

VICENTE MADRIGAL, PETITIONER, VS. SOTERO RODAS, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MAGDALENA ESTATE, INC. AND CONSOLIDATED INVESTMENTS, INC., RESPONDENTS.*G.R. No. L-1636. February 24, 1948*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0c4332213020/>**PADILLA, J.:**

Out of the sale of 96,000,000 common shares of the Consolidated Investments, Inc., at P0.01 par value each, constituting a controlling block of shares, claimed to have been made by the corporation to the petitioner on 15 November 1943, a controversy arose between the latter, on the one hand, and the corporation, five of its eleven directors, and the Magdalena Estate, Inc., on the other. The controversy is the subject-matter of an action brought on 21 January 1944 in the Court of First Instance of Manila where the case is now pending (Civil Case No. R-1809; Exhibit A). In the complaint filed by the petitioner, two directors, who disagreed with the five on the controversy, and the secretary-treasurer are made defendants. At the time of the commencement of the action three directors were absent from the country and one position was vacant.

Petitioner claims that the sale of the shares of stock in his favor was valid, for which certificate of stock No. 1143 of the corporation was issued in his name. The Consolidated Investments, Inc. and five of its directors contend that the sale of the shares of stock to the petitioner was invalid, because it was made by unauthorized officers of the corporation. The Magdalena Estate, Inc. alleging subscription to 94,000,000 common shares of the Consolidated investments, Inc., at P0.01 par value each, on 22 December 1943, joined the latter and its five directors in their contention.

Upon motion of the petitioner and the filing of a bond in the sum of P50,000, a writ of preliminary injunction was issued on 23 January 1944 in the civil case referred to, restraining the defendants Claudio Aldecoa, Antonio Pratts, Agapito Raagas, Mario Bengzon, and Juan Riu, directors of the Consolidated Investments, Inc., and any and all persons acting in their behalf, "from making any further newspaper publication or circulating any notice, printed or otherwise, and whatever its form, alleging the invalidity of Certificate of Stock No. 1143, issued in the name of herein plaintiff; and from recognizing the over-issued and void shares of Consolidated Investments, Inc. unlawfully issued by you in favor of the defendant Magdalena Estate, Inc. subsequent to November 15, 1943," * * * and the said defendants and the Magdalena Estate, Inc., and any and all persons acting in their behalf, "from making any use whatsoever of the said over-issued and invalid shares of Consolidated Investments, Inc., or from exercising any right in the Consolidated Investments, Inc., in virtue of said over-issued and invalid shares, or from disposing of any or all of said over--issued and void shares." (Exhibit B.)

Thenceforth several motions for the dissolution of the writ of preliminary injunction were filed, to wit: the first on 8 February 1944 was not acted upon, because the parties agreed to have the writ continued and maintained until final judgment of the case on its merits; the second was not also acted upon, but the court set an early date for the hearing of the case; the third on 20 March 1947, which prayed for the dissolution of the writ and the fixing of the

amount of the bond for such dissolution, was denied on 8 May (Exhibit C) ; the fourth on 10 May, which was a motion for reconsideration of the last order of 8 May, was not acted upon; the fifth on 25 June was denied on 9 July (Exhibit E); the sixth on 14 July, which prayed for a ruling on the alleged insufficiency of the verification of the petitioner's complaint raised for the first time in the fifth motion of 25 June, was granted on 18 August, dissolving the writ of preliminary injunction theretofore maintained, on the ground that the petitioner's verification of his complaint was insufficient, for, according to the respondent court, the facts alleged in his complaint were not known to him personally but on information and belief, and that there exists a more appropriate and adequate remedy for the protection of petitioner's interests (Exhibit F). On 27 August, petitioner filed a motion for reconsideration of the last order of 18 August, but it was denied on 1 September (Exhibit G).

In this original action petitioner seeks to have the last two orders of 18 August and 1 September 1947 annulled, on the ground that both orders constitute a grave abuse of discretion, against which he has no plain, adequate and speedy remedy in the ordinary course of law.

