**CORPORATION LAW**

**GRANDFATHER RULE**

**NATIONALITY OF CORPORATIONS**

A corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the “beneficial ownership” and “control” of the corporation. In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary. “Doubt” refers to various indicia that the “beneficial ownership” and “control” of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders. Even if at first glance the petitioners comply with the 60-40 Filipino to foreign equity ratio, doubt exists in the present case that gives rise to a reasonable suspicion that the Filipino shareholders do not actually have the requisite number of control and beneficial ownership in petitioners Narra, Tesoro, and McArthur. Hence, the Court is correct in using the Grandfather Rule in determining the nationality of the petitioners. **NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and McARTHUR MINING, INC., vs. REDMONT CONCOLIDATED MINES CORP., G.R. No. 195580, January 28, 2015, J. Velasco, Jr.**

The Grandfather Rule is a method to determine the nationality of the corporation by making reference to the nationality of the stockholders of the investor corporation. Based on a SEC Rule and DOJ Opinion, the Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt (i.e., in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in other joint venture corporation which is either 60-40% Filipino-alien or the 59% less Filipino). Stated differently, where the 60-40 Filipino- foreign equity ownership is not in doubt, the Grandfather Rule will not apply. **NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and MCARTHUR MINING, INC. vs. REDMONT CONSOLIDATED MINES CORP., G.R. No. 195580, April 21, 2014, J. Velasco Jr.**

**CORPORATE JURIDICAL PERSONALITY**

**DOCTRINE OF CORPORATE JURIDICAL PERSONALITY**

Stockholders cannot claim ownership over corporate properties by virtue of the Minutes of a Stockholder’s meeting which merely evidence a loan agreement between the stockholders and the corporation. As such, there interest over the properties are merely inchoate. **PHILIPPINE NATIONAL BANK vs. MERELO B. AZNAR et al., G.R. No. 171805, May 30, 2011, J. Leonardo-De Castro**

URC and Oilink had the same Board of Directors and Oilink was 100% owned by URC. The Court held that the doctrine of piercing the corporate veil has no application here because the Commissioner of Customs did not establish that Oilink had been set up to avoid the payment of taxes or duties, or for purposes that would defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues, perpetrate deception or otherwise circumvent the law. **COMMISSIONER OF CUSTOMS vs. OILINK INTERNATIONAL CORPORATION, G.R. No. 161759, July 2, 2014, J. Bersamin**

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors’ and officers’ acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith. **GIRLY G. ICO vs. SYSTEMS TECHNOLOGY INSTITUTE, INC., MONICO V. JACOB and PETER K. FERNANDEZ, G.R. No. 185100, July 9, 2014, J. Del Castillo**

The writ of sequestration issued against the assets of the corporation is not valid because the suit in the civil case was against the shareholder in the corporation and is not a suit against the latter. Thus, the failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would be, in effect, disregarding their distinct and separate personality without a hearing.

Furthermore, the sequestration order issued against the corporation is deemed automatically lifted due to the failure of the Republic to commence the proper judicial action or to implead them therein within the period under the Constitution. **PALM AVENUE HOLDING CO.,INC., and PALM AVENUE REALTY AND DEVELOPMENT CORPORATION vs. SANDIGANBAYAN 5TH Division, REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), G.R. No. 173082, August 6, 2014, J. Peralta**

OCWD and Subic Water are two separate and different entities. Subic Water clearly demonstrated that it was a separate corporate entity from OCWD. OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere shareholder, OCWD’s juridical personality cannot be equated nor confused with that of Subic Water. It is basic incorporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Under this corporate reality, Subic Water cannot be held liable for OCWD’s corporate obligations in the same manner that OCWD cannot be held liable for the obligations incurred by Subic Water as a separate entity. The corporate veil should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify a wrong, protect fraud, or perpetrate a deception. **OLONGAPO CITY vs. SUBIC WATER AND SEWERAGE CO., INC., G.R. No. 171626, August 6, 2014, J. Brion**

BF Corporation filed a collection complaint with the Regional Trial Court against Shangri-La and the members of its board of directors. A corporation’s representatives are generally not bound by the terms of the contract executed by the corporation. They are not personally liable for obligations and liabilities incurred on or in behalf of the corporation. **GERARDO LANUZA, JR. AND ANTONIO 0. OLBES vs. BF CORPORATION, SHANGRI- LA PROPERTIES, INC., ALFREDO C. RAMOS, RUFO B. COLAYCO, MAXIMO G. LICAUCO III, AND BENJAMIN C. RAMOS, G.R. No. 174938, October 01, 2014, J. Leonen**

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.

