

**KANEMITSU YAMAOKA, PETITIONER, VS. PESCARICH
MANUFACTURING CORPORATION (FORMERLY YAMAOKA NIPPON
CORPORATION), TETSUO ADACHI, EIJI KAWAI AND MARIA LYNN
GESMUNDO, RESPONDENTS.**

G.R. No. 146079. March 25, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This treats of respondents' Motion for Partial Reconsideration of the Court's Decision dated July 20, 2001.

To recall, petitioner Kanemitsu Yamaoka instituted a case before the Securities and Exchange Commission (SEC) seeking the recovery of control and management of Pescarich Manufacturing Corporation (formerly Yamaoka Nippon Corporation). SEC Hearing Officer Simeon P. Badillo, Jr. subsequently issued an order denying petitioner's application for a writ of preliminary injunction and the appointment of a management committee.

Petitioner contested the order of the Hearing Officer by filing a petition for certiorari with the Commission itself. Respondents however questioned the propriety of certiorari as a remedy. Finding certiorari proper under its new Rules of Procedure, the SEC rendered a decision setting aside the order of the Hearing Officer. The SEC issued a writ of preliminary injunction "restraining and enjoining private respondents from exercising the rights and privileges arising from the 40% disputed shares, and from managing the affairs and disbursing the funds of Yamaoka Nippon Corporation (now Pescarich Manufacturing Corporation) until final judgment." The Commission further ordered the Hearing Officer to create and appoint a Management Committee to undertake the management of the Yamaoka Nippon Corporation.

Respondents appealed to the Court of Appeals, raising the following issues:

I

WHETHER OR NOT THE COMMISSION EN BANC ACQUIRED JURISDICTION OVER RESPONDENT YAMAOKA'S APPEAL BELATEDLY FILED 52 CALENDAR DAYS FROM RESPONDENT'S RECEIPT OF THE 21 JULY 1999 ORDER OF HEARING OFFICER SIMEON P. BADILLO, DENYING RESPONDENT'S MOTION FOR RECONSIDERATION.

(A)

WHETHER OR NOT RESPONDENT YAMAOKA'S APPEAL BEFORE THE COMMISSION EN BANC, FILED ON 17 DECEMBER 1999 IS COVERED BY THE SEC NEW RULES OF PROCEDURE, PROMULGATED ON 15 JULY 1999.

(B)

WHETHER OR NOT THE COMMISSION EN BANC ACTED PROPERLY IN GIVING DUE COURSE TO THE APPEAL, MUCH LESS IN RESOLVING THE MERITS OF THE PETITION.

II

WHETHER OR NOT THE COMMISSION EN BANC CORRECTLY RULED IN FINDING THAT:

(A)

THE SIX (6) PROMISSORY NOTES EXECUTED BY YAMAOKA IN FAVOR OF ADAHI WERE ISSUED WITHOUT CONSIDERATION.

(B)

THE DEED OF ASSIGNMENT CONVEYING ALL OF YAMAOKA'S SHARES IN FAVOR OF ADACHI WAS VALID, EFFECTIVE AND BINDING.

(C)

YAMAOKA AND ADACHI SUBSEQUENTLY AGREED TO THE CANCELLATION OF THE DEED OF ASSIGNMENT.

III

WHETHER OR NOT THE COMMISSION EN BANC ACTED CORRECTLY IN ISSUING A WRIT OF PRELIMINARY INJUNCTION AND IN ORDERING THE FORMATION OF A MANAGEMENT COMMITTEE.[1]

Subsequently, the Court of Appeals rendered a decision reversing the SEC, holding that certiorari was improper. The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, premises considered, the petition for review is hereby GIVEN DUE COURSE and accordingly GRANTED. The Decision rendered by the Securities and Exchange Commission En Banc on June 6, 2000 in SEC-EB No. 690 entitled "Kanemitsu Yamaoka v. Hon. Hearing Officer Simeon P. Badillo, Jr., Yamaoka Nippon Corporation (now Pescarich Manufacturing Corporation), Tetsuo Adachi, and Eiji Kawai," is hereby ANNULLED and SET ASIDE.

Consequently, let a writ of injunction [be] issue[d] permanently enjoining respondent, the Commission En Banc and/or the appropriate branch of the Regional Trial Court, their representatives, agents, employees, or other persons acting for and in their behalf, from executing and/or implementing the Decision of the Commission En Banc dated June 6, 2000 rendered in the said SEC-EB No. 690.[2]

Petitioner elevated the case to this Court. The Court granted the petition and reversed the decision of the Court of Appeals on the ground that the SEC rules did not prohibit certiorari as a remedy against interlocutory orders. Thus:

WHEREFORE, the petition is given DUE COURSE and GRANTED. The Decision of the Court of Appeals is REVERSED.[3]

On September 4, 2001, respondents filed its motion for partial reconsideration. Respondents pray that the Court modify its decision "in that the writ of preliminary injunction issued by the Court of Appeals shall remain in

effect to maintain the status quo of the parties, particularly with respect to (i) the portion of the SEC En Banc Decision in EB 690 enjoining respondents from exercising their rights over the 40% disputed shares and from managing and disbursing the funds of respondent Corporation and (ii) the Order directing the constitution of a Management Committee, pending further proceedings.”

In resolving the case for respondents, the Court of Appeals limited itself to the propriety of filing a petition for certiorari in the SEC to question the order of the Hearing Officer. The court did not see fit to delve on the correctness of the order of the SEC issuing a writ of preliminary injunction and directing the creation of a management committee. The Court of Appeals held that “all the matters raised in the petition need not be discussed since to pass upon them would be an exercise in futility considering that the assailed decision is NULL and VOID,” since the SEC had no jurisdiction over the petition for certiorari. When petitioner came to this Court, he raised essentially one issue, that is, whether certiorari was proper. As stated earlier, this Court reversed the decision of the Court of Appeals.

It appears, therefore, that the other issues respondents had raised before the Court of Appeals remain unresolved. As these issues involve factual matters, the Court hereby remands the case to the Court of Appeals for the resolution of said issues.

ACCORDINGLY, the Court Resolved to REMAND the case to the Court of Appeals for further proceedings.

Davide, Jr., C.J., (Chairman), and Ynares-Santiago, J., concur.
Puno, J., on official leave

[1] Rollo, pp. 79-80.

[2] Id., at 84-85.

[3] Id., at 176.

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