

DIPLOMAT HOTEL, INC., LOLITA S. MANDAPAT, AND PABLITO A. GAHOL, PETITIONERS, VS. ROSARIO P. MELCHOR, ANTONIO C. AGPAOA, DENNIS J. DWYER, SIGRUN SEUTEMANN AND AR1EL JB ARIAS, RES...

G.R. No. L-42979. December 17, 1976

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for injunction to enjoin "respondents from committing or continuing the commission of acts that prevent petitioners from exercising their powers and duties as officers and directors of the corporation" known as Diplomat Hotel, Inc. and "from pursuing the management of its corporate business. " After respondents had filed their answer and the case had been submitted for decision upon the filing of the memoranda of the parties, the following joint motion was filed on July 1, 1976:

"JOINT MOTION FOR JUDGMENT BASED ON COMPROMISE AGREEMENT

Petitioners and respondents, assisted by their respective counsel, respectfully manifest that they have amicably settled their dispute under the following terms and conditions, to wit:

1. The parties ratify and confirm the validity and enforceability of the following acts and deeds of the stockholders, directors and officers of the Domhill Resorts Corporation (previously Diplomat Hotels, Inc.) hereinafter referred to, for brevity, as "Corporation":
 - a) Resolution Nos. S-1, S-2, S-3 and S-4, Series of 1974, adopted during the special meeting of stockholders held on August 29, 1974;
 - b) The absolute transfer of the 30,000 fully paid up shares of the Corporation from the name of Leoncia Agpaoa to that of Antonio Agpaoa as evidenced by Stock Certificate No. 24;
 - c) The increase in the number of directors of the Corporation from five (5) to seven (7);
 - d) The increase in the authorized capital stock of the Corporation from P2,500,000.00 divided into 250,000 shares of the par value of P10.00 each to P10,000,000.00 divided into 1,000,000 shares of the par value of P10.00 each;
 - e) The change in the name of the Corporation from Diplomat Hotels, Inc. to Domhill Resorts Corporation;
 - f) The adoption of new by-laws of the Corporation as evidenced by the Certificate of Filing of New By-Laws issued by the Securities & Exchange Commission on 3 February 1976;
 - g) The resolutions, not inconsistent with the foregoing acts and deeds and the other terms of this Agreement, adopted by the stockholders and the Board of Directors of the Corporation during the following periods:
 - (i) From the time of incorporation up to 9 February 1974 during the incumbency of Antonio Agpaoa as

Chairman of the Board and President.

(ii) From 9 February 1974 up to 29 April 1974 during the incumbency of Antonio C. Agpaoa as Chairman of the Board and Leoncia S. Agpaoa as President.

(iii) From 29 April 1974 to 29 August 1974 during the incumbency of Ricardo Nepomuceno as Chairman of the Board and Leoncia S. Agpaoa as President.

(iv) From 29 August 1974 to 15 January 1976 during the incumbency of Sigrun Seutemann as Chairman of the Board and Antonio C. Agpaoa as President.

(v) From 16 January 1976 up to 28 February 1976 during the incumbency of Sigrun Seutemann as Chairman of the Board and Rosario B. Melchor as President.

(vi) From 1 March 1976 up to the date hereof during the incumbency of Leoncia S. Agpaoa as Chairman of the Board and President.

2. The parties, in their respective capacity as stockholders, directors and officers of the Corporation confirm and ratify that the following persons are the stockholders of record of the Corporation as of the date hereof and that their stockholdings are those set forth opposite their respective names:

Name of Stockholders

No. of Shares Sub-

Scribed at Par Value

Fully Paid

Issued

Of P10.00 Each

Up Shares

Shares

Sigrun Scutemann

79,667

79,667

79,667 (Cert.

Nos. 7, 13,

21 and 37)

Erwin Seutemann

40,333

40,333

40,333 (Cert.

Nos. 5, 14

and 38)

Antonio C. Agpaoa

135,264

123,264

84,264 (Cert.

Nos. 24, 27,

31 and 32)

Leoncia S. Agpaoa

40,000

25,000

25,000 (Cert.

Nos. 23 and

25)

Ariel JB Arias

55,265

40,881

34,215 (Cert.

Nos. 26, 29

and 36)

Aris Inter Traders Corp.

40,120

25,170

25,170 (Cert.

No. 33)

Ricardo Nep[omuceno

9,250

6,250

6,250 (Cert.