A director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.

In the present case, the respondents failed to show the existence of the first requisite. They did not specifically allege in their complaint that Rana and Burgos willfully and knowingly assented to the petitioner's patently unlawful act of forcing the respondents to sign the dubious employment contracts in exchange for their salaries. The respondents also failed to prove that Rana and Burgos had been guilty of gross negligence or bad faith in directing the affairs of the corporation. **FVR SKILLS AND SERVICES EXPONENTS, INC. (SKILLEX), FULGENCIO V. RANA and MONINA R. BURGOS** **vs.** **JOVERT SEV A, JOSUEL V. V ALENCERINA, JANET ALCAZAR, ANGELITO AMPARO, BENJAMIN ANAEN, JR., JOHN HILBERT BARBA, BONIFACIO BATANG, JR., VALERIANO BINGCO,JR., RONALD CASTRO, MARLON CONSORTE, ROLANDO CORNELIO, EDITO CULDORA, RUEL DUNCIL, MERVIN FLORES, LORD GALISIM, SOTERO GARCIA, JR., REY GONZALES, DANTE ISIP, RYAN ISMEN, JOEL JUNIO, CARLITO LATOJA, ZALDY MARRA, MICHAEL PANTANO, GLENN PILOTON, NORELDO QUIRANTE, ROEL RANCE, RENANTE ROSARIO and LEONARDA TANAEL**, **G.R. No. 200857, October 22, 2014, J. Arturo D. Brion**

**DOCTRINE OF PIERCING THE CORPORATE VEIL**

The corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical. In the case at bar, when petitioner Arco Pulp and Paper’s obligation to Lim became due and demandable, she not only issued an unfunded check but also contracted with a third party in an effort to shift petitioner Arco Pulp and Paper’s liability. She unjustifiably refused to honor petitioner corporation’s obligations to respondent. These acts clearly amount to bad faith. In this instance, the corporate veil may be pierced, and petitioner Santos may be held solidarily liable with petitioner Arco Pulp and Paper. **ARCO PULP AND PAPER CO., INC. and CANDIDA A. SANTOS vs. DAN T. LIM, doing business under the name and style of QUALITY PAPERS & PLASTIC PRODUCTS ENTERPRISES**, **G.R. No. 206806, June 25, 2014, J. Leonen**

When an officer owns almost all of the stocks of a corporation, it does not ipso facto warrant the application of the principle of piercing the corporate veil unless it is proven that the officer has complete dominion over the corporation. **WPM INTERNATIONAL TRADING, INC. and WARLITO P. MANLAPAZ vs. FE CORAZON LABAYEN**, **G.R. No. 182770, September 17, 2014, J. Brion**

The Court agrees with the petitioners that there is no need to pierce the corporate veil. Respondent failed to substantiate her claim that Mancy and Sons Enterprises, Inc. and Manuel and Jose Marie Villanueva are one and the same. She based her claim on the SSS form wherein Manuel Villanueva appeared as employer. However, this does not prove, in any way, that the corporation is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, warranting that its separate and distinct personality be set aside. **HACIENDA CATAYWA/MANUEL VILLANUEVA, et al. vs. ROSARIO LOREZO, G.R. No. 179640, March 18, 2015, J. Peralta**

**INCORPORATION AND ORGANZATION**

**BY-LAWS**

The relevant provisions of the articles of incorporation and the by-laws of Forest Hills governed the relations of the parties as far as the issues between them were concerned. Indeed, the articles of incorporation of Forest Hills defined its charter as a corporation and the contractual relationships between Forest Hills and the State, between its stockholders and the State, and between Forest Hills and its stockholder; hence, there could be no gainsaying that the contents of the articles of incorporation were binding not only on Forest Hills but also on its shareholders.On the other hand, the by-laws were the self-imposed rules resulting from the agreement between Forest Hills and its members to conduct the corporate business in a particular way. In that sense, the by-laws were the private “statutes” by which Forest Hills was regulated, and would function. The charter and the by-laws were thus the fundamental documents governing the conduct of Forest Hills’ corporate affairs; they established norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. Until repealed, the by-laws were a continuing rule for the government of Forest Hills and its officers, the proper function being to regulate the transaction of the incidental business of Forest Hills. The by-laws constituted a binding contract as between Forest Hills and its members, and as between the members themselves. Every stockholder governed by the by-laws was entitled to access them. The by-laws were self-imposed private laws binding on all members, directors and officers of Forest Hills. The prevailing rule is that the provisions of the articles of incorporation and the by-laws must be strictly complied with and applied to the letter. **FOREST HILLS GOLF AND COUNTRY CLUB, INC. vs. GARDPRO, INC.**, **G.R. No. 164686, October 22, 2014, J. Bersamin**

