

C. N. HODGES AND RICARDO GURREA, IN THEIR OWN BEHALF AS MAJORITY STOCKHOLDERS AND FOR AND IN BEHALF OF THE LA PAZ ICE PLANT & COLD STORAGE CO., INC., PLAINTIFFS AND APPELLEES, V...*G.R. No. L-17327. August 30, 1963*

Ponente: PADILLA, J.

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Appeal from an order dated 29 November 1958 entered by the Court of First Instance of Iloilo directing defendant Paquita B. Lezama, secretary of the La Paz Ice Plant & Cold Storage Co., Inc., to transfer in the books of the corporation the sale of seven shares of stock of plaintiff Eicardo Gurrea in favor of Ricardo Jeruta, Jr., Felipe Espinosa and Isidro Perlado upon surrender to her of the respective certificates of stock (Civil Case No. 4994).

The appeal involving as it does a question of jurisdiction of the trial court (section 17, paragraph 3, of Republic Act No. 296, as amended) and purely a question of law (section 17, paragraph 6, *id.*), the Court of Appeals, pursuant to its resolution dated 25 July 1960, certified the case to this Court as one falling within its exclusive appellate jurisdiction.

In a verified amended complaint dated 29 September 1958 filed in the Court of First Instance of Iloilo, plaintiffs C. N. Hodges and Ricardo Gurrea allege that the La Paz Ice Plant & Cold Storage Co., Inc., is a corporation duly organized and existing under the laws of the Philippines, engaged in the manufacture and sale of ice in the City of Iloilo, the defendants Jose Manuel Lezama and Paquita B. Lezama being its President-Manager and Secretary, respectively; that plaintiff C. N. Hodges is the registered owner of 2,230 shares of the capital stock of the corporation as evidenced by certificate of stock No. 17, which were sold by him to his co-plaintiff Ricardo Gurrea on 18 September 1958 for the sum of P80,000.00; that plaintiff Ricardo Gurrea and his wife Susie Gurrea are the registered owners of 249 shares of stock while Esteban Salvador, brother-in-law of defendant Lezama, is the registered owner of 1 share or a total of 2,520 shares of which plaintiffs and Mrs. Gurrea are the owners of 2,490 shares as against 29 shares of herein defendants; that defendant Jose Manuel Lezama, who has been the manager of the corporation since May 1949, has not rendered any accounting of the administration of the corporation to the stockholders, particularly to plaintiff Ricardo Gur-rea and since 1 November 1954, to plaintiff C. N. Hodges, when the latter became the principal stockholder; that stock certificate No. 17 was issued to plaintiff C. N. Hodges by the defendants Jose Manuel Lezama and Paquita B. Lezama, president and secretary of the corporation, but the plaintiffs do not know who are the other members of the Board of Directors of the corporation, and the stockholders have not been called to a general meeting for the purpose of electing officers since 1949; that because of such neglect and refusal of defendants to call a general meeting of the stockholders, the plaintiffs ask the intervention of the court by directing any stockholder or member of the corporation to call a meeting pursuant to section 26 of the Corporation Law for the purpose of electing the officers of the corporation so that the interests of the majority stockholders could be protected; that in July and August 1958 plaintiff Ricardo Gurrea sold and transferred a number of his shares of stock in the corporation to several individuals, but the defendants, as

