SOUTH SEAS CORPORATION, et al., Plaintiffs-Appellants

v.

SABLAN CONSTRUCTION COMPANY, et al., Defendants-Appellees

Civil Appeal No. 226

Appellate Division of the High Court

Mariana Islands District

December 6, 1978

Appeal from trial court judgment regarding ownership of corporate stock. The Appellate Division of the High Court, Hefner, Associate Justice, held that shareholders had no right to sell stock they did not own, and where corporate records showed that certain shareholders were each issued 1000 shares, but a Japanese company in fact paid for the stock issued in their names and each of them was to receive 100 shares as a gift for services as a "front man", and they sold the stock for $10,000, the sale was valid only as to the 100 shares each owned and each would be held to owe $9,000 to the buyer for the stock the buyer did not receive.

1. **Corporations—Stock—Validity of Certificates**

   That someone other than an officer, incorporator or potential stockholder prepared stock certificates is of no moment to the validity of the certificates.

2. **Corporations—Stock—Validity of Certificates**

   The four basics of a valid issuance of stock in the Trust Territory are: (1) formation of a corporation, (2) a permit to issue stock, (3) subscription to the stock by potential purchasers and payment for the stock pursuant to the permit to issue the stock, (4) execution of the stock certificates accurately reflecting the purchaser by name and number of shares issued, by the proper officials' signing the certificates.

3. **Corporations—Stock—Issuance**

   Stock certificates are "issued", in the ordinary sense, when officially executed and delivered by the corporation to the stockholders.

4. **Corporations—Stock—Issuance**

   Lack of a formal meeting with minutes recording the event does not affect the validity of the issuance of stock.

5. **Corporations—Stock—Purchase**

   Until April 1, 1974, there may have been a "policy" against non-American alien investment in the Trust Territory, but it was not "public policy" to the extent that it barred Japanese firm from purchase of stock in Trust Territory corporation.

6. **Trust Territory—Public Policy—Establishment**

Constant practice by government officials is not in and of itself sufficient to form a public policy against purchase of stock in a Trust Territory corporation by non-American aliens.

7. **Trust Territory—Public Policy—Acts Against**

An act or activity against public policy is one which tends to be injurious to the public or against the public good.

8. **Corporations—Stock—Purchase**

There was no public policy prior to April 1, 1974, prohibiting Japanese firm from purchasing from Trust Territory citizens their stock in Trust Territory corporation.

9. **Corporations—Stock—Sale**

Shareholders had no right to sell stock they did not own, and where corporate records showed that certain shareholders were each issued 1000 shares, but a Japanese company in fact paid for the stock issued in their names and each of them was to receive 100 shares as a gift for services as a "front man", and they sold the stock for $10,000, the sale was valid only as to the 100 shares each owned and each would be held to owe $9,000 to the buyer for the stock the buyer did not receive.

Counsel for Appellants: CUSHNIE & FITZGERALD
Counsel for Appellee: BROOKS & KLITZKIE
JOSE LEON GUERRERO

Before HEFNER, *Associate Justice*, GIANOTTI, *Associate Justice*, and LAURETA, *Temporary Justice by Appointment of the Secretary of Interior*

HEFNER, *Associate Justice*

After a protracted trial, Judgment in this matter was entered against plaintiffs/appellants. They filed a timely appeal asserting various errors.

At issue is the ownership of the stock of the South Seas Corporation. The main asset of the company is a hotel located on Saipan, Mariana Islands.

In order to properly assess and evaluate the legal issues presented, it is necessary to chronologically recount the events leading up to this litigation.

During the Japanese administration of these islands, one Haruji Matsue was instrumental in developing certain commercial enterprises in Micronesia including a sugar processing plant on Saipan. He is now deceased but his fame continues as the Sugar King of Saipan. During this time, the plaintiffs, Thomas Mendiola, Sr. and Felipe Mendiola, became acquainted with the Matsue family and this relationship grew into a friendship which transcended the war. In 1972, the son of Thomas Mendiola, Sr., Thomas, Jr., began a dialogue with Hirotsugu Matsue, a son of Haruji Matsue, about entering into various business ventures in the Northern Mariana Islands.

The initial discussions led to more concrete proposals between the plaintiffs and Mr. H. Matsue.

At this point in time, the chicanery and devious maneuvers began by the participants to this drama.