**BOARD OF DIRECTORS AND TRUSTEES**

**MEETINGS**

**The petitioner assails the validity of sale of shares of stocks to the respondents claiming that there was no compliance with the requirement of prior notice to the Board of Directors when the Board Resolution authorizing the sale to the respondent spouses were promulgated. The Supreme Court ruled that** **the general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law.** **However, the actions taken in such a meeting by the directors or trustees may be ratified expressly or impliedly. LOPEZ REALTY, INC. AND ASUNCION LOPEZ-GONZALES** **vs**. **SPOUSES REYNALDO TANJANGCO AND MARIA LUISA ARGUELLES-TANJANGCO**, **G.R. No. 154291, November 12, 2014, J. Reyes**

**STOCKHOLDERS AND MEMBERS**

**RIGHT TO INSPECT**

A criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer hook of a corporation under the second and fourth paragraphs of Section 74 of the Corporation Code can only he maintained against corporate officers or any other persons acting on behalf of such corporation. The complaint and the evidence Quiambao and Sumbilla submitted during preliminary investigation do not establish that Quiambao and Pilapil were acting on behalf of STRADEC. Violations of Section 74 contemplates a situation wherein a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation. Thus, the dismissal is valid. **ADERITO Z. YUJUICO AND BONIFACIO C. SUMBILLA vs. CEZAR T. QUIAMBAO AND ERIC C. PILAPIL, G.R. No. 180416, June 02, 2014, J. Perez**

**DERIVATIVE SUIT**

A derivative suit cannot prosper without first complying with the legal requisites for its institution. Thus, a complaint which contained no allegation whatsoever of any effort to avail of intra-corporate remedies allows the court to dismiss it, even motu proprio. Indeed, even if petitioners thought it was futile to exhaust intra-corporate remedies, they should have stated the same in the Complaint and specified the reasons for such opinion. The requirement of this allegation in the Complaint is not a useless formality which may be disregarded at will. **NESTOR CHING and ANDREW WELLINGTON vs. SUBIC BAY GOLF AND COUNTRY CLUB, INC., HU HO HSIU LIEN alias SUSAN HU, HU TSUNG CHIEH alias JACK HU, HU TSUNG HUI, HU TSUNG TZU and REYNALD R. SUAREZ**, **G.R. No. 174353, September 10, 2014, J.** **Leonardo-De Castro**

Derivative Suit: The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection.

Management committees: Management committees and receivers are appointed when the corporation is in imminent danger of (1) dissipation, loss, wastage or destruction of assets or other properties; and (2) paralysation of its business operations that may be prejudicial to' the interest of the minority stockholders, parties-litigants, or the general public." Applicants for the appointment of a receiver or management committee need to establish the confluence of these two requisites. This is because appointed receivers and management committees will immediately take over the management of the corporation and will have the management powers specified in law.

Jurisdiction to appoint receiver: The Court of Appeals has no power to appoint a receiver or management committee. The Regional Trial Court has original and exclusive jurisdiction to hear and decide intra-corporate controversies,including incidents of such controversies. These incidents include applications for the appointment of receivers or management committees. **ALFREDO L. VILLAMOR, JR.** **vs**. **JOHN S. UMALE, IN SUBSTITUTION OF HERNANDO F. BALMORES, G.R. No. 172843, September 24, 2014, J. Leonen**

**INTRA-CORPORATE DISPUTE**

Upon the enactment of Republic Act No. 8799, the jurisdiction of the SEC over intra-corporate controversies and the other cases enumerated in Section 5 of P.D. No. 902-A was transferred to the Regional Trial Court. The jurisdiction of the Sandiganbayan has been held not to extend even to a case involving a sequestered company notwithstanding that the majority of the members of the board of directors were PCGG nominees. **ROBERTO L. ABAD, MANUEL D. ANDAL, BENITO V. ARANETA, PHILIP G. BRODETT, ENRIQUE L. LOCSIN and ROBERTO V. SAN JOSE vs. PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION**, **G.R. No. 200620, March 18, 2015, J. Villarama, Jr.**

**DISSOLUTION AND LIQUIDATION**

ADC filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. To allow ADC to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation. **ALABANG DEVELOPMENT CORPORATION vs. ALABANG HILLS VILLAGE ASSOCIATION AND RAFAEL TINIO, G.R. No. 187456, June 02, 2014, J. Peralta**

