Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **August 10, 2022** *which reads as follows:*

"**G.R. No. 256470 [Formerly UDK-16880) (*Kazuo Okada vs. Tiger Resort, Leisure & Entertainment, Inc., et al.*).** – This resolves the following: (i) Extremely Urgent Motion for Reconsideration (of the *Status Quo Ante* Order dated 27 April 2022)[1] dated 02 May 2022 (SQAO MR); (ii) Urgent Omnibus Motion [Supplemental Motion for Reconsideration, Lift the Status Quo Ante Order and Show Cause][2] dated 13 May 2022 (Supplemental SQAO MR); (iii) Extremely Urgent Manifestation with Motion for Clarification *Ad Cautelam*[3] dated 09 June 2022 (Motion for Clarification), all filed by respondent Tiger Resort, Leisure & Entertainment, Inc. (TRLEI), (iv) Motion for Reconsideration (of the *Status Quo Ante Order* dated 27 April 2022)[4] dated 10 June 2022 (Sugiyama SQAO MR) of respondent Kenji Sugiyama (Sugiyama), and (v) Extremely Urgent Ex-Parte Manifestation with Motion to Resolve[5] dated 08 August 2022 filed by TRLEI.

The aforesaid motions seek reconsideration and clarification of the *Status Quo Ante* Order[6] (SQAO) issued by this Court in the Resolution dated 27 April 2022 directing the parties to observe the *status quo* prevailing prior to petitioner Kazuo Okada's (Kazuo) removal as stockholder, director, chairperson, and Chief Executive Officer (CEO) of TRLEI in 2017.

Antecedents

On 29 August 2018, Kazuo filed a Complaint[7] for Declaration of Nullity

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1 *Rollo*, Vol. V, pp. 1962-2001.
2 Id. at 2400-2417.
3 *Rollo*, Vol. VI, pp. 2491-2515.
4 *Rollo*, Vol. IX, pp. 3834-3922.
5 Temporary *rollo*, *unpaginated*.
6 *Rollo*, Vol. IV, p. 1946.
7 *Rollo*, Vol. II, pp. 833-856.

of Removal as a Stockholder, Director, and Officer and Reinstatement as a Stockholder, Director and Officer (Complaint) before the Regional Trial Court of Parañaque City (RTC) against TRLEI and its directors, Manuel M. Lazaro (Lazaro), Sugiyama, Steven Wolstenholme, Antonio O. Cojuangco (Cojuangco), Reynaldo G. David (David), Yoshinao Negishi, and Tiger Resort Asia Limited (TRAL) and its directors, Kenshi Asano (Asano) and Takako Okada (Takako).[8] Kazuo prayed that judgment be rendered: (1) declaring as null and void *ab initio* his removal as stockholder, director, chairperson, and CEO of TRLEI; and (2) reinstating him as stockholder, director, chairperson, and CEO of TRLEI.

In support of his Complaint, Kazuo alleged that he is an indirect owner of TRLEI by virtue of his shareholding in Okada Holdings Limited (OHL). OHL is a Hong Kong company which was founded and incorporated by Kazuo in 2010 to hold all of the shares of Universal Entertainment Corporation (UEC)[9] held by Kazuo's family. Originally 100% owned by Kazuo when it was founded in 1969, UEC is now a publicly-listed company registered in the Tokyo Stock Exchange with 67.9% of its shares owned by OHL. UEC owns 100% of the shareholdings of TRAL, a Hongkong corporation which in turn owns 99.99% of TRLEI. The ownership structure of OHL's shareholdings is as follows: Kazuo owns 46.40%; his children, Tomohiro Okada (Tomohiro) and Hiromi Okada (Hiromi), respectively hold 43.46% and 9.78%; and his wife, Takako Okada, holds 0.36% of OHL shares.[10]

As the registered owner of 46.40% of OHL, Kazuo averred that he has undisputed interests of 31.51% in UEC, 34.41% in TRAL, and 34.41% in TRLEI. Flowing from his ownership and control of OHL, Kazuo served as the sole director of TRAL, and consequently, TRLEI's director, chairperson, and CEO, holding one share in TRLEI as reflected in its General Information Sheet[11] (GIS) as of May 2017.[12]

Dispute arose when sometime in May 2017, Kazuo's son, Tomohiro, took control of the 9.78% OHL shares under the name of Kazuo's daughter, Hiromi. Combining this with his 43.4% shareholding, this resulted to Tomohiro's control over OHL, or 53.24% of OHL. Hiromi allegedly challenged the validity of the Share Management and Disposal Trust Agreement[13] (Trust Agreement) executed in favor of Tomohiro on the ground of fraud.[14]

The shift in control over OHL cascaded to its subsidiaries, which led to the ouster of Kazuo as chairperson and director of UEC, as director of TRAL,

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[8] The case was docketed as Civil Case No. 2018-226.
[9] Formerly Universal Lease Co. Ltd., which changed its name to Aruze Corporation in 1998, and finally to UEC in 2009.
[10] *Rollo*, Vol. I, p. 62.
[11] *Rollo*, Vol. II, pp. 868-877.
[12] *Rollo*, Vol. I, p. 66.
[13] *Rollo*, Vol II, pp. 956-961.
[14] Id. at 945-949.

and ultimately as stockholder, director, chairperson, and CEO of TRLEI.

On 15 June 2017, Takako and Asano, purportedly on behalf of TRAL, informed Kazuo that he was no longer a registered stockholder of TRLEI pursuant to the revocation of the Deed of Assignment with Declaration of Trust between him and TRAL, and enjoined him from attending any meetings of TRLEI's stockholders and directors.[15] Kazuo was then removed as CEO and chairperson of TRLEI, and was even barred from entering Okada Manila.

On 09 August 2017, Kazuo's daughter, Hiromi, allegedly executed a Power of Attorney[16] authorizing Kazuo to exercise the latter's rights as shareholder of OHL to appoint any person as director and/or remove or replace any existing director of OHL. Thereafter, Kazuo and Hiromi purportedly conducted the Extraordinary General Meeting of OHL[17] on 08 September 2017, where the former's removal as director of OHL was declared as invalid. Kazuo then informed TRLEI that he regained the majority ownership of OHL and he would re-assume control of OHL and its subsidiaries, UEC, TRAL, and TRLEI.[18] However, TRLEI did not recognize Kazuo's claim and the latter was refused entry into Okada Manila,[19] which is owned and operated by TRLEI, notwithstanding his investment thereto of more than Two Billion U.S. Dollars ($2,000,000,000.00).

