

GD EXPRESS WORLDWIDE N.V. AND AMIHAN MANAGEMENT SERVICES, INC. PETITIONERS, VS. HON. COURT OF APPEALS (FOURTH DIVISION), HON. SECURITIES AND EXCHANGE COMMISSION (EN BANC), HON. R...

G.R. No. 136978. May 08, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before the Court is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] of the Court of Appeals in CA-G.R. SP No. 48442 and praying for the dismissal of the petition filed before the Securities and Exchange Commission (SEC) by respondent Filchart Airways, Inc. (Filchart) in SEC Case No. 08-97-5746.

The following factual antecedents are matters of record.

Petitioner GD Express Worldwide N.V. (GD Express) is a corporation duly organized and existing under the laws of the Netherlands. On 27 September 1990, its predecessor-in-interest, TNT Limited (TNT) entered into a joint venture agreement with Philippine Aerospace Development Corporation (PADC) for the establishment of a domestic corporation as their corporate vehicle to operate as an international air freight carrier. The joint venture agreements stipulated that PADC would own 80% of the shares of stock of the corporate vehicle while TNT would own the remaining 20%.[3]

The agreements essentially laid down the relationship between TNT and PADC and the management, control and existence of the corporation. Also, pursuant to the joint venture agreements, PADC and TNT registered with the SEC a corporation to be known as Air Philippines Corporation (APC).

Subsequently, on 11 December 1992, APC amended its articles of incorporation to change its corporate name to Pacific East Asia Cargo Airlines, Inc. (PEAC). On 02 April 1993, TNT transferred all its shares in PEAC to petitioner GD Express.[4] PEAC immediately commenced operations. Herein petitioner Amihan Management Services, Inc. (Amihan), a domestic corporation, was contracted to undertake the daily operations in PEAC pursuant to the joint venture agreement.[5]

Sometime in 1994, the Office of the President mandated the Committee on Privatization to require the Asset Privatization Trust (APT) to dispose of PADC's 80% share in PEAC. Thus, petitioner GD Express and PADC executed the Terms of Reference that would govern the disposition of PADC's equity comprising 12,800 subscribed shares of stock in PEAC.[6]

In March 1996, the APT issued the Asset Specific Bidding Rules (ASBR) incorporating the Terms of Reference for the sale of PADC's shares of stock in PEAC. The ASBR required prospective bidders, among others, to comply with the obligations and undertakings/warranties enumerated therein. At the bidding conducted on 19 March 1996, respondent Filchart, also a domestic corporation, emerged as the highest bidder of the 12,800 shares

of stock owned by PADC in PEAC.

Alleging that respondent Filchart was bent on reneging on its obligations and warranties under the ASBR and Terms of Reference, petitioner GD Express instituted on 14 October 1996, Civil Case No. 96-1675 for specific performance before the Regional Trial Court (RTC) of Makati to compel PADC and APT to faithfully comply with the joint venture agreements, the ASBR and the Terms of Reference, with a prayer for the preservation of the status quo ante litem.

During the pendency of Civil Case No. 96-1675, PADC and respondent Filchart executed on 04 March 1997 the corresponding deed of absolute sale, by virtue of which PADC sold to respondent Filchart its shares of stock in PEAC in consideration of the bid price of P110,000,000.00.[7] The sale was duly recorded in PEAC's stock and transfer book and the shares of stock were transferred in the name of respondent Filchart.[8]

This prompted petitioner GD Express to file an amended complaint[9] to introduce another cause of action for the nullification of the said transfer and to implead the Committee on Privatization, the PEAC and respondent Filchart as additional defendants. The amended complaint reiterated the prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. Respondent Filchart opposed the issuance of TRO, claiming that the dispute was intra-corporate in nature falling within the SEC's jurisdiction.[10]

In the amended complaint dated 06 June 1997, petitioner sought to nullify the approval by the Committee on Privatization and the notice of award issued by the APT in favor of respondent Filchart and to compel the defendants to perform all their respective obligations under the joint venture agreements, the ASBR and the Terms of Reference and to desist from committing further breach thereof or, in the alternative, to nullify any transfer and/or issuance of PADC's subscribed shares of stock in PEAC in favor of respondent Filchart. Petitioner GD Express also prayed for an award of temperate and exemplary damages and attorney's fees.[11] On 22 August 1997, the RTC issued a temporary restraining order against respondent Filchart in Civil Case No. 96-1675.[12]

