

ANTONIO M. GARCIA, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE EXPORT & FOREIGN LOAN GUARANTEE CORPORATION, RESPONDENTS.

G.R. No. 123639. June 10, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioner Antonio Garcia challenges, through this petition for review on certiorari under Rule 45 of the Revised Rules of Court, the decision of the Court of Appeals promulgated on 23 October 1995 in CA-G.R. SP No. 27994 granting the motion to dismiss filed by private respondent Philippine Export & Foreign Loan Guarantee Corporation (Philguarantee) on grounds of lack of jurisdiction. Similarly impugned is the Court of Appeals' resolution dated 31 January 1996 denying petitioner's motion for reconsideration.

Petitioner was a major stockholder and president of Dynetics, Inc., a corporation primarily engaged in the manufacture of semi-conductors) originally owning 43% of its outstanding shares of stock. In 1981, Asia Reliability Co., Inc. (ARCI) obtained 28.98% interest in Dynetics. With the said acquisition, the ownership structure of Dynetics became: petitioner Garcia - 32.88%; ARCI - 28.78%; Vicente Chuidian (petitioner's business partner and a major stockholder of ARCI) - 26%; and others - 11.26%.[1]

In February 1981, ARCI, through the initiative of Chuidian and with the guarantee of private respondent, acquired a foreign loan in the amount of US\$25,000,000.00 ostensibly to finance its various business projects. However, the proceeds of the said loan were illegally diverted and used for unauthorized purposes.

When ARCI defaulted in the payment of the aforesaid loan, the foreign creditors went after the guarantor herein private respondent. In turn, private respondent filed cases for recovery against Chuidian, both here and in the United States (where Chuidian fled).

Unfortunately, Dynetics was caught in the crossfire and became a battlefield for control between Chuidian (who also owns, as previously stated, a substantial interest in Dynetics) and private respondent Philguarantee.[2]

In February 1985, Chuidian, as President of Interlek (the marketing arm of Dynetics, organized and based in California, USA) ordered the company to stop its remittances to Dynetics for the latter's assembly services which as of June 1985 amounted to approximately US\$5,000,000.00. Consequently, Dynetics filed a collection case against Interlek and Chuidian.

Thereafter, four (4) representatives of Philguarantee were assigned one (1) qualifying share each in Dynetics. Thus, on 27 May 1985 during the stockholders meeting of Dynetics, the aforementioned nominees (Victor Macalindog, Cesar Macuja, Eduardo Morato and Manuel Lazaro) were elected members of the Board of Directors of Dynetics (although Lazaro did not assume office). Petitioner was the fifth member of the Board.

On 27 November 1985, a Settlement and Mutual Release Agreement (SMRA) was executed by and between Dynetics and Chuidian and another between Philguarantee and Chuidian for the purpose of finally putting an end

to the numerous cases filed by the aforestated parties against one another. The agreements, provided the following:

- (1) dismissal with prejudice of all cases pending between the parties here and abroad, except as to claims against ARCI and Interlek with respect to which the dismissals in the aforementioned actions shall be without prejudice;
- (2) the assignment to Defendant Philguarantee of all shares of stocks owned and controlled by Chuidian in Interlek;
- (3) the assignment to Philguarantee to all shares of Chuidian in ARCI and in Dynetics;
- (4) the payment by Dynetics of US\$100,000.00 per month to Chuidian for five years, backed by a Letter of Credit; and
- (5) the assumption by Dynetics of all the obligations of ARCI in favor of Defendant Philguarantee in the aggregate sum of approximately US\$47 Million.[3]

On 12 December 1991, petitioner instituted a complaint for damages before the Regional Trial Court of Makati, Branch 58. On his first cause of action, petitioner alleged that private respondent reneged on its commitment, based on the aforesaid SMRA, to rehabilitate Dynetics and Chemark (a subsidiary wholly owned by Dynetics) and this caused the financial ruin of the two corporations. Dynetics and Chemark consequently defaulted on their financial obligations and petitioner, in his capacity as guarantor, was held personally liable. He was forced to compromise with the creditor banks in the total amount of P145,000,000.00.[4]

On his second cause of action, petitioner contended that as a result, likewise, of private respondent's failure to rehabilitate Dynetics and because of the implementation of the "onerous" SMRA with Chuidian, the book value of his shares in Dynetics plummeted, from P200.00 per share, to practically zero.