Summons were duly served to TRLEI and its directors, except for Sugiyama and Wolstenholmes. On the other hand, the summons to TRAL and its directors were returned unserved.[20]

In their answer,[21] TRLEI, Cojuangco, David, and Sugiyama argued, among others, that the Complaint is an election contest which has already prescribed. Lazaro essentially offered the same defense.[22] Kazuo countered that his Complaint was not an election contest the reglementary period for filing of because his unlawful ouster as a stockholder of TRLEI was integral to his subsequent void removal as a director, chairperson, and CEO thereof.

Through an Order[23] dated 16 November 2018, the RTC dismissed the Complaint on the ground of prescription.

Citing A.M. No. 01-2-04-SC or the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules), the RTC found that the Complaint

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[15] Id. at 969.
[16] Id. at 993-994.
[17] Id. at 1035-1039.
[18] Letter dated 03 October 2017 (Id. at 1040-1045).
[19] Letter of Protest dated 10 July 2017 (Id. at 971-972).
[20] Return of Service and Sheriff's Return dated 11 September 2018 (Id. at 1180-1182). The Sheriff's Return narrated that the summons for TRAL and its directors were served at Okada Manila, Parañaque City but the same were not received at the said address upon instruction of the legal department of TRLEI.
[21] Answer *Ad Cautelam* (with Compulsory Counterclaims) *with* Motion to Declare the Instant Case a Nuisance and Harassment Suit dated 17 September 2018 (*Rollo*, Vol. III, pp. 1211-1289).
[22] Answer (*Ad Cautelam*) dated 15 September 2018 (Id. at 1183-1210).
[23] Id. at 1434-1439. Penned by Judge Noemi J. Balitan.

was an election contest, which should have been filed within fifteen (15) days from Kazuo's unlawful removal as stockholder, director, chairperson, and CEO of TRLEI on 16 June 2017, or until 01 July 2017. Since the Complaint was filed on 29 August 2018, the action has prescribed.

Kazuo appealed before the Court of Appeals (CA). However, the CA denied the appeal in its Decision[24] dated 24 September 2020. The CA likewise denied Kazuo's motion for reconsideration in its Resolution[25] dated 19 February 2021.

Aggrieved, Kazuo filed a Petition for Review on *Certiorari*[26] (Petition) before this Court on 08 April 2021.[27] He maintains that the Complaint is not an election contest as he was assailing his illegal removal as a stockholder of TRLEI, which removal ultimately stemmed from the dispute over the control of OHL. According to Kazuo, there are two (2) pending cases[28] before the Chiba District Court in Japan (Chiba cases) where he sought to be declared as the true legal and/or beneficial owner of the shares registered under the names of his children in OHL, which then translates to his beneficial ownership of 67.88% of TRLEI. He avers that the OHL shares held by his children were registered in their names only for convenience and were neither intended to be gifts nor do his children have the means to personally acquire the same.

Kazuo likewise alleges mismanagement on the part of TRLEI's directors, claiming that, from the time they took over his functions in TRLEI in 2017, the corporation has continued to incur losses with increasing capital deficit and non-current liabilities.[29] TRLEI is also allegedly planning to transfer the corporation's Casino Business Permit to Okada Manila International, Inc. (OMI).[30] UEC purportedly intends to list OMI as a public company in the United States through the use of a Special Purpose Acquisition Company. Kazuo stresses that the transfer would cause TRLEI to lose 90% of its gross revenues and lead to its bankruptcy, rendering recovery of Kazuo's investments highly doubtful, if not impossible. According to Kazuo, likewise in danger of being waived or released is the corporation's leasehold rights over the land on which Okada Manila is situated.

Thus, to protect his beneficial ownership in TRLEI, Kazuo prayed for the issuance of an *ex parte* Temporary Mandatory Injunction and/or Temporary Restraining Order (TRO) or, in the alternative, an SQAO, to restore him as stockholder, director, chairperson, and/or CEO of TRLEI and to restrain the transfer of TRLEI's gaming license, leasehold rights, and other corporate assets

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[24] *Rollo,* Vol. II, pp. 819-829. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Danton Q. Bueser and Bonifacio S. Pascua.

[25] Id. at 831-832. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Danton Q. Bueser and Bonifacio S. Pascua.

[26] Id. at 783-809.

[27] A Supplemental Petition was likewise filed by petitioner.

[28] *Rollo*, Vol. IV, 1573-1622.

[29] Id. at 1624-1908.

[30] Letter dated 14 June 2021 to the Business Permits and Licensing Office of Parañaque (Id. at 1904).

and properties and/or from conducting any major corporate transaction requiring the vote of stockholders.

In Our Resolution dated 27 April 2022, the Court issued the assailed SQAO and ordered respondents to file their comments to the Petition. In a letter[31] dated 02 May 2022 to this Court, Kazuo requested for assistance to enforce the SQAO by directing the Office of the Clerk of Court of Parañaque City to accompany them in the said enforcement through any of its sheriffs.

On the same day, TRLEI filed the SQAO MR, arguing that the SQAO (i) was issued without due process of law; (ii) lacked legal justification; (iii) improperly prejudged the merits of the case; (iv) unduly interfered and improperly rendered nugatory the court decisions in Japan or Hong Kong; (v) will deprive TRAL or OMI of property rights without any legal justification; and (vi) will have a chilling effect on foreign investments in the country.

On 06 May 2022, Kazuo filed the Manifestation (Re: Enforcement of the Status Quo Ante Order dated 27 April 2022) with Extremely Urgent Omnibus Motion[32] dated 05 May 2022, praying for the Court to (i) *motu proprio* cite TRLEI, its current directors, Atty. Joemer Perez and Mr. Hajime Tokuda in indirect contempt; (ii) compel respondents to recognize the rights of Kazuo as a shareholder, director, chairperson, and CEO of TRLEI, and allow the latter access, possession, and control over corporate offices, files, records, documents, and all other assets of TRLEI; (iii) direct the Office of the Clerk of Court of Parañaque City to assign sheriff(s) in addition to the designated sheriff of the court *a quo* in the enforcement of the SQAO; and (iv) authorize the designated sheriff to seek assistance from other lawful authorities in the enforcement of the SQAO and to employ such means akin to a break-open order, if the circumstances require the same.

TRLEI filed the Supplemental SQAO MR on 24 May 2022, arguing that the SQAO was issued on the basis of Kazuo's falsehoods and misrepresentations constitutive of contempt of court and in violation of the Interim Rules. TRLEI adds that the SQAO improperly directs the doing or undoing of acts and disrupts the *status quo* to the detriment of its operations. Sugiyama likewise moved to reconsider the issuance of the SQAO based on the same grounds.

