

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (3RD DIVISION), JOSE L. AFRICA, UNIMOLCO, ROBERTO BENEDICTO, ANDRES AFRICA AND SMART COMMUNICATIONS, RESPONDENTS.

G.R. No. 128606. December 04, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review assailing the Resolutions[1] of the Sandiganbayan dated December 6, 1996[2] and March 17, 1997[3] in Civil Case No. 0009, entitled "Republic of the Philippines, Plaintiff versus Jose L. Africa, et al., Defendants," which upheld the sale by Universal Molasses Corporation (UNIMOLCO) of its shares of stock in Eastern Telecommunications Philippines, Inc. (ETPI), to Smart Communications. Petitioner contends that the sale violated its preemptive right as stockholder of ETPI, which is guaranteed in the Articles of Incorporation.

ETPI was one of the corporations sequestered by the Presidential Commission on Good Government (PCGG). Among its stockholders were Roberto S. Benedicto and UNIMOLCO.

Sometime in 1990, PCGG and Benedicto entered into a compromise agreement whereby Benedicto ceded to the government 204,000 shares of stock in ETPI, representing his fifty-one percent (51%) equity therein. The other forty-nine percent (49%), consisting of 196,000 shares of stock, were released from sequestration and adjudicated by final judgment to Benedicto and UNIMOLCO. Furthermore, the government agreed to withdraw the cases filed against Benedicto and free him from further criminal prosecution.

In a written notice received on April 24, 1996 by Melquiades Gutierrez, the President and Chairman of the Board of ETPI, UNIMOLCO offered to sell to ETPI its 196,000 shares of stock therein.

Meanwhile, on motion of petitioner, through the PCGG, the Sandiganbayan issued a Resolution, dated May 7, 1996, authorizing the entry in the Stock and Transfer Book of ETPI of the transfer of ownership of 204,000 shares of stock to petitioner, to be taken out of the shareholdings of UNIMOLCO. On June 5, 1996, Benedicto filed a "Manifestation and Motion" with the Sandiganbayan, praying that the Resolution dated May 7, 1996 be modified such that the entry of the 204,000 shares of stock of petitioner in ETPI be taken out of the shareholdings of UNIMOLCO and/or Roberto S. Benedicto.

On June 21, 1996, PCGG issued Resolution No. 96-142 enjoining all stockholders of ETPI from selling shares of stock therein without the written conformity of the PCGG.[4]

Subsequently, on July 24, 1996, UNIMOLCO and Smart Communications executed a Deed of Absolute Sale whereby UNIMOLCO sold its 196,000 shares of stock in ETPI to Smart.[5] Prior to the sale, Smart was not a stockholder of ETPI.

Thus, on August 8, 1996, petitioner filed with the Sandiganbayan a "Motion to Cite Defendant Benedicto and the Parties to the Sale of UNIMOLCO Shares in ETPI in Contempt of Court and to Rescind and/or Annul Said Sale." Petitioner alleged that the sale of the 196,000 shares of stock of UNIMOLCO to Smart was in defiance of the May

7, 1996 Resolution of the Sandiganbayan, which provided that the 204,000 shares of the government shall come from the shareholdings of UNIMOLCO, and it interfered with the proceedings thereon. In support of its prayer for the rescission and annulment of the sale, petitioner argued that the same violated its right of first refusal to purchase shares of stock in ETPI.

The right of first refusal is contained in Article 10 of the Articles of Incorporation of ETPI, which states:

ARTICLE TENTH: In the event any stockholder (hereinafter referred to as the "Offeror") desires to dispose, transfer, sell or assign any shares of stock of the Corporation (hereinafter referred to as the "Offered Stock"), except in the case of any disposal, transfer, sale or assignment between or among the incorporators or to corporation controlled by the incorporators, the Offeror shall give a right of first refusal to the Corporation and, thereafter in the event that the Corporation shall refuse or fail to accept all of the Offered Stock to all then stockholders of record of the Corporation (except the Offeror) to purchase the Offered Stock pro rata, at a price and upon terms and conditions specified by the Offeror based upon a firm, bona fide, written cash offer from a bona fide purchaser.

The Corporation shall be entitled to exercise its right of first refusal with respect to all, but not less than all, of the Offered Stock for a period (hereinafter referred to as the "First Period") of thirty (30) days, from the receipt by it of a written offer to sell from the Offeror.

