

# BusinessMirror Perspective

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## RACE RELATIONS

### Philippine Racing Club minority shareholders in a David vs Goliath battle



PHOTO BY NONIE REYES

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FOR several weeks now, the Philippine Racing Club Inc. (PRCI), one of the country's oldest and most prestigious racing clubs in the country, has been at the center of a raging corporate boardroom battle, pitting its minority shareholders against the company's Malaysian-controlled board of directors.

At the heart of the controversy is a prime piece of real estate: PRCI's historic 22-hectare Sta. Ana race track in the old Makati, which introduced thoroughbred horse racing to the Philippines in 1937. PRCI's majority shareholders, led by representatives of the Kuala Lumpur-based Magnum Holdings Bhd, however, want to swap the property for shares in a newly acquired subsidiary, JTH Davies Holdings, Inc.

JTH Davies, a distributor of agrochemicals and building materials, was formerly owned by Jardine Matheson BV. According to its own disclosure to the Philippine Stock Exchange, the holding firm recorded a turnaround in its finances only in 2006.

On July 22, PRCI's minority shareholders were able to secure a temporary restraining order from the Makati Regional Trial Court against the Malaysian-led board's planned property-for-shares swap.

In an interview with BUSINESSMIRROR, lawyer Brigido J. Dulay, PRCI director and spokesman for the minority shareholders, explains their position in what has been billed as a David vs. Goliath boardroom battle:

#### Can you elaborate on this ongoing feud within the PRCI board?

The minority shareholders of the Philippine Racing Club Inc. (PRCI) are opposing the planned swap of the Sta. Ana race track the company owns, for shares of stock of JTH Davies Holding, Inc. Property assessors have valued the race track at around P12 billion. JTH Davies Holdings' authorized capital stock is only P25 million. It's a case of the ant swallowing the elephant.

#### How did this deal happen?

The Malaysian-led majority shareholders of PRCI and the management of the corporation tried to pass a resolution in the PRCI board for the property-for-shares swap. Prior to that, we repeatedly requested the full disclosure of the details and documentation on the proposed exchange of the Makati property for JTH Davies shares but they refused and denied our requests. The corporation's president and CEO merely sought the approval by the board of a pro-forma resolution on the proposed swap with JTH. They obviously wanted to close the deal in a very hasty manner. We were never given any document or information on the proposed exchange to enable us to make an educated decision necessary for a transaction of this magnitude.

#### So you believe the deal is less than equitable?

They want to swap the Sta. Ana race track property worth around P12 billion for shares in a company worth P25 million. Even an elementary student is going to question the math of this transaction. We want to point out that the acquisition of JTH Davies, a holding company whose business is totally unrelated to PRCI's primary purpose, not only places a significant financial burden on the corporation but also unnecessarily depletes its corporate assets. The swap is not only lopsided and unconscionable, it borders on the immoral, in that it is totally biased in favor of JTH. The swap deprives PRCI of a valuable earning asset and is highly detrimental and prejudicial to PRCI and its shareholders.

#### What do you know about JTH Davies?

JTH Davies Holdings, Inc. is the former Jardine Davies, Inc. It reportedly incurred massive losses in 2005 and during the first half of 2006. Why swap a prime piece of real estate for shares of a company that is less than blue chip and that is not even a real estate company but a holding company? Why the need to transfer the company's prime asset to JTH Davies when PRCI is perfectly capable of doing what the majority shareholders want JTH Davies to accomplish, which is to develop

the property? That is why as early as 1995, PRCI even amended its Articles of Incorporation precisely to enable it to exploit and develop its Sta. Ana race track property on its own. So it is obvious that this proposed exchange is a "freeze-out" or a ploy to eliminate the minority shareholders of PRCI and to gain absolute control and monopoly of PRCI's prime asset.

#### What is the implication of this proposed property-for-asset swap to PRCI?

Located in the heart of Makati City, the Sta. Ana race track is PRCI's prime asset and is the sole and exclusive location on which it conducts its business of a race course. This means the corporation would then be unable to fulfill its primary purpose, "to carry on the business of a race course," as the only operational race course of the corporation is situated at its Makati property. At the very least, the corporation's control over the race course essential in running its principal business would be diminished, if not completely lost. We in the minority strongly maintain that the exchange deal is not only highly irregular but also extremely prejudicial to the interests of PRCI and its minority shareholders.

#### You mentioned that the minority shareholders were not given sufficient information and documents on the proposed transaction?

Yes. In fact they [majority shareholders] haven't disclosed a thing about the plan at all. I am a director of the company and yet I had no idea of what was happening. Just like what happened at the meeting of the PRCI board in September last year...a pro-forma resolution for the approval of the acquisition of JTH Davies was suddenly presented to the Board. It was not even on the agenda. It was only when the "Other Matters" on the agenda was tackled that I first learned about it and the Board was already being asked to pass a pro-forma board resolution approving the deal. Naturally, I objected.

