JOSE C. CORDOVA, PETITIONER, VS. REYES DAWAY LIM BERNARDO LINDO ROSALES LAW OFFICES, ATTY. WENDELL CORONEL AND THE SECURITIES AND EXCHANGE COMMISSION, RESPONDENTS.

G.R. NO. 146555. July 03, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated July 31, 2000 and December 27, 2000, respectively, in CA-G.R. SP No. 55311.

Sometime in 1977 and 1978, petitioner Jose C. Cordova bought from Philippine Underwriters Finance Corporation (Philfinance) certificates of stock of Celebrity Sports Plaza Incorporated (CSPI) and shares of stock of various other corporations. He was issued a confirmation of sale.[4] The CSPI shares were physically delivered by Philfinance to the former Filmanbank[5] and Philtrust Bank, as custodian banks, to hold these shares in behalf of and for the benefit of petitioner.[6]

On June 18, 1981, Philfinance was placed under receivership by public respondent Securities and Exchange Commission (SEC). Thereafter, private respondents Reyes Daway Lim Bernardo Lindo Rosales Law Offices and Atty. Wendell Coronel (private respondents) were appointed as liquidators.[7]Sometime in 1991, without the knowledge and consent of petitioner and without authority from the SEC, private respondents withdrew the CSPI shares from the custodian banks.[8] On May 27, 1996, they sold the shares to Northeast Corporation and included the proceeds thereof in the funds of Philfinance. Petitioner learned about the unauthorized sale of his shares only on September 10, 1996.[9] He lodged a complaint with private respondents but the latter ignored it[10] prompting him to file, on May 6, 1997,[11] a formal complaint against private respondents in the receivership proceedings with the SEC, for the return of the shares.

Meanwhile, on April 18, 1997, the SEC approved a 15% rate of recovery for Philfinance's creditors and investors.[12] On May 13, 1997, the liquidators began the process of settling the claims against Philfinance, from its assets.[13]

On April 14, 1998, the SEC rendered judgment dismissing the petition. However, it reconsidered this decision in a resolution dated September 24, 1999 and granted the claims of petitioner. It held that petitioner was the owner of the CSPI shares by virtue of a confirmation of sale (which was considered as a deed of assignment) issued to him by Philfinance. But since the shares had already been sold and the proceeds commingled with the other assets of Philfinance, petitioner's status was converted into that of an ordinary creditor for the value of such shares. Thus, it ordered private respondents to pay petitioner the amount of P5,062,500 representing 15% of the monetary value of his CSPI shares plus interest at the legal rate from the time of their unauthorized sale.

On October 27, 1999, the SEC issued an order clarifying its September 24, 1999 resolution. While it reiterated its earlier order to pay petitioner the amount of P5,062,500, it deleted the award of legal interest. It clarified that it never meant to award interest since this would be unfair to the other claimants.

On appeal, the CA affirmed the SEC. It agreed that petitioner was indeed the owner of the CSPI shares but the recovery of such shares had become impossible. It also declared that the clarificatory order merely harmonized the dispositive portion with the body of the resolution. Petitioner's motion for reconsideration was denied.

Hence this petition raising the following issues:

1) whether petitioner should be considered as a preferred (and secured) creditor of Philfinance;

2) whether petitioner can recover the full value of his CSPI shares or merely 15% thereof like all other ordinary creditors of Philfinance and

3) whether petitioner is entitled to legal interest.[14]

To resolve these issues, we first have to determine if petitioner was indeed a creditor of Philfinance.

There is no dispute that petitioner was the owner of the CSPI shares. However, private respondents, as liquidators of Philfinance, illegally withdrew said certificates of stock without the knowledge and consent of petitioner and authority of the SEC.[15] After selling the CSPI shares, private respondents added the proceeds of the sale to the assets of Philfinance.[16] Under these circumstances, did the petitioner become a creditor of Philfinance? We rule in the affirmative.

