AN ANALYTICAL SURVEY OF LEADING SUPREME COURT DECISIONS ON SEC JURISDICTION AND OTHER INTRA-CORPORATE CASES*

*Arturo E. Balbastro***

I. Introduction

A. Purpose

It is the purpose of this paper to present an analytical survey of leading decisions of the Supreme Court dealing with the jurisdiction of the Securities and Exchange Commission and other intra-corporate cases. The expanded jurisdiction of the SEC under Presidential Decree No. 902-A and the significant increase in the number of corporations and partnerships being registered with the SEC point to the relevance, if not altogether the necessity, of this survey.

B. Scope

The survey covers a span of seven (7) years from 1981 to 1987, with ten (10) selected cases. It starts with *Sunset View Condominium Corporation v. Campos, Jr.*[1] in 1981 and winds up with *Abejo v. De la Cruz*,[2] in 1987.

C. Approach

As a background, basic principles and concepts, as well as a definition of terms, are set forth at the outset. This is followed by the pertinent statutory provisions. Jurisprudential guidelines are also reproduced to complete the preparation necessary for a take-off in the survey.

II. Basic Principles and Concepts

A. Definition of Terms, Concepts and Jurisprudential Guidelines

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**Professor, U.P. College of Law; A.B. (cum laude), LL.B., LL.M. (UP);LL.M. (Harvard Law School).

[1]104 SCRA 295 (1981).

[2]149 SCRA 654 (1987).

"Jurisdiction" is the power and authority of a court to hear, try and decide a case.[3] It is the legal power of hearing and determining controversies,[4] and is conferred by law or by the sovereign authority.[5] It is determined by the allegations of the complaint and not by the defenses set up in the answer nor upon the motion to dismiss, for, were we to be governed by such a rule, the question of jurisdiction would depend almost entirely upon the defendant.[6]

"Stockholder" or "shareholder" is a corporator in a stock corporation.[7] A stockholder is one owning stock.[8] The issuance of a certificate of stock is not necessary to make one a stockholder.[9]

The transfer of shares is usually effected by the indorsement and delivery of certificates of stock with powers of attorney in blank.[10] The transfer may be done by a separate assignment and a power of attorney to transfer on the books of the corporation.[11] The transfer must be registered in the books of the corporation to affect third persons.[12] An unregistered transfer is not valid as against the corporation.[13] But notice to the corporation is equivalent to registration. The statute providing for registration of transfers contemplates only the protection of subsequent purchasers without notice of prior equities, and when such equities have been created by transfer, hypothecation, mortgage, or lien, the corporation is bound to regard them from the time it receives notice of their existence.[14]

B. Pertinent Provisions of P.D. No. 902-A.

Section 3 of P.D. No. 902-A provides as follows:

> "The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military."

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[3]Herrera v. Barreto, 25 Phil. 245 (1913).

[4]Huber v. Beck, 32 N.E. 1025, 6 Ind. App. 47 (1893).

[5]Perkins v. Roxas, 72 Phil. 514 (1941); People v. Mariano, 71 SCRA 600 (1976); Villamayor v. Luciano, 88 SCRA 156 (1979).

[6]Serrano v. Muñoz (HI) Motors, Inc., 21 SCRA 1085 (1967); Magay v. Estiandan, 69 SCRA 456 (1976); Republic v. Sebastian, 72 SCRA 222 (1976).

[7]CORP. CODE, Sec. 5

[8]Mills v. Stewart, 41 N.Y. 384, 386 (1869).

[9]11 Fletcher 65.

[10]10 Cyc. 594, 595: Hager v. Bryan, 19 Phil. 138, 143-144 (1911).

[11]Ballantine, 748.

[12]CORP. CODE, Sec. 63

[13]Uson v. Diosomito, 61 Phil. 535 (1935).

[14]Bank of Florala v. Amer. Nat. Bank of Pensacola, 75 So. 310 (1917).

Section 5 of the same Presidential Decree provides thus:

> "In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
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> 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.
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> b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or 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;
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> c) Controversies in the election or appointment of directors, trustees, officers or managers, of such corporations, partnerships or associations."

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III. Selected Supreme Court Decisions on SEC Jurisdiction and Other Intra-Corporate Cases

A. In *Sunset View Condominium Corporation v. Campos, Jr.*,[15] two cases were consolidated, involving similar facts and raising identical questions of law.

Under G.R. No. L-52361, the petitioner corporation filed an action for collection of assessments levied on the condominium unit against private respondent Aguilar-Bernares Realty. Private respondent filed a motion to dismiss the complaint on the grounds: (1) that the complaint did not state a cause of action; (2) that the court had no jurisdiction over the subject or nature of the action; and (3) that there was another action pending between the same parties for the same cause. Respondent Judge granted the motion to dismiss on the ground that the private respondent was a shareholder of the condominium corporation and that the SEC had exclusive original jurisdiction over controversies arising between shareholders of the corporation. Its motion for reconsideration having been denied, petitioner filed the petition for certiorari.

In G.R. No. L-52524, petitioner filed its amended complaint in the City Court of Pasay City for the collection of overdue accounts on assessment and insurance premiums and interest thereon against private respondent Lim Siu Leng, as assignee of a unit on installment basis of Towers Builders, Inc. Private respondent filed a motion to dismiss, alleging that the amount sought to be collected was an assessment and that the dispute was intra-corporate

[15] L-52361, April 27, 1981, and L-52524, April 27, 1981, 104 SCRA 295.

inasmuch as he was a purchaser of a condominium unit and had thereby become a stockholder of the petitioner corporation. Consequently, the SEC had exclusive jurisdiction over the case. Petitioner filed its opposition on the ground that the private respondent had not fully paid for the unit, was not the owner thereof, and was not a stockholder inasmuch as he was not a holder of a separate interest. Therefore, the case was not an intra-corporate dispute. After the petitioner had filed its answer to the opposition, the trial court issued an order denying the motion to dismiss. When its motion for reconsideration was denied, private respondent appealed to the Court of First Instance. Petitioner moved to dismiss the appeal on the ground that the order appealed from was interlocutory. Respondent Judge dismissed the appeal and directed the parties to ventilate their controversy with the SEC. When its motion for reconsideration was denied, petitioner filed a petition for certiorari.

