

LIM TAY, PETITIONER VS., COURT OF APPEALS, GO FAY AND CO. INC., SY GUIOK, AND THE ESTATE OF ALFONSO LIM, RESPONDENTS.

G.R. No. 126891. August 05, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The duty of a corporate secretary to record transfers of stocks is ministerial. However, he cannot be compelled to do so when the transferee's title to said shares has no prima facie validity or is uncertain. More specifically, a pledgee, prior to foreclosure and sale, does not acquire ownership rights over the pledged shares and thus cannot compel the corporate secretary to record his alleged ownership of such shares on the basis merely of the contract of pledge. Similarly, the SEC does not acquire jurisdiction over a dispute when a party's claim to being a shareholder is, on the face of the complaint, invalid or inadequate or is otherwise negated by the very allegations of such complaint. Mandamus will not issue to establish a right, but only to enforce one that is already established.

Statement of the Case

These are the principles used by this Court in resolving this Petition for Review on Certiorari before us assailing the October 24, 1996 Decision[1] of the Court of Appeals[2] in CA-GR SP No. 40832, the dispositive portion of which reads:

"IN THE LIGHT OF ALL THE FOREGOING, the Petition at bench is DENIED DUE COURSE and is hereby DISMISSED. With costs against the [p]etitioner."[3]

By the foregoing disposition, the Court of Appeals effectively affirmed the March 7, 1996 Decision[4] of the Securities and Exchange Commission (SEC) en banc:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the appeal on the ground that mandamus will only issue upon a clear showing of ownership over the assailed shares of stock, [t]he determination of which, on the basis of the foregoing facts, is within the jurisdiction of the regular courts and not with the SEC."[5]

The SEC en banc upheld the August 16, 1993 Decision[6] of SEC Hearing Officer Rolando C. Malabonga, which dismissed the action for mandamus filed by petitioner.

The Facts

As found by the Court of Appeals, the facts of the case are as follows:

"x x x On January 8, 1980, Respondent-Appellee Sy Guiok secured a loan from the [p]etitioner in the amount of P40,000 payable within six (6) months. To secure the payment of the aforesaid loan and interest thereon, Respondent Guiok executed a Contract of Pledge in favor of the [p]etitioner whereby he pledged his three hundred (300) shares of stock in the Go Fay & Company Inc., Respondent Corporation, for brevity's sake. Respondent Guiok obliged himself to pay interest on said loan at the rate of 10% per annum from the date of said

contract of pledge. On the same date, Alfonso Sy Lim secured a loan from the [p]etitioner in the amount of P40,000 payable in six (6) months. To secure the payment of his loan, Sy Lim executed a 'Contract of Pledge' covering his three hundred (300) shares of stock in Respondent Corporation. Under said contract, Sy Lim obliged himself to pay interest on his loan at the rate of 10% per annum from the date of the execution of said contract.

Under said 'Contracts of Pledge,' Respondent[s] Guiok and Sy Lim covenanted, inter alia, that:

'3. In the event of the failure of the PLEDGOR to pay the amount within a period of six (6) months from the date hereof, the PLEDGEE is hereby authorized to foreclose the pledge upon the said shares of stock hereby created by selling the same at public or private sale with or without notice to the PLEDGOR, at which sale the PLEDGEE may be the purchaser at his option; and the PLEDGEE is hereby authorized and empowered at his option to transfer the said shares of stock on the books of the corporation to his own name and to hold the certificate issued in lieu thereof under the terms of this pledge, and to sell the said shares to issue to him and to apply the proceeds of the sale to the payment of the said sum and interest, in the manner hereinabove provided;

4. In the event of the foreclosure of this pledge and the sale of the pledged certificate, any surplus remaining in the hands of the PLEDGEE after the payment of the said sum and interest, and the expenses, if any, connected with the foreclosure sale, shall be paid by the PLEDGEE to the PLEDGOR;

5. Upon payment of the said amount and interest in full, the PLEDGEE will, on demand of the PLEDGOR, redeliver to him the said shares of stock by surrendering the certificate delivered to him by the PLEDGOR or by retransferring each share to the PLEDGOR, in the event that the PLEDGEE, under the option hereby granted, shall have caused such shares to be transferred to him upon the books of the issuing company.' (idem, supra)