**CORPORATE REHABILITATION**

PALI filed petition for rehabilitation due to impossibility of meeting its debts and obligations. The issue is whether or not such dismissal of petition by the CA is valid. The court ruled that The validity of PALI’s rehabilitation was already raised as an issue by PWRDC and resolved with finality by the Court in its November 25, 2009 Decision in G.R. No. 180893 (consolidated with G.R. No. 178768). The Court sustained therein the CA’s affirmation of PALI’s Revised Rehabilitation Plan, including those terms which its creditors had found objectionable, namely, the 50% "haircut" reduction of the principal obligations and the condonation of accrued interests and penalty charges. **PUERTO AZUL LAND, INC. vs.** **PACIFIC WIDE REALTY DEVELOPMENT CORPORATION**, **G.R. No. 184000, September 17, 2014, J. Perlas- Bernabe**

Under Rule 3, Section 5 of the Rules of Procedure on Corporate Rehabilitation, the review of any order or decision of the rehabilitation court or on appeal therefrom shall be in accordance with the Rules of Court, unless otherwise provided. In the case at bar, TIDCORP’s Petition for Review sought to nullify the pari passu sharing scheme directed by the trial court and to grant preferential and special treatment to TIDCORP over other WGC creditors, such as RBC. This being the case, there is no visible objection to RBC’s participation in said case, as it stands to be injured or benefited by the outcome of TIDCORP’s Petition for Review – being both a secured and unsecured creditor of WGC. **ROBINSON'S BANK CORPORATION vs. HON. SAMUEL H. GAERLAN, et al.**, **G.R. No. 195289, September 24, 2014, J. Del Castillo**

A material financial commitment becomes significant in gauging the resolve, determination, earnestness and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the voluntary undertakings of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness and ability to contribute funds or property to guarantee the continued successful operation of the debtor corporation during the period of rehabilitation. In this case, the financial commitments presented by Basic Polyprinters were insufficient for the purpose of rehabilitation. Thus, its petition for corporate rehabilitation must necessarily fail. **PHILIPPINE BANK OF COMMUNICATIONS vs. BASIC POLYPRINTERS AND PACKAGING CORPORATION, G.R. No. 187581, October 20, 2014, J. Bersamin**

While the voice and participation of the creditors is crucial in the determination of the viability of the rehabilitation plan, as they stand to benefit or suffer in the implementation thereof, the interests of all stakeholders is the ultimate and prime consideration. **MARILYN VICTORIO-AQUINO vs. PACIFIC PLANS INC. and MAMARETO A. MARCELO, JR., G.R. No. 193108, December 10, 2014, J. Peralta**

It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets, and goals; and (c) speculative capital infusion or complete lack thereof for the execution of the business plan. In this case, not only has the petitioning debtor failed to show that it has formally began its operations which would warrant restoration, but also it has failed to show compliance with the key requirements under the Rules, the purpose of which are vital in determining the propriety of rehabilitation. Thus, for all the reasons hereinabove explained, the Court is constrained to rule in favor of BPI Family and hereby dismiss SMMCI’s Rehabilitation Petition. **BPI FAMILY SAVINGS BANKC, INC. vs. ST. MICHAEL MEDICAL CENTER, INC., G.R. No. 205469, March 25, 2015, J. Perlas-Bernabe**

**MERGER AND CONSOLIDATION**

Indubitably, it is clear that no merger took place between Bancommerce and TRB as the requirements and procedures for a merger were absent. A merger does not become effective upon the mere agreement of the constituent corporations. All the requirements specified in the law must be complied with in order for merger to take effect. Here, Bancommerce and TRB remained separate corporations with distinct corporate personalities. What happened is that TRB sold and Bancommerce purchased identified recorded assets of TRB in consideration of Bancommerce’s assumption of identified recorded liabilities of TRB including booked contingent accounts. There is no law that prohibits this kind of transaction especially when it is done openly and with appropriate government approval. **BANK OF COMMERCE vs. RADIO PHILIPPINES NETWORK, INC., ET. AL.**, **G.R. No. 195615, April 21, 2014, J. Abad**

**SECURITIES REGULATION CODE**

**PROXY SOLICITATION**

The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5 (c) of Presidential Decree No. 902-A

