

PACIFIC BASIN SECURITIES CO., PETITIONER, VS. ORIENTAL PETROLEUM AND MINERALS CORP. AND EQUITABLE BANKING CORP., RESPONDENTS.

G.R. NO. 143972. August 31, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

By Resolution dated February 21, 2001,[1] the Court ordered the consolidation of the Petitions for Review on Certiorari under Rule 45 of the Rules of Court docketed as G.R. No. 143972,[2] G.R. No. 144056[3] and G.R. No. 144631.[4]

The facts of the case are undisputed:

On May 31, 1991, Pacific Basin Securities, Inc. (Pacific Basin), through the stock brokerage firm First Resources Management and Securities Corporation (FRMSC), purchased 308,300,000 Class "A" shares of Oriental Petroleum and Minerals Corporation (OPMC). Pacific Basin fully paid for the OPMC shares in the total amount of P17,727,000.00 or P.05750 per share.[5] The shares were listed and traded in the Makati Stock Exchange.

The OPMC shares turned out to be owned by Piedras Petroleum Mining Corporation (Piedras Petroleum), a sequestered company controlled by the nominees of the Presidential Commission on Good Government (PCGG). PCGG sent a letter dated June 10, 1991 to Equitable Banking Corporation (EBC), OPMC's stock and transfer agent, confirming Piedras Petroleum's sale of the OPMC shares in favor of Pacific Basin through FRMSC. In the same letter, PCGG requested EBC to record the acquisition of said shares and to issue the corresponding certificates of stock in favor of Pacific Basin.[6]

The requests were left unheeded. EBC informed FRMSC that it cannot effect the transfer of the OPMC shares to Pacific Basin on the following grounds: first, that the endorser of the stock certificate, a certain Mr. Clemente Madarang, was not among the authorized signatories of Piedras Petroleum; and second, there was no board resolution from Piedras Petroleum which authorized the sale of the OPMC shares.[7]

FRMSC complied with the requirements imposed by EBC and consequently renewed its demand for the transfer of the OPMC shares to Pacific Basin and the issuance of new certificates of stock.[8] Again, these requests proved futile.

Hence, on April 23, 1992, Pacific Basin filed a Petition for Mandamus with Prayer for a Writ of Preliminary Mandatory Injunction and/or Restraining Order and Writ of Preliminary Prohibitory Injunction docketed as SEC Case No. 04225.[9] Pacific Basin alleged that: it had purchased 308,300,000 Class "A" shares of stock of OPMC; EBC refused to record its acquisition of the shares and to issue the corresponding certificates of stock, which is in grave neglect of the performance of the ministerial duty specifically enjoined by Section 63 of the Corporation Code; and there was a violation of Section 1, Article 1 of the Amended By-laws of OPMC which mandates the issuance of certificate of stock to each holder of fully paid stock.[10]

In their Answer,[11] OPMC and EBC claimed that the government's title over the subject OPMC shares was based on the cession made by Mr. Roberto S. Benedicto, an associate of former President Ferdinand Marcos, in exchange for immunity from prosecution and suit by the government for allegedly amassing ill-gotten wealth. According to OPMC and EBC, item no. 6 of the annex to the Compromise Agreement executed between the government (through PCGG) and Mr. Benedicto shows that part of the assets to be turned over by Mr. Benedicto to the government were all of the OPMC shares owned by Piedras Petroleum. The Court, however, in G.R. Nos. 108368, 108548-49, and 108550 issued a Temporary Restraining Order enjoining the enforcement of the Compromise Agreement. Thus, OPMC and EBC maintained that the basis for PCGG's claim of title over the OPMC shares disappeared as the effectivity of the supposed cession made by Mr. Benedicto is suspended.

OPMC and EBC also argued that even on the assumption that the government has a valid and effective title over the subject OPMC shares, the sale by Piedras Petroleum to Pacific Basin was void as there was no showing that Piedras Petroleum complied with the legal requirements for the disposition of government owned assets as embodied in Proclamation No. 50, as amended, and related rules and regulations on the matter. The non-holding of a public bidding for the sale of the shares was allegedly a blatant violation of the said law.