A Trust Territory corporation, South Seas Corporation, was formed. Installed as officers and directors of the corporation were Clement Jennings, Thomas Mendiola, Sr., Felipe Mendiola and David Sablan. Eighty thousand dollars was sent from the Japanese principals who included Mr. H. Matsue, a Mr. Ishida, and a Japanese company by the name of Nanyo Kohatsu Kabushiki Kaisha (NKK).

Pursuant to the application filed with the Trust Territory Government, the eighty thousand dollars was the amount to be paid by Jennings, the two Mendiolas and Sablan for the initial issuance of stock.

In fact, the records indicate that on July 1, 1973, several stock certificates were issued as follows:

Clement Jennings	5,000 shares
Thomas Mendiola, Sr.	1,000 shares
Felipe Mendiola	1,000 shares
David S. Sablan	1,000 shares

All stock was issued at $10.00 per share.

Clement Jennings at or about this time endorsed 4,500 shares in blank and they were sent or delivered to NKK to hold.

The exact nature and manner of this transaction is fairly clear. Jennings as a U.S. citizen was to be a "front man" for NKK and for his services he was to keep 500 shares valued at $5,000.00. The balance of 4,500 shares worth $45,000.00 were transferred to Mr. Ishida, President of NKK, pursuant to Plaintiffs' Exhibit 4.

The treatment of the stock of the Mendiolas and Sablan is not so clear. It is conceded by the plaintiffs that NKK paid for the stock that was issued in their respective names. It is also certain that each of the three issuees were to receive 100 shares worth $1,000.00 outright from NKK as a gift or return for their services in using them as "front men".

Certain distinctions exist in the handling of the Jennings' stock and that of the Mendiolas and Sablan. The stock certificates of the Mendiolas were not endorsed. The Sablan stock certificates were. There was no "Deed of Transfer" for the Mendiola or Sablan stock, although it is clear that no money has ever been paid for the stock by the three Micronesians.

Interestingly enough, even the parties to the action have difficulty in determining the status of the stock. Terms such as "loan", "reserve", "pledge", and "ownership" are used. Counsel for the plaintiffs at argument first stated that the Mendiola and Sablan stock was to be treated the same as the Jennings' stock which meant that none of the issuees had the right to sell or transfer their stock. Subsequently, at argument this theory was changed to draw distinctions between the transactions and it was argued that the Mendiolas and Sablan had the full right to sell or transfer the stock.

The defendants at argument developed additional theories as to the status of the stock. One theory is that Jennings, the Mendiolas and Sablan were agents for NKK and sold the stock on behalf of NKK. The other theory boiled down to one of "I don't care who owned the stock, we are bona fide purchasers."

The first witness for the plaintiffs, Mr. H. Hatsue, after experiencing extensive difficulty in defining the relationship finally asserted that NKK was the stockholder of South Seas Corporation (Tr. p. 52, 1112–1123).

The stock certificates issued on July 1, 1973, were prepared by a Mr. Hayashi, an employee of NKK. They were signed by Jennings as President and Sablan as Secretary or Vice-President.

Except for the shares kept by the respective parties, Hayashi took all the rest to Japan and delivered them to NKK (Tr. pp. 771–773). NKK continued to hold the stock certificates until presented at the time of trial as Exhibits 14 through 19.

After the corporation was formed and stock issued, a loan was obtained from Furakawa International Development Company in the amount of $1,200,000. The loan was for the construction of the hotel on Saipan. A construction contract was entered into by South Seas Corporation with the Sablan Construction Company to construct the hotel. The defendants, Vicente and Jesus Sablan, are principals in that company.

Work commenced on the hotel and progress payments were made to Sablan Construction Company. In the summer of 1974, the hotel was nearing completion. At this point in time the plot thickened.

In early August 1974, David Sablan, Vicente Sablan, President of Sablan Construction Company, and one Nago, Sablan's project manager for the hotel, went to Japan and met with a Mr. Koyama. They informed Mr. Koyama that

the South Seas Corporation was in bad financial straits and progress payments on the construction of the hotel were late. A request was made to buy out the owners of South Seas Corporation. Mr. Koyama contacted Mr. Kashiwa, an attorney in Hawaii, and a meeting was held in Honolulu around the middle of August 1974. Attending this meeting were Jennings, Kashiwa, Koyama and Nago. As a result of the meeting, Kashiwa and Jennings signed a purchase and sale agreement (Plaintiffs' Exhibit 27). By the terms of the agreement, Jennings agreed to sell 5,000 shares and to 'cause the other three stockholders [the two Mendiolas and Sablan] to sell all of their respective shares of stock . . . ." The buyers were to be Kashiwa for 6,000 shares, Vicente S. Sablan 1,000 shares and Jesus S. Sablan 1,000 shares.

