleged illegal removal of respondent Tan from his position as the Executive Vice-President of petitioner PSBA. The Labor Arbiter (Leaño) was held to have no jurisdiction over this case because the same involved not dismissal, but a corporate office having been declared vacant and Tan's not having been elected thereto. The election of the Executive Vice-President was the "prerogative of the Board of Directors, and involves the exercise of deliberate choice and the faculty of discriminative selection."[76] Subsection (c) of section five of P.D. 902-A was the pertinent provision, dealing as it does with "controversies in the election or appointment of . . . officers . . . of such corporations. . . ."

In the case of *James A. Strong v. Hon. Judge Jose Castro and Mateo Esparrago,*[77] the Supreme Court adhered to its *Union Glass* reasoning. *Strong* involved an intra-corporate controversy arising from the allegedly improper purchase of stock of the Malalag Lumber Co., Inc. by respondent

[73] Lopez, *The Securities and Exchange Commission: Its Jurisdiction Vis-a-Vis the Courts and Other Administrative Bodies,* 8 PHIL. L. GAZ. 10, 11 (1984).
[74] *Ibid.*
[75] G.R. No. 58468, February 24, 1984, 127 SCRA 778 (1984).
[76] *Id.* at 783.
[77] G.R. No. 63658, June 29, 1985, 137 SCRA 322 (1985).

Esparrago. Petitioner Strong had filed an action with the SEC questioning just such disposition of said corporation's shares. At the same time, Strong also filed a complaint with the Ministry of Natural Resources (MNR) questioning the right of Esparrago to operate the timber concession of Malalag. He asked the MNR to stop Esparrago's operations. When the MNR denied Esparrago's motion to dismiss Strong's complaint, Esparrago filed a civil action for prohibition with the Regional Trial Court to enjoin the MNR from proceeding with Strong's complaint on the ground that the SEC had jurisdiction over the case since the same involved intra-corporate matters. The Regional Trial Court sustained Esparrago, and Strong then brought a petition for *certiorari* and prohibition questioning the lower court's order. The Supreme Court granted Strong's petition and reversed the ruling of the Regional Trial Court on the ground that there was nothing in the relief sought by Strong from the MNR which required the latter to pass upon the issue of the questioned ownership of a certain bloc of Malalag stocks. The reliefs sought by Strong, the Supreme Court said, simply involved the exercise of the powers and functions vested by section five of Presidential Decree No. 705 as amended, otherwise known as the Forestry Code of the Philippines, in the Bureau of Forest Development (BFD) which is under the control and supervision of the MNR, to wit:

> "It [i.e., the BFD] shall be responsible for the protection, development, management, regeneration and reforestation of forest lands, operation of licensees, lessees and permitees for the taking or use of forest products therefrom or the occupancy or use thereof."

It might be said that by allowing the MNR to take cognizance of Strong's complaint, the Supreme Court undercut the control of the SEC over the action filed with it by Strong. The issue of the ownership of the bloc of Malalag stocks is a prejudicial question which must first be resolved before any final determination by the MNR of Esparrago's right to exploit Malalag's timber concession can be made. It is literally true, as the Supreme Court observes, that Strong's complaint before the MNR makes no mention of the pending SEC proceedings to resolve the dispute over the ownership of certain Malalag stocks; nevertheless, it is not difficult to see that any action the MNR may take *vis-a-vis* Strong's complaint must necessarily be premised on whether or not the SEC determines that Esparrago is entitled to be a stockholder of Malalag, and therefore entitled to exploit its timber concession. Thus, while Esparrago may have had reason to question the manner in which the MNR exercised its jurisdiction, he had no reason to question its assumption of jurisdiction. If so, his remedy was not prohibition but a motion to suspend the proceeding in the MNR pending final adjudication of the issue of stock ownership by the SEC.

It is not here suggested that the SEC has jurisdiction to decide the issue of whether or not Esparrago and his group are entitled to exploit Malalag's timber concession, much less order the MNR to divest Esparrago

and his group of authority to operate said timber concession, for the same constitutes not the exercise of judicial power nor the grant of judicial relief, but the exercise of a particular kind of ministerial-administrative power and its counterpart relief which is vested by law in a particular administrative agency, i.e., the BFD of the MNR. To hold otherwise would amount to depriving the latter of its statutory jurisdiction, and in the process traverse the "ascertainable standard" doctrine described by Mr. Justice Cardozo in his *Panama* dissent.

