

**MAKATI STOCK EXCHANGE, INC., MA. VIVIAN YUCHENGCO,
ADOLFO M. DUARTE, MYRON C. PAPA, NORBERTO C. NAZARENO,
GEORGE UY-TIOCO, ANTONIO A. LOPA, RAMON B. ARNAIZ, LUIS J.L.
VIRATA, AN...**

G.R. No. 138814. April 16, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 seeking the reversal of the Decision[2] dated 11 February 1997 and Resolution dated 18 May 1999 of the Court of Appeals in CA-G.R. SP No. 38455.

The facts of the case are as follows:

SEC Case No. 02-94-4678 was instituted on 10 February 1994 by respondent Miguel V. Campos, who filed with the Securities, Investigation and Clearing Department (SICD) of the Securities and Exchange Commission (SEC), a Petition against herein petitioners Makati Stock Exchange, Inc. (MKSE) and MKSE directors, Ma. Vivian Yuchengco, Adolfo M. Duarte, Myron C. Papa, Norberto C. Nazareno, George Uy-Tioco, Antonio A. Lopa, Ramon B. Arnaiz, Luis J.L. Virata, and Antonio Garcia, Jr. Respondent, in said Petition, sought: (1) the nullification of the Resolution dated 3 June 1993 of the MKSE Board of Directors, which allegedly deprived him of his right to participate equally in the allocation of Initial Public Offerings (IPO) of corporations registered with MKSE; (2) the delivery of the IPO shares he was allegedly deprived of, for which he would pay IPO prices; and (3) the payment of P2 million as moral damages, P1 million as exemplary damages, and P500,000.00 as attorney's fees and litigation expenses.

On 14 February 1994, the SICD issued an Order granting respondent's prayer for the issuance of a Temporary Restraining Order to enjoin petitioners from implementing or enforcing the 3 June 1993 Resolution of the MKSE Board of Directors.

The SICD subsequently issued another Order on 10 March 1994 granting respondent's application for a Writ of Preliminary Injunction, to continuously enjoin, during the pendency of SEC Case No. 02-94-4678, the implementation or enforcement of the MKSE Board Resolution in question. Petitioners assailed this SICD Order dated 10 March 1994 in a Petition for Certiorari filed with the SEC en banc, docketed as SEC-EB No. 393.

On 11 March 1994, petitioners filed a Motion to Dismiss respondent's Petition in SEC Case No. 02-94-4678, based on the following grounds: (1) the Petition became moot due to the cancellation of the license of MKSE; (2) the SICD had no jurisdiction over the Petition; and (3) the Petition failed to state a cause of action.

The SICD denied petitioner's Motion to Dismiss in an Order dated 4 May 1994. Petitioners again challenged the 4 May 1994 Order of SICD before the SEC en banc through another Petition for Certiorari, docketed as SEC-EB No. 403.

In an Order dated 31 May 1995 in SEC-EB No. 393, the SEC en banc nullified the 10 March 1994 Order of SICD in SEC Case No. 02-94-4678 granting a Writ of Preliminary Injunction in favor of respondent. Likewise, in an Order dated 14 August 1995 in SEC-EB No. 403, the SEC en banc annulled the 4 May 1994 Order of SICD in SEC Case No. 02-94-4678 denying petitioners' Motion to Dismiss, and accordingly ordered the dismissal of respondent's Petition before the SICD.

Respondent filed a Petition for Certiorari with the Court of Appeals assailing the Orders of the SEC en banc dated 31 May 1995 and 14 August 1995 in SEC-EB No. 393 and SEC-EB No. 403, respectively. Respondent's Petition before the appellate court was docketed as CA-G.R. SP No. 38455.

On 11 February 1997, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 38455, granting respondent's Petition for Certiorari, thus:

WHEREFORE, the petition in so far as it prays for annulment of the Orders dated May 31, 1995 and August 14, 1995 in SEC-EB Case Nos. 393 and 403 is GRANTED. The said orders are hereby rendered null and void and set aside.