The Securities and Exchange Commission Hearing Officer[12] ruled in

favor of Pacific Basin. In the Decision[13] dated December 28, 1995, the Hearing Officer took judicial notice of the Court's January 10, 1993 and January 18, 1994 En Banc Resolutions which dismissed the petition and denied the Motion for Reconsideration filed by PCGG in G.R. No. 108368. Thus, the issue of the Temporary Restraining Order on the Compromise Agreement executed between PCGG and Mr. Benedicto was rendered moot. The Decision further held that since the subject shares have been fully paid by Pacific Basin, it is the obligation and a ministerial duty of OPMC and EBC to transfer the shares in the corporate books and issue certificates of stock in favor of Pacific Basin under Section 63 of the Corporation Code and Section I of Article I of the amended by-laws of OPMC. The corporate officers of OPMC were also found to have acted in bad faith when they refused to transfer the shares to Pacific Basin. Hence, they were ordered to jointly and severally pay Pacific Basin the following amounts: P20,000,000.00 representing actual damages; P300,000.00 representing exemplary damages; P300,000.00 representing attorney's fees; and P50,000.00 for the cost and expenses of the suit.

On December 28, 1995, OPMC and EBC filed their Motion for Reconsideration which was denied by the Hearing Officer. Later, OPMC and EBC filed their appeal before the SEC en banc. On July 13, 1999, the SEC en banc rendered its Decision[14] which modified the December 28, 1995 Decision of the Hearing Officer by deleting the awards of actual and exemplary damages in favor of Pacific Basin.

Petitioner Pacific Basin and respondents OPMC and EBC separately went to the Court of Appeals (CA) on appeal, docketed as CA-G.R. SP No. 54456 and CA-G.R. SP No. 54442, respectively.

In CA-G.R. SP No. 54442, OPMC and EBC contend that the SEC erred in holding that the sale of publicly listed shares of stock through the stock market is tantamount to a public bidding and that they are ministerially bound to record said shares in their stock and transfer book.[15]

On January 26, 2000, the CA rendered a Decision[16] which affirmed in toto the July 13, 1999 Decision of the SEC en banc.[17] The CA held that: public bidding signifies a letting of a contract that is open to all notorious, a letting that furnishes fair and reasonable public notice and secures to the public equal competition in bidding and becoming contractors; the sale of shares through public stock exchange offers transparent and fair competition; and the pricing of shares of stock is a highly specialized field that is better left to the experts. The dispositive portion of the Decision states:

WHEREFORE, the instant petition is hereby DENIED. Accordingly, the Decision dated 13 July 1999 of the

Securities and Exchange Commission is AFFIRMED in toto.

SO ORDERED.[18]

upon learning the January 26, 2000 Decision of the CA in CA-G.R. SP No. 54442, Pacific Basin filed with the Court a petition, docketed as G.R. No. 143972, assailing said CA Decision claiming that:

I.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT SUSTAINED THE SEC'S EN BANC DECISION WHICH DELETED THE AWARD OF ACTUAL AND COMPENSATORY DAMAGES IN FAVOR OF THE PETITIONER. THERE IS CLEAR AND CONVINCING EVIDENCE ESTABLISHED THROUGH THE UNREBUTTED TESTIMONY OF PETITIONER'S EXPERT WITNESS THAT PETITIONER WAS DEPRIVED OF ACTUAL PROFITS IN THE AMOUNT OF AROUND TWENTY MILLION PESOS (P20,000,000.00) X X X

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FAILED TO AWARD THE PETITIONER EXEMPLARY DAMAGES, AS FOUND BY THE SEC HEARING OFFICER WHO CONDUCTED ADVERSARIAL PROCEEDINGS BELOW AND HAD OPPORTUNITY TO EXAMINE THE PARTIES' EVIDENCE AND THEIR WITNESSES. RESPONDENTS' MANIFEST BAD FAITH AND MALICIOUS REFUSAL TO REGISTER THE PURCHASE OF THE SHARES DESPITE LACK OF REASONABLE OR JUSTIFIABLE GROUND ENTITLE THE PETITIONER TO EXEMPLARY DAMAGES. x x x

OPMC and EBC are also before the Court in a petition, docketed as G.R. No. 144056, questioning the CA Decision, thus:

I.