Kazuo, in his comment[33] to the SQAO MR and Supplemental SQAO MR, contends that the alleged procedural issues should not prevent the Court from protecting his rights as there are no specific guidelines on the issuance of an SQAO. Kazuo also insists that the final decision in Japan should not affect the resolution of this case since the same does not pertain to his ownership of OHL's outstanding shares. As to the alleged lack of jurisdiction over TRAL,

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[31] *Rollo*, Vol. V, pp. 1954-1955.
[32] Id. at 2333-2344.
[33] Temporary *rollo*, *unpaginated*.

Kazuo posits that the latter was impleaded in the Complaint but attempts to bring it within the jurisdiction of the Philippine courts were thwarted due to the erroneous dismissal of the case. In any event, the SQAO was addressed to TRLEI and can be implemented against it. Kazuo likewise points out that the alleged transfer to OMI of the ownership over TRLEI is unsubstantiated.

During the pendency of the foregoing motions of Kazuo and TRLEI, the latter filed the Motion for Clarification, praying that the extent of the SQAO be clarified. TRLEI alleged that the following acts were executed on the pretext of implementing the SQAO: (i) installation of new directors and officers who were not occupying such positions in 2017 on 02 May 2022; and (ii) takeover of Okada Manila on 31 May 2022.

In response to the Motion for Clarification, Kazuo insists that the assailed actions are within the bounds of the SQAO since the SQAO recognized him as the sole representative of TRAL to TRLEI.[34] Kazuo rebuffs respondents' claim that he only held one (1) share in TRLEI, emphasizing that "he controls the 99.9% shares in TRLEI held by TRA[L]."[35] He explains that the "the *status quo* prior to [his] removal in 2017 was his being the sole representative of TRA[L] in TRLEI, director, [c]hairman and CEO of TRLEI on top of his one (1) qualifying share."[36]

Issues

The main issues to be resolved by this Court are (i) the extent and scope of the assailed SQAO; (ii) the propriety of the issuance of the SQAO; and (iii) the propriety of delegation to the CA for reception of evidence for determination of factual matters relating to the case.

Ruling of the Court

"'*Status quo ante*' is a Latin term for 'the way things were before.'" Hence, "[a]n order of this nature is imposed to maintain the existing state of things before the controversy."[37]

In *Megaworld Properties and Holdings, Inc. v. Majestic Finance and Investment Co., Inc.* (*Megaworld*),[38] the Court, citing then Justice Florenz D. Regalado, succinctly discussed the nature of an SQAO as distinguished from the provisional remedy of TRO:

> There have been instances when the Supreme Court has issued a *status quo* order which, as the very term connotes, is merely intended to

[34] Temporary *rollo*, *unpaginated* (Comment and/or Opposition [To: *Extremely Urgent Manifestation with Motion for Clarification Ad Cautelam* dated 09 June 2022] dated 22 June 2022).

[35] Temporary *rollo*, *unpaginated* (Consolidated Reply dated 21 June 2022, p. 1).

[36] Temporary *rollo*, *unpaginated* (Comment and/or Opposition [To: *Extremely Urgent Manifestation with Motion for Clarification Ad Cautelam* dated 09 June 2022] dated 22 June 2022, p. 6); italics supplied.

[37] *Remo v. Bueno*, 784 Phil. 344, 385 (2016).

[38] 775 Phil. 34 (2015).

> maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. **This was resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but the affected party neither sought such relief or the allegations in his [or her] pleading did not sufficiently make out a case for a temporary restraining order. The *status quo* order was thus issued *motu proprio* on equitable considerations.** Also, unlike a temporary restraining order or a preliminary injunction, a *status quo* order is more in the nature of a cease and desist order, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a *status quo* order does not require the posting of a bond.[39]

In his Separate Opinion in *ABS-CBN Corporation v. National Telecommunications Commission,*[40] Justice Marvic M.V.F. Leonen elucidated that an SQAO is "an interlocutory order created by the Supreme Court *En Banc* to afford remedies to parties" and for "compelling reasons that cater to the demands of justice and equity."[41] Thus, the existence of a clear legal right, which is required in issuing an injunction, "is not necessary for the issuance of a *status quo ante* order."[42] While there is no specific rule governing the issuance of an SQAO, Justice Leonen noted that the Court has been guided by the following factors: (i) justice and equity considerations; (ii) when conservation of the *status quo* is desirable or essential; (iii) the preservation of any serious damage; and (iv) where constitutional issues are raised.[43]

With the foregoing principles in mind, We now resolve the present motions.

I. Procedural Issues

There was substantial compliance with the rules on verification of pleadings

TRLEI and Sugiyama assert that the Supplemental Petition should be dismissed as it was not properly verified.[44] As it serves to supplement the Petition, respondents insist that the Supplemental Petition must also comply with Rule 45 of the Rules of Court, specifically, the basic requirement that the pleading should be verified.[45]

While the Supplemental Petition lacks the required verification,[46] contrary to Section 1, Rule 45 of the Rules of Court, the requirement of

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[39] Id. at 52; Citations omitted; Emphasis supplied.
[40] G.R. No. 252119, 25 August 2020.
[41] Separate Opinion of J. Leonen in *ABS-CBN Corp. v. National Telecommunications Commission*, G.R. No. 252119, 25 August 2020.
[42] Id.
[43] Id.
[44] *Rollo*, Vol. V, pp. 1968-1973; Temporary *rollo, unpaginated* (Sugiyama's Comment, pp. 26-28).
[45] Id.
[46] *Rollo*, Vol. IV, pp. 1526-1557.

verification is merely a condition affecting the form of the pleading.[47] Non-compliance with this requirement is not jurisdictional, and does not automatically render the pleading fatally defective.[48] A pleading without the required verification may still be given due course if the circumstances justify the relaxation of the rules.[49] So it must be here, given the importance of the issues raised and the iniquitous consequences should We choose to enforce a strict application of the procedural rules.

The issuance of the SQAO was not in violation of the Interim Rules; The SQAO may be issued ex parte and without need of a bond

TRLEI and Sugiyama uniformly argue that the SQAO was issued in violation of the Interim Rules.[50] Citing Section 1, Rule 10 of the Interim Rules, they claim that the issuance of an SQAO requires an exceptional case, prior hearing, and a bond.[51] TRLEI further asserts that it was not afforded due process because it has yet to file its comment on the petition when the SQAO was issued.[52] We are not persuaded.

