

G. L. ENTERPRISES, INC., MARIO J. FELICIANO, SR., JOSE E. MUÑOZ, IRENEO COMPRENDIO, ELENA RAFOLS, LUCIANO ESPIRITU-SANTO, MAXIMO PIÑERO, VICTORIANO DELES, ISMAEL BUDLONG, CRESEN...*G.R. No. L-47418. February 15, 1982*

Ponente: AQUINO, J.

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This case is about the jurisdiction of the courts and the Securities and Exchange Commission over intracorporate controversies and over the validity of the sale of the property of a corporation to a third person.

Guerrilla Legion, Inc. on April 26, 1949 purchased from the Philippine Alien Property Administration for P28,703.64 a 369-square meter lot, formerly owned by a Japanese national, located at the corner of Guardia Nacional and Tomas Claudio Streets in the business center of Zamboanga City (p. 133, Rollo). A Chinese, who leased the lot, constructed a concrete building thereon with the understanding that upon the termination of the lease the building would become the property of Guerrilla Legion, Inc. (pp. 171 and 205, Rollo).

According to the individual respondents, in 1966, the corporate life of Guerrilla Legion, Inc. was shortened. It was dissolved and converted from a nonstock corporation into a stock corporation with the name G. L. Enterprises, Inc. The said lot was transferred to G. L. Enterprises at a valuation of P29,520. On that basis, the 430 members of Guerrilla Legion, Inc. became stockholders of G. L. Enterprises, Inc. Each member became a stockholder for eight shares with a par value of P100 per share (pp. 172 and 185, Rollo).

In February, 1976, the said lot and building were sold by G. L. Enterprises for P575,000 to Zamboanga Commercial and Trading Corporation. Two hundred thousand pesos out of the price were to be distributed as dividends among the stock-holders. The remainder of the price was to be deposited in the bank (pp. 173 and 186, Rollo). The amount deposited in the Bank of P. I. is allegedly P450,000, according to the complaint of Guerrilla Legion, Inc. in SEC. Case No. 001823.

A title for the lot was issued to Zamboanga Commercial and Trading Corporation which took possession of the premises. It filed an ejectment suit against Diosdado Johnny Lewis, the lessee of the ground floor. He was ejected from the premises. (See *Lewis vs. Bidin*, L-47770, August 10, 1978, 84 SCRA 583 and *Lewis vs. Zamboanga Commercial and Trading Center*, L-48644.)

Lewis also filed in May, 1976 in the Court of First Instance at Zamboanga City a complaint for the annulment of the said sale. His complaint was dismissed because it did not state a cause of action. Lewis' appeal from the order of dis-missal was not given due course (pp. 45-74, Rollo of L-48644).

On March 7, 1977, some stockholders of G. L. Enterprises, Inc. filed in the Court of First Instance at Zamboanga City a "derivative suit" against the directors of G. L. Enterprises, Inc. and Zamboanga Commercial and Trading Corporation because the sale of the lot was allegedly in violation of Republic Act No. 477. The purpose of the derivative suit was to secure a declaration that the two sales were void and to restore the property to G. L.

Enterprises, Inc.

Upon motions to dismiss filed by defendants G. L. Enterprises, Inc. and Zamboanga Commercial and Trading Corporation, the trial court in its order of September 2, 1977 (received on September 6) dismissed the complaint on the ground that it has no jurisdiction over the case and that the Securities and Exchange Commission, under sections 5(a) and (b) and 6 of Presidential Decree No. 902-A, has exclusive jurisdiction over it since it involves intra-corporate matters and fraudulent devices or schemes which are detrimental to the interests of the stockholders and the public.

The trial court relied on the following provisions of Presidential Decree No. 902-A (72 O. G. 4156):

"SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

"(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

"(b) Controversies arising out of intra-corporate or partnership relations; between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity.

"(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

"SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

"x x x x x x x x

"(j) To exercise such other powers as implied, necessary or incidental to the carrying out the express powers granted to the Commission or to achieve the objectives and purposes of this Decree."

The trial court conceded that the plaintiffs, as minority stockholders, have personality or legal capacity to file the suit and that they have a cause of action for the recovery of the pro-erty for G. L. Enterprises.

Plaintiffs' motion for reconsideration filed on September 13, 1977 was denied by the trial court in its order of November 4, 1977 which was received by the plaintiffs on that same date (p. 3, Rollo).

The petitioners or the plaintiffs below had twenty-three days, or up to November 27, within which to appeal the dismissal order to this Court (Sec. 3, Republic Act No. 5440, superseding Rule 42 of the Rules of Court, in relation to sec. 3 of Rule 41). It was only eight days later or on December 5, 1977 when they filed in this Court a motion for extension of the period within which to file their "petition for certiorari and mandamus".

The motion was eight days late. The order of dismissal had already become final and unappealable when the petitioners came to this Court. The opposition of Zamboanga Commercial and Trading Corporation to the said motion for extension is well-founded (pp. 106-110, Rollo).

Plaintiffs cannot resort to the special civil actions of certiorari and mandamus because these remedies are not available when, as in this case, there was a remedy by appeal and the period for appealing had already expired. Because of that technicality, we have no jurisdiction to review the lower court's order of dismissal. The petition in this case for certiorari and mandamus (which, like petitioners' amended complaint in the trial court, contains gross

inaccuracies) cannot be entertained and cannot be utilized for the purpose of setting aside the lower court's order of dismissal which had become final and unappealable.

For that reason, we cannot pass upon the motion dated August 14, 1980 of Zamboanga Commercial and Trading Corporation for the demolition of the building on the property in question.[*]

WHEREFORE, the petition for certiorari and mandamus is dismissed. Costs against the petitioners.

SO ORDERED.

Barredo (Chairman), Concepcion, Jr., Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.

[*]It may be noted that on December 3 and 12, 1976, some stockholders of G. L. Enterprises filed with the Securities and Exchange Commission against the president and directors thereof (private respondents herein) complaints for violations of the Corporation Law and Presidential Decree No. 902-A the purpose of which is to declare void the two sales of the said property. The complaints were docketed as Cases Nos. 1407 and 1409 (pp. 124-125, Rollo).

In Case No. 1407, the herein petitioners asked the SEC to issue an injunction to prevent the respondents from withdrawing from the bank the sum of P450,000 as part of the proceeds of the sale of the said property. A SEC hearing officer in his order of February 9, 1978 denied the petition for injunction for lack of legal basis (p. 255, Rollo). In an order dated February 7, 1978, a SEC hearing officer directed the petitioners to examine the books of G. L. Enterprises, Inc. (p. 260, Rollo).

On the other hand, the reliefs sought in Case No. 1409 are the same reliefs prayed for in this case. For failure to prosecute, Case No. 1409 was dismissed by a SEC hearing officer in his order dated February 27, 1979 (pp. 323 and 383, Rollo).

It should further be noted that on December 14, 1979 Guerrilla Legion, Inc. filed with the SEC a petition to declare void its dissolution and the two sales in question. The petition was docketed as Case No. 001823. It is still pending according to the manifestation of the counsel of Guerrilla Legion, Inc. dated October 5, 1981. Zamboanga Commercial and Trading Corporation is a party in that SEC case.

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