Jennings then returned to the Northern Marianas and after discussions and conversations with the Mendiolas and David Sablan, the three Micronesians agreed to sell their shares to the Kashiwa group.

In order to transfer the 8,000 shares, new stock certificates were made up and issued to the original stockholders who then endorsed the certificates over to the buyers. Bills of sale were also executed by the plaintiffs (Defendants' Exhibits 8 and 9). All of the second certificates and bills of sale were dated August 31, 1974.

On the same date, new certificates were issued to the buyers as indicated in the purchase agreement dated August 15, 1974. The plaintiffs, Thomas Mendiola, Sr. and Felipe Mendiola, and Sablan were paid $10,000 each for the stock.

In December of 1974, co-plaintiff Amari entered the picture by acquiring the interest of NKK in the 7,200 shares which were held since July of 1973. Amari testified that he was only the holder of the stock for his employer, Fuji Kantetsu which was owed sizeable sums by NKK.

In February of 1975, the plaintiffs filed this action against Sablan Construction Company, Jennings (who defaulted), Kashiwa, Koyama, David Sablan, Vicente Sablan and Jesus S. Sablan. The ground of the complaint was that the defendants made material false representations causing the plaintiffs to sell their stock. The relief requested was to cancel the sale and the plaintiffs offered to pay back the money they received for the stock.

It is noted that other claims were filed, but for the purposes of this appeal, only the issue as to the ownership of the stock in the South Seas Corporation is before the Court.

Initially, it is necessary to determine whether the first issue of stock of the South Seas Corporation was valid.

The Trial Court found that the share certificates prepared by Hayashi in July of 1973 were not an authorized issue of shares of the South Seas Corporation (Finding of Fact # 2).

Yet, the Trial Court apparently found the certificates prepared in August of 1974 to be a valid issue (Finding of Fact # 22).

Finding of Fact # 3 found that the original four incorporators (Jennings, the two Mendiolas and Sablan) subscribed to their respective shares and paid the amount due for the initial capitalization. Further, the Trial Court found:

> At all times between March 12, 1973, and August 31, 1974, Jennings, the two Mendiolas and David S. Sablan were the owners of record of all the issued and outstanding shares of stock in the corporation issued and outstanding.

The basic inconsistency in the findings of the Trial Court are apparent.

The appellees assert that the initial issue in July of 1973 was void because:

(a) The certificates were prepared by Hayashi upon the instructions from Matsue and;

(b) There are no minutes or any indication of a Board of Directors' meeting of the corporation to authorize the issuance.

That to hold these reasons are sufficient to find the issue of stock in July of 1973 to be void is error.

[1] The fact that someone other than an officer, incorporator or potential stockholder prepared the certificates is of no moment. To attribute such a defect in the issuance of stock would mean that anytime a legal secretary prepares stock certificates for an attorney for his clients, the issue would be suspect. Additionally, the fact that the certificates were issued at the behest of NKK does not, in and of itself, void the issue of the stock.

[2] There are four basic steps to a valid issue of stock in the Trust Territory:

1. Formation of a corporation;
2. Obtaining a permit to issue stock;
3. Subscription of the stock by the potential purchasers and actual payment of the consideration for the stock to the corporation pursuant to the permit to issue the stock;
4. Execution of the stock certificates accurately reflecting the purchaser by name and the number of shares issued. Execution is performed by the proper officials signing the certificates.

[3] When certificates of stock are officially executed and delivered by a corporation to its stockholders, they are "issued" in the ordinary sense. 18 Am.Jur.2d, *Corporations*, § 242.

[4] The fact that Jennings, the two Mendiolas and Sablan did not go through the formality of a meeting with minutes recording the event does not affect the issue of the stock. In this case, the application to the Trust Terri-

tory Government and the actual issuance was exactly as it was purported to be and which, in fact, the Trial Court found in Finding of Fact No. 3. There was no dispute nor objection to the issuance, as all concerned knew exactly who was issued what stock. From July of 1973 to August of 1974, no one within the corporation ever raised the question of any error or defect in the preparing and issuing of the stock. In fact, the same stockholders with the same number of shares were issued duplicate certificates in August of 1974.