No. 19)

Rosario Melchor

100

100

100 (Cert.

No. 34)

Dennis Dwyer

1

1

1 (Cert.

No. 35)

TOTAL --

400,000

340,666

295,000

"3. Out of their above stockholdings, the following parties shall sell and assign to Alfonso R. Reyno, Jr. for and in behalf of Montevista Investments & Development Corporation, a corporation in the process of incorporation, their following shares of stock and unpaid subscription in the capital stock of the Domhill Corporation under the terms and conditions set forth in the "Agreement for Sale of Shares of Stock", a copy of

which is attached and made an integral part hereof as Annex "A":

No. of Fully Paid

No. of Subscribed But

Sellers

Up Shares Sold

Unpaid Shares Assigned

Total

Antonio C. Agpaoa

121,514

12,000

133,514

Ariel JB Arias

35,681

14,384

50,065

Aris Inter Traders Corp.

25,170

14,950

40,120

Ricardo Nepomuceno

3,000

3,000

TOTAL -

182,365

44,334

226,699

“4. Leoncia S. Agpaoa shall transfer and assign to Alfonso R. Reyno, Jr., for and in behalf of Montevista Investments & Development Corporation, her 25,000 fully paid-up shares and 15,000 subscribed but unpaid shares in the capital stock of the Domhill Corporation in exchange for shares of stock of said Montevista Investments & Development Corporation, under the terms and conditions set forth in the 'Deed of Exchange', a copy of which is attached and made an integral part hereof as Annex ' B ' .

“5. For the purpose of implementing the sale, transfer and assignment of the above shares of stock to Montevista Investments & Development Corporation, the parties hereto who are stockholders of Domhill Resorts Corporation hereby declare and agree that Resolution No. S-13 Series of 1974 adopted by the stockholders of the Corporation during the annual meeting held on December 31, 1974, which resolution required notice to and approval by the Board of Directors for any transfer of shares of stock and entitles the other stockholders to a right of first refusal, is repealed, void and of no effect.

“6. Upon sale and assignment to Alfonso R. Reyno, Jr., for and on behalf of Montevista Investments & Development Corporation, of the shares of stock and unpaid subscriptions set forth in paragraph 3 above, the parties herein, as stockholders and directors of Domhill Resorts Corporation, agree to reorganize the management of the Corporation, including the Board of Directors and the officers thereof to reflect the new proportionate ownership in the Corporation subject to paragraph 9 hereof.

“7. Domhill Corporation shall pay to the following persons such amounts as may be ascertained to be lawfully due and payable to them from the Corporation by the accounting firm of Garcia, Tolentino, Aguilar & Co. or any other accounting firm that may be acceptable to the financing institution extending loan/s to the Corporation (The above accounting firm shall conduct an audit of the financial condition of the Corporation from January 1, 1975 to date hereof.), in the following manner:

"a) To Mrs. Hannah Langsdorf, one-half (1/2) of the amount within six (6) months from the approval of this Agreement and the balance within the next succeeding six (6) months; and

b) To Joyce Boivin, Aris Inter Traders, Inc., and Leoncia Agpaoa, individually, as soon as the Corporation is financially capable.

“8. Domhill Corporation shall utilize a portion of the Diplomat Hotel premises as a spiritual center for meditation and shall give preference to Hotel guests of Mrs. Sigrun Seutemann and Mrs. Leoncia S. Agpaoa.

“9. The parties herein, as stockholders of Domhill Corporation, agree to execute a Shareholders' Agreement with the following salient features: (i) the shares of the parties will be voted to elect directors corresponding to their proportionate shareholdings, (ii) Sigrun Seutemann and Ariel JB Arias, shall be elected as Vice Chairman of the Board and Executive Vice President, respectively, so long as they maintain their present holdings, and (iii) the position of Executive Vice President shall not be abolished and he shall be made a permanent member of the Executive Committee which shall implement the policies adopted by the Board of Directors.

“10. In consideration of the reciprocal rights and obligations of the parties under this compromise settlement, the parties hereby reciprocally waive, quitclaim, remiss and abandon all claims and demands, of whatever kind and nature, which they have or might have in connection with, or arising out of the subject of this instant suit, including but not limited to any and all causes of action asserted in the pleadings, the intention of the parties being to completely and absolutely free each from any and all such liabilities.

“11. Each and all of the parties hereby represent and warrant that they have full power and authority to execute and deliver this compromise agreement.