Petitioners filed a Motion for Reconsideration of the foregoing Decision but it was denied by the Court of Appeals in a Resolution dated 18 May 1999.

Hence, the present Petition for Review raising the following arguments:

I.

THE SEC EN BANC DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FILED BY RESPONDENT BECAUSE ON ITS FACE, IT FAILED TO STATE A CAUSE OF ACTION.

II.

THE GRANT OF THE IPO ALLOCATIONS IN FAVOR OF RESPONDENT WAS A MERE ACCOMMODATION GIVEN TO HIM BY THE BOARD OF [DIRECTORS] OF THE MAKATI STOCK EXCHANGE, INC.

III.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE SEC EN BANC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT MADE AN EXTENDED INQUIRY AND PROCEEDED TO MAKE A DETERMINATION AS TO THE TRUTH OF RESPONDENT'S ALLEGATIONS IN HIS PETITION AND USED AS BASIS THE EVIDENCE ADDUCED DURING THE HEARING ON THE APPLICATION FOR THE WRIT OF PRELIMINARY INJUNCTION TO DETERMINE THE EXISTENCE OR VALIDITY OF A STATED CAUSE OF ACTION.

IV.

IPO ALLOCATIONS GRANTED TO BROKERS ARE NOT TO BE BOUGHT BY THE BROKERS FOR THEMSELVES BUT ARE TO BE DISTRIBUTED TO THE INVESTING PUBLIC. HENCE, RESPONDENT'S CLAIM FOR DAMAGES IS ILLUSORY AND HIS PETITION A NUISANCE SUIT.[3]

On 18 September 2001, counsel for respondent manifested to this Court that his client died on 7 May 2001. In a Resolution dated 24 October 2001, the Court directed the substitution of respondent by his surviving spouse, Julia Ortigas vda. de Campos.

Petitioners want this Court to affirm the dismissal by the SEC en banc of respondent's Petition in SEC Case No.

02-94-4678 for failure to state a cause of action. On the other hand, respondent insists on the sufficiency of his Petition and seeks the continuation of the proceedings before the SICD.

A cause of action is the act or omission by which a party violates a right of another.[4] A complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to dismissal on the ground of failure to state a cause of action.

If a defendant moves to dismiss the complaint on the ground of lack of cause of action, he is regarded as having hypothetically admitted all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendant.[5]

Given the foregoing, the issue of whether respondent's Petition in SEC Case No. 02-94-4678 sufficiently states a cause of action may be alternatively stated as whether, hypothetically admitting to be true the allegations in respondent's Petition in SEC Case No. 02-94-4678, the SICD may render a valid judgment in accordance with the prayer of said Petition.

A reading of the exact text of respondent's Petition in SEC Case No. 02-94-4678 is, therefore, unavoidable. Pertinent portions of the said Petition reads:

7. In recognition of petitioner's invaluable services, the general membership of respondent corporation [MKSE] passed a resolution sometime in 1989 amending its Articles of Incorporation, to include the following provision therein:

"ELEVENTH - WHEREAS, Mr. Miguel Campos is the only surviving incorporator of the Makati Stock Exchange, Inc. who has maintained his membership;

"WHEREAS, he has unselfishly served the Exchange in various capacities, as governor from 1977 to the present and as President from 1972 to 1976 and again as President from 1988 to the present;

"WHEREAS, such dedicated service and leadership which has contributed to the advancement and well being not only of the Exchange and its members but also to the Securities industry, needs to be recognized and appreciated;

"WHEREAS, as such, the Board of Governors in its meeting held on February 09, 1989 has correspondingly adopted a resolution recognizing his valuable service to the Exchange, reward the same, and preserve for posterity such recognition by proposing a resolution to the membership body which would make him as Chairman Emeritus for life and install in the Exchange premises a commemorative bronze plaque in his honor;

"NOW, THEREFORE, for and in consideration of the above premises, the position of the "Chairman Emeritus" to be occupied by Mr. Miguel Campos during his lifetime and irregardless of his continued membership in the Exchange with the Privilege to attend all membership meetings as well as the meetings of the Board of Governors of the Exchange, is hereby created."