On his third cause of action, petitioner alleged that Dynetics incurred severe losses due to the provision in the SMRA directing the said corporation to drop the collection case it filed against Interlek and Chuidian for unpaid remittances.

Petitioner thus prayed that private respondent pay the following:

1. On his First Cause of Action, P145,000,000.00 as actual/compensatory damages under the terms and conditions of said compromise agreements mentioned in plaintiff's First Cause of Action dated January 17, 1989;
2. On his Second Cause of Action, P32,000,000.00 representing actual losses of the book value of plaintiff's 159,997 shares of stock of Dynetics, Inc. from P200.00 per share to zero amount per share;
3. On his Third Cause of Action, P3,200,000.00 representing losses of plaintiff's equity in unrealized profit out of said unremitted US\$5,000,000.00 due from Interlek;
4. On this Fourth Cause of Action, P15,000,000.00 as moral damages and P10,000,000.00 as exemplary damages.
5. On his Fifth Cause of Action, P30,000,000.00 for and as attorney's fee (15% of the amount involved).[5]

On 20 February 1992, private respondent filed a motion to dismiss on grounds of lack of jurisdiction over the subject matter.

On 21 May 1992, the Regional Trial Court of Makati issued an order denying private respondent's motion to dismiss. The order reads thus:

ORDER

The decision promulgated on May 6, 1992 by the Hon. Court of Appeals in CA-G.R. SP. No. 27685 entitled Phil. Export and Foreign Loan Guarantee Corporation vs. Hon. Presiding Judge, Br. 58, RTC, Makati directing this Court to resolve said petitioner's motion to dismiss, a copy of said decision having been furnished this Court, is NOTED.

Pending resolution before this Court is the motion to dismiss filed by defendant Philguarantee, the opposition thereto filed by the plaintiff, and the reply to opposition filed by the said defendant. After considering the arguments for and against the motion, the Court resolves to deny the motion. Furthermore, after a meticulous assessment of the record of this case, the Court is more inclined to believe that the nature of this case is for damages rather than an intra-corporate matter and therefore this Court has jurisdiction over this case. Due to the denial of defendant's motion to dismiss as aforementioned, the said defendant is given fifteen (15) days from receipt of a copy of this order within which to file its answer pursuant to Sec. 4, Rule 16 of the Rules of Court.

Notify the respective counsel of both parties of this order.

SO ORDERED.[6]

Private respondent challenged the trial court's order before the Court of Appeals which, in a decision dated 23 October 1995, reversed the same. The dispositive portion states thus:

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The assailed order of respondent court dated May 21, 1992 is SET ASIDE.

SO ORDERED.[7]

The Court of Appeals ruled that the controversy between petitioner and private respondent is intra-corporate in nature and therefore falls under the jurisdiction of the Securities and Exchange Commission (SEC) and not the regular courts.

In a resolution dated 20 December 1995, the Court of Appeals denied petitioner's motion for reconsideration.[8] Hence, this petition for review on certiorari.

Petitioner assigns the following errors:

I

RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONER'S ACTION BEFORE THE COURT A QUO IS PURELY OF DAMAGES ARISING OUT OF BREACH OF CONTRACT AND THEREFORE WITHIN THE EXCLUSIVE JURISDICTION OF REGULAR CIVIL COURTS.

II

RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT THE INSTANT ACTION DOES NOT INVOLVE INTRA-CORPORATE MATTERS OR ISSUES AND THEREFORE BEYOND THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION.[9]

In insisting that the SEC does not have jurisdiction, petitioner recounts the events in this manner: before private respondent entered the picture, Chemark, a Dynetics subsidiary, obtained loans from PCIB, BPI, RCBC, PISO, LB and other banks on various dates. These loans were personally guaranteed by petitioner under suretyship agreements he executed in favor of the said banks in 1980. After private respondent gained control of Dynetics, it

made a firm commitment, petitioner claims, to rehabilitate Dynetics and Chemark in exchange for his acquiescence to the SMRA even though its terms were prejudicial to Dynetics. However, private respondent reneged on its promise, which caused Dynetics and Chemark to collapse financially. Being the corporations' guarantor, petitioner was forced to settle their debts with the aforementioned banks with his personal properties. Hence, petitioner contends that what he sought to recover in his complaint for damages was primarily the money he paid to the creditor banks of Dynetics and Chemark.