president-manager and secretary, respectively, refused to register in the corporate books the transfer and to issue the corresponding certificates of stock; that from the time plaintiff Gurrea has ceased to be the manager and principal stockholder of the corporation in 1949, the new manager; Jose Manuel Lezama, in spite of repeated demands coured through the Securities and Exchange Commission, has not made any financial statement showing the operations and financial status of the corporation to the stockholders, particularly to plaintiff Ricardo Gurrea and his wife Susie Gurrea, as well as to C. N. Hodges who became the principal stockholder in November 1954; that because of mismanagement and diversion of corporate funds for personal use by its president and manager Jose Manuel Lezama and excessive salaries and allowances or disbursements, the corporation has suffered losses; that since 1950 the principal stockholders have not received any dividend, unlike in previous years when Ricardo Gurrea was then the manager; that since May 1949 when dependant Lezama took over the management, the corporation suffered a total loss of P100,000; that if Lezama should continue as manager, the corporation with its assets estimated at from P150,000 to P200,000 and its daily earnings of P 300 to P400 would suffer tremendous losses; and that since Lezama and his, wife own only 29 shares of stock, the appointment of a receiver ex-parte is necessary to preserve and administer the assets and earnings of, and to avoid irreparable damages to the corporation which is on the verge of insolvency (civil case No. 4994). Upon the foregoing, the plaintiffs pray that an order ex-parte be issued appointing Ricardo Gurrea receiver of all funds, assets and business of the corporation taking into account the fact that he had been its manager from the time it started operations in 1929 until 1949, and his technical knowledge as the, present manager of the Riverside Ice Plant and Cold Storage; directing him to call a meeting of the stockholders . for the purpose of electing its officers and to preside at said meeting until after a majority of stockholders representing a majority of the stock present and entitled to vote shall have chosen one of their members to act as presiding officer; and ordering defendant Jose Manuel Ler zama to pay the La Paz Ice Plant & Gold Storage Co. Inc., or the plaintiffs herein, the sum of P100,000 as damages, interest thereon at the rate of 6% per annum from the date of the filing of the complaint. As prayed for in the original complaint, on 26 September 1958 the court; appointed Jose Dineros receiver of the corporation and not Ricardo Gurrea who is a party to the suit, as praye4 for in the amended complaint.

In their answer dated 8 October 1958, the defendants deny that plaintiff C. N. Hodges owned 2,300 shares of stock of the corporation as evidenced by certificate of stock No. 17, because upon the issuance of said certificate to Hodges, he immediately transferred the shares to Benjamin Luis Borja, to whom certificate of stock No. 18 was issued and whose name appears in the corporate books but not Ricardo Gurrea. Defendant Lezama admits having failed to render any account of his management to any stockholder including Gurre or C. N. Hodges who was a stockholder only for a day for the reason that his annual accounting were made directly to the Board of Directors of the corporation; that the annual general meeting had been held every August from 1949 to 1958; that he admits that he had not made or furnished the plaintiffs with a financial statement as every stockholder is free to inspect the books of the corporation; that he denies having misused or diverted corporate funds for his personal use, made excessive expenditures or mismanaged the corporation, the truth of the matter being that if the corporation had suffered losses, it was due to keen and ruinous competition in the ice and storage business between the corporation and four other ice manufacturers including the Riverside Ice Plant & Cold Storage in Iloilo City established in 1950 and managed since then by plaintiff Ricardo Gurrea; that the latter is defendant in civil case No. 2654 filed in the Court of First Instance of Iloilo by the La Paz Ice Plant & Cold Storage Co., Inc., for alleged unauthorized withdrawals of about P100.000 made by him while he was still the manager of the corporation; and that the plaintiff's aim in bringing the action for appointment of a receiver is to destroy the business of the corporation by placing it under receivership for the sole benefit of its competitors, especially the Riverside Ice Plant and Cold Storage owned and managed by plaintiff Gurrea; that when Gurrea left the management of the corporation taking with him more than P100,000, the corporation was left without enough working capital so that even under the best management, it could not make profits; that the properties and business of the corporation is

under lease for one year since February 1958 to Natalio Ventosa at a monthly rental of P1,000 and neither is the corporation insolvent nor has it committed acts so as to justify a declaration of insolvency. By way of counterclaim, the defendants allege that the main purpose of plaintiff Gurrea in bringing the action is to eliminate one competitor of the ice plant and cold storage business personally managed by him and to discourage defendant tezama in his capacity as president of the La Paz Ice Plant & Cold Storage Co., Inc., from prosecuting civil case No. 2654 against plaintiff Ricardo Gurrea; and for that reason they pray that the amended complaint be dismissed, the heretofore appointed receiver discharged, and the plaintiffs ordered to pay jointly and severally damages to the La Paz Ice Plant & Cold Storage Co., Inc., the sum of P20,000 annually and P50,000 to the herein defendants for moral damages and costs.