Since the private respondents in both cases admitted that they had not yet fully paid the purchase price of their units, the identical issues raised in both petitions were as follows:

1. Is a purchaser of a condominium unit in the condominium project managed by the petitioner, who has not yet fully paid the purchase price thereof, automatically a stockholder of the petitioner condominium corporation?
2. Is it the regular court or the SEC that has jurisdiction over cases for collection of assessments assessed by the condominium corporation on condominium units, the full purchase prices of which have not been paid?

Private respondents in both cases argued that every purchaser of a condominium unit, regardless of whether or not he had fully paid the purchase price, was a holder of a separate interest and was automatically a shareholder of the condominium corporation.

The Supreme Court found such contention without merit. Section 5 of the Condominium Act expressly provides that the shareholding in the condominium corporation will be conveyed only in a proper case. The Condominium Act leaves to the Master Deed the determination of when the shareholding will be transferred to the purchaser of a unit. It is clear then that not every purchaser of a condominium unit is a shareholder of the condominium corporation. The share of stock appurtenant to the unit will be transferred accordingly to the purchaser of the unit only upon full payment of the purchase price at which time he will also become the owner of the unit. The private respondents, therefore, who had not fully paid the purchase price of their units and were consequently not owners of their units, were not members or shareholders of the petitioner condominium corporation. Hence, the cases for collection were not intra-corporate controversies within the original and exclusive jurisdiction of the SEC, but under the jurisdiction of the regular courts.

B. *Philex Mining Corporation v. Hon. Domingo Coronel Reyes*[16] resolved the question of jurisdiction over a controversy concerning a stock certificate covering a 10% stock dividend, which certificate had ben sent to a stockholder (Huenefeld) but which the latter did not receive. Said stockholder requested for the issuance of another certificate in lieu of the lost one in accordance with Republic Act No. 201. When the request was not granted, the stockholder commenced suit in the Court of First Instance against Philex for the issuance of a replacement certificate with damages.

Philex filed a motion to dismiss on the ground that the court had no jurisdiction over the case, the issue being one of an intra-corporate relationship between a stockholder and a corporation. The court issued an order holding in abeyance resolution of the incident.

In the meantime, Philex filed a petition with the SEC for the resolution of the controversy.

Philex informed the Court of First Instance about the filing of the petition with the SEC and reiterated its motion to dismiss the case. When the court denied its motion for reconsideration for lack of merit, Philex filed the petition for certiorari to review the orders of the court.

Finding the controversy to be a typical intra-corporate dispute, the Supreme Court said:

> "The issue is whether respondent Court of First Instance has jurisdiction over the present controversy, which Philex contends is an intra-corporate one, but which Huenefeld denies.
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> Evident from the foregoing is that an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations. The issue of whether or not a corporation is bound to replace a stockholder's lost certificate of stock is a matter purely beween a stockholder and the corporation. It is a typical intra-corporate dispute. The question of damages raised is merely incidental to that main issue.
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> Huenefeld's attempt to limit intra-corporate controversies x x x is not well taken. The foregoing interpretation does not square with the intent of the law, which is to segregate from the general jurisdiction of regular Courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution, in much the same way that labor disputes are now brought to the Ministry of Labor and Employment (MOLE) and the National Labor Relations Commission (NLRC), and not to the Courts.
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> The controversy between the parties being clearly an intra-corporate one, it is the SEC, as held by it, and not respondent Court of First Instance, that has original and exclusive jurisdiction, by express mandate of the law.[17]

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[16] L-57707, November 19, 1982, 118 SCRA 602.

[17] *Id.*, at 605-607.

C. *Union Glass & Container Corporation v. Securities and Exchange Commission*[18] involved a petition for certiorari and prohibition seeking to annul and set aside the order of the SEC upholding its jurisdiction in SEC Case No. 2035 entitled "Carolina Hofileña v. Development Bank of the Philippines, et al."

Private respondent Hofileña was a stockholder of Pioneer Glass Manufacturing Corporation which obtained various loans from DBP and other local and foreign sources which DBP guaranteed. These loans were secured by mortgages over the corporate assets and properties, and also by mortgages executed by some of its corporate officers over their personal assets. Through conversion into equity of the accumulated unpaid interests on the various loans, DBP gained control of the outstanding shares of common stocks of Pioneer Glass, and three regular seats in the board of directors of the corporation. When Pioneer Glass suffered serious liquidity problems, it entered into a *dacion en pago* agreement with DBP covering the assets mortgaged to DBP in full satisfaction of its obligations in the total amount of P59,000,000.00. Part of the assets ceded to DBP was the glass plant in Rosario, Cavite, which DBP leased and subsequently sold to petitioner Union Glass.

Hofileña filed a complaint in SEC against DBP, Union Glass and Pioneer Glass. Of the five causes of action, only the first concerned petitioner Union Glass. The first cause of action was based on the alleged illegality of the *dacion en pago* resulting from: (1) the supposed unilateral and unsupported undervaluation of the assets of Pioneer Glass covered by the agreement; (2) the self-dealing indulged in by DBP, having acted both as stockholder/director and secured creditor of Pioneer Glass; and (3) the wrongful inclusion by DBP in its statement of account of P26M as due from Pioneer Glass when the same had already been converted into equity.