Petitioner thus persists in his argument that, being an action for damages due to breach of contract, the present case is cognizable by the regular courts and beyond the jurisdiction of the SEC, for, had private respondent not withdrawn its commitment, petitioner rationalizes, Dynetics would have regained its strong business position. Consequently, it could have settled its obligations with its creditor banks and petitioner would have been released from his obligations as surety.[10]

Petitioner further contends that he is suing not as a stockholder of Dynetics but in his personal capacity as the latter's aggrieved surety. In like manner, private respondent is being sued as "a separate entity which authored the notorious SMRA." [11]

Petitioner also avers that his principal cause of action is "damages arising from breach of contract." The other causes of action in his complaint are incidental claims which emanate from and are the direct consequences of his main cause of action.[12]

The petition is unmeritorious. Jurisdiction over the present controversy is vested in the SEC and not in the regular courts.

To determine which body has jurisdiction over the present controversy, we rely on the sound judicial principle 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 the plaintiff is entitled to all or some of the claims asserted therein.[13]

The law, P.D. 902-A, explicitly lays down the parameters of the Securities and Exchange Commission's jurisdiction. Thus:

SECTION 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 existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

- a) Devices 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 of the stockholders, partners, members of associations or organizations registered with the Commission.
- b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any and/or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity.
- c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships, or associations.
- d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all of its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the

Management Committee created pursuant to this Decree.

Jurisprudence, however, has tempered the aforequoted provision, paragraph (b) in particular:

x x x. 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.[14]

We have judiciously gone over petitioner's original complaint and are not deceived by his cunning arguments. The case at bar is a classic illustration of a dispute between stockholders - - private respondent, the current majority and controlling stockholder of Dynetics and petitioner, the erstwhile majority stockholder of said corporation (although he still holds a substantial interest therein).

Petitioner's stubborn insistence that he brought the case for damages in his capacity as an aggrieved surety and not as a stockholder is belied by the opening statement in his complaint:

1. Plaintiff is a Filipino, of legal age, with business address at 7th Floor, Chemphil Building, Pasay Road, Makati, Metro Manila, where he may be served with all court processes; he was (and still is) at all times relevant to his complaint a major stockholder of Dynetics, Inc. (Dynetics for brevity), a corporation duly organized and existing under the laws of the Philippines;[15] x x x (underscoring ours).

Moreover, in the same complaint petitioner also sought to recover the loss in the book value of his shares of stock in Dynetics and his share in the said corporation's unrealized profits. Although the foregoing may have arisen from the same facts or circumstances, we cannot simply brush these aside as incidental claims because only in his personality as a prejudiced stockholder, and not in his capacity as a mere surety, will petitioner be able to rightly pray for and be granted these claims.

More importantly, petitioner became a surety of Dynetics and Chemark because he was then one of the principal stockholders of Dynetics. This was a requisite of the creditor banks. Petitioner's character as surety for Dynetics, therefore, can even be traced to and is interlocked with the fact that he is a major stockholder of the said corporation. Petitioner himself revealed in his complaint:

21. On the other hand, at various times before the aforesaid controversy between the Marcoses and Chuidian, Chemark, a subsidiary of Dynetics, obtained various loans from PCIB, IBAA, SBTC and a consortium of banks (PISO, BPI, RCBC, PCIB, and LB) the security for which loans were required by said creditor banks to include guarantee and/or suretyships coming from the principal stockholders of Dynetics and Chemark including plaintiff who had to execute such guarantees and/or suretyships in his personal capacity under a joint and several or solidary type of obligation.[16] (underscoring ours).

It is evident from the aforequoted averment that petitioner instituted his complaint primarily as stockholder of Dynetics. Petitioner however, wants us to focus solely on his character as surety and his claim for damages as such to remove the present controversy from Section 5(b) of P.D. 902-A, and corollarily from the jurisdiction of the SEC.

Petitioner, likewise, assails the status of private respondent as stockholder of Dynetics. His contention, however, is belied by the allegations in his complaint. As early as 27 May 1985 Philguarantee's representatives were already on the Board of Directors of Dynetics, constituting the majority thereof. In his complaint, petitioner himself stated, that:

9. At the start of the second quarter of 1985, the defendant, acting apparently upon the instructions of the Marcoses, without assuming formal ownership of the company and employing undue power and influence started to gain control of Dynetics. No major decision or fund disbursement was made without the defendant's

consent. On May 27, 1985, during a stockholders meeting convened at its proddings, the defendant had its nominees, namely, Victor Macalincag, Cesar Macuja and Eduardo Morato (of HSDC) elected and constituted as a majority in the board of Dynetics. Out of five members, only four assumed office. The fourth member was plaintiff. The fifth member, Manuel Lazaro, then the President's Legal Counsel, was nominated and elected but did not assume office. Chuidian was ousted as a director although he still had sufficient shares in his name and control to elect himself.[17] (underscoring ours).