Respondent Guiok and Sy Lim endorsed their respective shares of stock in blank and delivered the same to the [p]etitioner." [7]

However, Respondent Guiok and Sy Lim failed to pay their respective loans and the accrued interests thereon to the [p]etitioner. In October, 1990, the [p]etitioner filed a 'Petition for Mandamus' against Respondent Corporation, with the SEC entitled 'Lim Tay versus Go Fay & Company, Inc., SEC Case No. 03894', praying that:

'PRAYER

WHEREFORE, premises considered, it is respectfully prayed that an order be issued directing the corporate secretary of [R]espondent Go Fay & Co., Inc. to register the stock transfers and issue new certificates in favor of Lim Tay. It is likewise prayed that [R]espondent Go Fay & Co., Inc[.] be ordered to pay all dividends due and unclaimed on the said certificates to [P]laintiff Lim Tay.

Plaintiff further prays for such other relief just and equitable in the premises.' (page 34, Rollo)

The [p]etitioner alleged, inter alia, in his Petition that the controversy between him as stockholder and the Respondent Corporation was intra-corporate in view of the obstinate refusal of the corporate secretary of Respondent Corporation to record the transfer of the shares of stock of Respondent Guiok and Sy Lim in favor of and under the name of the [p]etitioner and to issue new certificates of stock to the [p]etitioner.

The Respondent Corporation filed its Answer to the Complaint and alleged, as Affirmative Defense, that:

'AFFIRMATIVE DEFENSE

7. Respondent repleads and incorporates herein by reference the foregoing allegations.

8. The Complaint states no cause of action against [r]espondent.

9. Complainant is not a stockholder of [r]espondent. Hence, the Honorable Commission has no jurisdiction to

enter the present controversy since their [sic] is no intracorporate relationship between complainant and respondent.

10. Granting arguendo that a pledge was constituted over the shareholdings of Sy Guiok in favor of the complainant and that the former defaulted in the payment of his obligations to the latter, the same did not automatically vest [i]n complainant ownership of the pledged shares.’ (page 37, Rollo)

In the interim, Sy Lim died. Respondents Guiok and the Intestate Estate of Alfonso Sy Lim, represented by Conchita Lim, filed their Answer-In-Intervention with the SEC alleging, inter alia, that:

‘x x x

3. Deny specifically the allegation under paragraph 5 of the Complaint that, failure to pay the loan within the contract period automatically foreclosed the pledged shares of stocks and that the share of stocks are automatically purchased by the plaintiff, for being false and distorted, the truth being that pursuant to the [sic] paragraph 3 of the contract of pledges, Annexes ‘A’ and ‘B’, it is clear that upon failure to pay the amount within the stipulated period, the pledgee is authorized to foreclose the pledge and thereafter, to sell the same to satisfy the loan. [H]owever, to this point in time, plaintiff has not performed any operative act of foreclosing the shares of stocks of [i]ntervenors in accordance with the Chattel Mortgage law, [n]either was there any sale of stocks -- by way of public or private auction -- made after foreclosure in favor of the plaintiff to speak about, and therefore, the respondent company could not be force[d] to [sic] by way of mandamus, to transfer the subject shares of stocks from the name of your [i]ntervenors to that of the plaintiff in the absence of clear and legal basis for such;

4. DENY specifically the allegations under paragraphs 6, 7 and 8 of the complaint as to the existence of the alleged intracorporate dispute between plaintiff and company for being without proper and legal basis. In the first place, plaintiff is not a stockholder of the respondent corporation; there was no foreclosure of shares executed in accordance with the Chattel Mortgage Law whatsoever; there were no sales consummated that would transfer to the plaintiff the subject shares of stocks and therefore, any demand to transfer the shares of stocks to the name of the plaintiff has no legal basis. In the second place, [i]ntervenors had been in the past negotiating possible compromise and at the same time, had tendered payment of the loan secured by the subject pledges but plaintiff refused unjustifiably to oblige and accept payment o[r] even agree on the computation of the principal amount of the loan and interest on top of a substantial amount offered just to settle and compromise the indebtedness of [i]ntervenors;

