

**MARILOU C. ADRIANO, PETITIONER, VS. HON. CESAR O. UNTALAN,
IN HIS CAPACITY AS ACTING PRESIDING JUDGE OF PROMULGATED:
BRANCH 142 OF THE REGIONAL TRIAL COURT OF MAKATI CITY,
AND P...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

A complaint denominated to be for Specific Performance with Accounting and Damages was filed by the respondent Philip K. C. Ng (or hereafter Ng) against Philippine Laminates, Inc. (or PLI) and its stockholders, the petitioner Marilou C. Adriano (or Adriano), and Paul Daza (or Daza), Angeli Daza and Paul Yu (a.k.a. Yu Yung Shou) before the Regional Trial Court of Makati City (or RTC) where it was docketed as Civil Case No. 02-1301. Judgment was rendered adverse to PLI and its stockholders, hence this recourse but which was taken by Adriano alone.

In his complaint, Ng averred that he was the brain and moving factor in the organization of PLI, a corporation engaged in the business of distributing laminates and selling laminated products. Ng paid the initial paid-up capital of P62,500.00 and thereafter authorized Adriano and Daza and three others namely Eric Daza, Roldan Samson and Edmund Datuin, to act as incorporators. Also with Ng's conformity, Adriano and Daza became respectively the president and treasurer of PLI. As of December 1998, Ng had subscribed and paid for 7,000 shares or 70% of its authorized capital stock and had been receiving the corresponding dividends. But PLI's officers failed and refused to issue the corresponding stock certificates in his name and to recognize him as a stockholder in its transfer book. Too, they refused to amend PLI's Articles of Incorporation to delete the word "retail" in its primary purpose. Finally, they refused to acknowledge the advances they took from Ng prompting him to file the said Civil Case No. 02-1301.

PLI and its stockholders failed to answer despite the receipt of summons. Resultantly they were declared in default and Ng was allowed to present his evidence ex-parte.

Adriano subsequently moved for the lifting of the default. This was initially denied by the RTC but was reconsidered and Adriano was allowed to file her Answer.

In her traverse, Adriano denied the material allegations in the complaint and averred that the complaint failed to state cause of action. Adriano alleged that Ng is a Malaysian national prohibited by law from being a stockholder of PLI which is a corporation engaged in retail. Ng therefore cannot compel them to perform the illegal acts of recognizing him as a stockholder, registering his name in the transfer book and issuing him a certificate of stock. Also, whether PLI and its stockholders would amend the primary purpose provided for in its Articles of Incorporation, is an exclusive prerogative of its Board of Directors and which the trial court cannot supplant with its own judgment.

Adriano further asseverated that Ng has no cause of action against them because Ng is neither an incorporator nor a stockholder of PLI. Finally, assuming that Ng has a valid claim, this is already barred by the Statute of

Limitations. Adriano prayed for the dismissal of the complaint.

PLI and the Dazas also filed a joint Answer to the complaint, but this was not admitted by the trial court on the reasoning that they have lost their standing in court when they were declared in default and so could no longer file any answer to the complaint.

On October 29, 2001, the RTC rendered its Decision disposing that:

Accordingly, judgment is hereby rendered ordering defendant corporation Philippine Laminate, Inc. through its directors and officers, Paul Daza, Marilou Adriano, Angeli Daza, and Paul Yiu to do the following:

- To recognize Philip K.C. Ng as a stockholder for 7,000 shares of stock which he fully paid for;
- To issue stock certificates corresponding therefore;
- To recognize his rights as a stockholder such as the right to recover further dividends, to receive payment for his advances in excess of the value of the 7,000 shares of stock, the right to inspection of corporate books and the right to vote and voted for;
- To acknowledge through a written statement his total investment in PLI in the amount of P3,566,549 including payment for 7,000 shares; and
- To the deletion of the word “retail” in the primary purpose of PLI’s Articles of Incorporation by filing the necessary documents to effect the amendment with the SEC.

Moreover, defendants Paul R. Daza and Marilou C. Adriano are jointly and severally liable to the plaintiff the following:

- To pay the amount of P500,000.00 as Moral damages;
- To pay plaintiff the amount of P100,000.00 as Exemplary damages;
- To pay plaintiff the amount of P50,000.00 as attorney’s fees and costs of suit.