Since both parties in the case at bar are stockholders of the corporation, jurisdiction over their present conflict vests in the SEC pursuant to Sec. 5(b) of P.D. 902-A. Our task, however, does not end here. As stated in *Viray v. CA*,^[18] the establishment of any of the relationships in Sec. 5(b) of PD 902-A does not automatically "confer jurisdiction over the dispute on the SEC to the exclusion of the regular courts." We are quite aware that not all disagreements between stockholders or between a corporation and its stockholder are intra-corporate in nature. Hence, we proceed to the next test: whether or not the nature of the controversy itself is intra-corporate.

Contrary to petitioner's averments, this is not a simple action for breach of contract. Digging deeper, the "corporate nature" of the present controversy is eventually revealed.

Petitioner attributes to the SMRA the commitment of private respondent to rehabilitate Dynetics and Chemark. This is the reason why, when private respondent withdrew the restructuring plans for the rehabilitation of the aforementioned corporations, petitioner instituted a complaint for breach of contract. The problem with this scenario, however, is that petitioner failed to indicate the exact provision where this specific promise is embodied. Instead, petitioner presented the letter dated 18 October 1985 sent by Cesar P. Macuja, Chairman of the Board of Directors of Dynetics and Executive Vice-President of private respondent to all the creditor banks of Dynetics and Chemark entitled "Proposed Integrated Financial Plan for the Rehabilitation of Dynetics, Inc., Asian Reliability Company, Inc. and Chemark Electric Motors, Inc." The contents of the said letter is hereby reproduced:

In accordance with our discussion meetings of 9-11 October 1985, I am submitting to each one of you for review and favorable consideration, the Proposed Integrated Financial Plan for the rehabilitation of the above-mentioned companies.

As reported to you, PHILGUARANTEE has been ceded ownership of these companies and the success of our rehabilitation of the business will depend largely on your approval to restructure your respective exposures in Dynetics and Chemark. The basic restructuring scheme is summarized as follows:

1. For the Secured Creditors of Dynetics. - Unpaid interest up to 31 December 1985 will be capitalized as principal. The consolidated principal amount (original principal balance plus capitalized interest) will be repaid within four (4) years at an interest rate of 14% per annum with a one (1) year grace period on principal repayment. These loans will remain as dollar-denominated liabilities.
2. For the Unsecured Creditors of Dynetics - Unpaid interest up to 31 December 1985 will be capitalized as principal. The consolidated principal amount (original principal balance plus capitalized interest) will be repaid within seven (7) years at an interest rate of 1-1/2% over Treasury Bills with two (2) years grace period on principal repayment.
3. For the Chemark's Creditors - Unpaid interest up to 31 December 1985 will be capitalized as principal. The consolidated principal amount (original principal balance plus capitalized interest) will be repaid within fifteen (15) years with two (2) years grace period on principal repayment at an interest rate of 10% per annum.
4. New Equity Contribution - Since PHIL- GUARANTEE is a government financial institution and not a venture capital company, it is proposed that an 'Investors Group' be invited to invest new money of about P44.0 million.

COMMERCIAL PLAN

The financial projections are prepared on the basis of three (3) divisional commercial plans as follows:

- a. Semiconductor - There will be a continuance of the operations of Dynetics, Inc. as a semi conductor assembly division with gradual buildup of supply orders from its 40 major customers with profitable market recovery during 1986.
- b. PHILGUARANTEE's acquired assets from ARCI shall be integrated into the operation of Dynetics as Integrated Circuits Testing/Tool and Die Fabrication Divisions.
- c. Restart the operation of Chemark under the financial assistance from Dynetics in accordance with new business opportunities as reflected by letters of intent.

EXPANDED BOARD OF DIRECTORS

It is planned that the consolidated operation will have a simple Board of Directors to be expanded from the present five (5) members to nine (9) members. The four (4) new Board representatives are proposed to be nominated from among the creditor banks.