II. SPECIAL AFFIRMATIVE DEFENSES

Intervenors replead by way of reference all the foregoing allegations to form part of the special affirmative defenses;

5. This Honorable Commission has no jurisdiction over the person of the respondent and nature of the action, plaintiff having no personality at all to compel respondent by way of mandamus to perform certain corporate function[s];

6. The complaint states no cause of action;

7. That respondent is not [a] real party in interest;

8. The appropriation of the subject shares of stocks by plaintiff, without compliance with the formality of law, amounted to ‘[p]actum commis[s]orium’ therefore, null and void;

9. Granting for the sake of argument only that there was a valid foreclosure and sale of the subject st[o]cks in favor of the plaintiff -- which [i]ntervenors deny -- still paragraph 5 of the contract allows redemption, for which intervenors are willing to redeem the share of stocks pledged;

10. Even the Chattel Mortgage law allowed redemption of the [c]hattel foreclosed;

11. As a matter of fact, on several occasions, [i]ntervenors had made representations with the plaintiff for the compromise and settlement of all the obligations secured by the subject pledges -- even offering to pay compensation over and above the value of the obligations, interest[s] and dividends accruing to the share of stocks but, plaintiff unjustly refused to accept the offer of payment;' (pages 39-42, Rollo)

The [r]espondents-[i]ntervenors prayed the SEC that judgment be rendered in their favor, as follows:

‘IV. PRAYER

It is respectfully prayed to this Honorable Commission after due hearing, to dismiss the case for lack of merit, ordering plaintiff to accept payment for the loans secured by the subject shares of stocks and to pay plaintiff:

1. The sum of P50,000.00, as moral damages;
2. the sum of P50,000.00, as attorneys fees; and,
3. costs of suit.

Other reliefs just and equitable [are] likewise prayed for.' (pages 42-43, Rollo)

After due proceedings, the [h]earing [o]fficer promulgated a Decision dismissing [p]etitioner's Complaint on the ground that although the SEC had jurisdiction over the action, pursuant to the Decision of the Supreme Court in the case of 'Rural Bank of Salinas, et al. versus Court of Appeals, et al., 210 SCRA 510', he failed to prove the legal basis for the secretary of the Respondent Corporation to be compelled to register stock transfers in favor of the [p]etitioner and to issue new certificates of stock under his name (pages 67-77, Rollo). The [p]etitioner appealed the Decision of the [h]earing [o]fficer to the SEC, but, on March 7, 1996, the SEC promulgated a Decision, dismissing [p]etitioner's appeal on the grounds that: (a) the issue between the [p]etitioner and the [r]espondents being one involving the ownership of the shares of stock pledged by Respondent Guiok and Sy Lim, the SEC had no jurisdiction over the action filed by the [p]etitioner; (b) the latter had no cause of action for mandamus against the Respondent Corporation, the right of ownership of the [p]etitioner over the 300 shares of stock pledged by Respondent Guiok and Sy Lim not having been as yet, established, preparatory to the institution of said Petition for Mandamus with the SEC."

Ruling of the Court of Appeals

On the issue of jurisdiction, the Court of Appeals ruled:

"In ascertaining whether or not the SEC had exclusive jurisdiction over [p]etitioner's action, the [a]ppellate [c]ourt must delve into and ascertain: (a) whether or not there is a need to enlist the expertise and technical know-how of the SEC in resolving the issue of the ownership of the shares of stock; (b) the status of the relationships of the parties; [and] (c) the nature of the question that is the subject of the controversy. Where the controversy is purely a civil matter resolvable by civil law principles and there is no need for the application of the expertise and technical know-how of the SEC, then the regular courts have jurisdiction over the action." [8] [citations omitted]

On the issue of whether mandamus can be availed of by the petitioner, the Court of Appeals agreed with the SEC, viz.:

