

**VIRGINIA O. GOCHAN, FELIX Y. GOCHAN III, MAE GOCHAN-EFANN,
LOUISE Y. GOCHAN, ESTEBAN Y. GOCHAN JR., DOMINIC Y. GOCHAN,
FELIX O. GOCHAN III, MERCEDES R. GOCHAN, ALFREDO R.
GOCHAN...**

G.R. No. 131889. March 12, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A court or tribunal's jurisdiction over the subject matter is determined by the allegations in the complaint. The fact that certain persons are not registered as stockholders in the books of the corporation will not bar them from filing a derivative suit, if it is evident from the allegations in the complaint that they are bona fide stockholders. In view of RA 8799, intra-corporate controversies are now within the jurisdiction of courts of general jurisdiction, no longer of the Securities and Exchange Commission.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court. The Petition assails the February 28, 1996 Decision[1] of the Court of Appeals (CA), as well as its December 18, 1997 Resolution denying petitioner's Motion for Reconsideration. The dispositive part of the CA Decision reads as follows:

"WHEREFORE, the petition as far as the heirs of Alice Gochan, is DISMISSED, without prejudice to filing the same in the regular courts.

SO ORDERED."[2]

In dismissing the Complaint before the SEC regarding only Alice Gochan's heirs but not the other complainants, the CA effectively modified the December 9, 1994 Order of the hearing officer[3] of the Securities and Exchange Commission (SEC). The Order, which was affirmed in full by the SEC en banc, dismissed the entire case.

The Facts

The undisputed facts are summarized by the Court of Appeals as follows:

"Felix Gochan and Sons Realty Corporation (Gochan Realty, for brevity) was registered with the SEC on June, 1951, with Felix Gochan, Sr., Maria Pan Nuy Go Tiong, Pedro Gochan, Tomasa Gochan, Esteban Gochan and Crispo Gochan as its incorporators.

"Felix Gochan Sr.'s daughter, Alice, mother of [herein respondents], inherited 50 shares of stock in Gochan Realty from the former.

"Alice died in 1955, leaving the 50 shares to her husband, John Young, Sr.

"In 1962, the Regional Trial Court of Cebu adjudicated 6/14 of these shares to her children, herein [respondents] Richard Young, David Young, Jane Young Llaban, John Young Jr., Mary Young Hsu and Alexander Thomas Young.

"Having earned dividends, these stocks numbered 179 by 20 September 1979.

"Five days later (25 September), at which time all the children had reached the age of majority, their father John Sr., requested Gochan Realty to partition the shares of his late wife by cancelling the stock certificates in his name and issuing in lieu thereof, new stock certificates in the names of [herein respondents].

"On 17 October 1979, respondent Gochan Realty refused, citing as reason, the right of first refusal granted to the remaining stockholders by the Articles of Incorporation.

"On 21, 1990, [sic] John, Sr. died, leaving the shares to the [respondents].

"On 8 February 1994, [respondents] Cecilia Gochan Uy and Miguel Uy filed a complaint with the SEC for issuance of shares of stock to the rightful owners, nullification of shares of stock, reconveyance of property impressed with trust, accounting, removal of officers and directors and damages against respondents. A Notice of Lis Pendens was annotated as [sic] real properties of the corporation.

"On 16 March 1994, [herein petitioners] moved to dismiss the complaint alleging that: (1) the SEC ha[d] no jurisdiction over the nature of the action; (2) the [respondents] [were] not the real parties-in-interest and ha[d] no capacity to sue; and (3) [respondents'] causes of action [were] barred by the Statute of Limitations.

"The motion was opposed by herein [respondents].

"On 29 March 1994, [petitioners] filed a Motion for cancellation of Notice of Lis Pendens. [Respondents] opposed the said motion.

"On 9 December 1994, the SEC, through its Hearing Officer, granted the motion to dismiss and ordered the cancellation of the notice of lis pendens annotated upon the titles of the corporate lands. In its order, the SEC opined:

`In the instant case, the complaint admits that complainants Richard G. Young, David G. Young, Jane G. Young Llaban, John D. Young, Jr., Mary G. Young Hsu and Alexander Thomas G. Young, who are the children of the late Alice T. Gochan and the late John D. Young, Sr. are suing in their own right and as heirs of and/or as the beneficial owners of the shares in the capital stock of FGSRG held in trust for them during his lifetime by the late John D. Young. Moreover, it has been shown that said complainants ha[d] never been x x x stockholder[s] of record of FGSRG to confer them with the legal capacity to bring and maintain their action. Conformably, the case cannot be considered as an intra-corporate controversy within the jurisdiction of this Commission.

