

**BENJAMIN TOLENTINO, PETITIONER, VS. COURT OF APPEALS,
TRUSTCOM FUTURES, INC., STEVEN TANG (ALIAS TANG CHAI TAK),
ELENA LAO, AND JOEL RODRIGUEZ, RESPONDENTS.**

G.R. No. 123445. October 06, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On 14 November 1988, petitioner filed before the Regional Trial Court of Quezon City a complaint for "Sum of Money With Application For Issuance Of Writ Of Preliminary Attachment" against private respondents herein, alleging:

4. That on or about February 27, 1989, plaintiff entered into a contract described as 'Trading Contract and Rules for Commodity Trading' with the defendant Trustcom Futures, Inc., who was represented therein by defendant Joel Rodriguez who signed for and in its behalf, x x x;
5. That pursuant to the aforesaid contract, defendant Joel Rodriguez was designated as the Investment Consultant for the purpose of trading in behalf of the plaintiff in the commodity futures market thru the MIFE, the local exchange duly licensed by the Securities and Exchange Commission;
6. That in accordance with the aforesaid contract, the defendant corporation required the plaintiff Benjamin Tolentino to make an initial margin deposit in the sum of P300,000.00 and after the said plaintiff paid the said margin deposit he was issued by the defendant corporation a margin receipt;
7. That pursuant to this Contract the plaintiff was assigned Account No. 8O11-52, and the defendants opened in behalf of the plaintiff on various dates beginning February 27, 1987 to April 30, 1987 inclusive, a series of buying and selling positions the same to be traded thru the MIFE;
8. That in accordance with the requirements imposed by the defendants, the plaintiff pursuant to several margin calls and/or requirements for infusions paid a net sum of P887,300.00 which were receipted by the defendants with the issuance of margin receipt, x x x;
9. That the plaintiff came to know and discovered later, that the defendants appeared later, that the defendants appeared to have conspired and confederated to commit fraud, misrepresentation and/or machinations by actually engaging themselves in cross trading thru the opening (buying/selling) of positions opposed to the buying and selling positions of the plaintiff (PLTFF) in sugar commodity and in order to cover their fraud or to put a semblance of legitimacy to the commissions of fraud, machinations and/or misrepresentations against the plaintiff, the defendants' (DEFENDANTS BUY/SELL IN UNITS) used fictitious names and/or fictitious accounts in order to achieve their purpose of defeating or prejudicing the already opened buying or selling positions of the herein plaintiff x x x;
10. That due to the disadvantageous and prejudicial positions (buying and selling) of the plaintiff on account of the cross trading by defendants and the misrepresentations, frauds and machinations undertaken by them, the herein plaintiff incurred a total loss of P827,300.00 as of April 30, 1987, however, the defendants on the other hand realized profits on the aforesaid transactions in the sum of P283,978.66;

11. That the profits realized and/or earned by the defendants should have been earned by the plaintiff had the defendants not engaged in cross-trading and/or fraudulent transactions designed to defeat those taken by the plaintiff which also constitute a breach of trust and confidence because they are mandated by the nature of their positions as broker to manage the account of the plaintiff to the best of their abilities and not use insider information and/or fictitious accounts and/or fictitious persons for the purpose of cross trading against those positions opened (buying or selling) by defendants which they took for and on behalf of its clients, namely the herein plaintiff;

12. That the defendant corporation thru the individual defendants conspired and confederated and took steps to insure the attainment of their illicit purposes to defraud the herein plaintiff by managing and/or trading plaintiff trading accounts individually and collectively, and with full knowledge that they do not have the required licenses to manage and/or trade these accounts as licensed investment consultant by the Securities and Exchange Commission;

13. That the defendant corporation and individual defendants again connived and confederated to further insure their illegal purposes against the plaintiff thru the use of the so-called special accounts using for the purpose fictitious accounts and/or persons with the addresses of staff houses of other brokers or their own or former addresses, x x x;

