

MILA YAP SUMNDAD, PETITIONER, VS. JOHN WILLIAM HARRIGAN AND BORACAY BEACH CLUB HOTEL, INC., (BBCHI), RESPONDENTS.

G.R. No. 132358. April 12, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to annul and set aside the decision promulgated on October 1, 1997, by the Court of Appeals, affirming the decision of the Regional Trial Court of Makati, Branch 61, which ruled in favor of respondent John William Harrigan, ordering respondent Boracay Beach Club Hotel Inc. to pay P8 million plus interest, attorney's fees and costs.

The facts of this case disclose that on February 6, 1995, Harrigan filed a complaint docketed as Civil Case No. 95-223 for collection of a sum of money with prayer for preliminary attachment with the RTC Makati against respondent BBCHI.[1]

Harrigan prayed for the issuance of a writ of preliminary attachment pending the hearing of the case, which was granted by the trial court on March 2, 1995, after he posted an attachment bond of P2 million.[2]

On March 6, 1995, Harrigan filed an amended complaint[3] impleading the management committee of BBCHI through its acting chairman, Corazon T. Tirol. The following material facts were alleged in the complaint, as amended:[4]

x x x

- Pursuant to a joint venture agreement between plaintiff and one Mila Yap-Sumndad, a Filipino and alleged owner of a 3,000 sq. m. land in Boracay, Aklan, to establish and develop a first-class tourist resort on said land which was assigned to defendant BBCHI, plaintiff invested in, and paid P1 Million for 8,000 shares of defendant corporation corresponding to 40% of its authorized capital stock.

- To finance the construction of new buildings and the acquisition of furniture, equipment and other facilities of said resort, called Boracay Beach Club Hotel and owned by BBCHI, plaintiff gave advances or loans to said defendant, which as of October 2, 1990, already amounted to P1,000,000.00...

- Plaintiff continued to give advances to defendant BBCHI to complete the construction of the buildings and facilities of the Boracay Beach Club Hotel resort, which advances or loans was determined to be at least P8,000,000.00. Said loans, which are demandable in character and subject to interest of 20% per annum accruing from September 1, 1990, are to be serviced and paid by defendant BBCHI.

x x x

- Considering that as of September 1994, defendant has failed to service and pay, not only its above-mentioned demandable loans but even the accrued interests thereon which, as of December 31, 1994, already amounted to P393,451.07, plaintiff through his counsel demanded from defendant, through its officer and SEC-appointed manager, for settlement of the latter's said unpaid obligations.

- Despite plaintiff's foregoing written demands for payment of its due obligations, the defendant has refused and failed to do so.[5]

The trial court admitted the amended complaint and issued an amended order for the issuance of writ of attachment.[6]

On March 29, 1995, petitioner Mila Yap Sumndad filed an "Urgent Motion for Leave to Intervene with Prayer for Status Quo Order and/or Suspension" praying that she be allowed to intervene either as plaintiff or defendant.[7] The trial court granted said motion on June 8, 1995 and gave petitioner ten days to file either a complaint or an answer in intervention.[8]

Instead of filing an answer, petitioner moved to dismiss the amended complaint based on the following grounds: (1) forum shopping; (2) lack of jurisdiction; (3) failure to state a cause of action; and (4) *litis pendencia*. [9] This was denied by the RTC in its order dated October 17, 1995.[10] Thereafter, Sumndad filed 6 motions for additional time to file an answer.[11]

Upon motion of Harrigan, petitioner was declared in default on March 21, 1996, for failure to answer within the reglementary period and the trial court proceeded with the *ex-parte* presentation of evidence.[12]

On April 18, 1996, Harrigan filed a Motion for Judgment on the Pleadings.[13]

On several occasions, petitioner attempted to regain her standing in court by filing numerous pleadings and motions. On October 1, 1996, the trial court resolved her motions in this wise:

A scrutiny of the entire records of this case show that Intervenor MILA YAP SUMNDAD, for failure to file COMPLAINT or ANSWER IN INTERVENTION, was declared in default per Order of 21 March 1996 and received by counsel for Intervenor on 10 May 1996, and subsequent thereto Intervenor MILA YAP SUMNDAD filed the following pleadings, to wit:

- Manifestation and Opposition to Motion for Judgment on the Pleadings filed on 20 May 1996;
- Motion to Suspend Proceedings filed on 28 May 1996;
- Supplement to the Opposition to Motion for Judgment on the Pleadings with Manifestation to file Motion to Lift Order of Default filed on 17 June 1996;
- Supplement to "Motion to Suspend Proceedings" on ground of Prejudicial Question and Forum Shopping;
- Motion to Consolidate Above-Entitled Case with Civil Case No. 4847 of the RTC, Branch 7, Kalibo, Aklan filed on 03 September 1996.