Indeed, the validation of proxies in this case relates to the determination of the existence of a quorum. Nonetheless, it is a quorum for the election of the directors, and, as such, which requires the presence – in person or by proxy – of the owners of the majority of the outstanding capital stock of Omico. Also, the fact that there was no actual voting did not make the election any less so, especially since Astra had never denied that an election of directors took place. **SECURITIES AND EXCHANGE COMMISSION**  **vs.** **THE HONORABLE COURT OF APPEALS, OMICO CORPORATION, EMILIO S. TENG AND TOMMY KIN HING TIA / ASTRA SECURITIES CORPORATION,  vs.**
**OMICO CORPORATION, EMILIO S. TENG AND TOMMY KIN HING TIA,** **G.R. No. 187702, October 22, 2014,** **CJ. Sereno**

**SECURITIES AND EXCHANGE COMMISSION**

The authority of the SEC and the manner by which it can issue cease and desist orders are provided in Section 64 of the SRC. The law is clear on the point that a cease and desist order may be issued by the SEC motu proprio, it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. It is beyond dispute that Primasa plans were not registered with the SEC. Primanila was then barred from selling and offering for sale the said plan product. A continued sale by the company would operate as fraud to its investors, and would cause grave or irreparable injury or prejudice to the investing public, grounds which could justify the issuance of a cease and desist order under Section 64 of the SRC. **PRIMANILA PLANS, INC., HEREIN REPRESENTED BY EDUARDO S. MADRID vs. SECURITIES AND EXCHANGE COMMISSION, G.R. No. 193791, August 6, 2014, J. Reyes**

As an administrative agency with both regulatory and adjudicatory functions, the SEC was given the authority to delegate some of its functions to, inter alia, its various operating departments, such as the SECCFD, the Enforcement and Investor Protection Department, and the Company Registration and Monitoring Department. In this case, the Court disagrees with the findings of both the SEC En Banc and the CA that the Revocation Order emanated from the SEC En Banc. Rather, such Order was merely issued by the SEC-CFD as one of the SEC’s operating departments. In other words, the Revocation Order is properly deemed as a decision issued by the SEC-CFD as one of the Operating Departments of the SEC, and accordingly, may be appealed to the SEC En Banc, as what Cosmos properly did in this case. Perforce, the SEC En Banc and the CA erred in deeming Cosmos’s appeal as a motion for reconsideration and ordering its dismissal on such ground. C**OSMOS BOTTLING CORPORATION vs.** **COMMISSION EN BANC of the SECURITIES AND EXCHANGE COMMISSION (SEC) and JUSTINA F. CALLANGAN, in her capacity as Director of the Corporation Finance Department of the SEC**, **G.R. No. 199028, November 12, 2014, J. Perlas- Bernabe**

**SPECIAL COMMERCIAL LAWS**

Section 2 of R.A. No. 1405, the Law on Secrecy of Bank Deposits, provides for exceptions when records of deposits may be disclosed. These are under any of the following instances: (a) upon written permission of the depositor, (b) in cases of impeachment, (c) upon order of a competent court in the case of bribery or dereliction of duty of public officials or, (d) when the money deposited or invested is the subject matter of the litigation, and (e) in cases of violation of the Anti-Money Laundering Act, the Anti-Money Laundering Council may inquire into a bank account upon order of any competent court. The Joint Motion to Approve Agreement was executed by BPI and TIDCORP only. There was no written consent given by Doña Adela or its representative that it is waiving the confidentiality of its bank deposits.It is clear therefore that Doña Adela is not bound by the said provision since it was without the express consent of Doña Adela who was not a party and signatory to the said agreement. **DOÑA ADELA EXPORT INTERNATIONAL, INC. vs. TRADE AND INVESTMENT DEVELOPMENT CORPORATION and the BANK OF THE PHILIPPINE ISLANDS G.R. No. 201931, February 11, 2015, J. Villarama, Jr.**

It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets, and goals; and (c) speculative capital infusion or complete lack thereof for the execution of the business plan. In this case, not only has the petitioning debtor failed to show that it has formally began its operations which would warrant restoration, but also it has failed to show compliance with the key requirements under the Rules, the purpose of which are vital in determining the propriety of rehabilitation. Thus, for all the reasons hereinabove explained, the Court is constrained to rule in favor of BPI Family and hereby dismiss SMMCI’s Rehabilitation Petition. **BPI FAMILY SAVINGS BANKC, INC. vs. ST. MICHAEL MEDICAL CENTER, INC. G.R. No. 205469, March 25, 2015, J. Perlas-Bernabe**