If the Corporation shall fail or refuse within the First Period to accept the offer for all of the Offered Stock, then on or before the end of such First Period, the Secretary of the Corporation shall transmit by registered mail and by telegram or cable a copy of such offer to each stockholder of record (other than the Offeror) at his/its address appearing on the books of the Corporation and shall also notify each stockholder of the expiry date of such offer (such expiry date being thirty (30) days after the end of the First Period). All then stockholders of record of the Corporation, other than the Offeror, shall be entitled for a period (hereinafter referred to as the Second Period) ending thirty (30) days after the First Period to exercise their rights of first refusal with respect to all or any portion of the Offered Stock for which they have a right of first refusal and may in addition offer to purchase any shares thereof not subscribed for by the other stockholders pursuant to rights of first refusal. Such shares shall be allocated among stockholders offering to purchase such shares, pro rata, up to the limits, if any, specified by such purchasing stockholders. Each such purchasing stockholder shall transmit to the Corporation with his/its acceptance cash, or a certified check or checks drawn on a Philippine bank or banks, in an amount sufficient to meet the terms of the offer corresponding to such number of shares of Offered Stock specified in his/its acceptance.

In its Resolution dated December 6, 1996, the Sandiganbayan denied petitioner's motion for contempt and to rescind or annul the sale of the 196,000 ETPI shares of stock to Smart.[6] Petitioner filed a motion for reconsideration but the same was denied in a Resolution dated March 17, 1997.[7]

Hence, this petition for review raising the following grounds:

I. THE SANDIGANBAYAN ERRED IN NOT RECOGNIZING PETITIONER PCGG'S EXERCISE OF ITS RIGHT OF FIRST REFUSAL AS STOCKHOLDER, TO PURCHASE THE 196,000 ETPI SHARES REGISTERED IN THE NAME OF UNIMOLCO.

II. THE SANDIGANBAYAN ERRED IN APPROVING/RATIFYING THE SALE OF THE 196,000 SHARES BY PRIVATE RESPONDENTS UNIMOLCO, BENEDICTO AND AFRICA IN FAVOR OF SMART.

Petitioner argues that it received the notice of UNIMOLCO's offer to sell its shares of stock only on August 30, 1996. The written notice, issued by Atty. Bayani K. Tan, ETPI Corporate Secretary, gave the stockholders, including petitioner, until September 26, 1996 within which to exercise their preemptive right. On September 24,

1996, petitioner sent a letter to the Corporate Secretary stating that the government is exercising its right of first refusal and offering payment thereof in the form of compensation or set-off against the assets of respondent Benedicto still due to the Philippine government under the Compromise Agreement.

Respondents UNIMOLCO, Benedicto and Andres L. Africa filed their Comment,[8] arguing that petitioner's offer of payment by way of set-off was invalid, inasmuch as the Articles of Incorporation of ETPI specifically provided that tender of payment should be in cash, certified check or checks drawn on a Philippine bank.

Respondent SMART filed its Comment,[9] likewise arguing that petitioner's proposal to off-set the purchase price for the shares of stock with assets of Benedicto did not constitute a valid tender of payment. Moreover, petitioner cannot use assets recovered as ill-gotten wealth for the purchase of the shares of stock because under Section 63 of Republic Act No. 6657, any amounts derived therefrom shall be appropriated to fund the Comprehensive Agrarian Reform Program.

On October 2, 1997, Victor Africa filed a Motion for Leave to Intervene and a Comment-in-Intervention.[10] He alleges that petitioner's exercise of the right of first refusal is preconditioned on its being a stockholder of ETPI. However, intervenor has a pending motion before the Sandiganbayan precisely questioning petitioner's right to become a transferee of ETPI shares and to enjoin the registration of petitioner as a legitimate stockholder in the Stock and Transfer Book of ETPI. On December 10, 1997, the motion for leave to intervene was granted and the Comment-in-Intervention was admitted.[11]

The petition is without merit.