Meanwhile, on 12 August 1997, respondent Filchart filed before the SEC a petition, docketed as SEC Case No. 08-97-5746, praying for the appointment of a management committee to take over the business operations of PEAC pending litigation and for judgment declaring, among others, the nullity of certain provisions in the joint venture agreement between PADC and petitioner GD Express, particularly those requiring the consent of petitioner GD Express in the sale of PADC's shareholdings in PEAC. Also sought to be nullified were certain provisions in PEAC's articles of incorporation and by-laws, and the management agreement between petitioners GD Express and Amihan. Named respondents were herein petitioners GD Express and Amihan.[13]

On 29 September 1997, petitioners filed a motion to dismiss the petition in SEC Case No. 08-97-5746 on the grounds that its filing constituted a willful and deliberate act of forum shopping and that respondent Filchart had no capacity to sue and cause of action to ask for the appointment of a management committee pending the determination of its status as a stockholder.[14]

On 21 November 1997, Hearing Officer Rosita R. Guerrero issued an order denying petitioners' motion to dismiss, holding that SEC Case No. 08-97-5746 pertained to different causes of action falling under the exclusive jurisdiction of the SEC. Petitioners' motion for reconsideration was denied in an Order dated 08 December 1997.[15]

Petitioners elevated the matter to the SEC en banc via a petition for certiorari. Acting on petitioners' prayer for the issuance of a TRO, the SEC en banc issued an order on 15 December 1997 enjoining the Hearing Officer from appointing a management committee and conducting any proceedings on the petition. However, the SEC en banc eventually dismissed the petition for certiorari and affirmed the two aforementioned orders of the Hearing Officer.

The SEC en banc likewise denied petitioners' motion for reconsideration.[16]

Aggrieved, petitioners filed a Rule 43 petition before the Court of Appeals arguing that the Hearing Officer had no jurisdiction over SEC Case No. 08-97-5746 on the following grounds: (1) the dispute was not intra-corporate in character considering that respondent Filchart had not fully paid the subscription rights in PADC; (2) respondent Filchart's status as stockholder in PEAC must be settled first in Civil Case No. 96-1675; and (3) a request from the supervising government agency must be secured first before the appointment of a management committee to undertake the management of PEAC. Petitioners also pointed out that the filing of the petition in SEC Case No. 08-97-5746 constituted a willful and deliberate act of forum shopping and that the Hearing Officer dismissed petitioners' motion to dismiss and motion for reconsideration without stating clearly and distinctly the reasons of the dismissal.[17]

On 23 December 1998, the Court of Appeals rendered the assailed decision, dismissing the petition for lack of merit. The appellate court ruled that the SEC had jurisdiction over a petition filed by a non-stockholder like respondent Filchart under Section 5(a) of P.D. No. 902-A, where fraud and misrepresentation detrimental to public interest were alleged to have been committed by petitioner GD Express against PEAC. As regards the issue of respondent Filchart's status as a stockholder, the appellate court held that the resolution thereof needed a study of the merits of the case and should be referred to the SEC Hearing Officer. The appellate court further held that respondent Filchart did not commit forum shopping in filing SEC Case No. 08-97-5746 because the causes of action raised therein were different from those raised in Civil Case No. 96-1675.[18]

Hence, the instant petition, arguing that the SEC Hearing Officer was not authorized to assume jurisdiction over SEC Case No. 08-97-5746 for the following reasons: (1) the status of respondent Filchart must first be resolved with finality in Civil Case No. 96-1675; (2) there is no intra-corporate dispute since respondent Filchart is not a stockholder; (3) SEC jurisdiction under Section 5(a) of P.D. No. 902-A does not apply to SEC Case No. 08-97-5746; (4) prior request of the supervising government agency must first be secured before the SEC Hearing Officer can appoint a management committee; and (5) the filing of SEC Case No. 08-97-5746 constitutes a willful and deliberate act of forum shopping.[19]

Subsequently, petitioners filed a supplemental petition,[20] which was admitted by the Court. The supplemental petition averred that the SEC constituted a Hearing Panel in SEC Case No. 08-97-5746. On the same day the instant petition was filed or on 29 January 1999, the said SEC Hearing Panel purportedly issued an ex-parte order creating and appointing an Interim Management Committee in PEAC. Two members of the SEC Hearing Panel allegedly went to the PEAC office to implement the said order. Thus, petitioners sought to implead additional respondents, namely: SEC Hearing Officers Ysobel S.Y. Murillo and Juanito B. Almosa, Jr., as well as Atty. Cornelio T. Peralta and Jose Antonio Lim, two of the members of the Interim Management Committee.[21]