Plainly, with the subject credit agreement, the element of consent or agreement by the borrower is now completely lacking, which makes [PNB’s] unlawful act all the more reprehensible. Accordingly, [Spouses Silos] are correct in arguing that estoppels should not apply to them, for estoppels cannot be predicated on an illegal act. As between the parties to a contract, validity cannot be given to it by estoppels if it is prohibited by law or public policy. It appears that by its acts, PNB violated the Truth in Lending Act or Republic Act No. 3765 which was enacted to protect citizens from a lack of awareness of the true cost of credit to the use by using a full disclosure of such cost with a view of preventing the uninformed use of credit to the detriment of the national economy. **SPOUSES EDUARDO AND LYDIA SILOS vs. PHILIPPINE NATIONAL BANK, G.R. No. 181045, July 2, 2014, J. Del Castillo**

In the present case, however, nothing in the documents presented by Calinico would arouse the suspicion of PAB to prompt a more extensive inquiry. When the Ilogon spouses applied for a loan, they presented as collateral a parcel of land evidenced by an OCT issued by the Office of the Register of Deeds… and registered in the name of Calinico. This document did not contain any inscription or annotation indicating that Contreras was the owner or that he has any interest in the subject land. In fact, he admitted that there was no encumbrance annotated on Calinico’s title at the time of the latter’s loan application. Any private arrangement between Calinico and him regarding the proceeds of the loan was not the concern of PAB, as it was not a privy to this agreement. If Calinico violated the terms of his agreement with Contreras on the turn-over of the proceeds of the loan, then the latter's proper recourse was to file the appropriate criminal action in court. **PHILIPPINE AMANAH BANK (NOW AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES, ALSO KNOWN AS ISLAMIC BANK) vs. EVANGELISTA CONTRERAS, G.R. No. 173168, September 29, 2014, J. Brion**

A material financial commitment becomes significant in gauging the resolve, determination, earnestness and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the voluntary undertakings of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness and ability to contribute funds or property to guarantee the continued successful operation of the debtor corporation during the period of rehabilitation. In this case, the financial commitments presented by Basic Polyprinters were insufficient for the purpose of rehabilitation. Thus, its petition for corporate rehabilitation must necessarily fail. **PHILIPPINE BANK OF COMMUNICATIONS vs. BASIC POLYPRINTERS AND PACKAGING CORPORATION, G.R. No. 187581, October 20, 2014, J. Bersamin**

**INTELLECTUAL PROPERTY LAW**

**COPYRIGHT INFRINGEMENT**

The must­carry rule mandates that the local television (TV) broadcast signals of an authorized TV broadcast station, such as the GMA Network, Inc., should be carried in full by the cable antenna television (CATV) operator, without alteration or deletion. In this case, the Central CATV, Inc. was found not to have violated the must-carry rule when it solicited and showed advertisements in its cable television (CATV) system. Such solicitation and showing of advertisements did not constitute an infringement of the “television and broadcast markets” under Section 2 of E.O. No. 205. **GMA NETWORK, INC. vs. CENTRAL CATV, INC., G.R. No. 176694, July 18, 2014, J. Brion**

**UNFAIR COMPETITION**

Section 168 of Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines” (IP Code), provides for the rules and regulations on unfair competition. Section 168.2 proceeds to the core of the provision, describing forthwith who may be found guilty of and subject to an action of unfair competition — that is, “any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result x x x.” In this case, the Court finds the element of fraud to be wanting; hence, there can be no unfair competition. **SHANG PROPERTIES REALTY CORPORATION (formerly THE SHANG GRAND TOWER CORPORATION) and SHANG PROPERTIES, INC. (formerly EDSA PROPERTIES HOLDINGS, INC.) vs. ST. FRANCIS DEVELOPMENT CORPORATION, G.R. No. 190706, July 21, 2014, J. Perlas-Bernabe**

Unfair competition is defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. This takes place where the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor. Here, it has been established that Co conspired with the Laus in the sale/distribution of counterfeit Greenstone products to the public, which were even packaged in bottles identical to that of the original, thereby giving rise to the presumption of fraudulent intent. In light of the foregoing definition, it is thus clear that Co, together with the Laus, committed unfair competition, and should, consequently, be held liable therefor. Although liable for unfair competition, the Court deems it apt to clarify that Co was properly exculpated from the charge of trademark infringement considering that the registration of the trademark "Greenstone" – essential as it is in a trademark infringement case – was not proven to have existed during the time the acts complained of were committed. **ROBERTO CO** **vs.** **KENG HUAN JERRY YEUNG and EMMA YEUNG, G.R. No. 212705, September 10, 2014, J. Perlas-Bernabe**