The records likewise show that Intervenor MILA YAP SUMNDAD despite its Supplement to the Opposition to Motion for Judgment on the Pleadings with Manifestation to file Motion to Lift Order of Default filed on 17 July 1996 (Underscoring ours) has not, until now, filed the necessary motion to lift Order of Default, dated 21 March 1996.

In view of the foregoing, and the Order of 21 March 1996 declaring Intervenor MILA YAP SUMNDAD [in default,] not having been lifted, Intervenor has no standing in court, or considered out of court, and consequently can no longer appear herein, or expect her pleadings to be acted upon. (citation omitted)[14]

On the same date, the trial court, acting on Harrigan's motion for judgment on the pleadings, decreed:

A perusal of the ANSWERS filed by the defendants in this case for a SUM OF MONEY evidently failed to tender an issue and therefore, pursuant to Section 1, Rule 19, Rules of Court, JUDGMENT ON THE PLEADINGS is hereby rendered in favor of plaintiff and as against defendant BORACAY BEACH CLUB

HOTEL, INC. (BBCHI), who is hereby ordered to:

- PAY plaintiff the sum of EIGHT MILLION (P8,000,000.00) PESOS, Philippine Currency, plus 12% interest per annum computed from 27 July 1993, until fully paid;
- PAY attorney's fees in the amount of P200,000.00, plus appearance fee of P2,000.00 per hearing attended by the counsel; and to
- PAY the costs.[15]

Not satisfied with the decision, petitioner moved for reconsideration.[16] In the meantime, Harrigan moved for the execution of judgment.[17] By order dated March 11, 1997, the trial court denied petitioner's motion for reconsideration and granted Harrigan's motion for execution of judgment.[18]

Thereafter, a writ of execution was issued.[19]

On May 7, 1997, petitioner filed with the Court of Appeals, a petition for certiorari, prohibition and mandamus, docketed as CA-G.R. SP No. 44088.[20] On October 1, 1997, the CA dismissed the petition for lack of merit.[21]

Petitioner again moved for reconsideration. This, too, was denied in a resolution dated January 21, 1998.[22]

Hence this petition for review on certiorari ascribing the following errors to the appellate court below:

I

THE COURT OF APPEALS, SIXTH DIVISION HAS SO FAR SANCTIONED THE ERRONEOUS EXERCISE OF JURISDICTION BY THE REGIONAL TRIAL COURT, MAKATI BRANCH 61 OVER CIVIL CASE NO. 95-223, FILED BY PRIVATE RESPONDENT JOHN HARRIGAN, AGAINST BORACAY BEACH CLUB HOTEL INC., OF WHICH HE ALLEGES TO BE A STOCKHOLDER (40%) FOR COLLECTION OF A SUM OF MONEY, BASED ON ALLEGED FRAUD, WHICH IS A SUBJECT MATTER CLEARLY WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION, UNDER SEC. 5 PD 902-A. FOR SUCH CLEAR ERROR OF JURISDICTION CERTIORARI NOT ORDINARY APPEAL IS THE CORRECT REMEDY.[23]

II

THE COURT OF APPEALS HAS CAPRICIOUSLY, GROSSLY AND PATENTLY ERRED IN HOLDING THAT PETITIONER'S REMEDY IS APPEAL AND NOT CERTIORARI, WHICH REMEDY WAS LOST FOR FAILURE TO APPEAL WITHIN THE REGLEMENTARY PERIOD OF APPEAL, INCONSISTENTLY CATEGORIZING THE ALLEGED ERRORS AS ONE OF JUDGEMENT AND NOT OF JURISDICTION.[24]

III.