After the issues had been joined by the parties and while the case was pending trial, a motion dated 4 November 1958 was filed by Ricardo Jeruta, Jr., Felipe Espinosa and Isidro Perlado alleging that on 4 August 1958 plaintiff Ricardo Gurrea, who is the registered owner of 134 shares of stock of the La Paz Ice Plant & Cold Storage Co., Inc., evidenced by certificate of stock No. 14 of the corporation, had sold seven shares thereof to the movants:

(a) three common shares of stock to Ricardo Jeruta, Jr.

(b) three common shares of stock to Felipe Espinosa; and (c) one common share of stock to Isidro Perlado; and that before and after the court had appointed Jose Dineros receiver of the corporation on 25 September 1958 the movants exerted efforts to have said shares of stock registered in their names in the books of the corporation, "but the persons concerned refused to do so;" and praying that the trial court order the receiver to record such transfer of shares of stock in the books of the corporation and to issue in their names the certificates of the shares of stock sold to them in lieu of those of plaintiff Gurrea. Acting upon the motion, the court a quo on 29 November 1958 issued an order, the pertinent part of which is:

VI. Acting upon the motion of Atty. Sorongan the secretary of the corporation is hereby ordered to transfer in the books of the defendant corporation the sale of shares of stock of plaintiff Ricardo Gurrea in favor of Ricardo Jeruta, Jr., Felipe Espinosa and Isidro Perlado after surrendering the certificate to the secretary of the corporation.

On 18 December 1958 the defendant secretary moved for a reconsideration and setting aside of the above order, on the ground that the duly-appointed receiver of the corporation should decide what to do with the aforesaid transfer of shares, and as an additional ground, she advanced the theory that the movants (Jeruta, Jr., Espinosa and Perlado), who are not parties to the pending case of receivership, have no right to come into the case and ask for the cancellation of the certificates of stock of Ricardo Gurrea and, in lieu thereof, for the issuance of new ones in their names, and that the issues in the case have nothing to do with the alleged purchase and transfer of shares. On 2 January 1959 the movants filed an objection to the defendant's (Paquita B. Lezama's) motion for reconsideration of the order of 29 November 1958 contending that as a result of the appointment of a receiver, the court may order the secretary of the corporation to transfer in the corporate books the sales of the shares of stock of plaintiff Gurrea to the three movants, the conveyance being a business transaction and the properties of the corporation being in the hands of the receiver, or in custodia legis.

Without acting upon the movant's motion of 12 December 1958 for contempt of court against the secretary of the corporation, on 5 January 1959 the court denied the motion for reconsideration.

The plaintiff Ricardo Gurrea is the registered owner of 215 shares of the capital stock of the corporation. On 4 August 1958, in a notarized instrument, he sold seven of the shares to herein movants-appellees and on 26 September 1958 the corporation was placed under receivership. Despite surrender of the owner's (Gurrea's) certificate No. 14 and efforts exerted by the purchasers (movants) to have the transfer registered in the "stock and

transfer books" of the corporation, the appellant as secretary of the corporation refused the registration and transfer. The appellant never questioned the legality of the transfer sought to be registered, she having admitted* in her answer that Gurrea owned 215 shares of stock of the corporation.

This Court has ruled and held that a trial court has jurisdiction to order a receiver of a corporation under receivership to do any act so as to protect and preserve its properties, and to that end it may order the secretary to do an act within the internal affairs of the corporation aimed at protecting the interests of the stockholders.[1] Sections 35 and 52 of the Corporation Law, as amended by Act 3471, which require that all transfer of shares to be valid as far as the corporation is concerned must be entered and noted upon the books of the corporation, contemplate no restriction as to whom the shares may be transferred or sold.[2] The assets and business of the corporation having been placed under receivership, the court is in duty bound and has the authority to require the appellant as secretary of the corporation to perform her duties under the law.

The order appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Angeles vs. Santos, 64 Phil. 697.

[2] Fleischer vs. Botica Nolasco Co., Inc., 47 Phil. 583.

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