

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, and DOMESTIC SATELLITE PHILIPPINES, INC., Petitioners, vs. INVESTA CORPORATION, IGNAC...*G.R. No. 135466. May 07, 2008*

Ponente: CARPIO, J.

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This is a petition for review[1] of the Order[2] promulgated on 17 March 1998 and the Resolution[3] promulgated on 28 August 1998 of the Sandiganbayan in Civil Case No. 0182, Republic of the Philippines v. Investa Corporation, et al. The Sandiganbayan dismissed the case filed by the Presidential Commission on Good Government (PCGG) on behalf of the Republic of the Philippines (Republic) and Domestic Satellite Philippines, Inc., (Domsat) (collectively, petitioners) for lack of jurisdiction. The Sandiganbayan ruled that the acts of the Board of Directors of Domsat, which the Republic claims amount to fraud, are proper subjects of an intracorporate dispute which lies with the jurisdiction of the Securities and Exchange Commission (SEC) and not with the Sandiganbayan.

The Facts

The PCGG, by authority of Executive Order Nos. 1 and 2, issued two orders for the sequestration and immediate takeover of Domsat in 1986. On 14 March 1986,[4] the PCGG requested Mr. Carlos M. Farrales (Farrales) to "sequester and immediately take-over" Domsat, as well as all assets, funds, and records thereof, and to be the Officer-in-Charge of Domsat. The PCGG also requested Farrales to "immediately freeze all the withdrawals, transfers, and/or remittances from the funds of [Domsat] under any type of deposit accounts, trust accounts or placements, with the exception of those which are necessary for maintaining the ordinary course of business." On 11 April 1986,[5] the PCGG named Roberto S. Benedicto (Benedicto), Jose L. Africa (J. Africa), Victor A. Africa, and Alfredo L. Africa as the owners and controllers of the shares in Domsat which should be under sequestration. The PCGG further ordered that "[t]here shall be no removal, transfer, concealment, hypothecation or any form of disposition of the above-referred shares and emoluments or benefits therefrom until further orders of this Commission."

Domsat was incorporated in 1975 with an authorized capital stock of P20 million divided into 200,000 shares with a par value of P100 per share. The incorporators divided the shares among themselves as follows:

Incorporator

Subscribed Shares Amount of Subscription Amount Paid Up

Ramon Cojuangco 4,000 P400,000 P100,000

Paterno M. Kintanar 4,000 P400,000 P100,000

Enrique D. Perez 4,000 P400,000 P100,000
Manuel H. Nieto, Jr. 4,000 P400,000 P100,000
Roberto S. Benedicto 4,000 P400,000 P100,000
Jose L. Africa 4,000 P400,000 P100,000
Alejandro L. Lukban 4,000 P400,000 P100,000
Francisca de Leon 4,000 P400,000 P100,000
Salvador Tan 4,000 P400,000 P100,000
Caridad Cruz 2,000 P200,000 P50,000
Vicente Esguerra 2,000 P200,000 P50,000
Total 40,000 P4,000,000 P1,000,000[6]

At the time of the issuance of the sequestration orders, the shares in Domsat were distributed as follows:

Stockholder Shares Equity Percentage

Jose L. Africa 4,000 10%
Roberto S. Benedicto 4,000 10%
Oscar Africa 1
Antonio Cojuangco 1
Exequiel Garcia 4,000 10%
Antonio Gomez 4,000 10%
Manuel H. Nieto, Jr. 8,800 22%
Enriquez Perez 1
PLDT 7,197 18%
Francisca Benedicto 8,000 20%
Total 40,000 100%[7]

The PCGG sequestered the Domsat shares in the names of Exequiel Garcia, Antonio Gomez, Francisco Benedicto, Oscar Africa, and Enriquez Perez as nominees of Benedicto. The PCGG also sequestered the shares of Manuel H. Nieto, Jr. (Nieto).

In 1987, the Republic, represented by the PCGG, filed Civil Case No. 9 before the Sandiganbayan, which is a complaint for reconveyance, reversion, restitution, accounting and damages against Benedicto, J. Africa, and Nieto as well as against Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio. The Republic alleged that all assets and properties sequestered by the PCGG are ill-gotten or fruits of ill-gotten wealth of Ferdinand E. Marcos and Imelda R. Marcos and are being held by their co-defendants in trust for and for the benefit of the Marcos spouses, thus all these assets and properties must be reverted and reconveyed to the Republic. The assets and properties in Civil Case No. 9 included the shares of stock in Domsat.

In 1989, three years after the issuance of the sequestration orders, Domsat elected a new Board of Directors whom the Republic alleged are nominees of Benedicto, J. Africa, and Nieto. On 27 September 1989, the new Domsat Board of Directors entered into a Memorandum of Agreement on Engagement of Management Consultancy and Investment Advisory Services (management contract) with Investa Corporation (Investa) to be made effective as of 25 July 1989. The management contract stated that Investa will be paid, out of Domsat's unsubscribed and unissued shares, with full value Domsat shares computed at par at the rate of one million pesos, or ten thousand shares, per semester effective 25 July 1989. As of 29 August 1989, Domsat reserved 49,200 shares for Investa. Investa eventually subscribed to these shares.