The records of the case clearly show that the written notice by UNIMOLCO, the Offeror, of its intention to sell its 196,000 shares of stock was duly received on April 24, 1996 by the President and Chairman of the Board of ETPI. The Sandiganbayan correctly held that this was valid service of the written offer to the corporation, applying by analogy the Rules of Court provisions on service of summons. Petitioner does not dispute that the written notice to the President and Chairman of the Board of ETPI was service to the corporation. It merely argues that after receipt of the offer, ETPI did not act in accordance with the procedure laid down in the Articles of Incorporation. Thus, in its petition for review, petitioner states:

The April 24, 1996 offer sent to ETPI Chairman and President Melquiades Gutierrez did not become valid and effective as it was not able to completely comply with the requirements of Article 10 of the ETPI Articles of Incorporation. Indeed, after receipt by ETPI of the April 24, 1996 offer, ETPI never acted on it. Assuming that ETPI, as a corporation did not exercise its right of first refusal within the first thirty day period pursuant to Article 10, it did not send notices to then stockholders of record of ETPI about the offered sale and their privilege to exercise their rights of first refusal. In other words, the ETPI stockholders were denied of its formal notice from ETPI about the said offer to sell the 196,000 share of stock.[12]

Hence, the First Period of thirty days contemplated in the Articles of Incorporation commenced to run on April 24, 1996, giving the corporation until May 24, 1996 within which to exercise its right of first refusal. ETPI's inaction simply means that it did not desire to purchase the shares of stock. The stockholders' right of first refusal, thus, accrued upon the expiration of the First Period and within the succeeding thirty days, known as the Second Period. The Sandiganbayan held that the First Period and the Second Period are "continuous in character because the Second Period ends, in the very words of Article 10 of the ETPI Articles, 'thirty (30) days after the First Period', and the 'expiry date being thirty (30) days after the end of the First Period.'"[13] The Second Period, therefore, covered the period from May 24, 1996 to June 23, 1996.

Petitioner maintains that under the Articles of Incorporation, the Corporate Secretary of ETPI should have given the stockholders written notice of the offer to sell on or before the expiration of the First Period. However,

Resolution No. 96-142, adopted by PCGG on June 21, 1996, states among others:

WHEREAS, on 4 June 1996, the PCGG received copy of a letter of 29 May 1996 from Atty. Juan de Ocampo, alleging that he is the Corporate Secretary of ETPI, copy of which is hereto attached, stating that under Article Tenth of the ETPI articles of Incorporation, all stockholders of record have the right of first refusal to purchase pro rata to their holdings in ETPI to expire 20 days (supposed to be 30) from expiry date of ETPI's right of first refusal which was allegedly 24 May 1996, giving the Government up to 18 June 1996 to exercise the right of first refusal to purchase up to 22,148 shares of stock.[14]

From the above, it clearly appears that, by petitioner's own admission and contrary to its belated protestation, the procedure outlined in the Articles of Incorporation relating to the right of first refusal was observed. But petitioner takes exception to Atty. De Ocampo's authority to act as Corporate Secretary of ETPI. In this connection, the Sandiganbayan held:

xxx. The question of who are the legitimate directors and officers of ETPI has been elevated to the Supreme Court but has not yet been finally resolved. This should not, however, detract from the fact that PCGG has actually been informed of the intended sale.[15]

We agree with the Sandiganbayan. The purpose of the notice requirement in Article 10 of the ETPI Articles of Incorporation is to give the stockholders knowledge of the intended sale of shares of stock of the corporation, in order that they may exercise their preemptive right. Where it is shown that a stockholder had actual knowledge of the intended sale within the period prescribed to exercise the right, the notice requirement had been sufficiently met. In the case at bar, PCGG had actual knowledge of UNIMOLCO's offer to sell its shares of stock. In fact, it issued Resolution No. 96-142 enjoining the sale of the said shares of stock to Smart. Petitioner, thus, cannot feign lack of notice.[16]

Parenthetically, PCGG had no more authority to enjoin the sale of UNIMOLCO's 196,000 shares of stock, as it endeavored to do in Resolution No. 96-142. As correctly found by the Sandiganbayan, since the 196,000 shares of stock had already been adjudicated by final judgment to Benedicto and UNIMOLCO, PCGG could no longer exercise power and authority over the same.[17]

Therefore, we sustain the Sandiganbayan's ruling that petitioner's right of first refusal was not seasonably exercised.[18]

Even on the assumption that petitioner exercised its right of first refusal on time, it nonetheless failed to follow the requirement in the Articles of Incorporation that payment must be tendered in "cash or certified checks or checks drawn on a Philippine bank or banks". The set-off or compensation it proposed does not fall under any of the recognized modes of payment in the Articles. In order that compensation may be proper, Article 1279 of the Civil Code requires:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things are consumable, they be of the same kind, and also of the same quality if the later has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable, and
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Petitioner sought the offsetting of the price of the shares of stock with assets of respondent Benedicto, whom it claimed was indebted to it for certain lands and dividends due to it under their Compromise Agreement. Benedicto was only a stockholder of UNIMOLCO, the Offeror. While he may be the majority stockholder, UNIMOLCO cannot be said to be liable for Benedicto's supposed obligations to petitioner. To be sure, Benedicto and UNIMOLCO are separate and distinct persons. On the basis of this alone, there can be no valid set-off. Petitioner and UNIMOLCO are not principal debtors and creditors of each other.