Section 1, Rule 10 of the Interim Rules does not squarely apply to appeals before the Court. While not expressly stated, it is apparent from the text of the Interim Rules that they govern proceedings before trial courts. The Interim Rules were issued to implement Section 5.2 of Republic Act No. (RA) 8799,[53] which transferred from the Securities and Exchange Commission (SEC) to the Regional Trial Courts jurisdiction over intra-corporate controversies and other cases under Section 5 of Presidential Decree No. 902-A.[54] As such, the Interim Rules govern proceedings in a Regional Trial Court. Its provisions do not extend to appellate proceedings. In fact, the absence of a specific provision on appeals prompted the Court to issue a separate Resolution in A.M. No. 00-8-10-SC,[55] clarifying the period of appeal, and A.M. No. 04-9-07-SC,[56] specifying the mode of appeal. All told, respondents' reliance on Section 1, Rule 10 of the Interim Rules is misplaced.

In any event, even assuming that the Interim Rules apply to this appeal, the absence of the requirements under Section 1, Rule 10 does not bar the Court from granting relief. In *Air Materiel Wing Savings and Loan Association, Inc.*

[47] *Heirs of the de Luzuriaga v. Republic*, 609 Phil. 84, 97 (2009).

[48] *Guy v. Asia United Bank*, 561 Phil. 103, 116 (2007) citing *Heavylift Manila Inc. v. Court of Appeals*, G.R. No. 154410, 20 October 2005 and *Robern Development Corp. v. Quitain*, G.R. No. 135042, 23 September 1999.

[49] *Linton Commercial Co., Inc. v. Hellera*, 561 Phil. 536, 549 (2007) *citing Precision Electronics Corp. v. National Labor Relations Commission*, 258-A Phil. 449-453 (1989).

[50] *Rollo*, Vol. V, pp. 2406-2409; Temporary *rollo, unpaginated* (Sugiyama's Motion for Reconsideration, pp. 76-78).

[51] Id.

[52] Id. at 1973-1974.

[53] Otherwise known as the Securities Regulation Code; *See* A.M. No. 04-9-07-SC, 1st Whereas Clause.

[54] *Bank of the Philippine Islands v. Baculla, Jr.*, G.R. No. 223404, 15 July 2020; *See* Sec. 5.2 of RA 8799.

[55] Entitled "Clarification on the Legal Fees to be Collected and the Applicable Period of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission."

[56] Entitled "Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission."

v. Manay,[57] the Court emphasized that the Interim Rules may not be invoked to erode the authority to provide injunctive relief, especially in cases that require judicial intervention. According to the Court, "[t]he proscription on the issuance of a TRO without a hearing was never intended to bar the court absolutely from exercising its power to issue the same when the court deems it imperative."[58] As also emphasized by the Court in *Megaworld* and *Garcia v. Mojica*,[59] an SQAO may be issued *motu proprio* on equitable considerations, and does not require the posting of a bond. Therefore, the absence of a prior hearing and the non-posting of a bond do not render the SQAO defective.

Relatedly, TRLEI's claim of deprivation of due process is unmeritorious. While We issued the SQAO *ex parte*, as We have the power to do so, We gave TRLEI an opportunity to be heard by requiring it to file a comment on the petition. Also, through their motions, respondents were able to ventilate their side. Due process is simply "the reasonable opportunity for every party to be heard."[60] This, respondents were undeniably given. Moreover, as will be further discussed below, the SQAO was not anchored on Our "wholesale acceptance" of Kazuo's claims, contrary to TRLEI's assertion. Our issuance of the SQAO rests on undisputed facts on record.

The allegations in the Supplemental Petition may be considered in issuing the SQAO

TRLEI argues that the Supplemental Petition improperly raises factual matters and new issues not covered by Kazuo's Complaint and Petition.[61] TRLEI cites the rule that issues or questions of fact cannot be raised for the first time on appeal.[62] However, this argument is misplaced.

The Petition contained allegations on respondents' supposed dissipation of TRLEI's assets and attempt to sell Okada Manila, including the land where it is located.[63] Kazuo alleged that "[w]ithout an injunctive relief from this Honorable Court, Mr. Okada may thus lose Okada Manila at the hands of respondents, resulting in great and irreparable injury to him."[64] Kazuo further stated that "without any access to TRLEI and its corporate records, Mr. Okada is unable to monitor and control the progress and development of Okada Manila."[65] While the details of these allegations were further threshed out in the Supplemental Petition, the Petition already specified the nature of Kazuo's claims of damage and injury.

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[57] 561 Phil. 459-479 (2007).
[58] Id. at 472-473.
[59] 372 Phil. 892, 900 (1999), citing F.D. REGALADO, I REMEDIAL LAW COMPENDIUM 651 (6th Revised Ed., 1997).
[60] *Reyes v. Rural Bank of San Rafael (Bulacan), Inc.*, G.R. No. 230597, 23 March 2022.
[61] *Rollo*, Vol. V, pp. 1977-1979.
[62] Id. at 1978-1979.
[63] *Rollo*, Vol. I, p. 31.
[64] Id.
[65] Id.

Moreover, some of the documents relied upon in the Supplemental Petition were executed after the filing of the Petition. These include TRLEI's letter dated 14 June 2021, purportedly evincing the planned transfer of its Casino Business Permit to OMI,[66] and OMI's registration statement filed with the United States Securities and Exchange Commission on 22 February 2022, supposedly proving its waiver of its leasehold rights over the land on which Okada Manila is situated.[67] That these were not mentioned in the Petition is clearly justified, as the documents were not yet in existence at the time the Petition was filed. Moreover, certain events transpired after the filing of the Complaint in 2018, such as the alleged losses that TRLEI has suffered as of 31 December 2020, and the supposed plan to transfer TRLEI's Casino Business Permit to OMI.

Indeed, even if some of these developments were only expounded on in the Supplemental Petition, We have the authority to consider them in adjudging the propriety of an SQAO. The equitable reasons for issuing an SQAO may or may not bear directly on the issues of the main case and, thus, are not necessarily "issues or questions of fact" relevant to the complaint. That is the case here, where Our considerations for the issuance of the SQAO do not directly relate to the validity or invalidity of Kazuo's removal as stockholder, director, chairperson, and CEO of TRLEI.

Similarly, the circumstances warranting an SQAO may not be apparent at the early stage of the proceedings. It may take some time before the situation reaches the proverbial saturation point. Thus, We cannot impose a requirement that arguments for the issuance of an SQAO must have been raised at the courts *a quo*, as in fact, no such requirement exists. Conversely, We cannot ignore circumstances that warrant the issuance of an SQAO on the sole ground that they were first raised on appeal. Once it is made clear to Us that Our intervention is warranted, We would not hesitate to issue an SQAO.