Pioneer Glass filed its answer. Petitioners moved for dismissal of the case on the ground that the SEC had no jurisdiction over the subject matter or nature of the suit. Respondent Hofileña filed her opposition to the motion, to which petitioners filed a rejoinder.

SEC Hearing Officer Eugenio E. Reyes, to whom the case was assigned, granted the motion to dismiss for lack of jurisdiction. However, upon motion for reconsideration filed by respondent Hofileña, Hearing Officer Reyes reversed his original order by upholding the SEC jurisdiction over the subject matter and over the persons of the petitioners. Unable to secure a reconsideration of the order as well as to have the same reviewed by the SEC *en banc*, petitioners filed the instant petition for certiorari and prohibition, raising the issue of whether the jurisdiction over the case was with the regular courts or with the SEC.

In granting the petition and in setting aside the questioned orders of the SEC, ordering the dropping of petitioner Union Glass from SEC Case No.

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[18] L-64013, November 28, 1983, 126 SCRA 31.

2035, without prejudice to the filing of a separate suit before a regular court of justice, the Supreme Court said:

> "In the ordinary course of things, petitioner Union Glass, as transferee and possessor of the glass plant covered by the *dacion en pago* agreement, should be joined as party-defendant under the general rule which requires the joinder of every party who has an interest in or lien on the property subject matter of the dispute. Such joinder avoids multiplicity of suits as well as ensures the convenient, speedy and orderly administration of justice.
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> But since petitioner Union Glass has no intra-corporate relation with either the complainant or the DBP, its joinder as party-defendant in SEC Case No. 2035 brings the cause of action asserted against it outside the jurisdiction of the respondent SEC.
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> "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 intrisically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.
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> "As heretofore pointed out, petitioner Union Glass is involved only in the first cause of action of Hofileña's complaint in SEC Case No. 2035. While the Rules of Court, which applies suppletorily to proceedings before the SEC, allows the joinder of causes of action in one complaint, such procedure however is subject to the rules regarding jurisdiction, venue and joinder of parties. Since petitioner has no intra-corporate relationship with the complainant, it cannot be joined as party-defendant in said case as to do so would violate the rule on jurisdiction. Hofileña's complaint against petitioner for cancellation of the sale of the glass plant should therefore be brought separately before the regular court. But such action, if instituted, shall be suspended to await the final outcome of SEC Case No. 2035, for the issue of the validity of the *dacion en pago* posed in the last mentioned case is a prejudicial question, the resolution of which is a logical antecedent of the issue involved in the action against Union Glass. Thus, Hofileña's complaint against the latter can only prosper if final judgment is rendered in SEC Case No. 2035, annulling the *dacion en pago* executed in favor of the DBP."

D. Questioned in *Philippine School of Business Administration v. Leaño*[19] was the jurisdiction of a Labor Arbiter over a controversy involving a stockholder and the corporation and a majority of its directors.

Ruling that the NLRC did not have jurisdiction over the case, the Supreme Court said:

> "Basically, therefore, the question is whether the election of directors on August 1, 1981 and the election of officers on September 5, 1981, which resulted in TAN's failure to be reelected, were validly held. This is the crux of the question that TAN has raised before the SEC. Even in his position paper before the NLRC, TAN alleged that the election on August 1, 1981 of the three directors was in con-

[19] L-58468, February 24, 1984, 127 SCRA 778.

travention of the PSBA By-Laws providing that any vacancy in the Board shall be filled by a majority vote of the stockholders at a meeting specially called for the purpose. Thus, he concludes, the Board meeting on September 5, 1981 was tainted with irregularity on account of the presence of illegally elected directors without whom the results could have been different.

TAN invoked the same allegations in his complaint filed with the SEC. So much so, that on December 17, 1981, the SEC (Case No. 2145) rendered a Partial Decision annulling the election of the three directors and ordered the convening of a stockholders' meeting for the purpose of electing new members of the Board. The correctness of said conclusion is not for us to pass upon in this case. TAN was present at said meeting and again sought the issuance of injunctive relief from the SEC.

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President. Vis-a-vis the NLRC,, these matters fall within the jurisdiction of the SEC. x x x"

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This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of TAN's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist."

E. For resolution in *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*[20] was the sole issue of proper forum, as between the regular courts and the Securities and Exchange Commission, to take cognizance of a controversy involving, *inter alia,* the issuance of shares of stock as payment of a valid debt of a corporation.

Petitioner, a partnership engaged in leasing heavy equipment and other allied transactions, entered into a contract of lease with the private respondent, covering three (3) units of heavy equipment. Among the conditions of the agreement was that an amount equivalent to 30% of the collection was to be invested in the purchase of shares of stock of the respondent corporation at the market value of P37,000.00 per share.

As a result of the agreement, petitioner proceeded to perform what was incumbent upon it. For the period from September 1, 1978 up to October 15, 1978, petitioner's total job performance amounted to P122,207.31, of which P87,106.83 was to be paid in cash, and P35,100.48 invested in the purchase of shares of stock in accordance with the agreement between the parties. Despite the sending of periodic statements of account by the petitioner, the respondent refused to comply with its obligation to the petitioner.

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[20]L-57936, September 28, 1984, 132 SCRA 293.

Petitioner filed a complaint against the respondent before the Court of First Instance of Rizal. As defendant therein, respondent filed a motion to dismiss the complaint on the sole ground that the court had no jurisdiction over the nature of the action or suit. The trial court granted the motion to dismiss. Hence, the petition was filed for the review of the order dismissing the case.