THE COURT OF APPEALS HAS ERRONEOUSLY RULED THAT THE PETITION FOR CERTIORARI HAS BEEN FILED BELATEDLY COUNTING THE THREE (3) MONTHS PERIOD NOT FROM APRIL 27, 1997 THE DATE OF RECEIPT OF THE DENIAL OF THE MOTION FOR RECONSIDERATION OF THE JUDGMENT ON THE PLEADINGS DATED OCTOBER 1, 1996 SUBJECT OF CERTIORARI BUT FROM MARCH 21, 1996, THE DATE OF THE DENIAL OF THE MOTION FOR RECONSIDERATION OF THE ORDER DENYING MOTION TO DISMISS.[25]

IV.

THE COURT OF APPEALS CLEARLY AND WHIMSICALLY ERRED IN HOLDING THAT THE PETITIONER LACKS PERSONALITY TO QUESTION THE DECISION AGAINST BORACAY BEACH CLUB HOTEL INC. WHICH DECISION DOES NOT CONCERN HER ALLEGEDLY.[26]

The central issue raised in the petition is: Is it the regular court or the Securities and Exchange Commission (SEC) that has jurisdiction over the subject matter of the case?

Petitioner insists that it is the SEC that has jurisdiction by virtue of Presidential Decree No. 902-A (Reorganization of the Securities and Exchange Commission with Additional Powers) because the complaint alludes to fraud committed by respondent corporation, and the complainant is a stockholder of the respondent corporation.

Private respondent, on the other hand, maintains that jurisdiction is lodged with the regular courts, it being a simple collection case.

The petition is unmeritorious.

First. The rule is that jurisdiction over the subject matter of the case is conferred by law and determined by the allegations of the complaint.[27] Therefore, to resolve the issue raised to us, an interpretation and application of the law on jurisdiction, must be made vis-à-vis the averments of the petitioner's complaint.

The law on jurisdiction of the SEC, Section 5 of PD 902-A, states that in addition to the regulatory and adjudicative functions of the SEC over corporations, partnerships and other forms of associations registered with it as expressly granted under the existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving devises or schemes employed by or any acts of the Board of Directors, business associates, its officers and partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or to the stockholders, partners, members of associations or organizations registered with the Commission.[28]

Now, from the averments of the amended complaint filed with the trial court as quoted above, Harrigan seeks to collect from BBCHI his advances or loans in the amount of at least P8 million, which are demandable in character pursuant to their agreement,[29] including interest at 20% per annum accruing from September 1, 1990. The cause of action of the suit is, clearly, for the collection of a sum of money.

However, petitioner interprets said collection complaint as one involving mainly the issue of fraud committed by respondent corporation, which makes the controversy fall under the ambit of PD 902-A. The particular portion of the amended complaint referred to by petitioner states:

14. In so allowing another person to have the absolute and uncontrolled possession, management, and utilization of the buildings and facilities of the Boracay Beach Club Hotel resort without any corresponding financial return or material benefit therefor, and the misappropriation by said third party of the income from the operation of the resort business therein, since July 28, 1994 and up to the present or for a period of over seven (7) months now, defendant has, in effect, disposed of and continues to ACTUALLY DISPOSE of and/or wantonly waste/dissipate said corporate properties and funds, in fraud of its creditors, which include herein plaintiff.[30]

To our mind, from the totality of the complaint filed by Harrigan, the main issue is whether or not he is entitled to collect the loan and not whether or not he was defrauded by BBCHI. The mere use of the phrase "in fraud of creditors" does not, ipso facto, throw the case within SEC's jurisdiction. The amended complaint filed by Harrigan does not sufficiently allege acts amounting to fraud and misrepresentation committed by respondent corporation.

In *Alleje vs. CA*,[31] "fraud" is defined as a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by

which another is cheated. Within the context of the complaint as quoted above, the phrase “in fraud of creditors” can only mean, “to the prejudice of creditors” and not to the use of devices or schemes tantamount to fraud and misrepresentation employed by the Board of Directors, business associates or its officers and partners to divert corporate funds and assets for personal use, as contemplated in Section 5 of PD 902-A.