II. Substantive Issues

The extent and scope of the assailed SQAO is limited by its language and the nature of such order

The pertinent portion of the SQAO reads:

> **NOW, THEREFORE**, effective immediately and continuing until further orders from this Court, You, petitioner and respondents, your agents, representatives, or persons acting on your place or stead, are hereby required **to observe the status quo prevailing prior to petitioner's removal as stockholder, director, chairman and CEO of Tiger Resort Leisure and Entertainment, Inc. (TRLEI) in 2017.** (Emphasis supplied.)

[66] *Rollo*, Vol. IV, pp. 1531-1532.

[67] Id. at 1546.

It must be stressed that an SQAO, an extraordinary relief issued on equitable considerations, must be implemented strictly based on the language of the order and in the context of the nature of an SQAO, *i.e.,* to restore the parties to the last, actual, peaceable and uncontested state of things that preceded the controversy.

As will be discussed below, the Court determined that the *status quo ante* or the last, actual, peaceable, and uncontested state of things that preceded the present controversy is the time when **Kazuo was a stockholder, director, chairperson, and CEO of TRLEI, or prior to his sudden removal as such.** The grant of the SQAO was based on equity in recognition of the right of Kazuo to protect his interest as an indirect beneficial owner of TRLEI, pending the disposition of the main case. It is in this context that the clear language of the SQAO should be read and implemented.

Indeed, disruption is never the intent of the SQAO. The language of the SQAO is clear. If there are acts that supposedly implement the SQAO but exceed its scope, the parties have at their disposal numerous remedies before the proper forum. The parties may avail of various remedies to pray for the precise relief necessary, as calibrated to specific circumstances.

In fact, We note that criminal cases were allegedly filed against those involved in the 31 May 2022 Okada Manila incident. [68] While the merits of these cases do not concern Us, they highlight that the parties are not without recourse, and such recourse is beyond the issues before the Court. Our authority and viewpoint in a Rule 45 petition are much more limited than other fora. The parties may be able to obtain timelier, more well-suited redress through other procedural vehicles.

The SQAO was properly issued in accordance with law and jurisprudence

TRLEI asserts that the Court did not explain or provide any legal basis in the issuance of the SQAO.[69] TRLEI and Sugiyama further argue that the restoration of the *status quo* prior to Kazuo's ouster may not be made through an SQAO, considering that there is an ownership dispute.[70] It is insisted that an SQAO is issued on the basis of justice and equity considerations, which are not present in this case.[71] TRLEI further questions the propriety of issuing the SQAO,[72] claiming that it was issued on the basis of Kazuo's blatant falsehoods and misrepresentations.[73] The contentions have no merit.

We emphasize that the *status quo ante* that preceded the present

[68] Temporary *rollo, unpaginated* (Motion for Clarification, p. 16).
[69] *Rollo*, Vol. V, pp. 1979-1990.
[70] Id. at 1981-1982; Sugiyama's Comment, pp. 81-83.
[71] Id. at 1980-1983.
[72] Id. at 1983-1990.
[73] Temporary *rollo, unpaginated* (Supplemental SQAO MR, pp. 2402-2406).

controversy is the time when Kazuo was a stockholder, director, chairperson, and CEO of TRLEI, or prior to his sudden removal as such in TRLEI. To recall, the filing of the instant case was initiated when Kazuo's involvement with the management of TRLEI was severed, following the dispute over the majority ownership and control of OHL.[74]

Likewise, there is no merit in the assertion that the SQAO was issued without providing any explanation or legal basis. In fact, the members of the Second Division of the Court discussed and deliberated upon the issues, arguments of the parties, and the reasons which justify the issuance of the SQAO. Ultimately, the members of the Second Division unanimously voted for the issuance of the SQAO on 27 April 2022.

Nonetheless, it bears stressing that an SQAO is different from a TRO or a preliminary injunction, as it does not direct the doing or undoing of acts.[75] In fact, the requirement of a clear legal right is not necessary for the issuance of an SQAO.[76] Courts have more leeway in granting an SQAO as this may be issued on the basis of equitable considerations.[77]

Indeed, a court may not, by means of preliminary injunction, transfer property in litigation from the possession of one party to another.[78] Here, it is clear that what this Court issued is an SQAO, and not a preliminary injunction. The parties were merely instructed to maintain the *status quo* prior to the controversy and were not called to do or undo certain acts.

While the statutory right of a stockholder over corporate assets and properties pertains to the corporation in which he or she is a stockholder,[79] as a matter of equity, the interest of a stockholder of a parent company in the corporate assets and properties of a wholly-owned subsidiary may be recognized.[80] The indirect or beneficial ownership of a stockholder of a parent company clothes such beneficial owner with interest and right to be informed of the management and dealings of the subsidiary corporation. In the same vein, the right of a beneficial owner to preserve the corporate assets and properties, and ensure that the corporation continues as a going concern, should also be acknowledged.

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[74] *Rollo*, Vol. II, pp. 839-842.

[75] *GMA Network, Inc. v. National Telecommunications Commission*, 780 Phil. 244, 253 (2016) citing *Garcia v. Mojica*, G.R. No. 139043, 10 September 1999.

[76] Separate Concurring Opinion of J. Leonen in *ABS-CBN Corp. v. National Telecommunications Commission*, G.R. No. 252119, 25 August 2020.

[77] *Garcia v. Mojica*, 372 Phil. 892, 900 (1999).

[78] *Detective & Protective Bureau, Inc. v. Cloribel*, 135 Phil. 258, 269 (1968).

[79] See Section 39 of the Revised Corporation Code, which provides that the sale of all or substantially all of the corporation's properties or assets requires authority from at least 2/3 of the outstanding capital stock of the corporation.

[80] See *Gokongwei, Jr. v. Securities and Exchange Commission,* 178 Phil. 266, 316-317 (1979). The Court pronounced that where a foreign subsidiary is wholly owned by respondent corporation and, therefore, under its control, it would be in accord with equity, good faith and fair dealing to construe the statutory right of a stockholder to inspect the books and records of the corporation as extending to books and records of such wholly owned subsidiary which are in respondent corporation's possession and control.