Appellees have been unable to cite any authority to support this theory that the July 1973 issue was void. Their brief does not even discuss the matter and except for a passing reference in an "errata sheet" to their brief, it was only at argument that the matter was discussed. However, as will be seen, this threshold question of the initial issuance is crucial to the determination of this matter.

Once it is concluded that the July 1973 issuance is valid, the relationships between the issuees and NKK must be determined.

It is not seriously contested by anyone that Jennings owned any more than the 500 shares given to him by NKK. The remaining 4,500 shares were transferred almost immediately after issuance to the party paying for the stock, NKK. The Trial Court equated the Jennings transactions with that of the two Mendiolas and Sablan.

As noted above, the plaintiffs first argued that the Mendiolas had transferred their stock to NKK just as Jennings had done and acknowledged they had no right to sell the stock. Their attempted reversal of this position cannot be sustained. The appellants' brief at page 2 treats the two Mendiolas and Sablan the same and states:

> The remaining 900 shares subscribed in the names of each Micronesian *would be purchased* with funds received by them as a percentage of South Seas Corporation profits. (Emphasis added.)

A review of the transcript reveals that even the proposition that the Micronesians had a firm contract to buy back the 900 shares delivered to NKK was not a certainty. Not only were the Mendiolas and Sablan unable to definitively specify the relationship but the NKK officials were pretty much at a loss to explain it.

The First Amended Complaint upon which the plaintiffs proceeded in this matter alleged that Sablan pledged the stock to NKK and endorsed the certificates. It is further alleged that Amari, as successor to NKK, is entitled to the legal and beneficial ownership of the stock pledged to NKK. Thus, in treating Sablan's stock and Jennings' stock, the plaintiffs concede ownership in NKK. The only difference with the Mendiola stock was that they did not endorse their respective 900 shares but delivery of the certificates to NKK indicated the intent to place ownership where it remained, and that is, with NKK.

Additionally, in the second cause of action of the plaintiffs' Amended Complaint, the status of the plaintiff Amari is alleged as being the successor in interest to the rights and obligations of NKK. To prove that status, there was admitted into evidence the contract whereby Amari obtained the total of 7,200 shares of South Seas Corporation stock, including the 900 shares issued in the names of each of the two Mendiolas and Sablan (Defendants' Exhibit 5).

The conclusion is inescapable. The Jennings, Sablan and Mendiola stock was all treated the same, and that unless there are other legal impediments to the transfers, Amari or his company Fuji Kantetsu is the owner of 7,200 shares of South Seas Corporation stock.

One possible legal impediment is the misrepresentations made by Jennings, the two Mendiolas and Sablan to the Trust Territory Government in their formation of the corporation and the issuance of the stock.

There is no doubt, and the Trial Court so found, that the original incorporators hid from the Trust Territory Government the real source of funds for the purchase of the corporate stock.

The Articles of Incorporation (Plaintiffs' Exhibit 38), Article Six, placed restrictions on the transfer or sale of the stock. Reference is also made to Public Law 3C–50 (33 TTC §§ 1–19 and 1 TTC § 13). Article Seven gives the corporation the first option to purchase any stock for sale. There is no evidence of the corporation ever exercising its option and pursuant to Article Seven, ". . . if the corporation shall not have exercised its option to purchase such shares (the stockholder) shall be free to transfer, alienate, or otherwise dispose of such shares without any restriction whatsoever."

In the case of the South Seas Corporation, after the Articles of Incorporation and By-laws were submitted to the High Commissioner, a charter was issued on March 12, 1973 (Plaintiffs' Exhibit 37). Section 5 of the Charter required that stock certificates of the corporation issued to Trust Territory citizens contain the legend as follows:

> The share certificates may not be legally transferred, assigned or otherwise disposed of to anyone other than a Trust Territory citizen and any such purported transfer, assignment or other disposal in contravention hereof shall be deemed null and void.

The certificates issued to the two Mendiolas and Sablan did not have that legend on the back of their stock certificates (Plaintiffs' Exhibits 17, 18, and 19).