8. Hence, to this day, petitioner is not only an active member of the respondent corporation, but its Chairman Emeritus as well.

9. Correspondingly, at all times material to this petition, as an active member and Chairman Emeritus of

respondent corporation, petitioner has always enjoyed the right given to all the other members to participate equally in the Initial Public Offerings (IPOs for brevity) of corporations.

10. IPOs are shares of corporations offered for sale to the public, prior to the listing in the trading floor of the country's two stock exchanges. Normally, Twenty Five Percent (25%) of these shares are divided equally between the two stock exchanges which in turn divide these equally among their members, who pay therefor at the offering price.

11. However, on June 3, 1993, during a meeting of the Board of Directors of respondent-corporation, individual respondents passed a resolution to stop giving petitioner the IPOs he is entitled to, based on the ground that these shares were allegedly benefiting Gerardo O. Lanuza, Jr., who these individual respondents wanted to get even with, for having filed cases before the Securities and Exchange (SEC) for their disqualification as member of the Board of Directors of respondent corporation.

12. Hence, from June 3, 1993 up to the present time, petitioner has been deprived of his right to subscribe to the IPOs of corporations listing in the stock market at their offering prices.

13. The collective act of the individual respondents in depriving petitioner of his right to a share in the IPOs for the aforementioned reason, is unjust, dishonest and done in bad faith, causing petitioner substantial financial damage.[6]

There is no question that the Petition in SEC Case No. 02-94-4678 asserts a right in favor of respondent, particularly, respondent's alleged right to subscribe to the IPOs of corporations listed in the stock market at their offering prices; and stipulates the correlative obligation of petitioners to respect respondent's right, specifically, by continuing to allow respondent to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

However, the terms right and obligation in respondent's Petition are not magic words that would automatically lead to the conclusion that such Petition sufficiently states a cause of action. Right and obligation are legal terms with specific legal meaning. A right is a claim or title to an interest in anything whatsoever that is enforceable by law.[7] An obligation is defined in the Civil Code as a juridical necessity to give, to do or not to do.[8] For every right enjoyed by any person, there is a corresponding obligation on the part of another person to respect such right. Thus, Justice J.B.L. Reyes offers[9] the definition given by Arias Ramos as a more complete definition:

An obligation is a juridical relation whereby a person (called the creditor) may demand from another (called the debtor) the observance of a determinative conduct (the giving, doing or not doing), and in case of breach, may demand satisfaction from the assets of the latter.

The Civil Code enumerates the sources of obligations:

Art. 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts.

Therefore, an obligation imposed on a person, and the corresponding right granted to another, must be rooted in at least one of these five sources. The mere assertion of a right and claim of an obligation in an initiatory pleading, whether a Complaint or Petition, without identifying the basis or source thereof, is merely a conclusion of fact and law. A pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished

from mere conclusions of fact or conclusions of law.[10] Thus, a Complaint or Petition filed by a person claiming a right to the Office of the President of this Republic, but without stating the source of his purported right, cannot be said to have sufficiently stated a cause of action. Also, a person claiming to be the owner of a parcel of land cannot merely state that he has a right to the ownership thereof, but must likewise assert in the Complaint either a mode of acquisition of ownership or at least a certificate of title in his name.

In the case at bar, although the Petition in SEC Case No. 02-94-4678 does allege respondent's right to subscribe to the IPOs of corporations listed in the stock market at their offering prices, and petitioners' obligation to continue respecting and observing such right, the Petition utterly failed to lay down the source or basis of respondent's right and/or petitioners' obligation.