“12. The parties declare that they have fully understood the terms of this Agreement and that they have no other agreement or undertakings other than those expressed herein.

"WHEREFORE, the parties respectfully pray that the foregoing Compromise Agreement be approved and that a judgment be rendered accordingly.

" Makati, Rizal for Manila, 9 June 1976.

Petitioners Respondents

DIPLOMAT HOTEL, INC. ANTONIO C. AGPAOA (Sgd.)

(Sgd.) (Sgd.)

By:

LEONCIA S. AGPAOA DENNIS DWYER

President and in her own personal capacity

(Sgd.) (Sgd.)

LOLITA S. MANDAPAT ARIEL JB. ARIAS

For his personal capacity and as President of Aris Inter-Traders Corporation

(Sgd.)

PABLITO A. GAHOL SIGRUN SEUTEMANN

By: (Sgd.)

Assisted by: ARIEL JB ARIAS

(Sgd) Attorney-in-Fact Manila

MANUEL B. TOMACRUZ

Counsel for the Petitioners

451-461 Cabildo Street, Intramuros

PTR # 121647; 1/30/76; Manila

Assisted by:

CIRIACO LOPEZ, JR. & ASSOCIATE

503 Casa Blanca Apartments

1447 M. Adriatico, Ermita Manila

By: (Sgd.)

CIRIACO LOPEZ, JR.

Counsel for the Respondents

" ANNEX A

"AGREEMENT FOR SALE OF SHARES OF STOCK

This AGREEMENT, entered into this 10th day of June, 1976, at Makati, Rizal, by and between:

ANTONIO C. AGPAOA, residing at Camp 7, Baguio City; ARIEL JB ARIAS, residing at 81 Amapola St., Bel Air, Makati, Rizal; RICARDO NEPOMUCENO, residing at J. Roxas St., Makati, Rizal, all of whom are Filipinos, married and of legal age; and ARIS INTER-TRADERS CORPORATION, a corporation organized and existing under and by virtue of the laws of the Philippines with office address at 62 Buendia St., Makati, Rizal, represented in this act by its duly authorized President, Mr. ARIEL JB ARIAS (hereinafter collectively called the 'SELLERS');

- and -

ALFONSO R. REYNO, JR. , Filipino, of legal age, married, residing at 107 Matahimik St. U.P. Village, Quezon City, for and in behalf of MONTEVISTA INVESTMENTS & DEVELOPMENT CORPORATION, a corporation in the process of incorporation (hereinafter called the 'BUYER');

WITNESSETH: That

WHEREAS, the SELLERS are the record owners of 226,699 shares of the outstanding capital stock of DOMHILL RESORTS CORPO-RATION ('DOMHILL', for brevity), a corporation organized and existing under Philippine law, consisting of the following shares with par value of P10.00 each, to wit:

Sellers No. of issued shares (the Domhill IssuedStock") No. of fully paid shares for which no certificates have been issued (the "Domhill Fully Paid Stock No. of subscribe but unpaid shares (the "Domhill Sub-scribed Stock")

Antonio C. Agpaoa 84,264 37,250 12,000

Ariel JB Arias (Cert. Nos. 24 27, 31 and 32)

Aris Inter-Traders 34,215 1,466 14,384

(Cert. Nos. 26, 29 and 36)

25,170 14,950

(Cert. No. 33)

Ricardo Nepomuceno 3,000

WHEREAS, the SELLERS desire to sell and assign, and the BUYER desires to purchase and acquire, the DOMHILL Issued Stock, the DOMHILL Fully Paid Stock, and the DOMHILL Subscribed Stock, aggregating 226, 699 shares of DOMHILL Common Stock (collectively called the "DOMHILL STOCK");

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

1) SALE AND PURCHASE OF STOCK - Subject to the terms and conditions of this Agreement, the SELLERS hereby sell, assign, transfer and convey unto the BUYER, and the BUYER hereby purchases, acquires, and accepts, all of the SELLERS' rights, title and interest to the DOMHILL STOCK.

