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OPINION

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Will the SC allow the theft of investments in PRCI?

WHAT'S THE MATTER WITH THE THIRD DIVISION of the Supreme Court? It is supposed to assure the correct administration of justice, but is it instead committing an injustice? It recently issued a temporary restraining order on the enforcement of an injunction of the Makati Regional Trial Court, affirmed by the Court of Appeals, on a faction of the board of directors of the publicly listed Philippine Racing Club Inc.—which owns the Sta. Ana Racetrack—stopping it from going through with a stockholders' meeting on Wednesday to ratify a deal that would unjustly deprive the minority stockholders of their investments. The deal involves swapping the title to the P12-billion racetrack, the last remaining prime property in Makati, to a small shell company reportedly worth a measly P25 million.

Swap a P12-billion asset with a P25-million holding firm? Have you heard of a more stupid deal? It is not a stupid deal at all, from the point of view of the majority stockholders, because it would put the racetrack beyond the reach of the minority stockholders who would be left holding an empty bag. In other words, they would be able to get the 25-percent holdings of the minority for nothing, and there is nothing the latter can do about it.

Confused? I've written about this twice or thrice before but maybe I should give you a backgrounder so you will understand the case—a clear example of majority board members pulling a fast one on the minority through corporate manipulation.

PRCI owns and operates the Sta. Ana Racetrack in Makati. To date, the Sta. Ana Racetrack is the only operating racetrack of PRCI for its horse races.

PRCI is now controlled by two major groups: the Cua family which holds approximately 35 percent, and a Malaysian group which controls 40 percent. The remaining 25 percent is held by various other shareholders/investors with one board seat now held by lawyer Brigido Dulay.

Dulay has asked the board for documents on

AS I SEE IT



Neal H. Cruz

the development plans for the Sta. Ana property but the majority group, in violation of sound corporate practice, refuses to show him anything nor explain its actions. (Doesn't this remind you of the management of Meralco refusing to show documents to board member Winston Garcia?)

To isolate Dulay, the majority group came up with a scheme to squeeze out the minority board member and stockholders from interfering with their actions. This scheme involves the transfer of PRCI's Sta. Ana Racetrack to a shell company owned on paper by PRCI but totally controlled by the majority group.

The scheme was first put into action with the majority group coming up with a board resolution to purchase a shell company for a bloated price of P449 million, more or less, despite the fact that the usual price for a shell company at that time was only about P50 million.

Because they were the majority, the group was able to railroad the passage of the resolution, and PRCI subsequently bought a P25-million shell company named JTH Davies Holdings Inc. (JTH). The majority group then voted themselves as directors of JTH and Dulay was effectively barred from the JTH Board.

With the shell company in place, the majority group then moved to the second phase, which is to transfer PRCI's P12-billion Sta. Ana property to the P25-million JTH. Like an ant swallowing an elephant, the majority group in JTH wants to buy PRCI's P12-billion property for only P350 million, with JTH (and the majority group) thereafter monopolizing the development, sale and profit of the Sta. Ana property.

To effect the above transfer, the majority

group again railroaded a board resolution approving the transfer of PRCI's P12-billion property to JTH for only P350 million.

Considering that the minority stockholders will be left holding an empty bag and seeing their investments in PRCI's Sta. Ana property dwindle from P12 billion to P350 million, they filed a derivative suit and intra-corporate action against the majority group in the Makati RTC.

The RTC subsequently issued a TRO and an injunction against the majority directors from railroading the approval of the two board resolutions during a stockholders' meeting. On appeal, the TRO and injunction were upheld by the Court of Appeals. However, upon petition to the Supreme Court, the Third Division issued a TRO against the RTC and the CA.

With the SC TRO, the majority group is now fast-tracking the stockholders' meeting to be held day after tomorrow so that they can railroad the approval of the resolution by themselves as majority stockholders of PRCI.

The minority has filed a motion for reconsideration with the SC. If the SC does not lift its TRO, it would be a party to the theft of the investments of the minority stockholders in PRCI. The PRCI is listed in the stock market and there are many small investors who would lose their life savings if the deal is not stopped. Will the honorable justices have the heart to allow it to happen?

As a further backgrounder, the Malaysian group of PRCI is led by the controversial Malay-Thai businessman Surin Upatkoon, the same businessman now being investigated by Bangkok authorities amid allegations he maneuvered the controversial takeover of Thailand's Shin Corporation by the giant Singaporean firm Temasek Holdings. The same modus operandi is now being used in the acquisition of PRCI.

The Filipino group, on the other hand, is led by Santiago Cua Sr. alias Cua Sing Huan, who was last seen with the collapsed Westmont Bank. With his group in the PRCI board are his sons Santiago Cua Jr. and Solomon Cua, and defeated presidential candidate Renato de Villa.