Investa's percentage share in the ownership of Domsat grew as the years passed. As of 30 June 1993, Investa owned 39.5% of the Domsat shares, valued at P7.9 million. The Republic, on the other hand, held only 17% of the shares, 9.6% of which were ceded by Benedicto and his nominees while the remaining 6.4% were sequestered from the Africas and Nieto. At the time PCGG filed the present case before the Sandiganbayan on 3 March 1998, the Republic allegedly held only 15.998% of Domsat's shares compared to Investa's 75%.

The Sandiganbayan's Second Division issued an order on 17 March 1998. The Sandiganbayan summarized the allegations of the parties as follows:

A careful and thorough analysis of the facts of the case reveals that the causes of action of the [Republic and Domsat] are anchored on their belief that the [management contract] which was entered into by and between [Domsat] thru a set of directors, a majority of whom were allegedly nominees of Roberto S. Benedicto, Jose L. Africa and Manuel H. Nieto, and Investa Corporation (Investa); [Investa's] eventual control over [Domsat's] Board of Directors and management and its subsequent acts of holding the annual stockholder's meeting on March 6, 1991 without notice to the [PCGG]; the Board's issuance and disposal of all the unsubscribed and unissued 100,000 shares of capital stocks valued at P10 million; and lately, the Board's proposed amendments to the Domsat's Articles of Incorporation, viz, Second Article expanding the Statement of Purposes; Sixth Article increasing the number of directors from nine (9) to fifteen (15) and Seventh Article increasing the authorized capital stock of the corporation from P20 million to P2 billion are all fraudulent schemes to carry out a plot against the sequestration of and to weaken the hold of the Republic (thru the PCGG) on the sequestered shares of Domsat. In fact, the questioned acts have allegedly diluted the Republic's shareholdings from 32.79% in equity to 15.998%. In effect, the [Republic and Domsat] accordingly suffered losses or damages - both compensatory and nominal.[8]

The Ruling of the Sandiganbayan

The Sandiganbayan dismissed the petition *motu proprio* on the sole ground of lack of jurisdiction. We quote its ruling below.

In fine, the dispute in the case at bar concerns acts of the board of directors which the [Republic and Domsat] claim amount to fraud and consequently, detrimental to the interest of Domsat stockholders, more particularly the Republic as regards the sequestered shares.

This is also an intracorporate dispute well within the jurisdiction of the [SEC] pursuant to Section 5, paragraphs (a) and (b) of PD 902-A, as amended, which states:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, x x x 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) Devises 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 the stockholders, partners, members of associations or organizations registered with the Commission.

(b) Controversies arising out of the intracorporate 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.

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This does not pertain or relate to funds, moneys, assets and properties illegally acquired or misappropriated by former President Ferdinand Marcos, his family, cronies or dummies. Neither does it involve an incident arising from, incidental to, or related to any case involving such property over which the Sandiganbayan has no [sic] concern.

WHEREFORE, premises considered, the [Republic and Domsat's] petition for issuance of a temporary restraining order is denied for lack of merit and the instant case is dismissed *motu proprio* for lack of jurisdiction.

SO ORDERED.[9]

The Sandiganbayan denied[10] the Republic and Domsat's motion for reconsideration for lack of merit.

The Issue

The petition presented only one ground for our consideration: Does the Sandiganbayan have jurisdiction over Civil Case No. 0182?

Respondents Rodrigo A. Silverio and Robert W. Medel (Medel) and respondents Nilo B. Peña and Pompeyo C. Nolasco, in their separate comments, merely repeated the relevant portion of the Sandiganbayan's order and insisted that the Sandiganbayan knows the extent of its jurisdiction. However, respondent Investa's memorandum, filed through Ignacio D. Debuque, Jr., ignored the issue of the Sandiganbayan's jurisdiction. Investa instead asked whether PCGG had knowledge of the progressive increase of Domsat's subscribed and paid-in capital stock and whether PCGG had knowledge that Investa, as the new stockholder, was responsible for the said increase.

The Ruling of the Court

The petition has merit.

The Extent of the Sandiganbayan's Jurisdiction over the PCGG

Presidential Commission on Good Government v. Peña[11] defined the Sandiganbayan's jurisdiction over the PCGG in the exercise of the PCGG's powers under the applicable Executive Orders and the Constitution, thus:

Under section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding the "Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on certiorari exclusively by the Supreme Court.[12] (Emphasis added)

The present case involves the question of the propriety of dilution of the Republic's shares in Domsat. The Sandiganbayan cited *San Miguel Corporation v. Kahn*[13] (San Miguel) in its footnotes to support its ruling. However, contrary to the Sandiganbayan's ruling, we find that San Miguel does not stand on all fours with the present case.