The SEC, after holding that petitioner was the owner of the shares, stated:

> Petitioner is seeking the return of his CSPI shares which, for the present, is no longer possible, considering that the same had already been sold by the respondents, the proceeds of which are ADMITTEDLY commingled with the assets of PHILFINANCE.
>
> This being the case, [petitioner] is now but a claimant for the value of those shares. As a claimant, he shall be treated as an ordinary creditor in so far as the value of those certificates is concerned.[17]

The CA agreed with this and elaborated:

> Much as we find both detestable and reprehensible the grossly abusive and illicit contrivance employed by private respondents against petitioner, we, nevertheless, concur with public respondent that the return of petitioner's CSPI shares is well-nigh impossible, if not already an utter impossibility, inasmuch as the certificates of stocks have already been alienated or transferred in favor of Northeast Corporation, as early as May 27, 1996, in consequence whereof the proceeds of the sale have been transmuted into corporate assets of Philfinance, under custodia legis, ready for distribution to its creditors and/or investors. Case law holds that the assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver or liquidator, and shall from the moment of such receivership or liquidation, be exempt from any order, garnishment, levy, attachment, or execution.
>
> Concomitantly, petitioner's filing of his claim over the subject CSPI shares before the SEC in the liquidation proceedings bound him to the terms and conditions thereof. He cannot demand any special treatment [from] the liquidator, for this flies in the face of, and will contravene, the Supreme Court dictum that when a corporation threatened by bankruptcy is taken over by a receiver, all the creditors shall stand on equal footing. Not one of them should be given preference by paying one or some [of] them ahead of the others. This is precisely the philosophy underlying the suspension of all pending claims against the corporation under receivership. The rule of thumb is equality in equity.[18]

We agree with both the SEC and the CA that petitioner had become an ordinary creditor of Philfinance.

Certainly, petitioner had the right to demand the return of his CSPI shares.[19] He in fact filed a complaint in the liquidation proceedings in the SEC to get them back but was confronted by an impossible situation as they had

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already been sold. Consequently, he sought instead to recover their monetary value.

Petitioner's CSPI shares were specific or determinate movable properties.[20] But after they were sold, the money raised from the sale became generic[21] and were commingled with the cash and other assets of Philfinance. Unlike shares of stock, money is a generic thing. It is designated merely by its class or genus without any particular designation or physical segregation from all others of the same class.[22] This means that once a certain amount is added to the cash balance, one can no longer pinpoint the specific amount included which then becomes part of a whole mass of money.

It thus became impossible to identify the exact proceeds of the sale of the CSPI shares since they could no longer be particularly designated nor distinctly segregated from the assets of Philfinance. Petitioner's only remedy was to file a claim on the whole mass of these assets, to which unfortunately all of the other creditors and investors of Philfinance also had a claim.

Petitioner's right of action against Philfinance was a "claim" properly to be litigated in the liquidation proceedings.[23] In Finasia Investments and Finance Corporation v. CA,[24] we discussed the definition of "claims" in the context of liquidation proceedings:

> We agree with the public respondent that the word "claim" as used in Sec. 6(c) of P.D. 902-A,[25] as amended, refers to debts or demands of a pecuniary nature. It means "the assertion of a right to have money paid. It is used in special proceedings like those before [the administrative court] on insolvency."
>
> The word "claim" is also defined as:
> Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured.[26]

Undoubtedly, petitioner had a right to the payment of the value of his shares. His demand was of a pecuniary nature since he was claiming the monetary value of his shares. It was in this sense (i.e. as a claimant) that he was a creditor of Philfinance.

The Civil Code provisions on concurrence and preference of credits are applicable to the liquidation proceedings.[27] The next question is, was petitioner a preferred or ordinary creditor under these provisions?

Petitioner argues that he was a preferred creditor because private respondents illegally withdrew his CSPI shares from the custodian banks and sold them without his knowledge and consent and without authority from the SEC. He quotes Article 2241 (2) of the Civil Code:

> With reference to specific movable property of the debtor, the following claims or liens shall be preferred:
>
> xxx xxx xxx
>
> (2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
>
> xxx xxx xxx
>
> (Emphasis supplied)

He asserts that, as a preferred creditor, he was entitled to the entire monetary value of his shares.