Granting the petition for review and setting aside the questioned order, the Supreme Court said:

> "We agree with the petitioner. Jurisdiction of a court is conferred by the Constitution and by the laws in force at the time of the commencement of the action. (People v. Mariano, 71 SCRA 600; Villamayor v. Luciano, 88 SCRA 156). However, whether or not a court has jurisdiction over the subject matter of a case is determined from the allegations of the complaint (Magay v. Estiandan, 69 SCRA 456; Republic v. Sebastian, 72 SCRA 222). Therefore, to resolve the issue raised to us, an interpretation and application of the law on jurisdiction, must be made vis-a-vis the averments of the petitioner's complaint.
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> The complaint states that DMRC entered into a contract of lease with the defendant-respondent with the latter as lessee of heavy equipment. The rentals were to be paid partly in cash and partly in the form of shares of stock. Upon failure of the lessee to pay the agreed consideration, Civil Case No. Q-29585 for collection was filed against the defendant-respondent. The complaint was filed with the Court of First Instance of Rizal, Quezon City, Branch LII on the strength of Section 44, The Judiciary Act of 1948. x x x
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> However, in assailing the jurisdiction assumed by the Court, the respondent invokes Section 5, Presidential Decree 902-A earlier cited.
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> Nowhere in petitioner's complaint do we find any averment of fraud or misrepresentation which may have been committed by respondent company against petitioner to bring paragraph (a) of said Decree into play. Nor would paragraph (c) be of any significance. The bone of contention is thus, paragraph (b) on controversies arising out of intracorporate or partnership relations.
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> It must be stressed that the plaintiff-petitioner submitted himself to the jurisdiction of the lower court as creditor and the respondent did so as debtor. The fact that the case involves shares of stock to be used as payment for lease rentals does not convert it into an intra-corporate controversy. In fact, the greater part of the petitioner's claim is in terms of cash or money. To pass upon a money claim under a lease contract would be beyond the competence of the Securities and Exchange Commission and to separate the claim for money from the claim for shares of stock would be splitting a single cause of action resulting in a multiplicity of suits.
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> The purpose and the wording of the law escapes the respondent. Nowhere in said decree do we find even so much as an intimidation *(sic)* that absolute jurisdiction and control is vested in the Securities and Exchange Commission in *all* matters affecting corporations. To uphold the respondent's argument would remove without legal imprimatur from the regular courts all conflicts over matters involving or affecting corporations, regardless of the nature of the transactions which give rise to such disputes. The courts would then be divested of jurisdiction not by reason of the nature of the dispute submitted to them for adjudication, but solely for the reason that the dispute involves a corporation. This cannot be done. To do so would not only be to encroach on the legislative prerogative to grant and revoke jurisdiction of the courts but such a sweeping interpretation may suffer

constitutional infirmity. Neither can we reduce jurisdiction of the courts by judicial fiat. (Article X, Section 1, The Constitution).

Further buttressing the petitioner's stand is the fact that it is not a shareholder of the respondent corporation, no transfer or registration of shares having been made in its name yet. Precisely, the petitioner prays that it be made a stockholder of the corporation by virtue of the agreement in the lease contract. Hence, there can be no intra-corporate controversy between a stockholder and the corporation in the case at bar. It must be remembered that a determination of the rights of the parties under the contract is necessary before any mention can be made of the issuance of shares of stock. Petitioner must be shown to be entitled to its claim under the disputed contract. Such a determination falls under the jurisdiction of the Regional Trial Court, particularly as it involves not only a question of issuance of shares but more so, the interpretation of a contract of lease and a claim for a sum of money under the said contract. Only after a finding of entitlement and the implementation according to the contractual terms may the Securities and Exchange Commission assume jurisdiction in case a question later arises regarding said shares. To enforce the basic contract is clearly beyond the power of the Securities and Exchange Commission and would be excess of jurisdiction if it were to act thereon."

F. *Development Bank of the Philippines v. Hon. Joaquin Ilustre, Jr.*,[21] involved an action for rescission of an agreement between Isarog Pulp and Paper Co., Inc. and the DBP. The resolution of the motion filed by the DBP to dismiss the complaint on the ground that the case fell within the exclusive jurisdiction of the SEC, was held in abeyance by the Court of First Instance of Albay. When the motion for the reconsideration of said order was denied, recourse was had on certiorari to the Supreme Court.

Finding the existence of an intra-corporate relationship between the parties, the Supreme Court said;

"The Silverios contend that since their complaint is for rescission of the compromise agreement of March 18, 1977, plus damages, the same is properly cognizable by the Court of First Instance (now Regional Trial Court), and not by the Securities and Exchange Commission. It should not be overlooked, however, that said compromise agreement had long been executed and implemented and that as a result thereof, DBP had acquired 91% of the equity of ISAROG. Although the Silverios challenge the legality of the conversion by DBP of the majority shares of stocks of ISAROG, it is undeniable that DBP is a stockholder of the corporation. In fact, the illegal acts, devices and schemes allegedly employed by DBP which might have prompted the Silverios to sue for rescission of the memorandum agreement were done by the former in its capacity as such stockholder.

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From the allegations of the complaint in Civil Case No. 6599, it is evident that there exists an intra-corporate relationship between the parties; both the Silverios and the DBP are stockholders of ISAROG, while PHINMA acts as manager thereof. And while the case was instituted in the guise of a complaint for rescission, it is clear that the action is essentially for recovery from the DBP and PHINMA of the control and management of ISAROG. Thus, the Silverios seek in their complaint

[21] L-57905, August 1, 1985, 138 SCRA 11.

to set aside the election of the directors and officers of ISAROG, as well as the appointment of PHINMA, as its manager.[22]

G. *Bañez v. Dimensional Construction Trade and Development Corporation*[23] concerned an appeal from an order of a Court of First Instance dismissing plaintiff's complaint.