**ACQUISITION OF OWNERSHIP OF MARK**

In trademark registration, while both competing marks refer to the word “KOLIN” written in upper case letters and in bold font, but one is italicized and colored black while the other is white in pantone red color background and there are differing features between the two, registration of the said mark could be granted. It is hornbook doctrine that emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics. The mere fact that one person has adopted and used a trademark on his goods would not, without more, prevent the adoption and use of the same trademark by others on unrelated articles of a different kind. **TAIWAN KOLIN CORPORATION, LTD. vs. KOLIN ELECTRONICS CO., INC., G.R. No. 209843, March 25, 2015, J. Velasco, Jr.**

**TRANSPORTATION LAW**

**VIGILANCE OVER GOODS**

The shipment received by the ATI from the vessel of COCSCO was found to have sustained loss and damages. An arrastre operator’s duty is to take good care of the goods and to turn them over to the party entitled to their possession. It must prove that the losses were not due to its negligence or to that of its employees. The Court held that ATI failed to discharge its burden of proof. ATI blamed COSCO but when the damages were discovered, the goods were already in ATI’s custody for two weeks. Witnesses also testified that the shipment was left in an open area exposed to the elements, thieves and vandals. **ASIAN TERMINALS, INC. vs. FIRST LEPANTO-TAISHO INSURANCE CORPORATION, G.R. No. 185964, June 16, 2014, J. Reyes**

**LIABILITY FOR ACTS OF OTHERS**

The operator of a bus company cannot renege on the obligation brought about by collision of vehicles by claiming that she is not the true owner of the bus. In case of collision of motor vehicles, the person whose name appears in the certificate of registration shall be considered the employer of the person driving the vehicle and shall be directly and primarily liable with the driver under the principle of vicarious liability. **MARIANO C. MENDOZA AND ELVIRA LIM** **vs.** **SPOUSES LEONORA J. GOMEZ AND GABRIEL V. GOMEZ, G.R. No. 160110, June 18, 2014, J. Perez**

**STIPULATION FOR LIMITATION OF LIABILITY**

Common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence. As the carrier of the subject shipment, HEUNG-A was bound to exercise extraordinary diligence in conveying the same and its slot charter agreement with DONGNAMA did not divest it of such characterization nor relieve it of any accountability for the shipment. However, the liability of HEUNG-A is limited to $500 per package or pallet because in case of the shipper’s failure to declare the value of the goods in the bill of lading, Section 4, paragraph 5 of the COGSA provides that neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package. **PHILAM INSURANCE COMPANY, INC. (now CHARTIS PHILIPPINES INSURANCE, INC.\*) vs. HEUNG-A SHIPPING CORPORATION and WALLEM PHILIPPINES SHIPPING, INC G.R. No. 1877l HEUNG-A SHIPPING CORPORATION and W ALLEM PHILIPPINES SHIPPING, INC.vs. PHILAM INSURANCE COMPANY, INC. (now CHARTIS PHILIPPINES INSURANCE, INC.), G.R. No. 187812, July 23, 2014, J. Reyes**

**DILIGENCE REQUIRED OF COMMON CARRIERS**

There is no dispute that the custody of the goods was never turned over to the consignee or his agents but was lost into the hands of unauthorized persons who secured possession thereof on the strength of falsified documents. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. In the present case, Nedlloyd failed to prove that they did exercise the degree of diligence required by law over the goods they transported, it failed to adduce sufficient evidence they exercised extraordinary care to prevent unauthorized withdrawal of the shipments. **NEDLLOYD LIJNEN B.V. ROTTERDAM AND THE EAST ASIATIC CO., LTD. vs. GLOW LAKS ENTERPRISES, LTD., G.R. No. 156330, November 19, 2014, J. Perez**

**LIABILITIES OF COMMON CARRIERS**

Under the Code of Commerce, if the goods are delivered but arrived at the destination in damaged condition, the remedies to be pursued by the consignee depend on the extent of damage on the goods. If the effect of damage on the goods consisted merely of diminution in value, the carrier is bound to pay only the difference between its price on that day and its depreciated value as provided under Article 364. Malayan, as the insurer of PASAR, neither stated nor proved that the goods are rendered useless or unfit for the purpose intended by PASAR due to contamination with seawater. Hence, there is no basis for the goods’ rejection under Article 365 of the Code of Commerce. Clearly, it is erroneous for Malayan to reimburse PASAR as though the latter suffered from total loss of goods in the absence of proof that PASAR sustained such kind of loss. **LOADSTAR SHIPPING COMPANY, INCORPORATED and LOADSTAR INTERNATIONAL SHIPPING COMPANY, INCORPORATED vs. MALAYAN INSURANCE COMPANY, INCORPORATED, G.R. No. 185565, November 26, 2014, J. Reyes**