2) PURCHASE PRICE - BUYER shall pay individually to SELLERS the purchase price of P10.00 per share of the DOMHILL Issued Stock and the DOMHILL Fully Paid Stock and shall assume the subscription liability of each of the SELLERS for their respective DOMHILL Subscribed Stock. The BUYER shall, therefore, pay to the following the total purchase price set forth opposite their names:

Antonio C. Agpaoa P1, 215,140

Ariel JB Arias 356, 810

Aris Inter Traders Corp 251, 700

3) MODE OF PAYMENT - In respect of the purchase price of the DOMHILL Stock, the BUYER shall pay, and in fact has paid, receipt of which in Manager's Check in the name of the individual SELLERS is hereby acknowledged by the SELLERS, the following downpayments:

Antonio C. Agpaoa P100,000.00

Ariel JB Arias 170,000.00

Aris Inter Traders Corp. 10,000.00

The balance of the purchase price shall thereafter be paid in three (3) equal semi-annul payments counted from the date hereof.

4) DELIVERY OF STOCK CERTIFICATES, ASSIGNMENTS, ETC. - Upon payment of the foregoing downpayments, the SELLERS shall immediately deliver to the BUYER (i) the stock certificates representing the DOMHILL Issued Stock, duly endorsed in favor of the BUYER; (ii) and assignment of its rights to the DOMHILL Fully Paid Stock; and (iii) an assignment of its subscription rights to the DOMHILL Subscribed Stock.

5) TRANSFER TAXES - The SELLERS shall bear the transfer taxes or charges applicable to the transfer of the DOMHILL STOCK while the cost of all Philippine documentary and science stamp taxes applicable to the issuance of new Certificates of Stock in the name of the BUYER shall be borne by the latter.

6) REPRESENTATION AND WARRANTIES BY SELLERS - The SELLERS jointly and severally represent and warrant that:

a) They are the lawful record and beneficial owner of, with good marketable title to the above-described shares of DOMHILL, and that:

(i) All certificates for the stock to be delivered pursuant thereto are genuine, valid and subsisting certificates for shares of capital stock of DOMHILL;

(ii) SELLERS' title to the DOMHILL stock is good and valid, free and clear of all warranties, interests, liens, encumbrances, obligations, liabilities or other burdens in favor of third parties, except that there is a subscription payable of P443,340.00 on said shares;

(iii) SELLERS have no knowledge of any law, ruling, regulation or fact which will, upon transfer of and payment for the shares of DOMHILL and subscription rights thereto as herein provided, prevent BUYER from receiving good and marketable title to such shares of stock and subscription rights free of all warranty, interest, liens, encumbrances, obligations, liabilities or other burdens in favor of third parties.

b) DOMHILL RESORTS CORPORATION is a corporation duly organized, validly subsisting and in good standing under the laws of the Republic of the Philippines. DOMHILL has full power and authority to carry on its business, and to own, lease and operate its assets, properties and businesses as presently being conducted. The copies of the Certificate and Articles of Incorporation and By-Laws of DOMHILL and all amendments thereto to date which have been delivered to BUYER are true, complete and correct;

c) The authorized capital stock of DOMHILL consists of 1,000,000 shares of common stock with a par value of P10.00 per share. Of the 1,000,000 shares which are outstanding, 295,000 shares have been validly issued, fully paid and non-assessable and are represented by corresponding stock certificates; 45,666 shares are fully paid but for which no stock certificates have been issued; and 59,334 shares are subscribed and partially paid. There are no existing warrants, options, calls, agreements, or commitments of any kind relating to the purchase of any of the issued shares, or any of the authorized and un-issued share of stock of DOMHILL;

d) SELLERS have delivered to BUYER tentative financial statements of DOMHILL as of December 31, 1975, a copy of which is attached and made an integral part hereof as Annex "A". This financial statement accurately reflects the financial position of DOMHILL as recorded in its books and records, which books and records have been consistently maintained in conformity with accepted accounting principles applied on a consistent basis. SELLERS do not know of any basis for the assertion against DOMHILL as of the date hereof of any liability of any nature in any amount other than the liabilities incurred in the ordinary course of business since December 31, 1975. In the event that DOMHILL shall be required to pay or shall pay any liabilities which are not reflected in the financial statement after due audit by Garcia, Tolentino, Aguilar & Co., Annex "A", the SELLERS agree to indemnify and hold BUYER free and harmless from any such liabilities or payments. In the event DOMHILL and/or the BUYER is/are made to pay any liability not reflected in Annex "A", the BUYER shall have the right to offset any said payments against the purchase price due the SELLERS.

e) DOMHILL is the holder of a license issued by the Department of Tourism.

f) DOMHILL is the owner and operator of the DIPLOMAT HOTELS located in Baguio City and has good and valid title to all of the assets and properties pertaining thereto as reflected in the latest balance sheet as of December 31, 1975, Annex "A", and up to the date hereof.

g) The execution, delivery and performance of this Agreement by SELLERS do not violate, with or without the giving of notice or the passage of time, any provision of law now applicable to SELLERS or DOMHILL, and does not conflict with, or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance, upon any of the property or assets of DOMHILL pursuant to its corporate charter and by-laws, or any license, franchise or agreement to which SELLERS or DOMHILL is a party.

