

MANUEL M. ALLEJE, PETITIONER, VS. COURT OF APPEALS, SPORTS HEALTH AND PHYSICAL EDUCATION (SHAPE) CENTRE, INC., AND/OR ARMIE E. ELMA, PRESIDING JUDGE

G.R. No. 107152. January 25, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

We are called upon once again to draw the parameters of the jurisdiction of the regular courts vis-a-vis the Securities and Exchange Commission (SEC) under PD 902-A. Specifically, we are asked to rule on whether the Regional Trial Court of Pasig - and not the SEC - has jurisdiction over an action instituted by respondent SPORTS HEALTH AND PHYSICAL EDUCATION (SHAPE) CENTER, INC., against one of its officers, petitioner herein, for recovery of corporate funds and assets allegedly misappropriated by him.

Private respondent SHAPE is a duly registered non-stock, non-profit corporation the primary purpose of which is to foster and promote health, conduct physical education and fitness exercises as well as pleasure and recreation activities by establishing and maintaining facilities, sports centers, and the like. SHAPE owns and operates a main sports and fitness center at its principal office at the University of Life Complex in Pasig, Metro Manila, with a branch at the Philamlife Homes Clubhouse in Quezon City.

Petitioner Manuel M. Alleje was the Executive Vice President (EVP) of SHAPE until his termination on 6 June 1991.

On 16 October 1991 SHAPE filed a complaint for injunction and damages with application for preliminary injunction and/or temporary restraining order with preliminary attachment against petitioner Alleje. The case was raffled to Br. 153 of the Regional Trial Court of Pasig presided by respondent Judge Armie E. Elma. In its complaint SHAPE alleged inter alia that -

x x x x

- An internal audit of plaintiff's books of account revealed that:

7.1. defendant without authority from the plaintiff's board of directors or President directed that the entries in the books of account be reversed to reflect that SHAPE-Quezon City is not property/subsidiary or branch of plaintiff but a property of defendant created through advances from the plaintiff; and

7.2. defendant registered in his own name the service name of plaintiff 'SHAPE Centre,' appropriating the same as his personal property;

- Defendant surreptitiously carried out the acts of paragraph 7 above to make it appear that SHAPE-Quezon City is his personal property or business and not that of plaintiff;

- Defendant withdrew funds from plaintiff purportedly as 'advances for liquidation' in the amount of the P604,189.60 as reflected in the plaintiff's books of account x x x x

- Defendant, again using his authority as officer of plaintiff, was able to withdraw funds from the plaintiff purportedly as 'personal advances' in the amount of P760,505.12 as reflected in plaintiff's books of accounts;
- Despite demand, defendant has failed and refused and continues to fail and refuse to liquidate the advances mentioned in paragraphs 9 and 10 nor have returned the said advances to the plaintiff;
- Defendant solicited 'pledges' or personal loans from plaintiff's clients;
- The proceeds from the 'pledges' or personal loans to defendant were used to set up a fitness center at the 2/F Milelong, Amorsolo Street, Makati, Metro Manila, which health center was registered as a single proprietorship business of defendant;
- Defendant ordered the collections of SHAPE Centre, Inc., in the aggregate amount of One Million Five Hundred Nineteen Thousand Five Hundred Sixty Seven and 67/100 Pesos (P1,519,567.67) to be deposited in his personal account and later used the same to pay for his personal loans to the 'pledgers';
- Defendant also encashed a check in, the amount of FIFTY THOUSAND PESOS (P50,000.00) representing the payment of deposit and advance rentals by plaintiff's concessionaire for its health bar and failed to remit the proceeds thereof to plaintiff;
- Defendant instructed an employee of plaintiff to encash three (3) Bank of Philippine Islands' cashier's check (sic) which was (sic) purportedly signed by the plaintiff's President and to deliver to defendant the proceeds of said cashier's check (sic) in the aggregate amount of THREE HUNDRED SEVENTY FIVE THOUSAND PESOS (P375,000.00);
- Despite demand, defendant has not accounted for nor returned to the plaintiff the amounts referred to in paragraphs 14, 15 and 16 above;
- Defendant removed three (3) 'nautilus' machines owned by plaintiff from the latter's gym in the University of Life, Pasig, to his fitness center in Makati and is using said equipment in defendant's business;
- Despite previous demand, defendant has not returned to plaintiff the three (3) 'nautilus' machines;
- On May 2, 1991, the plaintiff's President Henri S. Kahn, in a letter dated May 2, 1991, and received by defendant on the same date, advised defendant that the latter was suspended from his position as EVP x x x x
- After investigation, plaintiff, thru its President, dismissed defendant effective on June 06, 1991 x x x x [1]

SHAPE prayed that Alleje be ordered to render an accounting of all his unliquidated advances, to pay SHAPE the aggregate amount of P12,685,691.00 representing money and funds he diverted for his personal use and benefit, as well as to reconvey to SHAPE all its assets and properties. [2]

On 14 December 1991, SHAPE filed a supplemental complaint alleging that after the filing of the original complaint, it discovered that Alleje coined a new name for his health and fitness centers and advertised the same as "SHAPE CAMP," thus tending to misrepresent to the public that SHAPE had entered into some kind of arrangement with Alleje when in fact it had not. [3]

Instead of filing an answer, Alleje filed a motion to dismiss contending that the Regional Trial Court has no jurisdiction over the present action which partakes of an intracorporate controversy solely cognizable by the SEC.