[G]OVERNMENT-OWNED PROPERTY, EVEN OF [SIC] SHARES OF STOCK WHICH ARE PUBLICLY LISTED IN A STOCK EXCHANGE, MAY BE DISPOSED OF ONLY THROUGH A PUBLIC BIDDING, THAT THE SALE OF SUCH SHARES IF MADE IN VIOLATION OF THE PUBLIC BIDDING REQUIREMENT IS NOT VALID AND THAT THE DISPOSITION OF SUCH SHARES THROUGH THE NORMAL OPERATION OF THE STOCK EXCHANGE DOES NOT SATISFY THE REQUIREMENT OF PUBLIC BIDDING. X X X

II.

x x x the GOOD FAITH OF THE PETITIONERS HAVING BEEN ESTABLISHED AS A MATTER OF FACT THERE IS NO LEGAL BASIS TO ASSESS ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT.

On the other hand, in CA-G.R. SP. No. 54456, Pacific Basin questioned SEC en banc's deletion of the actual and exemplary damages awarded to it by the SEC Hearing Officer.[19]

On August 18, 2000, the CA rendered its Decision[20] which held that: the testimony given by Ms. Vicky Chan, the Vice- President of Pacific Basin, is not sufficient to prove actual damages; no exemplary damages should be awarded since the responsible officers of OPMC did not act in bad faith nor in a wanton, fraudulent, reckless, oppressive or malevolent manner when they refused to transfer the subject shares to Pacific Basin's name; and the responsible officers of OPMC were only taking extra precautions in verifying the validity of the transfer since it involved a substantial number of shares aside from the highly controversial matters underlying the transfer which created doubt in their minds. The dispositive portion of the Decision states:

WHEREFORE, foregoing premises considered, the appealed Decision dated July 13, 1999 of the Securities and Exchange Commission (SEC) En Banc is hereby AFFIRMED in toto. Costs against the petitioner.

SO ORDERED.[21]

Pacific Basin is once again before the Court in a petition, docketed as G.R. No. 144631, assailing the CA Decision claiming that:

I.

IT WAS GRAVE ERROR FOR THE COURT OF APPEALS TO RULE THAT PETITIONER HAS FAILED TO PROVE ITS CLAIM FOR DAMAGES WITH A REASONABLE DEGREE OF CERTAINTY DESPITE THE EVIDENCE ON RECORD. EFFECTIVELY, THE COURT OF APPEALS IS REQUIRING ABSOLUTE CERTAINTY, WHICH IS EVEN BEYOND PROOF BEYOND REASONABLE DOUBT IN CRIMINAL PROCEEDINGS OR PREPONDERANCE OF EVIDENCE IN CIVIL PROCEEDINGS. SINCE THIS CASE WAS ORIGINALLY ADMINISTRATIVE IN NATURE, THE PROOF REQUIRED IS MERELY SUBSTANTIAL EVIDENCE WHICH PETITIONER HAS MORE THAN SUFFICIENTLY ESTABLISHED.

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED THAT THE TESTIMONY OF MS. VICKY CHAN, PETITIONER'S VICE-PRESIDENT, IS NOT SUFFICIENT TO PROVE ACTUAL DAMAGES SUSTAINED BY PETITIONER. THE TESTIMONY OF MS. CHAN WAS UNREBUTTED EVEN IN THE PROCEEDINGS BEFORE THE SEC. HER EXPERTISE IN STOCK BROKERAGE WAS ADMITTED AND NEVER QUESTIONED BY THE RESPONDENTS. x x x

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED THAT RESPONDENTS DID NOT ACT IN BAD FAITH, NOR IN WANTON, FRAUDULENT, RECKLESS OR OPPRESSIVE MANNER. x x x MOREOVER, THIS CASE AFFECTS THE EXPECTATION OF THE INVESTING PUBLIC ON THE MARKETABILITY OF THE SHARES LISTED AND TRADED IN THE STOCK EXCHANGE. AS AN EXAMPLE TO THE PUBLIC GOOD, RESPONDENTS SHOULD BE ORDERED TO PAY EXEMPLARY DAMAGES.