The supplemental petition was accompanied by an application for the issuance of a TRO and/or writ of preliminary injunction to enjoin the SEC Hearing Panel from assuming jurisdiction over SEC Case No. 08-97-5746 and the Interim Management Committee from implementing the Order dated 29 January 1999.[22] The supplemental petition reiterated the prayers for the reversal of the assailed decision of the Court of Appeals, for the dismissal of respondent Filchart's petition in SEC Case No. 08-97-5746 and for making permanent the injunction which may be granted in the instant case.[23]

At the core of the instant petition is the issue of whether the SEC erred in assuming jurisdiction over respondent Filchart's petition in SEC Case No. 08-97-5746 during the pendency of Civil Case No. 96-1675. Corollary to this is the question whether the filing thereof during the pendency of Civil Case No. 96-1675 constitutes a willful and deliberate act of forum shopping on the part of respondent Filchart.

At the outset, it must be emphasized that pursuant to Section 5.2[24] of Republic Act No. 8799,[25] the SEC's jurisdiction over intra-corporate controversies has been transferred to the RTCs or Special Commercial Courts (SCC) designated by the Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

In view of the said transfer of jurisdiction, the SEC Hearing Panel which the SEC constituted and the Interim Management Committee which the SEC Hearing Panel appointed have become functus officio. Petitioners' prayer for a TRO and/or writ of injunction to prevent the said bodies from acting upon their authority has been rendered moot and academic by this development.

R.A. No. 8799 became effective during the pendency of both Civil Case No. 96-1675 and SEC Case No. 08-97-5746. It appears that the records of SEC Case No. 08-97-5746 have already been forwarded to the Office of the Court Administrator for proper transmittal to the appropriate SCC.[26] Be that as it may, the resolution of this petition is not rendered moot by the transfer of jurisdiction from the SEC to the SCC. The question whether Civil Case No. 96-1675 can proceed simultaneously and independently with the intra-corporate case or whether both cases should be consolidated or either case suspended or dismissed remains to be settled.

Petitioners argue that the assumption of jurisdiction by the SEC over SEC Case No. 08-97-5746 has resulted in the splitting of jurisdiction over the issues of which the RTC has already previously assumed jurisdiction in Civil Case No. 96-17-675. Petitioners theorize that all issues pertaining to the validity and enforceability of the obligations of respondent Filchart under the joint venture agreements, the ASBR and the Terms of Reference, as well as the validity of certain provisions in PEAC's articles of incorporation and by-laws, the supposed transfer and issuance of subscribed shares to respondent Filchart and the exercise of rights of ownership over said shares, must be resolved by the RTC in Civil Case No. 96-17-675.

On the other hand, respondent Filchart argues that Civil Case No. 96-17-675 is an intra-corporate dispute exclusively cognizable by the SEC because the questions therein necessarily involve a determination of the validity of certain acts of a shareholder of a corporation, that is, whether the sale by PADC of its shares in PEAC to respondent Filchart is valid.

Respondent Filchart's petition in SEC Case No. 08-97-5746 prays for the following reliefs:

WHEREFORE, it is respectfully prayed that, after notice and hearing:

1. Pending judgment on the merits, an interim order be issued creating and appointing a Management Committee to take over the management of the business operations and affairs of PEAC; such Management Committee to be composed of a SEC representative to serve as Chairman, three (3) members to be nominated by Filchart and one (1) member to be nominated by GD Express.

2. After hearing on the merits, judgment be rendered in favor of Filchart:

(a) Declaring void ab initio for being contrary to law and public policy, and the Constitution (i) Sec. 6.1 of the Pre-Incorporation Agreement and Section 21.1 of the Shareholders Agreement which provisions purport to restrict PADC's right to sell, assign or transfer its shareholdings in PEAC without the written consent of GD Express; (ii) Article 10 [2], [3] of the Article of Incorporation of PEAC; and (iii) Section 8, Article II Section 5, Article III of the By-Laws of PEAC.