In San Miguel, Eduardo De los Angeles (De los Angeles) was one of the PCGG representatives in the Board of Directors of San Miguel Corporation (SMC). De los Angeles owned 20 shares in his name and was elected to the SMC Board by the 33,133,266 SMC shares sequestered by PCGG. De los Angeles questioned the SMC Board's resolution to assume the loans of Neptunia Co., Ltd. (Neptunia), SMC's indirectly wholly owned subsidiary. When De los Angeles' efforts to obtain relief from SMC and PCGG proved futile, he filed a derivative suit with the SEC. Ernest Kahn moved to dismiss De los Angeles' derivative suit on two grounds, one of which stated that the SEC had no jurisdiction over the controversy because the matters involved are strictly within the business judgment of SMC's Board of Directors.

The SEC ruled in favor of De los Angeles and stated, among others, that the SEC always has competence to inquire into situations where business judgment transgresses the law. However, the Court of Appeals overturned the SEC's ruling. The Court of Appeals ruled that De los Angeles had no legal capacity to institute the derivative suit because (1) De los Angeles' ownership in his name of 20 shares out of 121,645,680 outstanding shares of SMC does not adequately represent the interest of the minority stockholders; (2) De los Angeles' position as PCGG-nominated director is inconsistent with his desire to represent minority stockholders; (3) the PCGG can only exercise powers of administration over sequestered property; and (4) De los Angeles' suit is not brought for the benefit of SMC.

We ruled in favor of De los Angeles in his appeal before this Court. We found that De los Angeles' ownership of SMC shares in his name was sufficient to authorize him to bring suit. De los Angeles' act was also not contrary to PCGG's position. Moreover, De los Angeles' complaint was confined to the validity of SMC's assumption of the indebtedness of Neptunia and did not even inquire about the ownership of the SMC shares sequestered by PCGG. We then stated that the acts of the board of directors which are claimed to amount to fraud and to be detrimental to the interest of the sequestered corporation constitute an intracorporate dispute within the jurisdiction of the SEC even though a PCGG representative filed the case.

In the present case, the PCGG, as conservator of the sequestered Domsat shares, questions the dilution of the said shares brought about by the management contract between Domsat and Investa. The management contract allegedly diluted the Republic's shareholdings in Domsat from 32.79% to 15.998%.

The power to sequester ill-gotten wealth is one of the powers granted to PCGG.[14] A conservator of sequestered shares has the duty to ensure that the sequestered properties are not dissipated under its watch. In *Bataan Shipyard & Engineering Co., Inc. v. PCGG*, [15] we stated that:

By the clear terms of the law, the power of the PCGG to sequester property claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities," --for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same--until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks, or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.[16]

In PCGG's exercise of its role as conservator of a going concern such as Domsat, the PCGG "may in this case exercise some measure of control in the operation, running or management of the business itself." [17]

There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and

in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited.[18]

In light of the above, we hold that the PCGG's act of questioning the resulting dilution of the sequestered Domsat shares brought about by the management contract between Domsat and Investa properly lies within the jurisdiction of the Sandiganbayan. The present case clearly pertains to the percentage share of the Republic in Domsat as represented by the sequestered Domsat shares. The Domsat shares are properties which the Republic claims to be illegally acquired or misappropriated by former President Ferdinand E. Marcos, his family, cronies, or dummies. The Sandiganbayan should now rule upon the propriety of the management contract, and consider the issues raised by Investa in their memorandum before this Court.

WHEREFORE the petition is GRANTED. The Order promulgated on 17 March 1998 and the Resolution promulgated on 28 August 1998 of the Sandiganbayan in Civil Case No. 0182 are SET ASIDE. The Sandiganbayan is DIRECTED to take cognizance of Civil Case No. 0182.

SO ORDERED.

Puno, CJ., (Chairperson), Azcuna, Velasco, Jr.[*], and Leonardo-De Castro, JJ., concur.

[*]As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84- 2007.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 37-40. Penned by Associate Justice Harriet O. Demetriou with Associate Justices German G. Lee, Jr. and Godofredo L. Legaspi, concurring.

[3] Id. at 41-42. Penned by Associate Justice Edilberto G. Sandoval with Associate Justices Anacleto D. Badoy, Jr. and Godofredo L. Legaspi, concurring.

[4] Id. at 108.

[5] Id. at 109.

[6] See id. at 55.

[7] See id. at 56.

[8] Id. at 37-38.

[9] Id. at 38-40. Citations omitted.

[10] Id. at 41-42.

[11] No. L-77663, 12 April 1988, 159 SCRA 556. See also Soriano III v. Yuzon, No. L-79520, 10 August 1988, 164 SCRA 227.

[12] Id. at 561-562. Citations omitted.

[13] G.R. No. 85339, 11 August 1989, 176 SCRA 447.

[14] See Executive Order No. 1 (1986); Executive Order No. 2 (1986); Executive Order No. 14 (1986); Executive Order No. 14-A (1986); Rules and Regulations Implementing Executive Order Nos. 1 and 2 (1986).

[15] No. L-75885, 27 May 1987, 150 SCRA 181.

[16] Id. at 208-209.

[17] Id. at 237.

[18] Id. at 237-238.

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