The only question to be decided by the respondent court in civil case No. R-1809 is: who is the lawful owner of the controlling block of shares of the Consolidated Investments, Inc.? Is it the petitioner or the Magdalena Estate, Inc.? All other questions are subordinated to it. In the meantime, while that question is not yet determined, it is but proper and just that one party should not be allowed to take advantage of his favored position to the damage and prejudice of the other. If one party be allowed to vote the controlling block of shares at the stockholders meeting, such a vote may render nugatory and ineffectual any judgment that may be secured by the other. At such meeting two-thirds of the stockholders may confirm or ratify (the law uses the term "authorize") the proposal or action taken by the board of directors to sell the corporate property and assets (sec. 28 1/2 Act 1459, as amended by Act 3518). Even the dissolution of the corporation after paying its obligations may be authorized (Rule 104 of the Rules of Court). If not restrained by a writ, the shares of the corporation may be sold to innocent parties. Twenty million (20,000,000) shares were actually sold by the Magdalena Estate, Inc. to other persons before the issuance of the writ in the case pending in the respondent court. The latter should not allow such a situation to arise or to be brought about if it could be instrumental in preventing it. Hence, in cases like the one pending in the respondent court, a writ of preliminary injunction is the most appropriate and effective remedy to prevent any injustice that may be committed by one party against the other. The offer to file a bond for the dissolution of the writ of preliminary injunction to protect the interest of the party who had secured it, would require the respondent court to hear evidence on the present value of the corporate property and assets to enable it to fix the adequate amount of the bond for such dissolution, inasmuch as the main business of the corporation is the ownership of a large and centrally located commercial building (Exhibit E), the value of which at present has greatly increased as compared to its original value. The respondent court should not waste its precious time trying, to ascertain the present value of the corporate property and assets, instead of devoting such time to the determination of the controversy between the parties.

Nevertheless, the respondent court dissolved the writ of preliminary injunction, in spite of several unsuccessful attempts to have it discharged, on the ground that the verification of the petitioner's complaint is insufficient, for, according to the respondent court, he swore to facts not known to him personally but derived from information and belief, and because, in the language of the respondent court, "it having been shown that the writ of preliminary injunction issued in this case was inadequate to protect plaintiff's interest and that the quo warranto proceeding was a more effective and adequate remedy, it is but proper, legal and just that the preliminary injunction be dissolved." (Exhibit G.)

As to the alleged Insufficiency of the verification of petitioner's complaint, we find that such verification is not only upon information and belief but also upon knowledge of the petitioner. The verification of the petitioner's

complaint is as follows:

"Vicente Madrigal, having been duly sworn, deposes and says: "That he is the plaintiff in the above-entitled case; that he has read the contents of the foregoing complaint and that the same are true to the best of his knowledge, information and belief." (Italics supplied.)

In *Lim Bonfing y Hermanos, Inc. vs. Rodriguez* (40 Off. Gaz., 2046), we held:

En el juramento arriba transcrito no hallamos nada que apoye la conclusion de que Lim Yok Su no tenia conocimiento personal de los hechos sobre que juraba; por el contrario, en el tercer parrafo del juramento se afirma, positivamente, "that the defendant is about to dispose of his properties for the purpose of defrauding the plaintiff and other creditors. * * * That the statements contained in the foregoing complaint are true and correct to the best of my knowledge and belief." Notese bien "to the best of my knowledge and belief." No dice "to the best of my information." Entendemos, pues, que, tal como esta redactado el juramento, la conclusion a que llego el Tribunal de origen, de que la declaracion jurada del gerente de la corporacion deinandante no indicaba conocimiento personal suyo de los hechos sobre que presto el juramento, es erronea.

As regards the inadequacy of the writ of preliminary injunction to protect the interests of the petitioner, we have already stated that such writ is the most appropriate and effective remedy to protect petitioner's interests. The fact that he attempted to protect further his interests by prompting the Solicitor General to institute quo warranto proceedings against the directors of the corporation who, in his opinion, had been elected unlawfully, does not render the writ of preliminary injunction inadequate. The dismissal of the quo warranto proceedings is proof of its inadequacy to protect the interests of the petitioner. Besides, the adequacy of a relief lies not in the choice of the remedy by the party litigant but in its effectiveness.

Foreseeing dire consequences that may result from the dissolution of the writ, the respondent court hastened to forestall such consequences by restraining the Magdalena Estate, Inc. from selling, or otherwise disposing of, the remaining 74,000,000 common shares of the Consolidated Investments, Inc. it claims to own as lawful stockholder. As justification for this restraint on the Magdalena Estate, Inc., the respondent court stated that it chose to place the restriction not for the sake of the petitioner but for the protection of the public (Exhibit G). Be it for the protection of the public or otherwise, the fact is that the respondent court would not have imposed the restraint if it had not chosen to dissolve the writ of preliminary injunction. Such restraint is a strong reason for the continuance of the writ of preliminary injunction. Not only the public but also the petitioner is entitled to such protection.

For the foregoing reasons, we hold that the dissolution of the writ of preliminary injunction by the respondent court constitutes a grave abuse of discretion and that the orders of 18 August and 1 September 1947 issued by the respondent court, dissolving the writ of preliminary injunction, should be as are set aside and annulled.

The writ of certiorari prayed for is granted, with costs against the respondent corporations.

Moran, C. J., Feria, and Pablo, JJ., concur.

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