You will also note that one of the highlights of the projections, aside from the assumed restructuring terms, is a conservative estimate of Dynetics' overall working capital requirements, of P89.0 Million. This estimate already took into account Dynetics' financial assistance contemplated for Chemark for about P35.2 million. In this regard, Dynetics management had earlier proposed to source this requirement through short-term borrowings. It is nonetheless the opinion of PHILGUARANTEE that the right funding mix is a combination of short-term borrowings of P45.0 million and fresh equity infusion of the P44.0 million to be supplied by a proposed 'Investors Group.' PHILGUARANTEE is pursuing this funding mix so as not to overburden Dynetics in terms of financing cost.

The Integrated Financial Plan amply illustrates the business potential of this group of companies. May I therefore reiterate that your decision to go with this plan will benefit not just the thousands of people depending on these companies for livelihood. In more ways than one, your concerted efforts will go a long way towards achieving the desired stability of the export electronic industry in the Philippines, and should ultimately redound to the benefit of the private sectors like you.

Thank you and regards.

CESAR P. MACUJA

Chairman of the Board Executive Vice President

Dynetics, Incorporated Phil. Export & Foreign

Loan Guarantee Corp.

cc: Philguarantee Board of Directors.[19]

The aforequoted letter, to use a worn cliché, reveals beyond the shadow of a doubt that the proposed rehabilitation program for the said corporation was made by private respondent in its capacity as the majority or controlling stockholder of Dynetics. The rehabilitation plan was a corporate decision and a corporate action. The root of petitioner's complaint therefore, no matter how cleverly devised and artfully disguised is plainly a corporate affair and being so, jurisdiction over the dispute at bar pertains to the SEC and not to the regular courts.

We concur with the findings of the Court of Appeals, thus:

The private respondent, however, vigorously asserts that his case is nothing but an action for damages arising from breach of contractual obligation committed by petitioner in unilaterally withdrawing its agreement to rehabilitate Dynetics and Chemark. The contention is clever, but unacceptable. The fact remains that the claim for damages either depends on, or is inextricably linked with, the resolution of the corporate controversies. For instance, the prayer for moral and exemplary damages is grounded on ‘defendant’s total bad faith and malice knowing fully well that its acts were patently injurious to the rights and interests of said corporations and its stockholders, including plaintiff xxx.’ xxx. Clearly, what private respondent filed against petitioner before the court below was an intra-corporate case under the guise of an action for damages employing civil law terms and phrases.

The teaching of the Court, en banc, penned by Justice Bellosillo, in the recent case of *Andaya vs. Abadia, et al.*, 228 SCRA 707, 711, further illumines the issue:

The allegations against herein respondents in the amended complaint unquestionably reveal intra-corporate controversies cleverly concealed, although unsuccessfully, by use of civil law terms and phrases, xxx While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, the issue of consequential damages may just as well be resolved and adjudicated by the SEC. (underscoring supplied).[20]

In view of the foregoing, the declaration in *Union Glass and Container Corp. vs. SEC*.[21] is appropriately recalled:

x x x. The principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected and their activities pursued for the promotion of economic development.

It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations. (underscoring ours).

WHEREFORE, premises considered, the petition for review on certiorari is hereby DENIED.
SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.
Padilla, (Chairman), J., on leave.

[1] Rollo, p. 13.

[2] Id., at 106.

[3] Id., at 14.

[4] Id., at 180-183.

[5] Rollo, p. 120.

[6] Original Records, p. 119.

[7] Rollo, p. 44.

[8] Id., at 46.

[9] Id., at 18.

[10] Id., at 18.

[11] Id., at 83.

[12] Id., at 26.

[13] *Allejo v. CA*, 240 SCRA 495 (1995); *Macapalan v. Katalbas-Moscardon*, 227 SCRA 49 (1993); *A & A Continental Commodities Phils., Inc. v. SEC*, 225 SCRA 341 (1993); *Viray v. CA*, 191 SCRA 308 (1990); *Malayan Integrated Corp. v. Mendoza*, 154 SCRA 548 (1987).

[14] *Viray v. CA*, 191 SCRA 308 (1990); See also, *Torio v. CA*, 230 SCRA 626 (1994) and *Mainland Construction Co., Inc. v. Movilla*, 250 SCRA 290 (1995).

[15] *Rollo*, p. 104.

[16] Id., at 114.

[17] Id., at 107.

[18] See note 14.

[19] *Rollo*, pp. 123-125.

[20] *Rollo*, pp. 43-44.

[21] 126 SCRA 31 (1983).

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