The petitions are without merit.

In G.R. No. 144056, OPMC and EBC argue that the OPMC shares are government- owned and, as government property, these can be disposed of only through public bidding. Hence, the sale by Piedras Petroleum of the OPMC shares to Pacific Basin through the stock market is not valid, since it does not comply with the public bidding requirement.

The argument is baseless.

Prior to the 31 May 1991 sale to Pacific Basin, Piedras Petroleum was the owner of the subject OPMC shares. Piedras Petroleum is a sequestered company controlled by the nominees of the PCGG. The fact that Piedras Petroleum was placed under sequestration by the PCGG does not ipso facto make it a government-owned corporation.

The Court elucidated on the power of the PCGG to issue sequestration orders in *Bataan Shipyard & Engineering Company, Inc. v. Presidential Commission on Good Government*.^[22] The Court held:

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 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. And this, too, is the sense in which the term is commonly understood in other jurisdictions. (Emphasis supplied)[23]

The Court further held:

As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership. By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending the action. By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it. x x x (Emphasis supplied)[24]

A sequestration order is similar to the provisional remedy of Receivership under Rule 59 of the Rules of Court. The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over so as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator.[25]

The PCGG, as a mere conservator, does not automatically become the owner of a sequestered property in behalf of the government. There must be a final determination by the courts if the property is in fact "ill-gotten" and was acquired by using government funds. Thus, OPMC cannot conclusively claim that the subject shares are government property by virtue of a sequestration order on Piedras Petroleum. Such conclusion is non sequitur.

OPMC and EBC insist that Proclamation No. 50[26] is the law which should govern the sale of the OPMC shares to Pacific Basin. Under said law, the OPMC shares should be disposed of through public bidding. We find such argument untenable.

Proclamation No. 50 seeks to "[p]romote privatization through an orderly, coordinated and efficient programs for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to maintain."

The term "assets" is defined under Article I, Sec. 2, Par. 1, of Proclamation No. 50, as:

- (i) receivables and other obligations due to government institutions under credit, lease, indemnity and other agreements together with all collateral security and other rights (including but not limited to rights in relation to shares of stock in corporations such as voting rights as well as rights to appoint directors of corporations or otherwise engage in the management thereof) granted to such institutions by contract or operation of law to secure or enforce the right of payment of such obligations;
- (ii) real and personal property of any kind owned or held by government institutions, including shares of stock in corporations, obtained by such government institutions, whether directly or indirectly, through foreclosure or other means, in settlement of such obligations;
- (iii) shares of stock and other investments held by government institutions; and
- (iv) the government institutions themselves, whether as parent or subsidiary corporations.

The subject OPMC shares do not fall within the ambit of "assets," as the term contemplates properties which are

government-owned. To repeat, the OPMC shares originally owned by Piedras Petroleum, a sequestered corporation controlled by the nominees of PCGG, remain to be privately owned until such time when the court declares that the subject shares were acquired through government funds.

Even on the assumption that the OPMC shares are government assets, the Court finds that the sale of the subject shares through the stock exchange is valid and binding, as there is no law which mandates that listed shares which are owned by the government be sold only through public bidding.

As conceded by both Pacific Basin and OPMC, the subject OPMC shares are listed and traded in the stock exchange. OPMC is a listed corporation in the Philippine Stock Exchange (PSE).[27] As a listed corporation, it shall be bound by the provisions of the Revised Listing Rules of the PSE[28] the objective of which is "to provide a fair, orderly, efficient, and transparent market for the trading of securities x x x."

This Court held in *Nicolas v. Court of Appeals*[29] that stock market trading is a technical and highly specialized institution in the Philippines. Trading of listed shares should therefore be left to the stock market where knowledge and expertise on securities mechanism can be expected.