SO ORDERED. (p. 1132, record, Vol. 2)

Hence this petition where Adriano asserted in her original petition that:

- THE CASE IS NOT COVERED BY THE RULES ON INTRA-CORPORATE CONTROVERSIES
- THE DECISION FORCES ADRIANO AND THE OTHER DEFENDANTS IN CIVIL CASE NO. 02-1301 TO VIOLATE THE RETAIL TRADE LAW
- THE DECISION SUBSTITUTES THE BUSINESS JUDGMENT OF PLI’S BOARD OF DIRECTORS TO ENGAGE IN THE BUSINESS OF RETAIL TRADE
- THE DECISION ORDERS THE RECONVEYANCE OF SHARES DESPITE THE FACT THAT STOCKHOLDERS WHOSE INTERESTS WILL BE AFFECTED ARE NOT PARTIES TO THE CASE (p. 6, rollo)

and in her supplemental petition argues that:

- THE EVIDENCE SUBMITTED BY NG IS INSUFFICIENT AND NOT WORTHY OF BELIEF
- AS A MALAYSIAN NATIONAL, NG IS PROHIBITED BY LAW FROM INVESTING IN OR PARTICIPATING IN THE MANAGEMENT OF PLI, A PHILIPPINE CORPORATION ENGAGED IN THE RETAIL BUSINESS

- THE COURT HAS NO AUTHORITY TO DELETE THE WORD “RETAIL” FROM THE PRIMARY PURPOSE OF PLI’S ARTICLES OF INCORPORATION
- NG HAS PRESENTED NO BASIS FOR HIS CLAIM TO ANY PLI SHARE
- THE HONORABLE COURT SHOULD DISMISS THE COMPLAINT DUE TO ABSENCE OF INDISPENSIBLE PARTIES. (p. 72, rollo)

It has to be mentioned beforehand that a Motion To Dismiss with an attached Arbitration Agreement (pp 340-352, rollo) has been submitted. We have already denied this in the Resolution dated February 10, 2006 (pp 357-358, rollo) because Adriano is not a party thereto and she is the petitioner in this case and an answering defendant in the source case.

That aside, We shall take up ahead the procedural issue raised by Ng, claiming as he does that this should have sufficed for the early dismissal of the petition. Ng assails the mode of appeal chosen by Adriano, and in the alternative asserts that even assuming that it were the proper mode of appeal, still the petition failed to comply with the requirements under Rule 43.

Indeed the petition originally filed before Us was denominated as one for Injunction. Nonetheless it complied with and fulfilled the requirements of Rule 43. It stated the full names of the parties and the material dates, showing that it was filed on time. Also it alleged pertinent facts necessary for the understanding of the case and the grounds relied upon in support thereof discussing each of the grounds, with a citation of the authorities relied upon. In the last paragraph, it specified the judgment and other reliefs sought. Attached to it is the certified true copy of the decision of the Regional Trial Court and a sworn certification against forum shopping. Hence, even without changing the designation of the pleading, it may be treated as one for petition for review.

Such consideration is in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, especially so because the petition was filed within the reglementary period for the filing of a petition for review. Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not to be applied in a very rigid technical sense, as they are used only to help secure, not override substantial justice (Barnes vs. Padilla, G. R. No. 160753, June 28, 2005). If a technical and rigid enforcement of the rules were made, their aim would be defeated (Ramiscal, Jr. vs. Sandiganbayan, 140576-99, Dec. 13, 2004).

Adriano has a procedural gripe too. She faults the RTC for applying the Rules on Intra-Corporate Controversies in the instant case claiming that it is not an intra-corporate dispute. But Adriano herself confutes this when in her Petition she stated that it is filed pursuant to Section 4, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC, 13 March 2001).

Also, this Court in its Resolution of July 28, 2003 in CA-G.R. No. 78166 already settled this issue. Thus it can no longer be looked under the doctrine of the Law of the Case which bars courts from reopening what has been decided. It has been enunciated that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court (Ducat vs. Court of Appeals, G. R. No. 119652, January 20, 2000). Adriano is now barred from claiming that this case is not an intra-corporate dispute.

Turning now to the substantive issues, Adriano also insists that Ng is not a stockholder of PLI. She faults the RTC in ordering them to recognize him as such and compelling them to issue the corresponding stock certificates. Adriano asseverates that pieces of evidence presented by Ng are insufficient and not worthy of belief.

But it is notable that during the pre-trial conference, Adriano admitted that she issued Confidential File No. 1 (vide: Pre-trial Order, p. 791, record, Vol. 2). In this confidential file, Ng is listed as one of the stockholders of PLI with 70% actual capital contribution amounting to P3,566,198.94 (vide: Exhibit “I”, p. 923, record, Vol. 2). Section 4, Rule 129 of the Rules on Evidence provides that:

Sec. 4. Judicial Admissions. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

The admission by a party binds him and may be taken or used against him, and where made in the course of the proceedings in the same case, it does not require proof, and actually may be contradicted only by showing that it was made through palpable mistake or that no such admission was made (*Vesagas vs. Court of Appeals*, G.R. No. 142924, December 5, 2001).

Adriano failed to present clear and convincing evidence to rebut this and the other pieces of documentary and testimonial evidence presented by Ng. As against the mere testimonial evidence of Adriano, the documentary evidence of Ng must prevail. Oral testimony, depending as it does exclusively on human memory is not as reliable as written or documentary evidence. As it was once said, “I would rather trust the smallest slip of paper for truth than the strongest and most retentive memory ever bestowed on mortal man” (*Gener vs. De Leon*, G.R. No. 130730, October 19, 2001).