`The complainant heirs base what they perceived to be their stockholders' rights upon the fact of their succession to all the rights, property and interest of their father, John D. Young, Sr. While their heirship is not disputed, their right to compel the corporation to register John D. Young's Sr. shares of stock in their names cannot go unchallenged because the devolution of property to the heirs by operation of law in succession is subject to just obligations of the deceased before such property passes to the heirs. Conformably, until therefore the estate is settled and the payment of the debts of the deceased is accomplished, the heirs cannot as a matter of right compel the delivery of the shares of stock to them and register such transfer in the books of the corporation to recognize them as stockholders. The complainant heirs succeed to the estate of [the] deceased John D. Young, Sr. but they do not thereby become stockholders of the corporation.

`Moreover, John D. [Young Sr.'s] shares of stocks form part of his estate which is the subject of Special Proceedings No. 3694-CEB in the Regional Trial Court of Cebu, Branch VIII, [par. 4 of the complaint]. As complainants clearly claim[,] the Intestate Estate of John D. Young, Sr. has an interest in the subject matter of the instant case. However, actions for the recovery or protection of the property [such as the shares of stock in question] may be brought or defended not by the heirs but by the executor or administrator thereof.

`Complainants further contend that the alleged wrongful acts of the corporation and its directors constitute

fraudulent devices or schemes which may be detrimental to the stockholders. Again, the injury [is] perceived[,] as is alleged[,] to have been suffered by complainants as stockholders, which they are not. Admittedly, the SEC has no jurisdiction over a controversy wherein one of the parties involved is not or not yet a stockholder of the corporation. [SEC vs. CA, 201 SCRA 134].

‘Further, by the express allegation of the complaint, herein complainants bring this action as [a] derivative suit on their own behalf and on behalf of respondent FGSRC.

‘Section 5, Rule III of the Revised Rules of Procedure in the Securities and Exchange Commission provides:

‘Section 5. Derivative Suit. No action shall be brought by stockholder in the right of a corporation unless the complainant was a stockholder at the time the questioned transaction occurred as well as at the time the action was filed and remains a stockholder during the pendency of the action. x x x.’

‘The rule is in accord with well settled jurisprudence holding that a stockholder bringing a derivative action must have been [so] at the time the transaction or act complained of [took] place. (Pascual vs. Orozco, 19 Phil. 82; Republic vs. Cuaderno, 19 SCRA 671; San Miguel Corporation vs. Khan, 176 SCRA 462-463) The language of the rule is mandatory, strict compliance with the terms thereof thus being a condition precedent, a jurisdictional requirement to the filing of the instant action.

‘Otherwise stated, proof of compliance with the requirement must be sufficiently established for the action to be given due course by this Commission. The failure to comply with this jurisdictional requirement on derivative action must necessarily result in the dismissal of the instant complaint.’ (pp. 77-79, Rollo)

"[Respondents] moved for a reconsideration but the same was denied for being pro-forma.

"[Respondents] appealed to the SEC en banc, contending, among others, that the SEC ha[d] jurisdiction over the case.

"[Petitioners], on the other hand, contend that the appeal was 97 days late, beyond the 30-day period for appeals.

"On 3 March 1995, the SEC en banc ruled for the [petitioners,] holding that the [respondents'] motion for reconsideration did not interrupt the 30-day period for appeal because said motion was pro-forma." [4]

Aggrieved, herein respondents then filed a Petition for Review with the Court of Appeals.

Ruling of the Court of Appeals

The Court of Appeals ruled that the SEC had no jurisdiction over the case as far as the heirs of Alice Gochan were concerned, because they were not yet stockholders of the corporation. On the other hand, it upheld the capacity of Respondents Cecilia Gochan Uy and her spouse Miguel Uy. It also held that the intestate Estate of John Young Sr. was an indispensable party.

The appellate court further ruled that the cancellation of the notice of lis pendens on the titles of the corporate real estate was not justified. Moreover, it declared that respondents' Motion for Reconsideration before the SEC was not pro forma; thus, its filing tolled the appeal period.

Hence, this Petition.[5]

The Issues

These are the issues presented before us:

"A.