7) SURVIVAL OF REPRESENTATIONS - All representations and warranties of the SELLERS contained herein shall be deemed to be material and to be relied upon by the BUYER and shall survive the execution and delivery of this Agreement, and the consummation of the transactions hereby contemplated.

8) DEFECTIVE REPRESENTATION OR WARRANTIES - In the event any representation or warranty made by the SELLERS in this Agreement shall be found to be defective, BUYER shall be entitled to damages and reimbursement for all expenses or liabilities it and/or DOMHILL may incur as a result thereof for which the

SELLERS are jointly and severally liable and may be offset, at the option of the BUYER, against the balance of the purchase price due the SELLERS.

9) DEFAULT OF BUYER - In the event BUYER defaults in the payment of the balance of the purchase price to SELLERS, the SELLERS shall be entitled to interest on the due and demandable installments at the rate of 14% per annum. If after thirty (30) days from due dates, the BUYER continues to be in default, the SELLERS are, in addition, after written notice to, and acknowledged by the BUYER, to be automatically entitled to vote all the shares of stock of DOMHILL subject of this Agreement until the defaulted installments are fully paid by BUYER.

10) EXPENSES - All expenses incurred by or on behalf of any party hereto, including all fees and expenses of agents, representatives, counsel and accountants employed by any party hereto in connection with the authorization, preparation, execution and performance of this Agreement shall be borne solely by the party who shall have incurred the same and the other party shall have no liability in respect thereof.

11) BINDING EFFECT OF AGREEMENT - This Agreement and all the rights and obligations arising hereunder shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

12) IMPLEMENTATION OF AGREEMENT - The parties hereto agree to execute or cause to be executed such documents, contracts or instruments as may be necessary or required in order to carry out the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement at the place and on the date first above indicated.

"SELLERS

(SGD.) ANTONIO C. AGPAOA ARIS INTER-TRADING CORPORATION

By:

(SGD.) ARIEL JB ARIAS (SGD.) ARIEL JB ARIAS

President

(SGD.) RICARDO NEPOMUCENO (SGD.) ALFONSO R. REYNO, JR.

BUYER For and in behalf of Montevista Investments & Development Corp.

SIGNED IN THE PRESENCE OF:

(Sgd.) Illegible

(Sgd.) Illegible

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF RIZAL) S. S.
MUNICIPALITY OF MAKATI

BEFORE ME, a Notary Public, for and in the Province of Rizal, this 10th day of June, 1976, personally appeared:

Name

Res. Cert. No.

Date & Place of Issue

Antonio C. Agpaoa

A-600724

Mla 1-20-76

Ariel JB Arias

A-2770167

Mkati. 4-14-76

Ricardo Nepomuceno

A-0625192

Mkati. 1-23-76

Alfonso R. Reyno, Jr.

A-516501

Mla. 1-8-76

Aris Inter-Trading Corporation

C-24990

Mkati. 4-15-76

Montevista Investments & Dev. Corp.

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free act and deed as well as the free act and deed of the corporations they represented.

I further certify that the foregoing instrument relates to an Agreement for Sale of Shares of Stock; that it consists of nine (9) sheets, including this page where the Acknowledgment is written, and that the original thereof has been signed on the left margin by the parties appearing before me executing the same.

IN WITNESS WHEREOF, I have hereunto affixed my signature and notarial seal on the date and at the place first above-indicated.

(SGD.) FRANCIS V. SOBREVIAS

Notary Public for Rizal
Until December 31, 1977
PTR #5037198, Makati, Jan. 21, 1976
Doc. No. 52;
Page No. 12;
Book No. III;
Series of 1976."

The Court has gone over the foregoing motion and agreement and has found nothing therein to be contrary to law, morals or public policy.

WHEREFORE, judgment is hereby rendered approving the aforequoted compromise of the parties and enjoining them to comply with their respective obligations thereunder. No costs.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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