"x x x [T]he [p]etitioner failed to establish a clear and legal right to the writ of mandamus prayed for by him. x x x Mandamus will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists x x x. The principal function of the writ of mandamus is to command and expedite, and not to inquire and adjudicate and, therefore it is not the purpose of the writ to establish a legal right, but to enforce one which

has already been established."[9] [citations omitted]

The Court of Appeals debunked petitioner's claim that he had acquired ownership over the shares by virtue of novation, holding that respondents' indorsement and delivery of the shares were pursuant to Articles 2093 and 2095 of the Civil Code and that petitioner's receipt of dividends was in compliance with Article 2102 of the same Code. Petitioner's claim that he had acquired ownership of the shares by virtue of prescription was likewise dismissed by Respondent Court in this wise:

"The prescriptive period for the action of Respondent[s] Guiok and Sy Lim to recover the shares of stock from the [p]etitioner accrued only from the time they paid their loans and the interests thereon and [made] a demand for their return."[10]

Hence, the petitioner brought before us this Petition for Review on Certiorari in accordance with Rule 45 of the Rules of Court.[11]

Assignment of ErrorsPetitioner submits, for the consideration of this Court, these issues:[12]

"(a) Whether the Securities and Exchange Commission had jurisdiction over the complaint filed by the petitioner; and

(b) Whether the petitioner is entitled to the relief of mandamus as against the respondent Go Fay & Co., Inc."

In addition, petitioner contends that it has acquired ownership of the shares "through extraordinary prescription," pursuant to Article 1132 of the Civil Code, and through respondents' subsequent acts, which amounted to a novation of the contracts of pledge. Petitioner also claims that there was dacion en pago, in which the shares of stock were deemed sold to petitioner, the consideration for which was the extinguishment of the loans and the interests thereon. Petitioner likewise claims that laches bars respondents from recovering the subject shares.

The Court's Ruling

The petition has no merit.

First Issue: Jurisdiction of the SEC

Claiming that the present controversy is intra-corporate and falls within the exclusive jurisdiction of the SEC, petitioner relies heavily on Abejo v. De la Cruz,[13] which upheld the jurisdiction of the SEC over a suit filed by an unregistered stockholder seeking to enforce his rights. He also seeks support from Rural Bank of Salinas, Inc. v. Court of Appeals,[14] which ruled that the right of a transferee or an assignee to have stocks transferred to his name was an inherent right flowing from his ownership of the said stocks.

The registration of shares in a stockholder's name, the issuance of stock certificates, and the right to receive dividends which pertain to the said shares are all rights that flow from ownership. The determination of whether or not a shareholder is entitled to exercise the above-mentioned rights falls within the jurisdiction of the SEC. However, if ownership of the shares is not clearly established and is still unresolved at the time the action for mandamus is filed, then jurisdiction lies with the regular courts.

Section 5 of Presidential Decree No. 902-A sets forth the jurisdiction of the SEC as follows:

"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 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 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 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 appointment 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 property to cover all 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."^[15]

Thus, a controversy "among stockholders, partners or associates themselves"^[16] is intra-corporate in nature and falls within the jurisdiction of the SEC.

As a general rule, the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the complaint.^[17] In the present case, however, petitioner's claim that he was the owner of the shares of stock in question has no prima facie basis.

In his Complaint, petitioner alleged that, pursuant to the contracts of pledge, he became the owner of the shares when the term for the loans expired. The Complaint contained the following pertinent averments:

"x x x

3. On [J]anuary 8, 1990, under a Contract of Pledge, Lim Tay received three hundred (300) shares of stock of Go Fay & Co., Inc., from Sy Guiok as security for the payment of a loan of [f]orty [t]housand [p]esos (P40,000.00) Philippine currency, the sum of which was payable within six (6) months [with interest] at ten percentum (10%) per annum from the date of the execution of the contract; a copy of this Contract of Pledge is attached as Annex "A" and made part hereof;

4. On the same date January 8, 1980, under a similar Contract of Pledge, Lim Tay received three hundred (300) shares of stock of Go Fay & Co., Inc. from Alfonso Sy Lim as security for the payment of a loan of [f]orty [t]housand [p]esos (P40,000.00) Philippine currency, the sum of which was payable within six (6) months [with interest] at ten percentum (10%) per annum from the date of the execution of the contract; a copy of this Contract of Pledge is attached as Annex "" and made part hereof;