Whether or not the Spouses Uy have the personality to file an action before the SEC against Gochan Realty Corporation.

"B.

Whether or not the Spouses Uy could properly bring a derivative suit in the name of Gochan Realty to redress wrongs allegedly committed against it for which the directors refused to sue.

"C.

Whether or not the intestate estate of John D. Young Sr. is an indispensable party in the SEC case considering that the individual heirs' shares are still in the decedent stockholder's name.

"D.

Whether or not the cancellation of [the] notice of lis pendens was justified considering that the suit did not involve real properties owned by Gochan Realty."[6]

In addition, the Court will determine the effect of Republic Act No. 8799[7] on this case.

The Court's Ruling

The Petition has no merit. In view of the effectivity of RA 8799, however, the case should be remanded to the proper regional trial court, not to the Securities and Exchange Commission.

First Issue:

Personality of the Spouses Uy to File a Suit Before the SEC

Petitioners argue that Spouses Cecilia and Miguel Uy had no capacity or legal standing to bring the suit before the SEC on February 8, 1994, because the latter were no longer stockholders at the time. Allegedly, the stocks had already been purchased by the corporation. Petitioners further assert that, being allegedly a simple contract of sale cognizable by the regular courts, the purchase by Gochan Realty of Cecilia Gochan Uy's 210 shares does not come within the purview of an intra-corporate controversy.

As a general rule, the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the complaint.[8] For purposes of resolving a motion to dismiss, Cecilia Uy's averment in the Complaint -- that the purchase of her stocks by the corporation was null and void ab initio - is deemed admitted. It is elementary that a void contract produces no effect either against or in favor of anyone; it cannot create, modify or extinguish the juridical relation to which it refers.[9] Thus, Cecilia remains a stockholder of the corporation in view of the nullity of the Contract of Sale. Although she was no longer registered as a stockholder in the corporate records as of the filing of the case before the SEC, the admitted allegations in the Complaint made her still a bona fide stockholder of Felix Gochan & Sons Realty Corporation (FGSRC), as between said parties.

In any event, the present controversy, whether intra-corporate or not, is no longer cognizable by the SEC, in view of RA 8799, which transferred to regional trial courts the former's jurisdiction over cases involving intra-corporate disputes.

Action Has Not Prescribed

Petitioners contend that the statute of limitations already bars the Uy spouses' action, be it one for annulment of a voidable contract or one based upon a written contract. The Complaint, however, contains respondents' allegation that the sale of the shares of stock was not merely voidable, but was void ab initio. Below we quote its relevant portion:

"38. That on November 21, 1979, respondent Felix Gochan & Sons Realty Corporation did not have unrestricted retained earnings in its books to cover the purchase price of the 208 shares of stock it was then buying from complainant Cecilia Gochan Uy, thereby rendering said purchase null and void ab initio for being

violative of the trust fund doctrine and contrary to law, morals good customs, public order and public policy;"

Necessarily, petitioners' contention that the action has prescribed cannot be sustained. Prescription cannot be invoked as a ground if the contract is alleged to be void ab initio.[10] It is axiomatic that the action or defense for the declaration of nullity of a contract does not prescribe.[11]

Second Issue:

Derivative Suit and the Spouses Uy

Petitioners also contend that the action filed by the Spouses Uy was not a derivative suit, because the spouses and not the corporation were the injured parties. The Court is not convinced. The following quoted portions of the Complaint readily shows allegations of injury to the corporation itself:

"16. That on information and belief, in further pursuance of the said conspiracy and for the fraudulent purpose of depressing the value of the stock of the Corporation and to induce the minority stockholders to sell their shares of stock for an inadequate consideration as aforesaid, respondent Esteban T. Gochan . . ., in violation of their duties as directors and officers of the Corporation . . ., unlawfully and fraudulently appropriated [for] themselves the funds of the Corporation by drawing excessive amounts in the form of salaries and cash advances. . . and by otherwise charging their purely personal expenses to the Corporation."

x x x x x x x x

"41. That the payment of P1,200,000.00 by the Corporation to complainant Cecilia Gochan Uy for her shares of stock constituted an unlawful, premature and partial liquidation and distribution of assets to a stockholder, resulting in the impairment of the capital of the Corporation and prevented it from otherwise utilizing said amount for its regular and lawful business, to the damage and prejudice of the Corporation, its creditors, and of complainants as minority stockholders;"[12]

As early as 1911, this Court has recognized the right of a single stockholder to file derivative suits. In its words:

"[W]here corporate directors have committed a breach of trust either by their frauds, ultra vires acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a single stockholder may institute that suit, suing on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders."[13]

In the present case, the Complaint alleges all the components of a derivative suit. The allegations of injury to the Spouses Uy can coexist with those pertaining to the corporation. The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit on behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors. This cause of action is also included in the Complaint filed before the SEC.