You would think the approval of a resolution on such a significant matter should merit more than "Other

Matters" on the agenda. It was presented to the board for the first and only time during that meeting, which, incidentally, was not even called for that purpose. I was not provided any information nor documents related to the resolution, much less on the proposed acquisition and negotiated sale. I believe these are all essential to enable me, as a member of the board, to make an informed and enlightened decision on the proposal.

#### So most of the board members approved the resolution...

To my extreme disappointment, they did. They were very insistent about the immediate approval of the proposed resolution because the deadline within which to close the deal with JTH was due to expire the very next day. If that was the case, why did they not disclose it to the Board earlier so we could have had time to study and assess the proposed transaction? Obviously, there were ongoing negotiations between PRCI and JTH even before the scheduled meeting because you cannot transact deals of such kind in just one day.

The approval of the deal with undue haste and deliberate speed despite the complete absence of any disclosure and information is not only anomalous and fraudulent but again, I reiterate, extremely prejudicial and inimical to the interest of the corporation. And now they are doing the same thing with this property swap with JTH Davies.

#### Still, you were insistent in asking them to furnish you the documents pertaining to the company's acquisition of JTH Davies after the board meeting?

Yes. After the board approved the deal and prior to the special stockholders' meeting called for the purpose of approving the company's acquisition of JTH Davies, we requested for copies of pertinent documents relating to the acquisition. Instead of providing us with the requested documents, we were merely furnished with the corporation's pro-forma Definitive Information Statement filed with the SEC [Securities and Exchange Commission]. In January this year,

we again requested for a copy of all the records, documents, contracts, and agreements and other related materials and correspondences relative to the acquisition of JTH Davies. Again, they denied our request. Where is the transparency there? Our rights as shareholders have been completely ignored. All that we in the minority are after is full transparency and disclosure from the majority shareholders. Is that too much to ask?

#### As a director, how then would you describe the current state of affairs in PRCI?

It is a family corporation masquerading as a publicly-listed company. We have a Manual of Corporate Governance which the SEC requires of all publicly-listed companies after the Enron scandal in the States, but it is honored more in the breach than its observance. There is no real corporate governance. It's all lip service. That's why we believe the SEC should come up with measures to strictly monitor and enforce the compliance of publicly listed companies with the Code of Corporate Governance. Otherwise, it's not even worth the paper it's written on and we might as well do away with it.

#### According to a recent report by the Philippine Stock Exchange, PRCI is one of those companies which has exceeded the constitutional limit on foreign ownership. So this means the PRCI is majority-owned by its Malaysian investors?

Citing the report of the Philippine Dealing System Holdings Corp., the PSE said the PRCI has breached the constitutional cap since 2005 with some 569,684 shares in unregistered foreign holdings. Obviously, this is another manifestation of the lack of transparency in PRCI.

We want the PRCI management to categorically say whether or not they had a hand in perpetrating the breach of the constitutional limit on foreign ownership. We hope they do not brush aside this particular call for transparency as they did in the swap deal. They should shed light on the concern that the illegal entry of foreign investors into the racing

club is related to the purchase of the group of the shares in JTH Davies and the subsequent attempt to swap the Sta. Ana racetrack with shares of JTH.

#### The reality is, local companies need foreign money to survive and compete with other companies in the real world. Are you objecting to the entry of the Malaysian investors in PRCI?

We do not object to the entry of investments in the country. Still, it must be done within the framework of existing laws and the constitution. The Malaysian-led majority faction of PRCI must show that the law and the Philippine Constitution have not been violated by any of their actions.

#### What is the current status of your case against the PRCI board, and what are the next steps of the minority shareholders?

The Makati RTC earlier slapped a temporary restraining order on the Malaysian-led group stopping them from swapping PRCI's P12-billion racetrack in Sta. Ana with shares in the P25-million JTH Davies. The majority has appealed this to the Court of Appeals.

#### Do you see any chance of resolving this conflict with the majority shareholders in the near future?

We will continue to oppose moves by the Malaysian-led group to transfer the ownership of the Sta. Ana racetrack to JTH Davies through their proposed swap. We may be the minority but we still have rights and we deserve to be heard. All we want is full and complete transparency and disclosure. The Philippine Code of Corporate Governance mandates such transparency and disclosure for the protection of the investing public and shareholders, whether majority or minority. The government, through the SEC, must ensure that provisions of the Code are adhered to by all listed companies doing business in the Philippines. It should step in quickly to prevent the mockery of the Constitution and its own Code of Corporate Governance. Otherwise, why bother putting it in place at all?