True, the issue of whether or not Esparrago's group has the right to exploit Malalag's timber concession has its origins in an intra-corporate controversy, but unlike the SEC in the *Union Glass* case *vis-a-vis* the validity of the *dacion en pago* agreement as well as the subsequent sale to Union, the SEC is not at all competent to decide the said issue for the same does not involve the exercise of judicial power as conferred by P.D. 902-A.

In the case *Gimenez Stockbrokerage and Co., Inc. v. SEC,*[78] the Supreme Court passed upon the question of whether or not Batas Pambansa Blg. 129 otherwise known as the Judiciary Reorganization Act of 1981 had impliedly repealed the thirty-day period provided by P.D. 902-A within which to file a petition for review of any decision, ruling or order of the Commission *en banc*. Under section 39 of the said *Batas,* a period of fifteen days to appeal final judgments, orders, resolutions or awards of any court is provided.

The Court held that the thirty-day period for filing an appeal from the Commission *en banc* to the Supreme Court[79] was still in force for two reasons; first, because section 39 can have no application to the SEC because it is not a court but an administrative agency, and second, because implied repeals, i.e., of section six of P.D. 902-A by sections 9 (3) and 39 of B.P. blg. 129, are not as a general rule favored.

Such reasoning disregards section 16 of the Interim Rules and Guidelines promulgated by the Court to implement the provisions of the said *Batas.*[80] Said section provides:

> "The Intermediate Appellate Court *may* review final decisions, orders, awards or resolutions of regional trial courts and of all quasi-judicial bodies except the Commission on Elections, the Commission on Audit, the *Sandiganbayan,* and decisions issued under the Labor Code of the Philippines and by the Central Board of Assessment Appeals."

Expressio Unius Est Exclusio Alterius. Although permissive in tenor, said section must be read in the context of the mandatory tenor of section 9 (3) of the *Batas*:

[78] G.R. No. 68568, December 26, 1984, 133 SCRA 840 (1984).
[79] *Id.,* at 841. Appeal by *certiorari,* i.e., RULES OF COURT, Rule 45.
[80] Effective January 1, 1983.

> "(3) Exclusive appellate jurisdiction [of the Intermediate Appellate Court] over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948 [Republic Act No. 296, as amended]."

Furthermore, Republic Act No. 5434 (1968) which provides a fifteen-day period for appeal from the Commission *en banc* to the Court of Appeals (now Intermediate Appellate Court)[81] has been expressly deemed the applicable law by section 22 (c) of the said Interim Rules. The appeal herein contemplated can involve both questions of fact and of law, as distinguished from appeal by *certiorari* in which only questions of law can be raised.[82]

The Court's ruling leaves one no other choice but to conclude that with respect to appeals from the Commission *en banc* to the Intermediate Appellate Court, the period within which to perfect an appeal is fifteen days from notice of the decision, order, award or resolution sought to be reviewed and that with respect to appeal by *certiorari* from the Commission *en banc* to the Supreme Court, the period is thirty days.

Turning now to the Court's pronouncement that the SEC is not a court but an administrative agency, it is respectfully submitted that there is no contradiction between the two as would warrant the non-applicability of section 39 of the said *Batas* with regard to decisions handed down by the SEC pursuant to P.D. 902-A. As was earlier discussed, so long as an "officer, body, board or commission" exercises judicial powers expressly conferred by statute, he is deemed a court. If only to avoid the awkward conclusions which a literal reading and interpretation of *Gimenez* may entail, this meaning of "court" should be adopted.

One final, historical note: In a time of severe economic hardship such as that which the Philippines is now experiencing, the law relating to bankruptcy and insolvency, as well as such basic questions as jurisdiction, are of great significance to the practicing lawyer. Also, the fact that the corporation has today become the dominant and preferred type of business organization in society has made its regulation by an administrative agency like the SEC inevitable. The growing complexity in the way corporations operate will undoubtedly force the legislature to reexamine the adequacy of existing statutes and case law interpreting the same. The fact that P.D. 902-A was issued at all is a partial indication that the legislature perhaps recognized the inability of the regular courts to adjudicate the increasingly arcane issues posed in the field of corporaton law. Of course, this is not to say that the regular courts have been totally divested of jurisdiction in

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[81] Secs. 1 and 2.

[82] *See* RULES OF COURT, Rule 45.

this area, or that the SEC is in fact a more competent court to decide cases over which it shares concurrent jurisdiction with the regular courts.

The line between what is intra-corporate and what is extra-corporate will almost certainly become a "penumbra", to use Mr. Justice Holmes's word, and then in response thereto, perhaps the pertinent laws will either be amended or simply re-interpreted in a liberal manner. That the Law can be so re-interpreted appears both plausible and possible.

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