(b) Annuling and setting aside for being contrary to law, public policy and the Constitution the Management Agreement entered into between PEAC and Amihan.

(c) Directing the stockholders of PEAC to amend PEAC's Articles of Incorporation and By-Laws by deleting the provisions declared void ab initio as prayed for above.

(d) Declaring Filchart's nominees, namely: Robin Sy, Jose Antonio Lim, Eduardo R. Ceniza, Domingo G.

Castillo and Ricardo P.G. Ongkiko, as having been duly elected directors of PEAC at the Special Meeting of the Stockholders held on August 5, 1997, and ordering defendant GD Express, its officers, and all persons acting in their behalf to allow said nominee directors of Filchart to have access to the office premises of PEAC, its records and its properties.

(e) Ordering GD Express to pay Filchart -

[i] nominal damages in the amount of P1,000,000.00;

[ii] temperate damages in such amount as the Honorable Commission may fix in its discretion;

[iii] exemplary damages in the amount of P500,000.00;

[iv] attorney's fees, in the amount of P2,000,000.00, plus expenses of litigation the amount of which will be proved at the trial.

[v] the costs of suit.

Filchart prays for such other reliefs just and equitable under the premises.[27]

There is no question that the prayers for the appointment of a management receiver, the nullification and amendment of certain provisions of PEAC's articles of incorporation and by-laws, the recognition of the election of respondent Filchart's directors, as well as the inspection of the corporate books, are intra-corporate in nature as they pertain to the regulation of corporate affairs.

Even the issue of respondent Filchart's status as stockholder in PEAC and, concomitantly, its capacity to file SEC Case No. 08-97-5746 must be threshed out in the intra-corporate proceedings. Petitioner GD Express' allegation that respondent Filchart has not fully paid its subscription to the shares in PEAC and, thus, cannot claim to be a stockholder in PEAC does not oust the SCC of its jurisdiction over the case. For the purpose of determining whether SEC Case No. 08-97-5746 should be heard as an intra-corporate proceeding, the allegation in respondent Filchart's petition that it is a stockholder in PEAC is deemed hypothetically admitted. It is only after a full-blown hearing that the SCC may determine whether respondent Filchart's may be considered a bona fide stockholder of PEAC and is entitled to the reliefs prayed for in its petition.

However, in view of the transfer of jurisdiction over intra-corporate disputes from the SEC to the SCCs, which are the same RTCs exercising general jurisdiction, the question of jurisdiction is no longer decisive to the resolution of the instant case.

It should be noted that the SCCs are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799[28] directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter.

The designation of certain RTC branches to handle specific cases is nothing new. For instance, pursuant to the provisions of the R.A. No. 6657 or the Comprehensive Agrarian Reform Law, the Supreme Court has assigned certain RTC branches to hear and decide cases under Sections 56 and 57 of R.A. No. 6657.

The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

There is no jurisdictional infirmity for either court (the RTC hearing Civil Case No. 96-17-675 and the SCC assigned to hear SEC Case No. 08-97-5746), the only question that remains is whether Civil Case No. 96-17-675 and SEC Case No. 08-97-5746, now transferred to the proper SCC, may proceed concurrently or should be consolidated or whether SEC Case No. 08-97-5746 should be suspended to await the outcome of Civil Case No. 96-17-675.

Incidentally, not all the prayers and reliefs sought by respondent Filchart in SEC Case No. 08-97-5746 can be characterized as intra-corporate in nature. For instance, respondent Filchart's petition does not allege that the cause of action for the nullification of the management contract between PEAC and petitioner Amihan is being instituted as a derivative suit. It is an ordinary action for the nullification of a contract, which is cognizable by courts of general jurisdiction.

The issue of the interpretation of the provisions of the joint venture agreements is among the subjects of Civil Case No. 96-17-675. On the one hand, petitioner GD Express is claiming therein that the joint venture agreements requiring the petitioner GD Express' consent to the sale of PADC's shares in PEAC must be enforced while respondent Filchart instituted SEC Case No. 08-97-5746 precisely to nullify the said provision. There is no doubt that the objects of both suits are necessarily connected; hence, respondent Filchart's prayer for the nullification of the joint venture agreements should have been raised as a defense in Civil Case No. 96-17-675 because there exists a logical relationship between the two claims. Conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court.[29]

As regards the aforementioned intra-corporate issues raised in SEC Case No. 08-97-5746, the resolution thereof is necessarily connected with the outcome of Civil Case No. 96-17-675. The transactions alleged in SEC Case No. 08-97-5746 had come about as an offshoot of the events forming the basis of Civil Case No. 96-17-675. The latter ultimately seeks to nullify the award in favor of and the consequent transfer of PEAC shares to respondent Filchart. The outcome in Civil Case No. 96-17-675, that is, whether or not the award in favor of and the sale of PEAC's shares to respondent Filchart is valid, will have a bearing on respondent Filchart's capacity to institute the intra-corporate suit.