Neither the plaintiffs nor defendants have discussed or raised this issue and consequently the Trial Court made no determination as to the effect of the legend. The Trust Territory Code is silent as to the legal effect of the legend. 33 TTC § 52 gives the Registrar of Corporations the power to prescribe rules and regulations which shall have the force and effect of law. The regulations promulgated set

forth certain requirements for the issuance of securities. The consequences of violation are either injunction, Title 4, part 4–5 & 35.10 and/or civil liability, Part 11.6 (71 TTC § 7).

However, the Government is not a party to this suit and whatever sanctions and remedies they have is not in issue here. Likewise, the suit here is not based upon the civil liability statute of 71 TTC § 7. This case does not involve any legal dispute between the plaintiffs and NKK (Amari) as far as the legend condition on the stock is concerned and this Court makes no determination as to that issue.

In short, it appears that notwithstanding the misrepresentations made to the Government and the transfer of the Micronesian stock with the legend thereon, as between the original recipients of the stock and NKK, there is nothing to void the transfer to NKK or from NKK to Amari.

What the appellees do rely upon and argue at length is the policy against foreign investment. This issue was framed in the pre-trial order as follows:

> Whether the plaintiffs have violated public policy of the Trust Territory with respect to foreign investments as said policy may be determined from the laws, regulations of the administering authority and the government of the Trust Territory of the Pacific Islands, the United Nations Trusteeship Agreement and relevant decisional law.

This will-of-the wisp policy permeated the entire trial of this matter and the Trust Territory Attorney General's office submitted an *amicus curiae* brief on the matter.

In 1972, a "policy" existed for the islands administered by the United States. This "policy" dictated that no foreign investment was allowed except by United States citizens. This was termed the "most favored nation clause" and resulted from the interpretation of Article 8(1) of the Trusteeship Agreement for the Former Japanese Mandated Islands. Simply stated, the United States, as the administer-

ing authority, would give to the other member nations of the United Nations equal treatment. If the United States allowed one member state to do business in the Trust Territory, it had to allow all member states the same business rights. However, if the United States chose not to allow any other state to do business in the Trust Territory, then it could exclude all non-Trust Territory citizens except U.S. citizens.

[5] After a thorough review of the briefs and the law cited by counsel, it is concluded that until April 1, 1974, there may have been a "policy" against non-American alien investment but it was not "public policy" to the extent that it bars the investment made by NKK.

The only source of the "public policy" revealed in the testimony was Article 8 of the Trusteeship Agreement. Article 8 is clearly the foundation of the "policy".

This Court has previously held that the Trusteeship Agreement is not self-executing. *Trust Territory v. Lopez*, 7 T.T.R. 449.

"Public Policy" is defined in *Black's Law Dictionary* as "that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against public good."

[6] The appellees are unable to point to any law or regulation, but cite *United States v. Trans-Missouri Freight Ass'n.*, 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 and *Zeigler v. Illinois Trust Savings Bank*, 91 N.E. 1041 (245 Ill. 180) for the proposition that constant practice of government officials can be the foundation of public policy where there is no statute. The *Trans-Missouri* case actually rested on a law passed by the U.S. Congress and not the practice of government officials. *Zeigler* apparently parrots *Trans-Missouri*, but in any event, it cannot be held, and it is not held here, that the "constant practice of government officials" in and of itself is sufficient to form a law

or sanction to void contracts or transactions between individuals such as those participating in the corporate maneuvers of the South Seas Corporation.

Quite possibly, the Secretary of the Interior could have issued a Secretarial Order defining foreign investment, imposing limitations thereon, and including penalties and sanctions. However, there is no evidence that he ever did.

To accept appellees' theory of the formation of public policy by simply the practice of government officials would run afoul of the due process provisions of 1 TTC 4. Citizens and non-citizens alike are entitled to know what activities in a society are prohibited and those which are allowed.

[7] An act or activity against public policy is one which tends to be injurious to the public or against the public good. It has not been shown how and in what way the injection of Japanese capital onto the island of Saipan in 1973 injured anyone. On the contrary, the record is clear that the hotel which was built utilized the defendants' very own construction company and the defendants acknowledged its appreciation for the business (Plaintiffs' Exhibit 46).