The Spouses Uy have the capacity to file a derivative suit in behalf of and for the benefit of the corporation. The reason is that, as earlier discussed, the allegations of the Complaint make them out as stockholders at the time the questioned transaction occurred, as well as at the time the action was filed and during the pendency of the action.

Third Issue:

Capacity of the Intestate Estate of

John D. Young Sr.

Petitioners contend that the Intestate Estate of John D. Young Sr. is not an indispensable party, as there is no showing that it stands to be benefited or injured by any court judgment.

It would be useful to point out at this juncture that one of the causes of action stated in the Complaint filed with the SEC refers to the registration, in the name of the other heirs of Alice Gochan Young, of 6/14th of the shares

still registered under the name of John D. Young Sr. Since all the shares that belonged to Alice are still in his name, no final determination can be had without his estate being impleaded in the suit. His estate is thus an indispensable party with respect to the cause of action dealing with the registration of the shares in the names of the heirs of Alice.

Petitioners further claim that the Estate of John Young Sr. was not properly represented. They claim that "when the estate is under administration, suits for the recovery or protection of the property or rights of the deceased may be brought only by the administrator or executor as approved by the court." [14] The rules relative to this matter do not, however, make any such categorical and confining statement.

Section 3 of Rule 3 of the Rules of Court, which is cited by petitioner in support of their position, reads:

"Sec. 3. Representatives as parties. - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal."

Section 2 of Rule 87 of the same Rules, which also deals with administrators, states:

"Sec. 2. Executor or administrator may bring or defend actions which survive. - For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend, in the right of the deceased, actions for causes which survive."

The above-quoted rules, while permitting an executor or administrator to represent or to bring suits on behalf of the deceased, do not prohibit the heirs from representing the deceased. These rules are easily applicable to cases in which an administrator has already been appointed. But no rule categorically addresses the situation in which special proceedings for the settlement of an estate have already been instituted, yet no administrator has been appointed. In such instances, the heirs cannot be expected to wait for the appointment of an administrator; then wait further to see if the administrator appointed would care enough to file a suit to protect the rights and the interests of the deceased; and in the meantime do nothing while the rights and the properties of the decedent are violated or dissipated.

The Rules are to be interpreted liberally in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. [15] They cannot be interpreted in such a way as to unnecessarily put undue hardships on litigants. For the protection of the interests of the decedent, this Court has in previous instances [16] recognized the heirs as proper representatives of the decedent, even when there is already an administrator appointed by the court. When no administrator has been appointed, as in this case, there is all the more reason to recognize the heirs as the proper representatives of the deceased. Since the Rules do not specifically prohibit them from representing the deceased, and since no administrator had as yet been appointed at the time of the institution of the Complaint with the SEC, we see nothing wrong with the fact that it was the heirs of John D. Young Sr. who represented his estate in the case filed before the SEC.

Fourth Issue

Notice of Lis Pendens

On the issue of the annotation of the Notice of Lis Pendens on the titles of the properties of the corporation and the other respondents, we still find no reason to disturb the ruling of the Court of Appeals.

Under the third, fourth and fifth causes of action of the Complaint, there are allegations of breach of trust and confidence and usurpation of business opportunities in conflict with petitioners' fiduciary duties to the

corporation, resulting in damage to the Corporation. Under these causes of action, respondents are asking for the delivery to the Corporation of possession of the parcels of land and their corresponding certificates of title. Hence, the suit necessarily affects the title to or right of possession of the real property sought to be reconveyed. The Rules of Court[17] allows the annotation of a notice of lis pendens in actions affecting the title or right of possession of real property.[18] Thus, the Court of Appeals was correct in reversing the SEC Order for the cancellation of the notice of lis pendens.