Moreover, even if the law indeed requires that the sale of the subject shares undergo public bidding, the Court finds that sale through the stock exchange is already a substantial compliance with the public bidding requirement. As correctly held by the CA:

[T]o the mind of the Court, the sale of the sale of shares through public stock exchange offers transparent and fair competition. Parenthetically, the pricing of shares of stock is a highly specialized field that is better left to the experts. It involves an inquiry into the earning potential, dividend history, business risks, capital structure, management, asset values of the company, prevailing business climate, political and economic conditions, and myriad other factors that bear on the valuation of shares.

x x x x

The Commission on Audit does not require public bidding of publicly listed shares of stock as the stock market determines the price of the share, hence, by analogy, the stock market itself can be considered as public bidding. x x x[30]

It is beyond dispute that OPMC holds no unpaid claim against Pacific Basin for the value of the shares acquired by the latter. The Court sees no reason why OPMC and EBC consistently and continuously refused to record the transfer in the stock and transfer books of OPMC and issue new certificates in favor of Pacific Basin.

Section 63 of the Corporation Code provides:

Sec. 63. x x x Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid except as between the parties, until the transfer is recorded in the books of the corporation x x x.

Clearly, the right of a transferee/ assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.[31] The Court had ruled in *Rural Bank of Salinas, Inc. v. Court of Appeals*[32] that the corporation's obligation to register is ministerial, citing *Fletcher*, to wit:

In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.[33]

The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by mandamus.[34]

The Court further held in *Rural Bank of Salinas* that the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred.[35]

Pacific Basin satisfied the condition of full payment of the OPMC shares as evidenced by the FRMC Buy Invoice No. 14200 dated May 31, 1991.[36] This fact was never denied by both OPMC and EBC. Therefore, upon Pacific Basin's full payment of the OPMC shares, it became a ministerial duty on the part of OPMC to record the transfer in the stock and transfer book of OPMC and issue new stock certificates in favor of Pacific Basin. Thus, OPMC's and EBC's refusal to record the transfer is violative of Section 63 of the Corporation Code and OPMC's own amended by-laws which states:

Certificate of stock shall be issued to each holder of fully paid stock in numerical order from the stock certificate book, and shall be signed by the President and countersigned by the Secretary and sealed with the corporate seal. A record of each certificate issued shall be kept on the stub thereof and upon the stock register of the company. (Emphasis supplied)

The Court agrees with and adopts the findings of the SEC Hearing Officer in his Decision:[37]

[t]he rights of an innocent purchaser of shares of stock cannot be prejudiced and has to be protected especially when the purchase of the shares are coursed through the Stock Market (in this case the Makati Stock Exchange). An investor when purchasing publicly listed shares of stock in the Stock Market has every right to presume that the shares of a publicly listed corporation being traded in the Stock Market are free from any defect, and that upon purchased [sic] of the said shares, it will be registered in his name in the corporate books.

To rule otherwise would be froth with dangerous consequences. The investing public's confidence in purchasing and investing in shares of stocks thru the Stock Market will erode and become a tedious and burdensome transaction for the buying or selling of shares of stock of publicly listed corporation. An investor who invests good money in shares in the stock market necessarily expects that the said shares will be registered in his name upon payment of the full value thereof.

Instead of building investor's confidence and encourage investment in publicly listed shares in the Stock Market, every investor will have second thoughts in investing as they will be purchasing shares in the stock market subject to a caveat that there is no guaranty the shares they buy are good or transferable to his name. Thus, every potential investor, prior to his purchase of shares of stock in the Stock Market will have to investigate each and every share he intends to purchase to make sure that it is free from any defect and that the said shares may be registered in his name after he purchases the same.

In G.R. No. 143972 and G.R. No. 144631, Pacific Basin alleges that the CA erred when it upheld the Decision of the SEC En Banc which directed the deletion of the actual and exemplary damages awarded by the SEC Hearing Officer.

As to the issue on actual damages, Pacific Basin contends that the CA erred in ruling that there was failure to prove its claim for actual damages. Pacific Basin maintains that the testimony of its Vice-President, Ms. Vicky Chan, is sufficient to establish the loss incurred as a result of OPMC's refusal to transfer the shares in their name.