[8] The Japanese firm of Furakawa International Development Company loaned over one million dollars for the construction of the hotel and their financial stake is much greater than NKK. Yet, no one can reasonably argue that this loan was detrimental to the public good. To draw a distinction and deny NKK or its successor from any recovery of its $80,000 because of a "public policy" which has no legal basis cannot be sustained.

This case is unique in that all of the parties involved in the deceit and back-door dealing assumed that the Japanese investment prior to April 1, 1974, was illegal. It is little wonder that when appellants began meeting the defense of "public policy" they were frustrated in trying to pin down the illusive sanctions against foreign investment. This

is particularly true after they had gone to such great lengths to deceive the Trust Territory Government by their corporate manipulations.

It must be noted that on April 1, 1974, the "policy" against non-American investment of the Trust Territory was abolished in a perfunctory manner by apparently announcing the change by a public pronouncement. Certainly, if a "public policy" having the force and effect of law was in effect, it would not be eliminated in such a manner. Additionally, if the "public policy" existed before April 1, 1974, but was eliminated thereafter, it is questioned if this would mean that the Japanese investment prior to April 1, 1974, could not be recovered.

[9] Since the initial issue of stock was valid, on August 31, 1974, NKK held the ownership of 7,200 shares of South Seas Corporation. Neither Jennings, Sablan or the two Mendiolas had any right to sell any stock other than the 800 shares retained by the respective parties.

The second sale on August 31, 1974, reveals the continued chicanery by the plaintiffs, Jennings and Sablan. They accuse the defendants of fraud in getting the plaintiffs to sell their stock. Yet, during the same sale, they were selling stock they had no right to sell.

The plaintiffs blithely pass over the fact that they never paid one cent for their stock and ended up with $10,000 each.

The defendants did not establish themselves as bona fide purchasers and the Trial Court made no finding that they were such. At argument, counsel for appellees argued that status but there is no record to support them. As appellants note, appellees avoided the issue at trial and the appellees' attempt to change their theory at argument will receive the same treatment as appellants' inconsistent positions at argument.

The appellants stress that this is a case of fraud. We believe they miss the mark. The Trial Court did not find fraud, and we agree. This Court will not reweigh the evidence.

As to that portion of the Judgment which holds the sale of stock owned by the Mendiolas to the Kashiwa group to be valid, we concur, to the extent, however, that they each had only 100 shares to sell instead of 1,000. Since payment was made on the basis of $10 per share, the two Mendiolas owe $9,000 each to Vicente S. Sablan.

From what has been determined above, the application of the doctrine of clean hands does not enter into the consideration and resolution of this matter.

The defendants' theory that the plaintiffs, Jennings and Sablan, were agents for NKK in the sale of the stock is not supported by the evidence, and, of course, the Trial Court made no such finding.

This Court does not treat lightly the misrepresentations made to the Trust Territory Government by the plaintiffs, Jennings, David Sablan, and the Japanese principals. Misleading statements and failure to make full disclosures to the Government became a pattern. The annual report made to the Government for the calendar year 1973 and signed by David S. Sablan as Vice-President falsely stated the owners of the stock of South Seas Corporation.

Whatever sanctions or penalties the Government may assess against the participants to this matter was not before the Trial Court, and, consequently, will not be decided here.

This Court is also not unmindful of the fact that some of the parties and companies involved in this scheme have their position supported by this opinion. However, it is not disputed that it was NKK that actually put into the corporation coffers the $80,000. No creditors of the corporation were deceived in this regard. The paid-in capital which the

Government required before South Seas could begin operations was in the corporate account. It has not been shown how the public was harmed by the Japanese investment. Indeed, the hotel complex was designed to assist the economy of the Mariana Islands.

To recapitulate the above and for direction to the Trial Court, that portion of the Judgment which found the initial issue of stock of the South Seas Corporation in July 1973 was void is in error. As to the sale of the plaintiffs' stock to the defendants, only the sale of 100 shares from each of the Mendiolas to Vicente Sablan is sustained and the Mendiolas owe Vicente Sablan $9,000 each for the stock the latter did not receive.

That portion of the Judgment which found an additional 7,200 shares owned by Kashiwa, Vicente S. Sablan, and Jesus S. Sablan is in error. Said shares are owned by Eiji Amari as the Representative of Fuji Kantetsu Co.

This matter is therefore reversed in the above particulars and remanded to the Trial Court for entry of Judgment consistent with this opinion.