The SEC defines a *beneficial owner* of a corporation as a natural person who (1) ultimately owns or controls the corporation; or (2) exercises ultimate effective control over the corporation.[81] The term *ultimate effective control*, on the other hand, refers to any situation wherein ownership/control is exercised through actual or a chain of ownership or by means other than direct control, which may be achieved through, among others, direct or indirect ownership of at least 25% of the voting shares or capital of a corporation.[82]

Kazuo undisputedly owns 46.40% shares in OHL.[83] Considering that OHL is the ultimate parent company of TRLEI, it is also undisputed that Kazuo indirectly owns 31.47% of its shares,[84] which translates to indirect ownership of at least 25% of its voting shares. This indirect ownership is important as it clothes Kazuo with limited interest and right over TRLEI, which right he seeks to protect. Since the SQAO was issued based on Kazuo's undisputed interest, TRLEI's argument that this Court was influenced by Kazuo's falsehoods and representations does not hold water.

Notably, Kazuo alleges that, since his ouster in 2017, TRLEI has suffered losses and capital deficit, as can be seen in its Audited Financial Statements.[85] He adds that this will likely increase when the transfer of assets to OMI is pursued.[86] The alleged losses and capital deficit are reflected in TRLEI's own submissions to the SEC and are, thus, presumably correct in the absence of proof to the contrary. Faced with such data, and considering the exigency of the circumstances, the Court issued the SQAO to mitigate any further damage to TRLEI. Nonetheless, We acknowledge that there are factual issues surrounding TRLEI's financial condition and its operations. Thus, there is a need to ascertain whether the SQAO should be maintained or lifted.

To arrive at an informed resolution of the issue, We deem it prudent to delegate the reception of evidence to the CA. First, on the necessity of maintaining the SQAO whereby Kazuo would be able to present evidence supporting the factual assertions in his Supplemental Petition. Second, to afford respondents to further present countervailing evidence supporting their prayer to lift the SQAO. And finally, on the matters relevant to the resolution of the main issue of Kazuo's petition, *i.e.*, the propriety of the dismissal of his complaint on the ground of prescription, his complaint being treated as one for election contest, instead as one for an intra-corporate dispute. The report of the CA on the foregoing would then be considered by the Court in determining 1) whether the SQAO should remain effective and the 2) propriety of the main petition.

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[81] Securities and Exchange Commission Memorandum Circular No. 17, Series of 2018 (SEC MC No. 17-2018), 27 November 2018, Sec. 2.1

[82] Id. at Section 2.2.

[83] OHL 2021 Annual Return, Annex "A" of SQAO MR (*Rollo*, Vol. 5, pp. 2006-2015).

[84] The percentage of Kazuo's indirect ownership of TRLEI was computed with the following formula: percentage of OHL shares held by Kazuo (46.4%) x percentage of UEC shares held by OHL (67.9%) x percentage of TRAL shares held by UEC (100%) x percentage of TRLEI shares held by TRAL (99.9%) or [0.464 x 0.679 x 1 x 0.999] = 0.3147 or 31.47%.

[85] *Rollo*, Vol. IV, pp. 1623-1903.

[86] Id. at 1904.

The SQAO neither improperly prejudged the merits of the case nor did it provisionally resolve the ownership dispute

TRLEI and Sugiyama contend that the assailed SQAO improperly prejudged the merits of the case.[87] Sugiyama adds that the grant of the SQAO effectively resolves the dispute over the controlling interest in OHL, UEC, and TRAL.[88] The contentions are untenable.

In his Complaint, Kazuo questioned his removal as shareholder, director, chairperson, and CEO of TRLEI "for being without authority and in violation of Section 28 of the Corporation Code."[89] Aside from the notice and voting requirements under Section 28[90] of the Corporation Code, Kazuo assailed his ouster from TRLEI on the alleged lack of authority of Asano and Takako as purported directors of TRAL, which in turn was anchored on his claim of control over OHL.[91] In his appeal with the CA and the Petition before this Court, Kazuo stressed that he was mainly questioning his removal as the shareholder of TRLEI[92] and reiterated that his ouster was done through "a series of fraudulent and illegal acts" of his children.[93]

Thus, while the Complaint prayed for the declaration of Kazuo's removal as void and his reinstatement as shareholder, director, chairperson, and CEO of TRLEI, the main issue remains to be the illegality of Kazuo's ouster. We did not resolve this in any way with the issuance of the SQAO.

To be clear, in issuing the SQAO, the Court made a limited recognition of Kazuo's interest in TRLEI as an indirect beneficial owner thereof. As such, the SQAO is meant only to preserve his right as a beneficial owner of TRLEI during the pendency of main case. With the issuance of the assailed SQAO, the Court is neither declaring the removal of Kazuo as void nor are We deciding on the disputed ownership of OHL, which is ultimately the basis of the alleged illegality of Kazuo's ouster from TRLEI.

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[87] *Rollo*, Vol. V, pp. 1990-1992; Temporary *rollo, unpaginated* (Sugiyama SQAO MR, pp. 85-86).

[88] Temporary *rollo, unpaginated* (Sugiyama SQAO MR, pp. 81-83).

[89] *Rollo*, Vol. II, p. 851.

[90] **Section 28.** *Removal of directors or trustees.* -- Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: Provided, That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees, or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or, if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. Should the secretary fail or refuse to call the special meeting upon such demand or fail or refuse to give the notice, or if there is no secretary, the call for the meeting may be addressed directly to the stockholders or members by any stockholder or member of the corporation signing the demand. Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice prescribed in this Code. xxx [Now amended by Section 27 of RA 11232].

[91] Id. at 846-849.

[92] Id. at 678-681; 797-799.

[93] Id. at 800.

The decisions and records of foreign courts cannot be taken cognizance without proper authentication

TRLEI contends that Kazuo's claim of ownership over the controlling shares in OHL has been finally resolved by the courts in Japan and Hong Kong. As such, the SQAO would "effectively disregard the validity of the Trust Agreement as finally ruled in Japan," which TRLEI argues is "impermissible under Section 48, Rule 39 of the Rules of Court."[94]

By invoking the decisions of the Japan courts, TRLEI would have Us recognize said foreign judgments. It is settled, however, that Philippine courts do not take judicial notice of foreign judgments.[95] As such, foreign judgments must be proven as facts under our rules on evidence.[96] Under Section 19 (a), Rule 132 (B) of the 2019 Amendments to the 1989 Revised Rules on Evidence (Rules on Evidence), written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers of a foreign country, are considered as public documents that may be proved in accordance with Sections 24 and 25 of the same rules. To prove a foreign judgment, the Rules on Evidence require proof, either by (1) official publications; or (2) copies attested by the officer having legal custody of the documents. Should the copies of official records be proven to be stored outside of the Philippines, they must be accompanied by: (1) a certificate or its equivalent in the form prescribed in the treaty or convention to which the Philippines is a party, unless such certificate is not required under the treaty or convention; or (2) an authenticated certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept, if the foreign country is not a contracting party to any such treaty or convention. If copies are offered into evidence, the attestation: (1) must state that it is a correct copy of the original, or a specific part thereof; and (2) must be under the official seal of the attesting officer, or if he be the clerk of a court having a seal, under such seal of said court.