5. By the express terms of the agreements, upon failure of the borrowers to pay the stated amounts within the contract period, the pledge is foreclosed and the shares of stock are purchased by [p]laintiff, who is expressly authorized and empowered to transfer the duly endorsed shares of stock on the books of the corporation to his own name; x x x"^[18] (underscoring supplied)

However , the contracts of pledge, which were made integral parts of the Complaint, contain this common proviso:

"3. In the event of the failure of the PLEDGOR to pay the amount within a period of six (6) months from the date hereof, the PLEDGEE is hereby authorized to foreclose the pledge upon the said shares of stock hereby created by selling the same at public or private sale with or without notice to the PLEDGOR, at which sale the PLEDGEE may be the purchaser at his option; and the PLEDGEE is hereby authorized and empowered at his option, to transfer the said shares of stock on the books of the corporation to his own name and to hold the certificate issued in lieu thereof under the terms of this pledge, and to sell the said shares to issue to him and to apply the proceeds of the sale to the payment of the said sum and interest, in the manner hereinabove provided;"

This contractual stipulation, which was part of the Complaint, shows that plaintiff was merely authorized to foreclose the pledge upon maturity of the loans, not to own them. Such foreclosure is not automatic, for it must be done in a public or private sale. Nowhere did the Complaint mention that petitioner had in fact foreclosed the pledge and purchased the shares after such foreclosure. His status as a mere pledgee does not, under civil law, entitle him to ownership of the subject shares. It is also noteworthy that petitioner's Complaint did not aver that said shares were acquired through extraordinary prescription, novation or laches. Moreover, petitioner's claim, subsequent to the filing of the Complaint, that he acquired ownership of the said shares through these three modes is not indubitable and still has to be resolved. In fact, as will be shown, such allegation has no merit. Manifestly, the Complaint by itself did not contain any prima facie showing that petitioner was the owner of the shares of stocks. Quite the contrary, it demonstrated that he was merely a pledgee, not an owner. Accordingly, it failed to lay down a sufficient basis for the SEC to exercise jurisdiction over the controversy. In fact, the very allegations of the Complaint and its annexes negated the jurisdiction of the SEC.

Petitioner's reliance on the doctrines set forth in *Abejo v. De la Cruz* and *Rural Bank of Salinas, Inc. v. Court of Appeals* is misplaced. In *Abejo*, the Abejo spouses sold to Teletronic Systems, Inc. shares of stock in Pocket Bell Philippines, Inc. Subsequent to such contract of sale, the corporate secretary, Norberto Braga, refused to record the transfer of the shares in the corporate books and instead asked for the annulment of the sale, claiming that he and his wife had a preemptive right over some of the shares, and that his wife's shares were sold without consideration or consent.

At the time the Bragas questioned the validity of the sale, the contract had already been perfected, thereby demonstrating that Teletronic Systems, Inc. was already the prima facie owner of the shares and, consequently, a stockholder of Pocket Bell Philippines, Inc. Even if the sale were to be annulled later on, Teletronic Systems, Inc. had, in the meantime, title over the shares from the time the sale was perfected until the time such sale was annulled. The effects of an annulment operate prospectively and do not, as a rule retroact to the time the sale was made. Therefore, at the time the Bragas questioned the validity of the transfers made by the Abejos, Teletronic Systems, Inc. was already a prima facie shareholder of the corporation, thus making the dispute between the Bragas and the Abejos "intra-corporate" in nature. Hence, the Court held that "the issue is not on ownership of shares but rather the non-performance by the corporate secretary of the ministerial duty of recording transfers of shares of stock of the corporation of which he is secretary." [19]

Unlike *Abejo*, however, petitioner's ownership over the shares in this case was not yet perfected when the Complaint was filed. The contract of pledge certainly does not make him the owner of the shares pledged. Further, whether prescription effectively transferred ownership of the shares, whether there was a novation of the contracts of pledge, and whether laches had set in were difficult legal issues, which were unpleaded and unresolved when herein petitioner asked the corporate secretary of Go Fay to effect the transfer, in his favor, of the shares pledged to him.