The test to determine whether the suspension of the proceedings in the SECOND CASE is proper is whether the issues raised by the pleadings in the FIRST CASE are so related with the issues raised in the SECOND CASE, such that the resolution of the issues in the FIRST CASE would determine the issues in the SECOND CASE.[30]

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC, in this case the SCC, would suspend the proceedings in the SECOND CASE is submitted to its sound discretion.[31]

Thus, the SCC to which SEC Case No. 08-97-5746 was transferred has sufficient discretion to determine whether under the circumstances of the case, it should await the outcome of Civil Case No. 96-17-675.

Furthermore, petitioners also contend that respondent Filchart committed a deliberate act of forum shopping in filing SEC Case No. 08-97-5746.

The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. The elements of forum shopping are: (a) identity of parties, or at least such parties as represent the same interests in both action; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the

identity with respect to the two preceding particulars in the two cases is such that any judgment rendered in the pending cases, regardless of which party is successful, amount to res judicata in the other case.[32]

To begin with, respondent Filchart did not file multiple suits but only a single action which is SEC Case No. 08-97-5746. As already explained above, the outcome in Civil Case No. 96-17-675 will only determine respondent Filchart's capacity to institute the intra-corporate suit. Thus, the judgment in the said civil case cannot amount to res judicata in SEC Case No. 08-97-5746. Strictly speaking, the latter can still proceed independently of Civil Case No. 96-17-675, but the SCC may exercise its sound discretion to suspend the intra-corporate proceeding if it believes that the outcome of the civil case will affect the causes of action raised in SEC Case No. 96-17-675.

WHEREFORE, the instant petition is DENIED. Costs against petitioners.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

[*]Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

[***] In a Supplemental Petition dated 03 February 1999, which was admitted pursuant to a Resolution dated 08 February 1999, petitioners impleaded the following additional respondents: SEC Hearing Officers Ysobel S.Y. Murillo and Juanito B. Almosa, Jr. and members of the Interim Management Committee, namely, Atty. Cornelio T. Peralta and Jose Antonio Lim.

[1] Rollo, pp. 10-113.

[2] Dated 23 December 1998 and penned by Justice Marina L. Buzon and concurred in by Justices Jesus M. Elbinias, Chairman of the Fourth Division, and Eugenio S. Labitoria; Id. at 115-123.

[3] Id. at 115-16.

[4] Id. at 116.

[5] Id. at 357.

[6] Id. at 116.

[7] Id. at 117.

[8] Id. at 317.

[9] Id. at 454.

[10] Id. at 118.

[11] Id. at 484-491.

[12] Id. at 118.

[13] Id.

[14] Id. at 119.

[15] Id.

[16] Id.

[17] Id. at 120-121.

[18] Id. at 121-23.

[19] Id. at 49-50.

[20] Id. at 1274.

[21] Id. at 1256-1259.

[22] Id. at 1271.

[23] Id. at 1272.

[24] R.A. No. 8799, Section 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 the 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 payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

[25] Entitled "The Securities Regulation Code;" approved on 19 July 2000.

[26] SEC Records, p. 275.

[27] Rollo, pp. 322-323.

[28] Supra.

[29] See *Lafarge Cement Phils. Inc. v. Continental Cement Corp.* 486 Phil. 123 (2004).

[30] *Security Bank Corp. v. Victorio*, G.R. No. 155099, 31 August 2005, 468 SCRA 609, 627-628.

[31] *Security Bank Corp. v. Victorio*, G.R. No. 155099, 31 August 2005, 468 SCRA 609, 628.

[32] *United Overseas Bank Phils. v. Rosemoore Mining & Development Corp.*, G.R. Nos. 159669 & 163521, 12 March 2007, 518 SCRA 123, 134, citing *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, 14 April 2004, 427 SCRA 585.

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