

RICARDO L. GAMBOA, LYDIA R. GAMBOA, HONORIO DE LA RAMA, EDUARDO DE LA RAMA, AND THE HEIRS OF MERCEDES DE LA RAMA--BORROMEIO, PETITIONERS, VS. HON. OSCAR R. VICTORIANO AS PRESIDIN...

G.R. No. L-40620. May 05, 1979

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari to review the order of the respondent judge, dated January 2, 1975, denying the petitioners' motion to dismiss the complaint filed in Civil Case No. 10257 of the Court of First Instance of Negros Occidental, entitled, "Benjamin Lopue, Sr., et al., plaintiffs, versus Ricardo Gamboa, et al., defendants," as well as the order dated April 4, 1975, denying the motion for the reconsideration of said order.

In the aforementioned Civil Case No. 10257 of the Court of First Instance of Negros Occidental, the herein petitioners, Ricardo L. Gamboa, Lydia R. Gamboa, Honorio de la Rama, Eduardo de la Rama, and the late Mercedes de la Rama-Borromeo, now represented by her heirs, as well as Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi, were sued by the herein private respondents, Benjamin Lopue, Sr., Benjamin Lopue, Jr., Leonito Lopue, and Luisa U. Dacles, to nullify the issuance of 823 shares of stock of the Inocentes de la Rama, Inc. in favor of the said defendants. The gist of the complaint, filed on April 4, 1972, is that the plaintiffs, with the exception of Anastacio Dacles, who was joined as a formal party, are the owners of 1,328 shares of stock of the Inocentes de la Rama, Inc., a domestic corporation, with an authorized capital stock of 3,000 shares, with a par value of P100.00 per share, 2,177 of which were subscribed and issued, thus leaving 823 shares unissued; that upon the plaintiffs' acquisition of the shares of stock held by Rafael Ledesma and Jose Sicangco, Jr., then President and Vice-President of the corporation, respectively, the defendants Mercedes R. Borromeo, Honorio de la Rama, and Ricardo Gamboa, remaining members of the board of directors of the corporation, in order to forestall the takeover by the plaintiffs of the afore-named corporation, surreptitiously met and elected Ricardo L. Gamboa and Honorio de la Rama as president and vice-president of the corporation, respectively, and thereafter passed a resolution authorizing the sale of the 823 unissued shares of the corporation to the defendants, Ricardo L. Gamboa, Lydia R. Gamboa, Honorio de la Rama, Ramon de la Rama, Paz R. Battistuzzi, Eduardo de la Rama, and Mercedes R. Borromeo, at par value, after which the defendants Honorio de la Rama, Lydia de la Rama-Gamboa, and Enzo Battistuzzi were elected to the board of directors of the corporation; that the sale of the unissued 823 shares of stock of the corporation was in violation of the plaintiffs' and pre-emptive rights and made without the approval of the board of directors representing 2/3 of the outstanding capital stock, and is in disregard of the strictest relation of trust existing between the defendants, as stockholders thereof; and that the defendants Lydia de la Rama-Gamboa, Honorio de la Rama, and Enzo Battistuzzi were not legally elected to the board of directors of the said corporation and has unlawfully usurped or intruded into said office to the prejudice of the plaintiffs. Wherefore, they prayed that a writ of pre-liminary injunction be issued restraining the defendants from committing, or continuing the performance of an act tending to prejudice,

diminish or otherwise injure the plaintiffs' rights in the corporate properties and funds of the corporation, and from disposing, transferring, selling, or otherwise impairing the value of the 823 shares of stock illegally issued by the defendants; that a receiver be appointed to preserve and administer the property and funds of the corporation; that defendants Lydia de la Rama-Gamboa, Honorio de la Rama, and Enzo Battistuzzi be declared as usurpers or intruders into the office of director in the corporation and, consequently, ousting them therefrom and declare Luisa U. Dacles as a legally elected director of the corporation; that the sale of 823 shares of stock of the corporation be declared null and void; and that the defendants be ordered to pay damages and attorney's fees, as well as the costs of suit.[1]

Acting upon the complaint, the respondent judge, after proper hearing, directed the clerk of court "to issue the corresponding writ of preliminary injunction restraining the defendants and/or their representatives, agents, or persons acting in their behalf from the commission or continuance of any act tending in any way to prejudice, diminish or otherwise injure plaintiffs' rights in the corporate properties and funds of the corporation 'Inocentes de la Rama, Inc.' and from disposing, transferring, selling or otherwise impairing the value of the certificates of stock allegedly issued illegally in their names on February 11, 1972, or at any date thereafter, and ordering them to deposit with the Clerk of Court the corresponding certificates of stock for the 823 shares issued to said defendants on February 11, 1972, upon plaintiffs' posting a bond in the sum of P50,000.00, to answer for any damages and costs that may be sustained by the defendants by reason of the issuance of the writ, copy of the bond to be furnished to the defendants."[2] Pursuant thereto, the defendants deposited with the clerk of court the corporation's certificates of stock Nos. 80 to 86, inclusive, representing the disputed 823 shares of stock of the corporation.[3]

On October 31, 1972, the plaintiffs therein, now private respondents, entered into a compromise agreement with the defendants Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi,[4] whereby the contracting parties withdrew their respective claims against each other and the afore-named defendants waived and transferred their rights and interests over the questioned 823 shares of stock in favor of the plaintiffs, as follows:

"3. That the defendants Ramon L. de la Rama, Paz de la Rama Battistuzzi and Enzo Battistuzzi will waive, cede, transfer or otherwise convey, as they hereby waive, cede, transfer and convey, free from all liens and encumbrances unto the plaintiffs, in such proportion as the plaintiffs may among themselves determine, all of the rights, interests, participations or title that the defendants Ramon L. de la Rama, Paz de la Rama Battistuzzi, Enzo Battistuzzi now have or may have in the eight hundred twenty-three (823) shares in the capital stock of the corporation 'INOCENTES DELA RAMA, INC.' which were issued in the names of the defendants in the above-entitled case on or about February 11, 1972, or at any date thereafter and which shares are the subject-matter of the present suit."

The compromise agreement was approved by the trial court on December 4, 1972.[5]

As a result, the defendants filed a motion to dismiss the complaint, on November 19, 1974, upon the grounds: (1) that the plaintiffs' cause of action had been waived or abandoned; and (2) that they were estopped from further prosecuting the case since they have, in effect, acknowledged the validity of the issuance of the disputed 823 shares of stock. The motion was denied on January 2, 1975.[6]

The defendants also filed a motion to declare the defendants Ramon L. de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi in contempt of court, for having violated the writ of preliminary injunction when they entered into the afore-said compromise agreement with the plaintiffs, but the respondent judge denied the said motion for lack of merit.[7]

On February 10, 1975, the defendants filed a motion for the reconsideration of the order denying their motion to dismiss the complaint,[8] and subsequently, an Addendum thereto, claiming that the respondent court has no

jurisdiction to interfere with the management of the corporation by the board of directors, and the enactment of a resolution by the defendants, as members of the board of directors of the corporation, allowing the sale of the 823 shares of stock to the defendants was purely a management concern which the courts could not interfere with.[9] When the trial court denied said motion and its addendum, the defendants filed the instant petition for certiorari for the review of said orders.

The petition is without merit. The questioned order denying the petitioners' motion to dismiss the complaint is merely interlocutory and cannot be the subject of a petition for certiorari. The proper procedure to be followed in such a case is to continue with the trial of the case on the merits and, if the decision is adverse, to reiterate the issue on appeal. It would be a breach of orderly procedure to allow a party to come before this Court every time an order is issued with which he does not agree.

Besides, the order denying the petitioners' motion to dismiss the complaint was not capriciously, arbitrarily, or whimsically issued, or that the respondent court lacked jurisdiction over the cause as to warrant the issuance of the writ prayed for. As found by the respondent judge, the petitioners have not waived their cause of action against the petitioners by entering into a compromise agreement with the other defendants in view of the express provision of the compromise agreement that the same "shall not in any way constitute or be considered a waiver or abandonment of any claim or cause of action against the other defendants." There is also no estoppel because there is nothing in the agreement which could be construed as an affirmative admission by the plaintiff of the validity of the resolution of the defendants which is now sought to be judicially declared null and void. The foregoing circumstances and the fact that no consideration was mentioned in the agreement for the transfer of rights to the said shares of stock to the plaintiffs are sufficient to show that the agreement was merely an admission by the defendants Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi of the validity of the claim of the plaintiffs.

The claim of the petitioners, in their Addendum to the motion for reconsideration of the order denying the motion to dismiss the complaint, questioning the trial court's jurisdiction on matters affecting the management of the corporation, is without merit. The well-known rule is that courts cannot undertake to control the discretion of the board of directors about administrative matters as to which they have legitimate power of action,[10] and contracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so un-conscionable and oppressive as to amount to a wanton destruction of the rights of the minority.[11] In the instant case, the plaintiffs aver that the defendants have concluded a transaction among themselves as will result to serious injury to the interests of the plaintiffs, so that the trial court has jurisdiction over the case.

The petitioners further contend that the proper remedy of the plaintiffs would be to institute a derivative suit against the petitioners in the name of the corporation in order to secure a binding relief after exhausting all the possible remedies available within the corporation.

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.[12] In the case at bar, however, the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation. At any rate, it is yet too early in the proceedings since the issues have not been joined. Besides, misjoinder of parties is not a ground to dismiss an action.[13]

WHEREFORE, the petition should be, as it is hereby DISMISSED for lack of merit. With costs against the

petitioners.

SO ORDERED.

Antonio, (Actg. Chairman), Aquino, Santos, and Abad Santos, JJ., concur.
Barredo, J., on leave.

[1] Rollo, p. 48.

[2] Id., p. 10.

[3] Id., p. 102.

[4] Id., p. 63.

[5] Id., p. 12.

[6] Id., p. 15.

[7] Id., p. 99.

[8] Id., p. 4, par. VII of the Petition.

[9] Id., p. 147, p. 2 of Memorandum for the Respondents.

[10] Govt. vs. El Hogar Filipino, 50 Phil. 399.

[11] Ingersoll vs. Malabon Sugar Co., 53 Phil. 745.

[12] Republic Bank vs. Cuaderno, L-22399, March 30, 1967, 19 SCRA 671 and cases cited therein.

[13] Sec. 11, Rule 3, Revised Rules of Court.

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