Equally unavailing is petitioner’s contention that the case involves an intra-corporate controversy, or one between the corporation and its stockholder transposing it within the domain of the SEC. It should be noted that the issue has become moot and academic because with Republic Act No. 8799, Securities Regulation Code, it is now the Regional Trial Court and no longer the SEC that has jurisdiction. Under Section 5.2 of Republic Act No. 8799,[32] original and exclusive jurisdiction to hear and decide cases involving intra-corporate controversies have been transferred to a court of general jurisdiction or the appropriate Regional Trial Court.[33]

Foregoing given, Harrigan’s complaint against petitioner to recoup his financial exposure with BBCHI was properly lodged with the regular court and not with the SEC. This view is in accord with the rudimentary principle that administrative agencies, like the SEC, are tribunals of limited jurisdiction and, as such, could wield only such powers as are specifically granted to them by their enabling statutes.[34]

Given our disquisition that the complaint for sum of money was instituted with the proper court, petitioner’s remedy before the appellate court should have been a timely appeal and not certiorari. Therefore, the appellate court was correct in dismissing petitioner’s petition for certiorari for being time-barred. Indeed, certiorari cannot be used as a substitute for lost or lapsed remedy of appeal, especially if such loss was occasioned by one’s own neglect or error in the choice of remedies.[35] As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment reviewable by timely appeal and not by a special civil action of certiorari.[36]

It is now moot and academic to delve into the third assigned error raised by petitioner, i.e., that the CA erred in ruling that three month reglementary period for filing a petition for certiorari has already lapsed.

Neither does petitioner’s last assigned error merit our consideration, as any discussion on this issue of “personality” is merely academic. As earlier stated, whether or not petitioner has the personality to question the RTC order against BBCHI is a matter that should have been properly threshed out in an appeal filed with the CA. By allowing said order to become final and executory without interposing an appeal and by having incorrectly availed of the extraordinary remedy of certiorari, we can no longer, at this late hour, deal on this issue. We hasten to add that this issue requires delving into the facts of the case. Basic is the rule that this court is not a trier of facts.

WHEREFORE, the instant petition is DENIED for lack of merit and the challenged decision of the Court of Appeals of October 1, 1997 in CA-G.R. SP No. 44088 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

[1] Records, Vol. I, pp. 1-7.

[2] Id. at 46.

[3] Id. at 62-69.

[4] Ibid.

- [5] Id. at 63-64, 66.
- [6] Id. at 107-109.
- [7] Id. at 123-127.
- [8] Id. at 256.
- [9] Id. at 409-420.
- [10] Records, Vol. II, pp. 529-530.
- [11] Id. at 564, 567-568, 572-573, 576-577, 582-583, 607-608.
- [12] Id. at 643-644.
- [13] Id. at 649-652.
- [14] Id. at 799.
- [15] Id. at 807.
- [16] Id. at 812-815.
- [17] Id. at 840-841.
- [18] Id. at 849.
- [19] Id. at 854-861.
- [20] Id. at 863-897.
- [21] Rollo, pp. 47-60.
- [22] Id. at 61.
- [23] Id. at 11.
- [24] Id. at 20.
- [25] Id. at 24.
- [26] Id. at 26.
- [27] Deltaventures Resources, Inc. vs. Cabato, G.R. No. 118216, 327 SCRA 521, 528 (2000).
- [28] Union Glass & Container Corporation vs. Securities and Exchange Commission, G.R. No. L-64013, 126 SCRA 31, 37 (1983).
- [29] Supra, note 1 at 10-19, Annexes “B”, “C”, “D” & “D-1”.
- [30] Id. at 67.
- [31] G.R. No. 107152, 240 SCRA 495, 500 (1995).
- [32] Section 5.2., R.A. No. 8799.

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.

[33] Ty vs. Court of Appeals, et. al, G.R. Nos. 112872 & 114672, April 19, 2001, pp. 6-7.

[34] Union Bank of the Phils. vs. Court of Appeals, G.R. No. 131729, 290 SCRA 198, 214 (1998).

[35] Sempio vs. Court of Appeals, G.R. No. 115953, 263 SCRA 617, 626 (1996).

[36] Estate of Salud Jimenez vs. Philippine Export Processing Zone, G.R. No. 137285, 349 SCRA 240, 253 (2001).

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