In *Rivera v. Woo Namsun*,[97] We held that petitioner therein failed to comply with the rules on evidence when it submitted notarized copies of a foreign judgment in English and Korean, accompanied only by a letter of confirmation by the Embassy of the Republic of South Korea in the Philippines, signed by its counselor or consul, and an authentication certificate from the Department of Foreign Affairs. The Court, in the exercise of its liberality, remanded the case considering that the validity of the foreign judgment and the existence of pertinent foreign law are questions of fact.

Here, We are constrained from ruling on the legal effect of such foreign judgments for failure of TRLEI to comply with the foregoing rules on

[94] *Rollo*, Vol. V. pp. 1994-1995.
[95] See *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432 (2010).
[96] Id.
[97] G.R. No. 248355, 23 November 2021.

evidence. TRLEI submitted English copies of the following documents: (i) Judgement[98] dated 19 October 2018 of the High Court of the Hong Kong Special Administrative Region Court of First Instance in Miscellaneous Proceedings No. 2446 of 2017; (ii) Decision[99] dated 25 January 2019 of the Tokyo District Court 14th Civil Division; (iii) Decision[100] dated 10 July 2019 of the Tokyo High Court 1st Civil Affairs Division; and (iv) Report in Lieu of Written Decision[101] dated 14 July 2020 of the Third Petty Bench of the Supreme Court. These documents, however, are neither official publications nor are they duly attested copies of the same. The required certification is likewise not submitted. There is also no allegation that the documents are exempt from such requirement pursuant to a treaty or convention.

Further, aside from the non-submission of the decisions in the original language, there is no showing who effected the English translations of the said foreign decisions. Under Section 33 of the Rules on Evidence, "[d]ocuments written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino." In *Pacific Asia Overseas Shipping Corp. v. National Labor Relations Commission*,[102] the Court stressed the need for a translation of a document written in a non-official language (i) by the official interpreter of the court who must be of recognized competence both in the language in which the document involved is written and in English, or (ii) a translation agreed upon by the parties.

Relatedly, Kazuo refers to two (2) Chiba cases where he allegedly sought to be declared as the true legal and/or beneficial owner of OHL shares registered under the names of his children.[103] In support, Kazuo attached copies of: (i) a certification issued by the Chiba District Court of Japan regarding the pendency of the Chiba cases;[104] (ii) the Chiba complaints;[105] and (iii) a certification of consolidation of the complaints.[106] The documents are in Japanese and accompanied by English translations.

However, similar to the foreign judgments submitted by TRLEI, the court documents presented by Kazuo have yet to be authenticated. The copies are neither in the form of official publications, nor accompanied by the requisite certifications. It is also unclear whether the translated versions are accurate or official, as Kazuo failed to allege who translated the documents.

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[98] *Rollo*, Vol. V, pp. 2298-2323.

[99] Id. at 2018-2038.

[100] Id. at 2039-2047.

[101] Id. at 2016-2017.

[102] 244 Phil. 127, 139-140 (1988) citing *Ahag v. Cabiling*, 18 Phil. 415 (1911) and *Teng Giok Yan v. Hon. Court of Appeals, et al.*, 102 Phil. 404 (1957). See also *Arreza v. Toyo*, G.R. No. 213198, 01 July 2019, where the Court rejected the submitted English translation of the Japan Civil Code published by a Japanese private company engaged in publishing English translation of Japanese laws since such translations are not advertised as a source of official translations of Japanese laws.

[103] *Rollo*, Vol. IV, pp. 1571-1622.

[104] Id. at 1571-1572.

[105] Id. at 1573-1620

[106] Id. at 1621-1622.

With the foregoing disquisition, the parties must prove the fact of judgment and the pendency of the case before We ascertain the effect of the said foreign judgments and Chiba cases on Kazuo's interest in the present case, if any. To this end, evidence must be adduced to establish the documents' authenticity and the accuracy of their translations.

The SQAO does not deprive TRAL or OMI of property rights without legal justification

TRLEI and Sugiyama insist that the SQAO cannot be implemented without violating the rights of TRAL and OMI considering that jurisdiction over TRAL has not been acquired while OMI, as the current owner of TRLEI, has not been impleaded in this case.[107] The Court is not convinced.

TRAL was impleaded in the Complaint but summons to it was returned unserved. Nonetheless, the failed service of summons to TRAL does not affect the validity of the SQAO. While TRLEI avers that Kazuo was holding one (1) nominal share registered in his name in trust for TRAL pursuant to a Deed of Assignment and Declaration of Trust,[108] Kazuo has consistently disputed this.

In the Complaint, Kazuo averred that he was never furnished a copy of the alleged Deed of Assignment and Declaration of Trust.[109] In the Petition, Kazuo claimed that he "is a stockholder of TRLEI, whose ownership emanates from his own substantial shareholdings and interests in OHL, UEC and TRAL"[110] and that he "never sold, assigned or in any way transferred his shareholdings and interests in TRLEI" nor were said shares pledged, garnished, or declared delinquent and sold by the board.[111] We cannot, at this point, resolve the nature of the ownership of Kazuo over the one (1) share registered in his name in 2017. Such issue should be resolved in the main case.

In the same vein, the issue regarding OMI being a non-party to the case is rejected. Similar to TRAL, such argument is anchored on the allegation that Kazuo's share in TRLEI is only a nominal share, which Kazuo consistently disputed. Assuming there was an actual transfer of ownership of TRLEI, OMI stands exactly in the shoes of its alleged predecessor-in-interest, TRAL.[112] Hence, OMI not being impleaded does not affect the validity of the SQAO.

The chilling effect on foreign investments and alleged serious damage to shareholders are speculative and unsubstantiated

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[107] *Rollo*, Vol. V, 1996-1998; Temporary *rollo, unpaginated* (Sugiyama SQAO MR, pp. 84-85).
[108] Answer Ad Cautelam (with Compulsory Counterclaims) with Motion to Declare the instant case a nuisance and harassment suit dated 17 September 2018 (*Rollo*, Vol. III, p. 1222).
[109] *Rollo*, Vol. II, p. 841.
[110] Id. at 799.
[111] Id.
[112] *Santiago Land Development Corp. v. Court of Appeals*, 334 Phil. 741, 748-749 (1997).