In *Rural Bank of Salinas*, Melenia Guerrero executed deeds of assignment for the shares in favor of the respondents in that case. When the corporate secretary refused to register the transfer, an action for mandamus was instituted. Subsequently, a motion for intervention was filed, seeking the annulment of the deeds of assignment on the grounds that the same were fictitious and antedated, and that they were in fact donations because the considerations therefor were below the book value of the shares.

Like the *Abejo* spouses, the respondents in *Rural Bank of Salinas* were already prima facie shareholders when the deeds of assignment were questioned. If the said deeds were to be annulled later on, respondents would still be considered shareholders of the corporation from the time of the assignment until the annulment of such contracts.

Second Issue: Mandamus Will Not
Issue to Establish a Right

Petitioner prays for the issuance of a writ of mandamus, directing the corporate secretary of respondent corporation to have the shares transferred to his name in the corporate books, to issue new certificates of stock and to deliver the corresponding dividends to him.[20]

"In order that a writ of mandamus may issue, it is essential that the person petitioning for the same has a clear legal right to the thing demanded and that it is the imperative duty of the respondent to perform the act required. It neither confers powers nor imposes duties and is never issued in doubtful cases. It is simply a command to exercise a power already possessed and to perform a duty already imposed."[21]

In the present case, petitioner has failed to establish a clear legal right. Petitioner's contention that he is the owner of the said shares is completely without merit. Quite the contrary and as already shown, he does not have any ownership rights at all. At the time petitioner instituted his suit at the SEC, his ownership claim had no prima facie leg to stand on. At best, his contention was disputable and uncertain. Mandamus will not issue to establish a legal right, but only to enforce one that is already clearly established.

Without Foreclosure and
Purchase at Auction, Pledgee
Is Not the Owner of Pledged Shares

Petitioner initially argued that ownership of the shares pledged had passed to him, upon Respondents Sy Guiok and Sy Lim's failure to pay their respective loans. But on appeal, petitioner claimed that ownership over the shares had passed to him, not via the contracts of pledge, but by virtue of prescription and by respondents' subsequent acts which amounted to a novation of the contracts of pledge. We do not agree.

At the outset, it must be underscored that petitioner did not acquire ownership of the shares by virtue of the contracts of pledge. Article 2112 of the Civil Code states:

"The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquaintance for his entire claim."

Furthermore, the contracts of pledge contained a common proviso, which we quote again for the sake of clarity:

"3. In the event of the failure of the PLEDGOR to pay the amount within a period of six (6) months from the date hereof, the PLEDGEE is hereby authorized to foreclose the pledge upon the said shares of stock hereby created by selling the same at public or private sale with or without notice to the PLEDGOR, at which sale the PLEDGEE may be the purchaser at his option; and the PLEDGEE is hereby authorized and empowered at his option to transfer the said shares of stock on the books of the corporation to his own name, and to hold the certificate issued in lieu thereof under the terms of this pledge, and to sell the said shares to issue to him and to apply the proceeds of the sale to the payment of the said sum and interest, in the manner hereinabove provided;"[22]

There is no showing that petitioner made any attempt to foreclose or sell the shares through public or private auction, as stipulated in the contracts of pledge and as required by Article 2112 of the Civil Code. Therefore, ownership of the shares could not have passed to him. The pledgor remains the owner during the pendency of the pledge and prior to foreclosure and sale, as explicitly provided by Article 2103 of the same Code:

"Unless the thing pledged is expropriated, the debtor continues to be the owner thereof.

Nevertheless, the creditor may bring the actions which pertain to the owner of the thing pledged in order to recover it from, or defend it against a third person."

No Ownership by Prescription

Petitioner did not acquire the shares by prescription either. The period of prescription of any cause of action is reckoned only from the date the cause of action accrued.

"Since a cause of action requires as an essential element not only a legal right of the plaintiff and a correlative obligation of the defendant, but also an act or omission of the defendant in violation of said legal right, the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty." [23] Accordingly, a cause of action on a written contract accrues when a breach or violation thereof occurs.