14. That the above conspiracy to commit fraud by the defendants against the plaintiff is further manifested by the relaxation or non-implementation, of the Exchange and defendant company's rule on margin deposits of P10,000.00 for every unit (buy/sell) on the defendants, who engaged in cross trading with only a nominal or short margin deposit for trading involving hundreds of thousands or millions of pesos, x x x;

xxx xxx

16. That defendants are guilty of fraud in conspiring and confederating with one another, by convincing the herein plaintiff to invest with them, however while they are supposed to protect plaintiff's investment with them, they engage in fraudulent machinations and/or misrepresentations thru cross-trading or engaged in the buying and selling positions which were opposed to the buying and selling positions which they undertook for and in behalf of the plaintiff, thereby placing plaintiff's investments in jeopardy and later by using insider informations for the purpose of personal gain or benefits disposed of the same at prices or terms advantageous to themselves but disadvantageous to the plaintiff, and thereby realizing for themselves substantial profits which could have been generated by them for the benefit of the plaintiff;

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18. And further, the defendants used fictitious accounts called special accounts to ensure their illicit purposes of cross-trading against the trading positions of the plaintiff under the names and/or persons with false addresses and/or they used the defendants former or present addresses to guarantee the success of their manipulations, which cost the plaintiff to lose his investments thereon in the sum of P827,300.00;

19. That a sufficient cause of action exists which falls under Section 4(d) Rule 57 of the Rules of Court, and the principal amount due to the plaintiff of which there is no sufficient security whatsoever is P1,111,278.66 which amount is as much sum as the sum of which an order of attachment maybe granted, over and above all legal counter-claims;[1]

On 17 April 1989, private respondents moved to dismiss the said complaint on the following grounds: (1) that the trial court had no jurisdiction over the subject matter of the action; and (2) that several persons, including petitioner, had filed an action with the Securities and Exchange Commission (SEC) against the same defendants for the recovery of their investments which action was still pending before the SEC.

On 3 May 1989, the trial court issued an order dismissing the complaint. Petitioner moved to reconsider said order

but the trial court denied the same in an Order dated 22 September 1989.

Appeal before respondent court proved futile. On 25 June 1995, the Court of Appeals rendered a decision affirming the trial court's decision and dismissing petitioner's appeal. The appellate court held that:

It is a settled principle that jurisdiction is determined by the allegations in the complaint. In a nutshell, the complaint filed in the court a quo alleged that plaintiff-appellant seeks to collect a certain sum of money from the defendant corporation which came about when he entered into a contract entitled "Trading Contract and Rules for Commodity Trading" with the latter; that upon making several marginal deposits with the defendant corporation, the defendants conspired and confederated to commit fraud, misrepresentations and/or machinations by actually engaging themselves in cross-trading through the opening (i.e., buying and selling) of positions opposed to the buying and selling open positions of the plaintiff-appellant in sugar commodity; that in order to cover their fraud or put a semblance of legitimacy to the commission of fraud, machination and/or misrepresentation against the plaintiff-appellant, the defendants used fictitious names and/or fictitious accounts to achieve their purpose of defeating or prejudging the already opened buying or selling positions of the plaintiff-appellant; and that, as a consequence of the said cross-trading activities, plaintiff-appellant was placed at a disadvantage which caused him to suffer considerable losses.

Clearly, appellant's complaint is not an ordinary action for collection of a sum of money which would have been properly cognizable by the lower court. The reason therefor is that appellant had repeatedly alleged in his complaint that defendant Trustcom Futures, Inc., had employed schemes and devices amounting to fraud and misrepresentations in dealing with him, which are undeniably and concededly detrimental to the interest of the public. The lower court, therefore, rightly ruled that the instant suit falls within the exclusive jurisdiction of the Securities and Exchange Commission, as expressly mandated by Presidential Decree No. 902-A, as amended (SEC Reorganization Decree), more particularly Section 5(a) thereof xxx.[2]

Petitioner's motion for reconsideration was denied by respondent court in a Resolution dated 16 January 1996. Hence, the present recourse.

The petition is devoid of merit. With this finding, we find it unnecessary to pursue our Resolution dated 17 April 1996, requiring private respondents to comment on the petition. Said resolution is hereby recalled.