**BILL OF LADING**

Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible. In this case, the fault is attributable to ESLI. **EASTERN SHIPPING LINES, INC. vs.** **BPI/MS INSURANCE CORP., & MITSUI SUMITOMO INSURANCE CO., LTD.**, **G.R. No. 182864, January 12, 2015, J. Perez**

**NEGOTIABLE INSTRUMENTS LAW**

**HOLDER IN DUE COURSE**

Arguing that Gutierrez is not a holder in due course, Patrimonio filed the instant petition praying that the ruling of the CA, ordering him to pay Gutierrez, be reversed. Ruling in favor of the Patrimonio the SC ruled that Section 52(c) of the NIL states that a holder in due course is one who takes the instrument "in good faith and for value." Acquisition in good faith means taking without knowledge or notice of equities of any sort which could be set up against a prior holder of the instrument. It means that he does not have any knowledge of fact which would render it dishonest for him to take a negotiable paper. The absence of the defense, when the instrument was taken, is the essential element of good faith. In this case, after having been found out that the blanks were not filled up in accordance with the authority the Patrimonio gave, Gutierrez has no right to enforce payment against Patrimonio, thus, the latter cannot be obliged to pay the face value of the check. **ALVIN PATRIMONIO vs. NAPOLEON GUTIERREZ AND OCTAVIO MARASIGAN III, G.R. No. 187769, June 4, 2014, J. Brion**

**MATERIAL ALTERATION**

When the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client’s account only for bona fide disbursements he had made. If the drawee did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the drawer’s account which it was expected to treat with utmost fidelity. The drawee, however, still has recourse to recover its loss. The collecting banks are ultimately liable for the amount of the materially altered check. It cannot further pass the liability back to Cesar and Lolita absent any showing in the negligence on the part of Cesar and Lolita which substantially contributed to the loss from alteration. **CESAR V. AREZA and LOLITA B. AREZA vs.** **EXPRESS SAVINGS BANK, INC. and MICHAEL POTENCIANO, G.R. No. 176697, September 10, 2014, J. PEREZ**

**CHECKS**

Clearing should not be confused with acceptance. Manager’s and cashier’s checks are still the subject of clearing to ensure that the same have not been materially altered or otherwise completely counterfeited. However, manager’s and cashier’s checks are pre-accepted by the mere issuance thereof by the bank, which is both its drawer and drawee. Thus, while manager’s and cashier’s checks are still subject to clearing, they cannot be countermanded for being drawn against a closed account, for being drawn against insufficient funds, or for similar reasons such as a condition not appearing on the face of the check. Long standing and accepted banking practices do not countenance the countermanding of manager’s and cashier’s checks on the basis of a mere allegation of failure of the payee to comply with its obligations towards the purchaser. On the contrary, the accepted banking practice is that such checks are as good as cash. However, in view of the peculiar circumstances of the case at bench, We are constrained to set aside the foregoing concepts and principles in favor of the exercise of the right to rescind a contract upon the failure of consideration thereof. **METROPOLITAN BANK AND TRUST COMPANY** **vs**. **WILFRED N. CHIOK BANK OF THE PHILIPPINE ISLANDS** **vs.** **WILFRED N. CHIOK GLOBAL BUSINESS BANK, INC.** **vs.** **WILFRED N. CHIOK G.R. No. 172652, G.R. No. 175302, G.R. No. 175394**, **November 26, 2014, J.** **LEONARDO-DE CASTRO**

**INSURANCE LAW**

**PRESCRIPTION OF ACTION**

The prescriptive period for the insured’s action for indemnity should be reckoned from the "final rejection" of the claim. "Final rejection" simply means denial by the insurer of the claims of the insured and not the rejection or denial by the insurer of the insured’s motion or request for reconsideration. A perusal of the letter dated April 26, 1990 shows that the GSIS denied Hollero Construction’s indemnity claims. The same conclusion obtains for the letter dated June 21, 1990 denying Hollero Construction’s indemnity claim. Holler's causes of action for indemnity respectively accrued from its receipt of the letters dated April 26, 1990 and June 21, 1990, or the date the GSIS rejected its claims in the first instance. Consequently, given that it allowed more than twelve (12) months to lapse before filing the necessary complaint before the RTC on September 27, 1991, its causes of action had already prescribed. **H.H. HOLLERO CONSTRUCTION, INC. vs. GOVERNMENT SERVICE INSURANCE SYSTEM and POOL OF MACHINERY INSURERS, G.R. No. 152334, September 24, 2014, J. Perlas-Bernabe**