Under the contracts of pledge, private respondents would have a right to ask for the redelivery of their certificates of stock upon payment of their debts to petitioner, consonant with Article 2105 of the Civil Code, which reads:

"The debtor cannot ask for the return of the thing pledged against the will of the creditor, unless and until he has paid the debt and its interest, with expenses in a proper case." [24]

Thus, the right to recover the shares based on the written contract of pledge between petitioner and respondents would arise only upon payment of their respective loans. Therefore, the prescriptive period within which to demand the return of the thing pledged should begin to run only after the payment of the loan and a demand for the thing has been made, because it is only then that respondents acquire a cause of action for the return of the thing pledged.

Prescription should not begin to run on the action to demand the return of the thing pledged while the loan still exists. This is because the right to ask for the return of the thing pledged will not arise so long as the loan subsists. In the present case, the prescriptive period did not begin to run when the loan became due. On the other hand, it is petitioner's right to demand payment that may be in danger of prescription.

Petitioner contends that he can be deemed to have acquired ownership over the certificates of stock through extraordinary prescription, as provided for in Article 1132 of the Civil Code which states:

"Art. 1132. The ownership of movables prescribes through uninterrupted possession for four years in good faith.

The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition. x x x."

Petitioner's argument is untenable. What is required by Article 1132 is possession in the concept of an owner. In the present case, petitioner's possession of the stock certificates came about because they were delivered to him pursuant to the contracts of pledge. His possession as a pledgee cannot ripen into ownership by prescription. As aptly pointed out by Justice Jose C. Vitug:

"Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted. Thus, possession with a juridical title, such as by a usufructuary, a trustee, a lessee, agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other

party."[25]

Petitioner expressly repudiated the pledge, only when he filed his Complaint and claimed that he was not a mere pledgee, but that he was already the owner of the shares. Based on the foregoing, petitioner has not acquired the certificates of stock through extraordinary prescription.

No Novation in Favor of Petitioner

Neither did petitioner acquire the shares by virtue of a novation of the contract of pledge. Novation is defined as "the extinguishment of an obligation by a subsequent one which terminates it, either by changing its object or principal conditions, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor." [26] Novation of a contract must not be presumed. "In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point." [27]

In the present case, novation cannot be presumed by (a) respondents' indorsement and delivery of the certificates of stock covering the 600 shares, (b) petitioner's receipt of dividends from 1980 to 1983, and (c) the fact that respondents have not instituted any action to recover the shares since 1980.

Respondents' indorsement and delivery of the certificates of stock were pursuant to paragraph 2 of the contract of pledge which reads:

"2. The said certificates had been delivered by the PLEDGOR endorsed in blank to be held by the PLEDGEE under the pledge as security for the payment of the aforementioned sum and interest thereon accruing." [28]

This stipulation did not effect the transfer of ownership to petitioner. It was merely in compliance with Article 2093 of the Civil Code, [29] which requires that the thing pledged be placed in the possession of the creditor or a third person of common agreement; and Article 2095, [30] which states that if the thing pledged are shares of stock, then the "instrument proving the right pledged" must be delivered to the creditor.

Moreover, the fact that respondents allowed the petitioner to receive dividends pertaining to the shares was not meant to relinquish ownership thereof. As stated by respondent corporation, the same was done pursuant to an agreement between the petitioner and Respondents Sy Guiok and Sy Lim, following Article 2102 of the Civil Code which provides:

"If the pledge earns or produces fruits, income, dividends, or interests, the creditor shall compensate what he receives with those which are owing him; but if none are owing him, or insofar as the amount may exceed that which is due, he shall apply it to the principal. Unless there is a stipulation to the contrary, the pledge shall extend to the interest and the earnings of the right pledged."

Novation cannot be inferred from the mere fact that petitioner has not, since 1980, instituted any action to recover the shares. Such action is, in fact, premature, as the loan is still outstanding. Besides, as already pointed out, novation is never presumed or inferred.