It is petitioner's contention that the Regional Trial Court and not the SEC which has jurisdiction over the present case. Petitioner submits that the jurisdiction of the SEC under Sec. 5(a) of Presidential Decree No. 902-A[3] is limited to which those which may be detrimental to the interest of the public and does not cover cases of fraud which are isolated like the case at bar. He adds that the complaint filed before the lower court prayed for damages which is beyond the SEC's power to grant. Petitioner thus urges this Court to "finally settle and establish a clear cut ruling on commodity futures cases."

The above arguments put forth by petitioner have however been effectively addressed in *Bernardo vs. Court of Appeals*.^[4] In *Bernardo*, petitioners therein instituted before the Regional Trial Court what initially appeared to be "a simple case of annulment of the commodity agreement and instructions of sale and purchase with damages." In their answer the private respondents therein raised, among other defenses, the lack of jurisdiction of the trial court over the subject matter. After trial, the Regional Trial Court dismissed the case for want of jurisdiction, a decision subsequently affirmed by the Court of Appeals and, thereafter by this Court. A careful consideration of the succeeding pleadings and the evidence adduced during the trial revealed that the case was actually one "for recovery of an alleged investment in the commodity futures market and the accompanying damages which petitioners perceived to be directly caused by MASTER's deceit, inducements, misrepresentation, fraud or fraudulent schemes, insidious machinations, and scheming activities."

The case at bar is no different. Indeed, the complaint itself contains allegations that petitioner suffered damages as a result of private respondents' fraud, misrepresentation and machination, and prays for the recovery of petitioner's investment, plus damages. Consequently, this case, like *Bernardo*, falls within the exclusive jurisdiction of the SEC since, as we ratiocinated in that case:

xxx in the first place, it involve(s), at bottom, the supervisory powers of the SEC over the conduct of the business of commodity futures. Section 3 of P.D. No. 902-A expressly provides that the Commission 'shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who (sic) are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines,' and paragraph (g) of Section 6 thereof vests upon the SEC the power to authorize the establishment and operation of inter alia, commodity exchanges. Furthermore, under Section 7 of P.D. No. 178 (Revised Securities Act), the SEC is authorized to promulgate, subject to the approval of the Monetary Board, rules and regulations for the registration and regulation of commodity futures contracts and licensing of futures commission merchants, futures brokers, floor brokers and pool operators. Pursuant thereto and to Section 3 of P.D. No. 902-A, as amended, the SEC promulgated on 15 December 1987 the Revised Rules and Regulations on Commodity Futures Trading.

In the second place, the damages prayed for are alleged to have been proximately caused by or to have arisen from the alleged fraud or fraudulent inducements, deceit or deception, insidious machinations and misrepresentation committed by MASTER in connection with or incident to the execution of the customer's agreement on commodity futures, the margin and deposit requirements and the instructions of purchase and of sale on commodity futures.

There can be no question that the relationship between MASTER and the petitioners is one of those within the ambit of paragraph (a) of Section 5 of P.D. No. 902-A, viz., a corporation or its officers and members of 'the public.' It has been repeatedly held by this Court that in order that the SEC take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members or officers; (c) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; and (d) among stockholders, partners or associates themselves.

Elsewise stated, by the relationship of the parties and subject of their controversy, the jurisdiction of the SEC in this case is beyond dispute. We thus reiterate: The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy. (Citations omitted.)

Finally, petitioner claims that private respondent supposedly "admitted" the jurisdiction of the Regional Trial Court over the present case in their "Amended Answer" filed before said court. The fact that private respondents conceded the Regional Trial Court's jurisdiction, however, is immaterial and did not operate to confer jurisdiction upon the same. Jurisdiction is determined by law and not by the consent or agreement of the parties, or by estoppel.[5]

The Court of Appeals thus did not commit any reversible error when it upheld the trial court's order dismissing petitioner's complaint.

WHEREFORE, the petition is DENIED for lack of reversible error in the decision sought to be reviewed.
SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 36-40; underscoring supplied.

[2] *Id.*, at 43-44.

[3] 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 public and/or to the stockholders, partners, members of associations or organizations registered with the Commission.

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[4] G.R. No. 120730, October 28, 1996, penned by Justice Hilario G. Davide, Jr.

[5] *Lozon vs. National Labor Relations Commission*, 240 SCRA 1 (1995).

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