TRLEI alleges that the SQAO would send a terrible message to the foreign business community, investors, and governments, particularly Japan, which is the top provider of official developmental assistance to the Philippines.[113] Such assertion is untenable for being speculative. The Court is not convinced that the international business community or foreign governments would negatively view an order upholding the right of an indirect beneficial owner to protect his interest in a subsidiary corporation, pending the resolution of the dispute on the control of the ultimate parent company where he asserts majority ownership.

III. Delegation to the CA of the reception of evidence is warranted

As discussed in the foregoing, there are factual issues which would have to be settled before this Court can properly resolve the pending motions of TRLEI and Sugiyama, as well as any factual matters related to the main issue of Kazuo's petition, *i.e.*, whether or not the complaint filed before the trial court is an election contest and the right to file one had already prescribed. As such, the CA is directed to receive evidence on:

1. The propriety of maintaining the SQAO in view of the alleged developments in TRLEI after Kazuo's ouster, specifically:

   a. TRLEI's financial condition and the alleged dissipation of its assets;
   b. supposed non-payment of landlord, suppliers, and contractors;
   c. TRLEI's alleged intention to list OMI in the United States;
   d. TRLEI's purported plan to transfer its casino business permit to OMI;
   e. supposed waiver of TRLEI's leasehold rights over the land on which Okada Manila is situated; and
   f. other acts claimed to be *ultra vires* or prejudicial to TRLEI;

2. The existence, authenticity, and accuracy of the translations of the purported decisions of the Japanese and Hong Kong courts which allegedly have effectively ruled that Kazuo has no control over OHL, the ultimate parent company of TRLEI, OMI, TRAL and UEC, and as such, limit Kazuo's ability to influence and control the affairs of TRLEI;

3. The existence of the Chiba cases, and the authenticity and accuracy of the translations of the complaints allegedly filed before the Chiba courts;

4. The composition of the board of directors, shareholders, the general

[113] *Rollo*, Vol. II, pp. 1998-1999.

information sheet and audited financial statements submitted to the Securities and Exchange Commission (or its equivalent in case of foreign corporation) at the time of incorporation, as well as the latest submission of the following corporations:

a. Okada Holdings Limited;
b. Universal Entertainment Corporation;
c. Tiger Resort Asia Limited; and
d. Tiger Resort, Leisure and Entertainment Incorporated.

All documents should be authenticated; and

5. Any factual matters in determining the propriety of the trial court's dismissal of Kazuo's complaint based on its determination that the same is an election contest and thus, the right to file one had already prescribed.

There are no findings of fact which can be adopted by this Court, due to the absence of a trial on the merits before the RTC.[114] Likewise, We cannot settle the mentioned issues as the appreciation of facts and evidence is beyond the province of this Court.[115]

A.M. No. 10-4-20-SC, otherwise known as The Internal Rules of the Supreme Court, provides that where the Court itself decides to receive evidence, its reception "may be delegated to... one of the appellate courts or its justice who shall submit to the Court a report and recommendation on the basis of the evidence presented."[116] Relatedly, Rule 46, Section 6, in relation to Rule 56, Section 2 of the Rules of Court provides that whenever necessary to resolve factual issues, the Court may delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency, or office. While the said provisions pertain to original cases, We have applied the same in a case involving a petition for review on *certiorari*.[117]

The CA has the authority to receive evidence and perform any and all acts necessary to resolve factual issues.[118] When supported by substantial evidence, the CA's findings are binding on this Court.[119] In fact, the practice of remanding a case to the CA for the determination of factual matters is not novel.[120] In accordance with Section 6, Rule 46 and Section 2, Rule 32 of the Rules of Court, the Court can commission the CA to hear and receive evidence on pending factual issues arising in any stage of the case.

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[114] *Rollo*, Vol. III, pp. 1434-1439.
[115] *Pelonia v. People*, 549 Phil. 717, 730 (2007).
[116] A.M. No. 10-4-20-SC, Sec. 2.
[117] *Cabuguas v. Tan Nery*, 851 Phil. 86, 94 (2019).
[118] *Batas Pambansa Bilang* 129, Sec. 9, as amended.
[119] *W-Red Construction and Development Corp. v. Court of Appeals*, 392 Phil. 888, 894 (2000).
[120] See *Cabuguas v. Tan Nery*, G.R. No. 219915 (Resolution), 03 April 2019; *VSD Realty & Development Corp. v. Uniwide Sales, Inc.* (Resolution), 715 Phil. 578-594 (2013); *Manotok Realty, Inc. v. CLT Realty Development Corp.* (Resolution), 565 Phil. 59-164 (2007); Concurring Opinion of J. Puno in *Republic v. Court of Appeals*, 359 Phil. 530, 598 (1998).

To aid this Court in resolving the matters raised by the parties in relation to the issuance of the SQAO, We deem it proper to refer the pending factual issues to the CA for its determination. The CA, as commissioner, may issue subpoenas and subpoena *duces tecum*, swear witnesses, and rule on the admissibility of evidence.[121] Upon conclusion of the trial or hearing, the CA shall be required to submit a report to the Court.[122] Ultimately, this shall form the basis of the Court's final adjudication on the matter.[123]

WHEREFORE, premises considered, the Court **RESOLVES** to:

1. **REFER** this case to the Court of Appeals for the reception of evidence on the factual matters outlined in part III. 1 (a), (b), (c), (d), (e), (f); 2, 3, 4 and 5 of this Resolution.

   The Presiding Justice of the Court of Appeals is **DIRECTED** to cause the immediate raffle of this case among the Justices of the Court of Appeals, and to **REPORT** to this Court the action taken hereon within three days from such raffle.

2. **DIRECT** the concerned Division of the Court of Appeals, where the Justice to whom the case was raffled, to conduct continuous hearings on the reception of evidence with utmost dispatch and to submit to this Court its findings and recommendations within an inextendible period of 30 days from receipt of this Resolution; and

3. **DIRECT** that copies of this Resolution, as well as subsequent notices by this Court and the Court of Appeals relative to this matter, be furnished to the parties by personal service and electronic mail. Further, the parties are **DIRECTED** to cause the personal filing, as well as electronic filing, of all their submissions before the Court of Appeals.

Pending termination of the reception of evidence and submission of the report and recommendation, the *status quo ante* order subsists.

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[121] RULES OF COURT, Rule 32, Sec. 3.

[122] *Manotok Realty, Inc. v. CLT Realty Development Corp.* (Resolution), 565 Phil. 59, 102 (2007).

[123] Id. at 100.

SO ORDERED"

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
127 & 143
AUG 1 5 2022

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