In civil cases, the court must lean towards a party who successfully presents preponderance of evidence in her favor (*Heirs of Juan Oclarit vs. Court of Appeals*, G.R. No. 96644, June 17, 1994). In this case, Ng’s claim is amply supported by preponderance of evidence, while Adriano’s claim was not established by the opaque and ambivalent proofs she submitted.

In any event, We are called upon essentially to review the RTC’s assessment of the weight of the evidence presented by both parties. But the matter of giving credence to evidence presented is best addressed to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have appeared before him (*Heirs of Juan Oclarit vs. Court of Appeals*, *supra*). Indeed this rule is subject to well-recognized exceptions, but Adriano failed to prove that this case falls under one of them.

Adriano’s claim that they are being compelled to violate R. A. No. 8762 or the Retail Trade Liberalization Act of 2000 has too be rejected too. What removed PLI from the operation of R. A. No. 8762 was pointed out in the assailed Decision in these words:

Thus, laminates are not considered consumer goods.

According to the New Illustrated Webster’s Dictionary (1994 Edition) Laminates is defines as “to cover with thin sheets or laminae”. Laminates are raw material used in the manufacturing of furniture’s, wall cladding, kitchens, doors, etc. And are not at all consumer goods. Goods which reconsidered "generally raw material used in the manufacture of other goods, or if not, as one of the component raw materials or at least as elements utilized in the process of production and manufacturing “, are excluded from the coverage of the retail trade (*Balmaceda vs. Union Carbide Philippines, Inc.* 124 SCRA 893 [1983]).

Moreover, even if the Court considers PLI as engaging in the Retail Trade, the company would still not fall under R.A. No. 8762. Under Section 2 (d) of the Rules and Regulations implementing Republic Act No. 8762, it provides that sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines irrespective of the capitalization, is not considered as retail. It must be pointed out that as admitted by both parties, PLI does not maintain any other office or display

and selling area except in its principal office in Bangkal, Makati. Thus PLI, having a single outlet that manufactures, processes or assembles laminates in the Philippines is not considered as engaging in retail sales. It is therefore immaterial that the word retail is stated in the primary purpose of PLI since what will govern will be R.A. 8762. (pp. 1129- 1130, record, Vol. 2)

We need not say more.

The recognition of Ng as one of the stockholders of PLI would not violate R.A. No. 8762. Accordingly, PLI and its officers can be compelled to issue a certificate of stock in the name of Ng.

Contrary to Adriano's posture, the court has the authority to require a corporation to amend its Articles of Incorporation. Like any other contract, the articles embody the basic agreement of the stockholders and members (Jose Campos, Jr., *The Corporation Code*, Vol. 1, p. 488). As such, courts in the exercise of its adjudicatory power are not barred from examining its provisions and ordering its amendment, if necessary. The RTC therefore could not be said to have overreached in ordering PLI, its officers and stockholder to amend its Articles of Incorporation.

The non-inclusion of the other incorporators and stockholders namely, Eric Daza, Roldan Samson and Edmund Datuin in the complaint is not fatal to Ng's case. Contrary to Adriano's claim, the three incorporators are not indispensable but are merely necessary parties, hence their non-inclusion did not prevent the court from proceeding with the action. Thus, Section 9, Rule 3 of the Revised Rules of Civil Procedure, which is applicable in suppletory character to intra-corporate disputes, provides that (T)he non-inclusion of a necessary party does not prevent a court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of a necessary party.

But We find no basis from the record to justify the awards of moral and exemplary damages as well as attorney's fees in favor of Ng. In order that moral damages may be awarded, there must be a pleading and proof of moral suffering, mental anguish, fright wounded feelings and similar injury. Mere allegations do not suffice; they must be substantiated by clear and convincing proof (*Mahinay vs. Velasquez, Jr.*, G.R. No. 152753, January 13, 2004). While Ng alleged in his complaint that he suffered anxiety, mental anguish and embarrassment, he failed to prove them during the trial.

Neither is respondent entitled to exemplary damages. If the court has no proof or evidence upon the claim for moral damages that could be based, such indemnity could not be outrightly awarded. The same holds true with respect to the award of exemplary damages where it must be shown that a party acted in a wanton, oppressive or malevolent manner. Furthermore this specie damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages (*Mahinay vs. Velasquez, Jr.*, *supra*).

With respect to the award of litigation expenses and attorney's fees, Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award (*Country Bankers Insurance Corporation vs. Lianga Bay and Community Multi-Purpose Coopeartive, Inc.*, G.R. No. 136914, January 25, 2002). Thus for lack of factual and legal basis, the awards in the amount of P500,000.00 as moral damages, P100,000.00 as exemplary damages and P50,000.00 as attorney's fees and costs of suit in favor of Ng must therefore be deleted.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED. The assailed Decision is AFFIRMED with the MODIFICATION that the awards of moral and exemplary damages as well as attorney's fees and costs of suit are hereby DELETED.

SO ORDERED.

Guariña III and Romilla-lontok JJ., concur.

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