Petitioners filed a complaint against the private respondent for recovery of sums of money already due under various promissory notes issued to them by private respondent. Having failed to file an answer after the lapse of nine (9) months, private respondent was declared in default. Hearing was set for the presentation of evidence ex-parte before the clerk of Court, and thereafter the case was submitted for decision.

Before the case could be decided, respondent corporation filed an omnibus motion, praying, among others, for the dismissal of the case on the ground that it was the SEC and not the CFI which had exclusive jurisdiction over the subject matter of the case because of Section 5(a) of Presidential Decree No. 902-A. Respondent court issued the questioned order dismissing the case. In effect, the court below held that it was the SEC which had jurisdiction to hear and decide the plaintiff's complaint.

In reversing the order appealed from, the Supreme Court said:

"The recitals of the complaint in Civil Case No. 3569 disclose that plaintiff's cause of action is merely for the collection of the various sums of money that have already become payable to petitioners due to the promissory notes executed by defendant corporation which have already matured. There is no allegation nor any mention whatsoever in plaintiff's complaint that a device or scheme was resorted to by private respondent corporation amounting to fraud and misrepresentation. It is, therefore, difficult to consider that petitioners' case falls within the jurisdiction of the Securities and Exchange Commission pursuant to PD 902-A, Paradoxically, despite the absence of imputation of fraud and misrepresentation being alleged by plaintiff, it is the defendant corporation itself which insinuates the existence of fraud and misrepresentation on its part. Evidently, the defendant's challenge to jurisdiction of the court below is principally intended to negate the effects of the order of default earlier issued against it as well as the evidence already adduced by petitioners in the court below. The tactical step resorted to by the private respondent in the trial court appears to be its deliberate attempt to unduly delay the satisfaction of the reliefs claimed for by the petitioners and to avoid the effects of its failure to file any answer to the complaint and to controvert the evidence already adduced against it.

In the promissory notes issued by private respondent corporation, it is clearly indicated therein that the sums of money received by private respondent were in the nature of investments of the petitioners, agreed upon by the parties to be returned by the corporation upon the maturity of said promissory notes. As the money received by private respondent do not constitute payment of subscription of shares, the petitioners here did not become members of respondent Dimensional Trade and Development Corporation. In the case of Sunset View Condominium

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[22] *Id.*, at 15-16.

[23] L-62648, November 22, 1985, 140 SCRA 249.

> Corporation vs. Hon. Jose C. Campos, Jr. et al., 104 SCRA 295, it was ruled that where the stated party-litigants "are not shareholders of the condominium corporation, the instant cases for collection cannot be 'a controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates.' "
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> From the practical standpoint it would even be a useless exercise to refer to the Securities and Exchange Commission the subject case which has been pending in court for five (5) years considering that private respondents herein did not even elect to file any answer to the complaint filed against it in the court below nor has it made any mention in its pleading submitted to this court that it has a good and meritorious defense to the petitioners' cause of action. The efforts of the private respondent to promote unwarranted delay should not be allowed to succeed any further." [24]

H. In *Rivera v. Florendo*,[25] Isamu Akasako, a Japanese national who was allegedly the real owner of the shares of stock in the name of Aquilino Rivera, sold 2,550 shares of the same to Milagros Tsuchiya for P440,000.00 with the assurance that Milagros Tsuchiya would be made President and Lourdes Jureidini, director after the purchase. Rivera, who was in Japan, also assured Tsuchiya and Jureidini in an overseas call that he would sign the stock certificates because Akasako was the real owner. However, after the sale was consummated, Rivera refused to make the indorsement unless he was also paid.

Although Rivera admitted the genuineness of all the signatures of the corporate officers in the stock certificates, the corporation refused to register the same.

Private respondents filed a special civil action for mandamus with the Court of First Instance of Manila. A motion to dismiss was filed on the ground that the respondent Judge had no jurisdiction to entertain the case. When said motion was denied, petitioner brought the case to the Supeme Court on certiorari and prohibition with preliminary injunction for the review of said order denying the motion to dismiss.

Resolving the issue of whether the regular courts or the Securities and Exchange Commission had jurisdiction over the controversy, the Supreme Court said:

> "It has already been settled that an intra-corporate controversy would call for the jurisdiction of the Securities and Exchange Commission, (Philippine School of Business Administration v. Leaño, 127 SCRA 781, February 24, 1984). On the other hand, an intra-corporate controversy has been defined as 'one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever,' (Philex Mining Coporation v. Reyes, 118 SCRA 605, November 19, 1982). This Court has also ruled that cases of private respondents who are not shareholders of the corporation, cannot be a 'controversy arising out of intra-corporate or partnership relations between and among stockholders,

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[24] *Id.*, at 253-254.

[25] L-57586, October 8, 1986, 144 SCRA 643.

members or associates; between any or all of them and the corporation, partnership or association, of which they are stockholders, members or associates, respectively.' (Sunset View Condominium Corporation v. Campos, Jr., 104 SCRA 303, April 27, 1981).

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As confirmed by this Court, 'shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. Title may be vested in the transferee by delivery of the certificate with a written assignment or indorsement thereof (18 C.J.S. 928). There should be compliance with the mode of transfer prescribed by law (18 C.J.S. 930)' (Nava v. Peers Marketing Corp., 74 SCRA 65, 69, Nov. 25, 1976).