In its order of 27 February 1992 the trial court denied Alleje's motion to dismiss on the ground that the nature of the dispute did not require special expertise as it was simply one for the recovery of certain assets and properties allegedly dissipated by Alleje during his tenure as an officer.

The Court of Appeals sustained the trial court. In dismissing Alleje's petition for certiorari and prohibition, the appellate court held that the present controversy was not intracorporate inasmuch as Alleje was not being sued as a stockholder but as a former officer of the corporation who committed a breach of trust by dissipating assets belonging to the corporation. [4] After the appellate court denied reconsideration, Alleje filed the instant petition.

We grant the petition.

The applicable law is PD 902-A (Reorganization of the Securities and Exchange Commission with Additional Powers), as amended by PDs Nos. 1653, 1758 and 1799. Sec. 3 of PD 902-A provides:

SEC. 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of and to deputize any and all enforcement agencies of the government, civil or military, as well as any private institution, corporation, firm, association or person,

which provision should be read together with Sec. 5 of the same law which states:

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 the existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving: (a) Devises 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 to the stockholders, partners, members of associations or organizations registered with the Commission x x x

It is axiomatic that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations of the complaint irrespective of whether plaintiff is entitled to some or all of the claims asserted therein. [5]

The averments in the original complaint as well as the supplemental complaint of SHAPE sufficiently show the alleged acts committed by Alleje, an officer, against SHAPE which amount to fraud and misrepresentation and thus detrimental to the interest of the public. "Fraud" is defined as a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. [6]

Among the questionable acts imputed to petitioner are: (a) withdrawal of funds of SHAPE purportedly as either "personal advances" or "advances for liquidation" which he could not have accomplished if he were not an "EVP"; (b) failure to remit funds belonging to SHAPE; (c) unauthorized removal of "nautilus" equipment from SHAPE's gym for use in his own health and fitness centers; and, (d) naming his health and fitness centers as "SHAPE CAMP," making it appear that they had some business connection with SHAPE.

Clearly, the complaint alleges that as an officer of SHAPE Alleje employed devises or schemes tantamount to fraud and misrepresentation in order to divert corporate funds and assets for his personal use. This has transposed an otherwise ordinary action for recovery of certain properties and sum of money with damages into an intracorporate controversy which calls for the adjudicative powers of the SEC pursuant to Sec. 5, par. (a), of PD 902-A. In other words, the complaint filed by SHAPE before the Pasig trial court imputes unmistakable acts of fraud to Alleje as an officer of SHAPE which have supposedly resulted in its heavy financial losses. The fraud committed is detrimental to the interest not only of the corporation itself but also of its members who have unselfishly agreed among themselves that no part of the net income of the corporation shall inure to any of them.

As held in *Magalad v. Premier Financing Corporation*, [7] this (fraud) encompasses a category of relationship within the SEC jurisdiction, despite the fact that the complaint ultimately involves collection of money, the recovery of which would ordinarily fall within the legal competence of the regular courts.

WHEREFORE, the petition is GRANTED. The assailed Resolution of the Court of Appeals dated 25 March 1992 sustaining the trial court's denial of petitioner's motion to dismiss is REVERSED and SET ASIDE. The Regional Trial Court of Pasig, Br. 153, is ordered to DISMISS its Civil Case No. 61408 for lack of jurisdiction, without prejudice to the filing by private respondent SHAPE of the appropriate action against petitioner Manuel M. Alleje with the Securities and Exchange Commission.

No costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Civil Case No. 61408, Rollo, pp. 71-78.

[2] *Id.*, pp 81-81.

[3] *Id.*, pp. 118-125.

[4] Resolution in CA-G.R. SP No. 27588, 25 March 1992.

[5] *A & A Continental Commodities Philippines, Inc. v. Securities and Exchange Commission*, G.R. No. 55343, 16 August 1993, 225 SCRA 341, citing *Tijam v. Sibonghanoy*, 23 SCRA 29 and *Serrano v. Munoz (Hi) Motors, Inc.*, 21 SCRA 1085.

[6] *Black's Law Dictionary*, 4th Edition, 1951, p. 788.

[7] G.R. No. 87135, 22 May 1992, 209 SCRA 260.

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