The fact that respondents are not stockholders of the Mactan Realty Development Corporation and the Lapu-Lapu Real Estate Corporation does not make them non-parties to this case. To repeat, the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the Complaint. In this case, it is alleged that the aforementioned corporations are mere alter egos of the directors-petitioners, and that the former acquired the properties sought to be reconveyed to FGSRC in violation of the directors-petitioners' fiduciary duty to FGSRC. The notion of corporate entity will be pierced or disregarded and the individuals composing it will be treated as identical[19] if, as alleged in the present case, the corporate entity is being used as a cloak or cover for fraud or illegality; as a justification for a wrong; or as an alter ego, an adjunct, or a business conduit for the sole benefit of the stockholders.

Effect of RA 8799

While we sustain the appellate court, the case can no longer be remanded to the SEC. As earlier stated, RA 8799, which became effective on August 8, 2000, transferred SEC's jurisdiction over cases involving intra-corporate disputes to courts of general jurisdiction or to the regional trial courts.[20] Section 5.2 thereof reads as follows:

"5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed."

In the light of the Resolution issued by this Court in AM No. 00-8-10-SC,[21] the Court Administrator and the Securities and Exchange Commission should be directed to cause the transfer of the records of SEC Case No. 02-94-4674 to the appropriate court of general jurisdiction.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED, subject to the modification that the case be remanded to the proper regional trial court. The December 9, 1994 Order of Securities and Exchange Commission hearing officer dismissing the Complaint and directing the cancellation of the notice of lis pendens, as well as the March 3, 1995 Order denying complainants' motion for reconsideration are REVERSED and SET ASIDE. Pursuant to AM No. 00-8-10-SC, the Office of the Court Administrator and the SEC are DIRECTED to cause the actual transfer of the records of SEC Case No. 02-94-4674 to the appropriate regional trial court.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Justice Antonio M. Martinez (Division chairman), with the concurrence of Justices Pacita Canizares-Nye and Romeo J. Callejo Sr.

[2] CA Decision, p. 13; rollo, p. 43.

[3] Atty. Enrique L. Flores Jr.

[4] CA Decision, pp. 2-6; rollo, pp. 32-36.

[5] The case was deemed submitted for resolution on November 12, 1999, upon receipt by this Court of respondents' Memorandum filed by Attys. Jose R. Ebro Jr. and Ernesto T. Morales. Petitioners had previously filed their Memorandum, signed by Atty. Victor Basilio N. de Leon of Antonio R. Bautista & Partners, on October 27, 1999.

[6][6] Petitioners' Memorandum, p. 5; rollo, p. 114.

[7] Otherwise known as "The Securities Regulation Code," it became effective on August 8, 2000.

[8] *Lim Tay v. Court of Appeals*, 293 SCRA 634, August 5, 1998, citing *Javelosa v. Court of Appeals*, 265 SCRA 493, December 10, 1996.

[9] Tolentino, Civil Code, Vol. IV, 1991 ed. p. 631.

[10] *Ruiz v. Court of Appeals*, 79 SCRA 525, October 21, 1977; *Castillo v. Heirs of Vicente Madrigal*, 198 SCRA 556, June 27, 1991.

[11] Art. 1410, Civil Code.

[12] Respondents' Memorandum, p. 29; rollo, p. 170.

[13] *Pascual v. Del Saz Orozco*, 19 Phil. 82, March 17, 1911, per Trent, J.; cited in *Bitong v. Court of Appeals*, 292 SCRA 503, July 13, 1998.

[14] Petitioners' Memorandum, p. 13; rollo, p. 122.

[15] Rule 1, Section 6, Rules of Court.

[16] *Pascual v. Pascual*, 73 Phil. 561 (1942); *Velasquez v. George*, 125 SCRA 456, October 27, 1983; *Borromeo v. Borromeo et al.*, 98 Phil. 432 (1956).

[17] Section 14, Rule 13, Rules of Court.

[18] *Alberto v. CA*, GR No. 119088, June 30, 2000; *Viewmaster Construction Corp. v. CA*, GR No. 136283, February 29, 2000; *Villanueva v. CA*, 281 SCRA 298, November 5, 1997.

[19] *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, 1 SCRA 160, January 28, 1961; *Umali v. Court of Appeals*, 189 SCRA 529, September 13, 1990.

[20] See *Pascual v. CA*, GR No. 138542, August 25, 2000.

[21] "In Re: Transfer of Cases from the Securities and Exchange Commission to the Regular Courts pursuant to RA 8799."

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