Petitioner's argument is incorrect. Article 2241 refers only to specific movable property. His claim was for the

payment of money, which, as already discussed, is generic property and not specific or determinate.

Considering that petitioner did not fall under any of the provisions applicable to preferred creditors, he was deemed an ordinary creditor under Article 2245:

> Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference.

This being so, Article 2251 (2) states that:

> Common credits referred to in Article 2245 shall be paid pro rata regardless of dates.

Like all the other ordinary creditors or claimants against Philfinance, he was entitled to a rate of recovery of only 15% of his money claim.

One final issue: was petitioner entitled to interest?

The SEC argues that awarding interest to petitioner would have given petitioner an unfair advantage or preference over the other creditors.[28] Petitioner counters that he was entitled to 12% legal interest per annum under Article 2209 of the Civil Code from the time he was deprived of the shares until fully paid.

The guidelines for awarding interest were laid down in Eastern Shipping Lines, Inc. v. CA:[29]

> - When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> - With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> - When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> - When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty.
>
> Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.
>
> - When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[30] (Emphasis supplied)

Under this ruling, petitioner was not entitled to legal interest of 12% per annum (from demand) because the amount owing to him was not a loan[31] or forbearance of money.[32]

Neither was he entitled to legal interest of 6% per annum under Article 2209 of the Civil Code[33] since this provision applies only when there is a delay in the payment of a sum of money.[34] This was not the case here. In fact, petitioner himself manifested before the CA that the SEC (as liquidator) had already paid him P5,062,500 representing 15% of P33,750,000.[35]

Accordingly, petitioner was not entitled to interest under the law and current jurisprudence.

Considering that petitioner had already received the amount of P5,062,500, the obligation of the SEC as liquidator of Philfinance was totally extinguished.[36]

We note that there is an undisputed finding by the SEC and CA that private respondents sold the subject shares without authority from the SEC. Petitioner evidently has a cause of action against private respondents for their bad faith and unauthorized acts, and the resulting damage caused to him.[37]

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Puno, C.J., (Chairperson), and Azcuna, JJ., concur.
Sandoval-Gutierrez, J., on leave.
Garcia, J., no part.

[***] The Securities and Exchange Commission (SEC) was impleaded as public respondent in this petition. Under Rule 45, Section 4 of the 1997 Rules of Court, the petition may be filed without impleading the lower courts or judges thereof as petitioners or respondents. However, in the Court's resolution dated July 8, 2002, we considered the SEC as liquidator in place of Reyes Daway Lim Bernardo Lindo Rosales Law Offices and Atty. Wendell Coronel whose appointment had already expired; rollo, pp. 173, 179.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Renato C. Dacudao (retired) and concurred in by then Associate Justice Cancio C. Garcia (now Supreme Court Justice) and Associate Justice B. A. Adefuin-de la Cruz (retired) of the Second Division of the Court of Appeals; rollo, pp. 59-69.

[3] Id., p. 84.

[4] Id., p. 60.

[5] Which later on became the Pilipinas Bank; id.

[6] Id.

[7] In an Order dated December 15, 1988; id., pp. 85-88.

[8]Id.

[9] Id.

[10]Id.

[11] Docketed as SEC EB Case No. 24 entitled "In the Matter of the Liquidation of [Philfinance]"; id., pp. 60, 189, 201-202.

[12]SEC resolution dated September 24, 1999; id., pp. 60, 132.

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[13] Id., pp. 61, 173, 202.

[14] Petitioner, aside from seeking to recover the monetary value of his CSPI shares, also prayed that respondents -

". . . immediately deliver . . . the following certificates of stocks owned by petitioner and which are in the possession of the respondents or their money equivalent in the event they are no longer in their possession.