Respondent merely quoted in his Petition the MKSE Board Resolution, passed sometime in 1989, granting him the position of Chairman Emeritus of MKSE for life. However, there is nothing in the said Petition from which the Court can deduce that respondent, by virtue of his position as Chairman Emeritus of MKSE, was granted by law, contract, or any other legal source, the right to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

A meticulous review of the Petition reveals that the allocation of IPO shares was merely alleged to have been done in accord with a practice normally observed by the members of the stock exchange, to wit:

IPOs are shares of corporations offered for sale to the public, prior to their listing in the trading floor of the country's two stock exchanges. Normally, Twenty-Five Percent (25%) of these shares are divided equally between the two stock exchanges which in turn divide these equally among their members, who pay therefor at the offering price.[11] (Emphasis supplied)

A practice or custom is, as a general rule, not a source of a legally demandable or enforceable right.[12] Indeed, in labor cases, benefits which were voluntarily given by the employer, and which have ripened into company practice, are considered as rights that cannot be diminished by the employer.[13] Nevertheless, even in such cases, the source of the employees' right is not custom, but ultimately, the law, since Article 100 of the Labor Code explicitly prohibits elimination or diminution of benefits.

There is no such law in this case that converts the practice of allocating IPO shares to MKSE members, for subscription at their offering prices, into an enforceable or demandable right. Thus, even if it is hypothetically admitted that normally, twenty five percent (25%) of the IPOs are divided equally between the two stock exchanges -- which, in turn, divide their respective allocation equally among their members, including the Chairman Emeritus, who pay for IPO shares at the offering price -- the Court cannot grant respondent's prayer for damages which allegedly resulted from the MKSE Board Resolution dated 3 June 1993 deviating from said practice by no longer allocating any shares to respondent.

Accordingly, the instant Petition should be granted. The Petition in SEC Case No. 02-94-4678 should be dismissed for failure to state a cause of action. It does not matter that the SEC en banc, in its Order dated 14 August 1995 in SEC-EB No. 403, overstepped its bounds by not limiting itself to the issue of whether respondent's Petition before the SICD sufficiently stated a cause of action. The SEC en banc may have been mistaken in considering extraneous evidence in granting petitioners' Motion to Dismiss, but its discussion thereof are merely superfluous and obiter dictum. In the main, the SEC en banc did correctly dismiss the Petition in SEC Case No. 02-94-4678 for its failure to state the basis for respondent's alleged right, to wit:

Private respondent Campos has failed to establish the basis or authority for his alleged right to participate equally in the IPO allocations of the Exchange. He cited paragraph 11 of the amended articles of incorporation of the Exchange in support of his position but a careful reading of the said provision shows nothing therein that

would bear out his claim. The provision merely created the position of chairman emeritus of the Exchange but it mentioned nothing about conferring upon the occupant thereof the right to receive IPO allocations.[14]

With the dismissal of respondent's Petition in SEC Case No. 02-94-4678, there is no more need for this Court to resolve the propriety of the issuance by SCID of a writ of preliminary injunction in said case.

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals dated 11 February 1997 and its Resolution dated 18 May 1999 in CA-G.R. SP No. 38455 are REVERSED and SET ASIDE. The Orders dated 31 May 1995 and 14 August 1995 of the Securities and Exchange Commission en banc in SEC-EB Case No. 393 and No. 403, respectively, are hereby reinstated. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Peralta, JJ., concur.

[1] Per Resolution of 24 October 2001.

[2] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Jesus M. Elbinias and Hilarion L. Aquino, concurring; rollo, pp. 30-36.

[3] Rollo, p. 144.

[4] Revised Rules of Court, Rule 2, Section 2.

[5] *Fil-Estate Golf and Development, Inc. v. Court of Appeals*, 333 Phil. 465, 490-491 (1996).

[6] Rollo, pp. 50-52.

[7] *Bailey v. Miller*, 91 N.E. 24, 25, Ind. App. 475, cited in 37A Words and Phrases 363.

[8] Civil Code, Article 1156.

[9] Lawyer's Journal, 31 January 1951, p. 47.

[10] *Abad v. Court of First Instance of Pangasinan*, G.R. Nos. 58507-08, 26 February 1992, 206 SCRA 567, 579-580.

[11] Rollo, pp. 51-52.

[12] A distinction, however, should be made between Municipal Law and Public International Law. Custom is one of the primary sources of International Law, and is thus a source of legal rights within such sphere.

[13] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU*, G.R. No. 170734, 14 May 2008, 554 SCRA 110, 118.

[14] Rollo, p. 95.

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