Petitioner counters that UNIMOLCO's corporate fiction should be pierced since it is also owned by Benedicto. However, mere majority ownership of the stocks of a corporation is not per se a cause for piercing the corporate veil. There was no evidence that UNIMOLCO's corporate entity was used by respondent Benedicto to commit fraud or to do wrong on petitioner; neither was it shown that the corporate entity was merely a farce and that it was used as an alter ego, business conduit or instrumentality of a person or another entity or that piercing the corporation fiction is necessary to achieve justice or equity.[19] Only in these instances may the fiction be pierced and disregarded.[20] Being the party that invoked it, petitioner has the burden of substantiating by clear and convincing evidence that UNIMOLCO's corporate veil must be pierced.

Besides, petitioner's claims on the lands and dividends allegedly due it from respondent Benedicto's other business holdings are not enforceable in court. Only liquidated debts are enforceable in court, there being no apparent defenses inherent in them.[21] "For compensation to take place, a distinction must be made between a debt and a mere claim. A debt is a claim which has been formally passed upon by the highest authority to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass through the process prescribed by law before it develops into what is properly called a debt." [22] There being no two debts for which either party may be said as principally bound to each other, again, there can be no set-off.

In the final analysis, the resolution of this case hinges on questions of fact. It is axiomatic that factual findings of the Sandiganbayan are conclusive on the Supreme Court.[23] None of the exceptions to this rule[24] is present in this case.

WHEREFORE, the petition is DENIED. The Resolutions of the Sandiganbayan dated December 6, 1996 and March 17, 1997 in Civil Case No. 0009 are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Associate Justice Cipriano A. del Rosario, concurred in by Associate Justices Sabino R. de Leon, Jr. and Leonardo I. Cruz.

[2] Petition, Annex "A"; Rollo, pp. 72-96. 2 Petition, Annex "B"; Rollo, pp. 99-111.

[3] Petition, Annex "B"; Rollo, pp. 99-111.

[4] Rollo, pp. 136-137.

[5] Petition, Annex "F"; Rollo, pp. 138-140.

[6] Op. cit., note 2.

[7] Op. cit., note 3.

[8] Rollo; pp. 167-182.

[9] Rollo; pp. 195-203.

[10] Rollo; pp. 207-219.

[11] Rollo, p. 252.

[12] Petition for Review, p. 9; Rollo, p. 60; emphasis ours; underscoring copied.

[13] Resolution dated March 17, 1997, pp. 6-7; Rollo, pp. 104-105; underscoring copied.

[14] Rollo, p. 26.

[15] Resolution dated December 6, 1996, pp. 13-14; Rollo, pp. 84-85.

[16] Cf: *Bunye v. Sandiganbayan*, 306 SCRA 663, 676 (1999).

[17] Resolution dated December 6, 1996; Rollo, p. 86.

[18] Resolution dated March 17, 1997, p. 5; Rollo, p. 103.

[19] *Umali v. Court of Appeals*, 189 SCRA 529 (1990); *R.F. Sugay v. Reyes*, 12 SCRA 700 (1964).

[20] *Palay, Inc. v. Clave*, 124 SCRA 638 (1983); cited in *ARB Construction v. Court of Appeals*, G.R. No. 126554, May 31, 2000.

[21] IV Tolentino, *CIVIL CODE OF THE PHILIPPINES*, p. 371 (1986).

[22] *Vallarta v. Court of Appeals*, 163 SCRA 587, 594 (1988); cited in *E.G.V. Realty Development v. Court of Appeals*, G.R. No. 120236, July 20, 1999.

[23] *Resoso v. Sandiganbayan*, G. R. No. 124140, November 25, 1999 citing *Pareño v. Sandiganbayan*, 256 SCRA 242 (1996); *Cesar v. Sandiganbayan*, 134 SCRA 105 (1985).

[24] The exceptions are: 1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; 2) where the inference made is manifestly mistaken; 3) where there is grave abuse of discretion; and 4) where the judgment is based on misapprehension of facts, and the findings of fact of the SB are premised on the absence of evidence and are contradicted by evidence on record. *Tecson v. Sandiganbayan and People*, G. R. No. 123045, November 16, 1999.

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