In order that damages may be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must be duly proved, and so proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount thereof. If the proof is flimsy and unsubstantial, no damages will be awarded.[38]

The court cannot rely on uncorroborated testimony whose truth is suspect, but must depend upon competent proof that actual damages have been actually suffered.[39] The testimonies should be viewed in light of claimant's

self-interest and, hence, should not be taken as gospel truth.[40]

Based on the records, the claim of Pacific Basin for actual damages, in the amount of P20,000,000.00 is not supported by any documentary evidence. We find that the bare testimonial assertions of Ms. Vicky Chan are not adequate and competent proof of the actual pecuniary loss allegedly suffered by Pacific Basin.

OPMC and EBC, however, cannot escape liability. The Court awards Pacific Basin temperate damages.[41]

Temperate damages are included within the context of compensatory damages. In arriving at a reasonable level of temperate damages to be awarded, courts are guided by the ruling that there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss.[42]

The nature of stock market trading is speculative where the value of a specific share may vary from time to time, depending on several factors which may affect the market. Pacific Basin is in the business which involves marketing of securities; it would buy shares and re-sell them when their value appreciates to gain profit from the transaction.

OPMC's and EBC's refusal to record the transfer in the stock and transfer book and issuance of new certificates of stock in the name of Pacific Basin prevented Pacific from re-selling the subject shares in the market. By this non-performance of a ministerial function, the Court is convinced that Pacific Basin suffered pecuniary loss, the amount of which cannot be proved with certainty.

In lieu of actual damages, the Court finds OPMC and EBC, Mr. Roberto Coyiuto and Ethelwoldo Fernandez (as president and corporate secretary of OPMC respectively) liable for temperate damages, jointly and severally[43] in the amount of P1,000,000.00.

The issue on exemplary damages deserves scant consideration. Well settled is the rule that although exemplary damages are not recoverable as a matter of right, and although such damages may not be proved, it must first be shown that the claimant is entitled to moral, temperate or compensatory damages before a court can favorably consider an award of exemplary damages.[44]

The Court found earlier that Pacific Basin is not entitled to actual damages. Exemplary damages, as an accessory to actual damages, cannot also be awarded.

Moreover, the Court agrees with the findings of both the SEC en banc[45] and the CA[46] when it held that OPMC and EBC did not act in bad faith nor in a wanton, fraudulent reckless, oppressive or malevolent manner when they refused to transfer the subject shares under Pacific Basin's name.

It is true that both OPMC and EBC refused to transfer the subject OPMC shares in the name of Pacific Basin despite the fact that such transfer is ministerial in nature. However, the Court did not find any proof that such refusal was tainted by bad faith. Pacific Basin alleges that the bad faith of both OPMC and EBC is manifested by the propensity for shifting their defenses and the deliberate deprivation of the rights so that OPMC can gain substantial shareholdings in the company and affect the balance of power.[47] All these are mere allegations.

It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails.[48] In the case at bar, the burden of proving alleged bad faith therefore was on Pacific Basin, which failed to discharge its onus probandi. Without a clear and persuasive evidence of bad faith, the presumption of good faith in favor of OPMC and EBC stands.

On the issue regarding the award of attorney's fees, the Court finds

that it is justified. Attorney's fees may be awarded inter alia when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interests or in any other case where the court deems it just and equitable that the attorney's fees and expenses of litigation be recovered.[49]

Here, Pacific Basin was forced to file a case for Mandamus when the OPMC officers refused to do the ministerial act of recording the purchase of shares in the stock and transfer book and to issue new certificates of stock for fully paid shares.

WHEREFORE, the petition in G.R. No. 144056 is DENIED. The petitions in G.R. Nos. 143972 and 144631 are PARTLY GRANTED. The assailed Decisions of the Court of Appeals dated January 26, 2000 and August 18, 2000 are AFFIRMED with MODIFICATION to the effect that Oriental Petroleum and Minerals Corporation and Equitable Banking Corporation, Mr. Roberto Coyiuto and Ethelwoldo Fernandez (as president and corporate secretary of OPMC respectively) are ORDERED to pay Pacific Basin Securities Co., Inc., jointly and severally, temperate damages in the amount of P1,000,000.00.