As the bone of contention in this case is the refusal of petitioner Rivera to indorse the shares of stock in question and the refusal of the Corporation to register private respondents' shares in its books, there is merit in the findings of the lower court that the present controversy is not an intra-corporate controversy; private respondents are not yet stockholders; they are only seeking to be registered as stockholders because of an alleged sale of shares of stock to them. Therefore, as the petition is filed by outsiders not yet members of the corporation, jurisdiction properly belongs to the regular courts."

The Supreme Court considered the case as an ordinary civil action for specific performance.[26]

I. *Lorenzo C. Dy v. NLRC*[27] involved an NLRC resolution dismissing petitioners' appeal from the decision of the Executive Labor Arbiter which found private respondent, Carlito H. Vailoces, to have been illegally dismissed by the petitioners. Said private respondent was manager, director and stockholder of the Rural Bank of Ayungon (Negros Oriental).

On June 4, 1983, at a special meeting of the stockholders, members of the Board of Directors were elected. Thereafter, the new Board proceeded to elect the executive officers of the bank. Vailoces was not reelected as bank manager, of which position he was relieved by the Board in a resolution dated July 2, 1983. Vailoces filed a complaint with the Ministry of Labor and Employment against the petitioners for illegal dismissal and damages and also for underpayment of salary and non-payment of living allowance.

The Executive Labor Arbiter found that Vailoces was illegally dismissed. On appeal by Dy et al. to the NLRC, the latter bypassed the issue raised and simply dismissed the appeal for having been filed late.

Petitioners brought the case to the Supreme Court on a petition for review of the NLRC resolutions dismissing the appeal.

In setting aside the decision of the Executive Labor Arbiter and the NLRC resolution as having been rendered without jurisdiction, citing *PSBA v. Leaño*, 127 SCRA 778 (1984), the Supreme Court said:

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[26] *Id.*, at 664.

[27] L-68544, October 27, 1986, 145 SCRA 211.

"While the comment of Vailoces traverses the averments of the petition, that of the Solicitor General on behalf of public respondents perceives the matter as an intra-corporate controversy of the class described in Section 5, par. (c), of Presidential Decree No. 902-A, namely:

'(c) Controversies in the election or appointment of directors, trustees, officers or managers of such corporations, partnerships or associations.'

explicitly declared to be within the original and exclusive jurisdiction of the Securities and Exchange Commission, and recommends that the questioned resolution of the NLRC as well as the decision of the Labor Arbiter be set aside as null and void.

In truth, the issue of jurisdiction is decisive and renders unnecessary consideration of the other questions raised.

There is no dispute that the position from which private respondent Vailoces claims to have been illegally dismissed is an elective corporate office. He himself acquired that position through election by the bank's Board of Directors at the organizational meeting of November 17, 1979. He lost that position because the Board that was elected in the special stockholders' meeting of June 4, 1983 did not re-elect him. And when Vailoces, in his position paper submitted to the Labor Arbiter, impugned said stockholders' meeting as illegally convoked and the Board of Directors thereby elected as illegally constituted, he made it clear that at the heart of the matter was the validity of the directors' meeting of June 4, 1983 which, by not re-electing him to the position of manager, in effect caused termination of his service."[28]

Concerning Vailoces's argument on estoppel in relation to the issue of jurisdiction, the Supreme Court said that "It is well settled that the decision of a tribunal not vested with appropriate jurisdiction is null and void," citing *Calimlim v. Ramirez,* 118 SCRA 399 (1982), to wit:

"A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of *Sibonghanoy.* It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstances involved in *Sibonghanoy* which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in *Sibonghanoy* not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.

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To be sure, petitioners failed to raise the issue of jurisdiction in their petition before this Court. But this, too, is no hindrance to the Court's considering said issue.

'The failure of the appellees to invoke anew the aforementioned solid ground of want of jurisdiction of the lower court in this appeal should not prevent this Tribunal to take up *(sic)* that issue as the lack of jurisdiction of the lower court

[28] *Id.*, at 217-218.

> is apparent upon the face of the record and it is fundamental that a court of justice could only validly act upon a cause of action or subject matter of a case over which it has jurisdiction and said jurisdiction is one conferred only by law; and cannot be acquired through, or waived by, any act or omission of the parties (Lagman vs. CA, 44 SCRA 234 [1972]); hence may be considered by this court motu propio (Gov't. vs. American Surety Co., 11 Phil. 203 [1908]) x x x. (PLDT Co. vs. Free Telephone Workers Union, 116 SCRA 145)"

J. *Abejo v. De la Cruz*[29] involved the question of who, between the Regional Trial Court and the Securities and Exchange Commission had original and exclusive jurisdiction over the dispute between the principal stockholders of the corporation Pocket Bell Philippines, Inc., namely, the spouses Jose Abejo and Aurora Abejo, and the purchaser, Telectronic Systems, Inc. of their 133,000 minority shareholdings and of 63,000 shares registered in the name of Virginia Braga and covered by five stock certificates endorsed in blank by her, and the spouses Agapito Braga and Virginia Braga, erstwhile majority stockholders. With said purchases, Telectronics would become the majority stockholder, holding 56% of the outstanding stock and voting power of the corporation Pocket Bell.

With said purchases in 1982, Telectronics requested the corporate secretary of the corporation, Norberto Braga, to register and transfer to its name, and those of its nominees, the total of 196,000 Pocket Bell shares in the corporation's transfer book. Telectronics also requested the cancellation of the surrendered certificates of stock and the issuance of the corresponding new certificates in its name and in those of its nominees.

Corporate Secretary Norberto Braga refused to register the aforesaid transfer of shares in the corporate books, asserting that the Bragas claimed preemptive rights over the 133,000 Abejo shares, and that Virginia Braga never transferred her 63,000 shares to Telectronics but had instead, lost the five stock certificates representing those shares.