No Dacion en Pago in Favor of Petitioner

Neither can there be dacion en pago, in which the certificates of stock are deemed sold to petitioner, the consideration for which is the extinguishment of the loans and the accrued interests thereon. Dacion en pago is a form of novation in which a change takes place in the object involved in the original contract. Absent an explicit agreement, petitioner cannot simply presume dacion en pago.

Laches Not
a Bar to Petitioner

Petitioner submits that "the inaction of the individual respondents with respect to the recovery of the shares of stock serves to bar them from asserting rights over said shares on the basis of laches." [31]

Laches has been defined as "the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it." [32]

In this case, it is in fact petitioner who may be guilty of laches. Petitioner had all the time to demand payment of the debt. More important, under the contracts of pledge, petitioner could have foreclosed the pledges as soon as the loans became due. But for still unknown or unexplained reasons, he failed to do so, preferring instead to pursue his baseless claim to ownership.

WHEREFORE, the petition is hereby DENIED and the assailed Decision is AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 7-31.

[2] Fifth Division, composed of J. Romeo J. Callejo, ponente; and JJ. Pedro A. Ramirez (chairman) and Pacita Canizares-Nye (member), concurring.

[3] CA Decision, p. 24; rollo, p. 30.

[4] Rollo, pp. 62-66; signed by Acting Chairman Perfecto R. Yasay, Jr. and Associate Commissioners Rodolfo L. Samarista and Fe Eloisa C. Gloria.

[5] CA Decision, pp. 4-5; rollo, pp. 65-66.

[6] Rollo, pp. 103-113.

[7] CA Decision, pp. 1-3; rollo, pp. 7-9.

[8] CA Decision, pp. 10-11; rollo, p. 16-17.

[9] Ibid., pp. 14-15; rollo, pp. 20-21.

[10] Ibid., p. 23; rollo, p. 29.

[11] This case was deemed submitted for Resolution on November 11, 1997 upon receipt by the Court of private respondents' Memorandum.

[12] Memorandum for the Petitioner, pp. 6-7; rollo, pp. 308-309.

[13] 149 SCRA 654, May 18, 1987.

[14] 210 SCRA 510, June 26, 1992.

[15] Sec. 5, PD 902-A.

- [16] Securities and Exchange Commission v. Court of Appeals, 201 SCRA 124, 129, August 23, 1991, per Padilla J., citing Union Glass and Container Corporation v. SEC, 126 SCRA 31, November 28, 1983.
- [17] Javelosa v. CA, 265 SCRA 493, December 10, 1996.
- [18] Complaint, pp. 1-2; Rollo, pp. 68-69.
- [19] Abejo v. De la Cruz, 149 SCRA 654, 662, May 18, 1987, per Teehankee, C.J.
- [20] Petition for Review, p. 17; Rollo, p. 50.
- [21] University of San Agustin, Inc. v. Court of Appeals, 230 SCRA 761, 771-772, March 7, 1994, per Nocon, J.
- [22] Rollo, pp. 8-9.
- [23] Elido, Sr. v. Court of Appeals, 216 SCRA 617, 643, December 16, 1992, per Bellosillo, J.
- [24] Art. 2105, Civil Code.
- [25] Compendium of Civil Law and Jurisprudence, 1993 ed., pp. 463-464.
- [26] Caneda. v. Court of Appeals, 181 SCRA 762, 771, February 5, 1990, per Paras, J.
- [27] Rillo v. Court of Appeals, G.R. No. 125347, pp. 9-10, June 19, 1997, per Puno, J.
- [28] Memorandum of Respondents, p. 2; rollo, p. 291.
- [29] "Art. 2093. In addition to the requisites prescribed in Article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person of common agreement."
- [30] "Art. 2095. Incorporeal rights, evidenced by negotiable instruments, bills of lading, shares of stock, bonds, warehouse receipts and similar documents may also be pledged. The instrument proving the right pledged shall be delivered to the creditor, and if negotiable, must be indorsed."
- [31] Memorandum for the Petitioner, p. 29; Rollo, p. 330.
- [32] Republic Planters Bank v. Agana, Sr., 269 SCRA 1, 14, March 3, 1997, per Hermosisima, Jr., J.

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