Costs against Oriental Petroleum and Minerals Corporation and Equitable Banking Corporation.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura and Reyes, JJ., concur.

[1] Rollo II (G.R. No. 144056), p.114.

[2] Entitled, "Pacific Basin Securities Inc., Petitioner versus Oriental Petroleum and Mineral Corp. and Mineral Corp. and Equitable Banking Corp., Respondents."

[3] Entitled, "Oriental Petroleum and Mineral Corp., Equitable Banking Corp., and Robert Coyiuto, Jr., Petitioners versus Pacific Basin Securities Co., Inc., Respondent."

[4] Entitled, "Pacific Basin Securities Inc., versus Oriental Petroleum and Minerals Corp., Equitable Banking Corp., Roberto Coyiuto and Ethelwoldo Fernandez, Respondents."

[5] Rollo III (G.R. No. 144631), p. 118

[6] Id. at 135.

[7] Id. at 140.

[8] Id. at 125 and 144.

[9] Id. at 107-117.

[10] Id. at 109-113.

[11] Rollo I (G.R. No. 143972), pp. 217-226.

[12] SEC Hearing Officer Juanito B. Almosa, Jr.

[13] Rollo III (G.R. No. 144631), pp. 285-309.

[14] Id. at 93-100.

[15] Rollo II (G.R. No. 144056), p. 23.

[16] Associate Justice Artemio G. Tuquero, ponente, with Associate Justices Ramon U. Mabutas, Jr. and

Mercedes Gozo-Dadole, concurring; id..

[17] Id. at 22-28.

[18] Id. at 27.

[19] Id. at 68-69.

[20] Associate Justice Mercedes Gozo-Dadole, ponente, with Associate Justices Buenaventura J. Guerrero and Hilarion L. Aquino.

[21] Rollo III (G.R. No. 144631), p.53.

[22] No. L-75885, May 7, 1987, 150 SCRA 181.

[23] Id. at 208-209.

[24] Id. at 213.

[25] Id. at 236-237.

[26] Entitled, "Proclaiming and Launching A Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust" (1986).

[27] www.pse.coom.ph (visited 08 August 2007).

[28] Memorandum for Brokers No. 149-2004 (2004).

[29] 351 Phil. 548, 559 (1998).

[30] Rollo II (G.R. No. 144056), pp. 22-28.

[31] *Rural Bank of Salinas v. Court of Appeals*, G.R. No. 96674, June 26, 1992.

[32] Id.

[33] Id. citing 12 Fletcher 434, Sec. 5528.

[34] Id. citing 12 Fletcher 394, Sec. 5518.

[35] Id

[36] Rollo III (G.R. No. 144631), p. 118.

[37] Rollo III (G.R. No. 144631), p. 285.

[38] *Development Bank of the Philippines v. Court of Appeals*, 319 Phil. 447, 457 (1995).

[39] *Baliwag Transit Inc. v. Court of Appeals*, 326 Phil. 762, 772 (1996) citing *Fuentes, Jr. v. Court of Appeals and People of the Philippines*, 323 Phil. 508, 518 (1996).

[40] *Marikina Auto Line Transport Corporation v. People of the Philippines and Valdellon*, G.R. No. 152040, March 31, 2006, 486 SCRA 284, 299.

[41] Article 2224, Civil Code provides: Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

[42] Pleno v. Court of Appeals, No. L-56505, May 9, 1988, 161 SCRA 208, 223.

[43] Section 31, Corporation Code provides: Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation x x x.

[44] Professional Academic Plans, Inc. v. Crisostomo, G.R. No. 148599, March 4, 2005, 453 SCRA 342, 359.

[45] Rollo III (G.R. No. 144631), p.99.

[46] Id. at 52.

[47] Rollo I (G.R. 143972), pp. 22-27.

[48] Andrade v. Court of Appeals, 423 Phil. 30, 43 (2001); Heirs of Severa P. Gregorio v. Court of Appeals, 360 Phil. 753, 764-765 (1998).

[49] Civil Code of the Philippines, Article 2229; Poliand Industrial Limited v. National Development Company, G.R. No. 143866, August 22, 2005, 467 SCRA 500, 549

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