The Bragas asserted that the regular civil courts had original and exclusive jurisdiction as against the Securities and Exchange Commission, while the Abejos claimed the contrary.

The Supreme Court ruled that the SEC had original and exclusive jurisdiction over the dispute between the principal stockholders of the corporation Pocket Bell, namely, the Abejos and Telectronics, the purchasers of 56% majority stock, on the one hand, and the Bragas, erstwhile majority stockholders, on the other, that the SEC, through its *en banc* Resolution of May 15, 1984 had correctly ruled in dismissing the Bragas' petition questioning its jurisdiction, and that "the issue is not the ownership of shares but rather the non-performance by the Corporate Secretary of the ministerial duty of recording transfers of shares of stock of the Corporation of which he is secretary."

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[29] L-63558, May 19, 1987, 149 SCRA 654.

In support of said ruling, the Supreme Court made the following observations and/or holdings;

1. The SEC ruling upholding its primary and exclusive jurisdiction over the dispute was correctly premised on, and fully supported by, the applicable provisions of P.D. No. 902-A which reorganized the SEC and gave additional powers thereto.

2. Basically and indubitably, the dispute at bar was an intra-corporate dispute which had arisen between and among the principal stockholders of the corporation due to the refusal of the corporate secretary, backed up by his parents as erstwhile majority stockholders, to perform his "ministerial duty" to record the transfer of the corporation's controlling (56%) shares of stock, covered by duly endorsed certificates of stock, in favor of Telectronics as the purchaser thereof.

3. The very complaint of the Bragas for annulment of the sales and transfers as filed by them in the regular court questioned the validity of the transfer and endorsement of the certificates of stock, claiming alleged pre-emptive rights in the case of the Abejos' shares and alleged loss of the certificates and lack of consent and consideration in the case of Virginia Braga's shares. Such dispute clearly involved controversies "between and among stockholders," as to the Abejos' right to sell and dispose of their shares to Telectronics, the validity of the latter's acquisition of Virginia Braga's shares, who between the Bragas and the Abejos' transferee should be recognized as the controlling shareholders of the corporation with the right to elect the corporate officers and the management and control of its operations. Such a dispute and case clearly fell within the original and exclusive jurisdiction of the SEC to decide, under Section 5 of P.D. 902-A, above-quoted.

4. Under the "sense-making and expeditious doctrine of jurisdiction... the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the questions demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered."

IV. Analysis of the Rulings Laid Down in the Selected Cases

A. Cases Upholding SEC Jurisdiction

Of the ten (10) cases covered in the survey, five upheld the jurisdiction of the SEC.

In *Philex*,[30] the dispute concerned the request by a stockholder for the issuance of a replacement certificate covering a 10% stock dividend. There was no question about Huenefeld's being a stockholder of record in the books of the Corporation. The controversy was between stockholder Huenefeld and the

[30] *Supra*, note 16.

Corporation. The jurisdiction of the SEC was clear under Sec. 5(b), P.D. 902-A.

PSBA v. Leaño[31] involved an elective position in the corporation and the action of the Board of Directors in filling up said position. It was not a case of dismissal which fell within the jurisdiction of the NLRC, but an intra-corporate controversy within the jurisdiction of the SEC under Sec. 5(c), P.D. 902-A.

Although in the guise of an action to rescind a compromise agreement, *DBP v. Ilustre*[32] involved a dispute in the election of directors and officers of a corporation, and the appointment of its manager. The case fell within the context of Sec. 5(c) of P.D. 902-A. In connection with the charge of illegal acts, devices and schemes against DBP, which held three (3) seats in the Board of Directors of the corporation, the case fell under Sec. 5(a) of P.D. 902-A.

Like *PSBA v. Leaño*,[33] *Dy v. NLRC*[34] involved a dispute respecting an elective position in a banking corporation. Hence, it fell under Sec. 5(c), of P.D. 902-A.

Abejo v. De la Cruz[35] concerned the act of the corporate secretary in refusing to record the transfer of shares of stock of the corporation. Moreover, there were questions respecting preemptive rights and also ownership over certain shares of stock. As far as the Abejos and the Bragas were concerned, they were stockholders of record. The dispute between them, and that between them and the corporation clearly fell under Sec. 5(b) of P. D. 902-A.

A question may be raised with respect to Telectronics which was seeking the registration of the transfers of the shares of stock which it had purchased. The certificates of stock covering the shares bought by Telectronics were duly endorsed in its favor. Notice of the transactions to the corporation constituted registration thereof. Hence, Telectronics was considered a stockholder of Pocket Bell Corporation and its dispute with the corporate secretary and/or the Corporation fell under Sec. 5(b) of P.D. 902-A.

B. Cases Upholding Jurisdiction of Regular Courts

The other five (5) of the selected cases upheld the jurisdiction of the regular courts.

In *Sunset View Condominium*,[36] the parties having dispute with the corporation were not stockholders thereof. The dispute involved a simple collection of money covering unpaid assessments. The cases did not fall under Sec. 5 of P.D. 902-A. Jurisdiction was with the regular courts.

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[31] *Supra*, note 19.

[32] *Supra*, note 21.

[33] *Supra*, note 19.

[34] *Supra*, note 27.

[35] *Supra*, note 29.

[36] *Supra*, note 15.

The controversy in *Union Glass*[37] concerned the alleged illegality of a *dacion en pago* agreement entered into by Pioneer Glass, the corporation in question, with DBP which held equity in Pioneer Glass. In the action to rescind the agreement, Union Glass, which bought the assets of Pioneer Glass from DBP, was impleaded as respondent with DBP and Pioneer Glass. Union Glass was not a stockholder of Pioneer Glass. The Supreme Court ruled that the SEC had no jurisdiction over Union Glass.

It is noted in the decision that "while the Rules of Court, which applied suppletorily to proceedings before the SEC, allows the joinder of causes of action in one complaint, such procedure however is subject to the Rules regarding jurisdiction, venue and joinder of parties." It is obvious that the Court was referring to joinder of causes of action under Rule 2, Sec. 5, Rules of Court. But a closer scrutiny of the matter reveals that the question more appropriately refers to joinder of proper parties under Rule 3, Sec. 8, Rules of Court, which provides as follows:

> "SEC. 8 *Joinder of proper parties*—When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons."

There is no doubt that the SEC had jurisdiction over the subject matter of the case under Sec. 5(b), of P.D. 902-A. The only question is that Union Glass was not a stockholder of the corporation. Note should be taken of the condition to which joinder of proper parties is made subject under Rule 3, Sec. 8, of the Rules of Court, namely, "subject to the jurisdiction of the court as to both service of process and venue." In other words, the jurisdiction to which said joinder of parties is made subject pertains only to "both service of process and venue" and certainly not to jurisdiction over the subject matter.

In the *Union Glass* case,[38] the jurisdiction of the SEC over the subject matter or the cause of action was not in dispute. The only question was with respect to the joinder of Union Glass as a party to the case. In the light of the above discussion and in accordance with the policy of the law to avoid multiplicity of suits, it is submitted that Union Glass should not have been dropped from the case before the SEC.

DMRC Enterprises[39] was another case for collection of rentals for the use of heavy equipment under a lease agreement. The fact that part of the consideration of the lease was to be used to purchase shares of stock in the respondent corporation did not make the petitioner lessor a stockholder. In fact, no share had been actually purchased by the petitioner lessor. The

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[37] *Supra*, note 18.

[38] *Ibid.*

[39] *Supra*, note 20.

jurisdiction was with the regular court. It is not for the SEC to pass upon a money claim as in this case.

Bañez[40] was another case for collection of sums of money under promissory notes which were executed and issued by the corporation. The notes matured and the amounts thereunder became due and payable. The money was not invested in subscription to shares of stock of the corporation but was to be returned or paid by the corporation upon the maturity of the promissory notes.

Respondent corporation attempted to bring in the alleged device or scheme in its omnibus motion which it filed after it had been declared in default and evidence had been adduced *ex-parte* against it. No mention was made of such scheme or device in the complaint. In line with the settled rule that jurisdiction is determined by plaintiff's pleading, and not by defendant's defenses or answer,[41] it was correctly held that the case fell under the jurisdiction of the regular courts and not with the SEC inasmuch as the case did not fall under Sec. 5 of P.D. 902-A.

Rivera v. Florendo[42] can be distinguished from *Abejo* in that the certificates of stock involved were not indorsed at the time they were presented for registration. In *Abejo*, the shares purchased by Telectronics were covered by certificates of stock duly indorsed. Hence, Tsuchiya could not be considered a stockholder of the restaurant corporation and her dispute with the corporate secretary and the corporation could not be considered an intra-corporate controversy under Sec. 5 of P.D. 902-A.

V. Conclusion and Recommendations

A. Conclusion

Not all cases involving stockholders or corporations concern intra-corporate controversies. The dispute must arise out of or in connection with the relationship between stockholders or between a stockholder and a corporation. A problem is likely to arise because of the ruling in *Philex Mining Corporation v. Reyes*[43] to the effect that an intra-corporate controversy is "one which arises between a stockholder and the corporation" and "there is no distinction, qualification, nor any exemption whatsoever."

While it is said that the issuance of a certificate of stock is not necessary to make one a stockholder,[44] the essential requisites for the transfer of shares of stock must be met before notice of such transfer to the corporation can be

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[40] *Supra*, note 23.

[41] *Supra*, note 6.

[42] *Supra*, note 25.

[43] *Supra*, note 16.

[44] *Supra*, note 9.

considered equivalent to registration.[45] In *Abejo v. De la Cruz*,[46] the corporation refused to register the transfer, but the certificates of stock were duly indorsed by the stockholder of record, who was the seller, in favor of the buyer who presented said certificates for registration with the authority to make the transfer. No such indorsement existed in *Rivera v. Florendo*[47] so much so that the Supreme Court ruled that there was no intra-corporate controversy inasmuch as the party presenting the certificates for registration was not yet a stockholder.

B. Recommendations

For proper appreciation and understanding by the adjudicative body, the complaint or petition must set forth in clear and unmistakable language the status of the parties as stockholders in relation to each other or the status or position of a party as stockholder in relation to the other as a corporation. From this it can be clearly discerned that such a relationship has given rise to a dispute and there will be no mistaking the fact that the controversy is intra-corporate. In such a situation, the jurisdiction of the Securities and Exchange Commission cannot be faulted or questioned.

The authority of the Securities and Exchange Commission should be made clear by legislation regarding joinder of parties and its power to award damages not merely as an incident to the cause of action. Where the Securities and Exchange Commission has jurisdiction over the subject matter as when there is a proper intra-corporate controversy between two parties, but there is a need to implead a third party in order that complete relief may be awarded, no obstacle should be allowed against enabling the SEC to resolve the dispute involving all the proper parties. In such a case, the problem involved in *Union Glass*[48] would have no reason to exist and the controversy between the parties can be expeditiously and economically resolved.

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[45] *Supra*, note 14.

[46] *Supra*, note 29.

[47] *Supra*, note 25.

[48] *Supra*, note 18.