- CS # 140 Sigma Mariwasa - P100,000.00 COS 15775

- CS # 048 Porcelana Mariwasa - P40,000.00 [COS 13805]

- CS # 4047 DHMC - P130,000.00 COS 16041

- CS # 012 DHMC - [P100,000.00] COS 14572

- CS # 2698 B.F. Homes ï¿½ P250,000.00 COS 14456." (Id., p. 32.)

However, the factual context and legal reasons for the return of these certificates of stocks were never discussed in the body of the September 24, 1999 SEC resolution, October 27, 1999 SEC clarificatory order and the herein assailed CA decision. Even the petitioner did not discuss these in his pleadings before this Court. Hence, we cannot make a determination on this matter.

[15]CA decision, id., p. 66; SEC resolution, id., p. 55.

[16] Id., p. 66.

[17]Id., p. 56.

[18] Id., pp. 67-68, citation omitted.

[19] Article 22 of the Civil Code states that "[every] person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[20] A determinate thing is a "concrete, particularized object, indicated by its own individuality"; de Leon v. Soriano, 87 Phil. 193, 195 (1950), citing Manresa.

[21]Gaisano Cagayan, Inc. v. Insurance Company of North America, G.R. No. 147839, 8 June 2006, 490 SCRA 286, 299, citations omitted; Republic v. Grijaldo, 122 Phil. 1060, 1066 (1965).

[22] Gaisano Cagayan, Inc. v. Insurance Company of North America, id.

[23]The jurisdiction of the SEC to adjudicate this case was never questioned by private respondents nor did the SEC discuss it in its decision, resolution and order. Suffice it to say that in Araneta v. Court of Appeals (G.R. No. 95253, 10 July 1992, 211 SCRA 390), a case which also involved the liquidation of Philfinance, we stated that:

"Paraphrasing Dharmdas, it is enough to know that the DMC [promissory note] No. 2777 belongs to Philfinance, that it was transferred to the private respondent bank by virtue of its Securities Custodianship Agreement and that by virtue of the June 18, 1981 SEC order, it is available to the SEC-CB Management Committee as receiver. And by virtue of PD 902-A, the Securities and Exchange Commission is the only tribunal which has jurisdiction to decide all questions concerning the title or right of possession to the same." (Id., p. 398, citing Dharmdas v. Buenaflor, 57 Phil. 483, 485-486 [1932]) (Emphasis supplied)

This case was decided before RA 8799 or the Securities Regulation Code (which became effective on August 8, 2000) was enacted. Section 5.2 thereof provides:

"5.2. The [SEC'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 these cases. The [SEC] 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 [SEC] shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed." (Emphasis supplied)

[24] G.R. No. 107002, 7 October 1994, 237 SCRA 446.

[25] Section 6 (c) of P.D. 902-A, as amended, states:

Sec. 6. In order to effectively exercise such jurisdiction, the [SEC] shall possess the following powers:

xxx xxx xxx

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: Provided, however, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: Provided, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. (Emphasis supplied)

[26] Supra note 24, at 450, citations omitted. This was reiterated in Philippine Airlines v. Kurangking, G.R. No. 146698, 24 September 2002, 389 SCRA 588, 593 and Arranza v. B.F. Homes, Inc., 389 Phil. 318, 332-333 (2000).

[27]Development Bank of the Philippines v. CA, 415 Phil. 538, 550-553 (2001), citations omitted.

[28] Rollo, p. 132.

[29]G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[30]Id., pp. 95-97.

[31] Article 1933 of the Civil Code defines the contract of loan, to wit:

"By the contract of loan, one of the parties delivers to another xxx money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid xxx"

[32] In footnote no. 16 of Eastern Shipping Lines, Inc. v. CA, supra note 29, pp. 93-94, it states that:

"Black's Law Dictionary (1990 ed., 644) citing the case of Hafer v. Spaeth, 22 Wash. 2d 378, 156 P. 2d 408, 411

defines the word forbearance, within the context of usury law, as a contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable." (Emphasis supplied)

[33]If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (Emphasis supplied)

[34] President of Philippine Deposit Insurance Corporation v. Reyes, G.R. No. 154973, 21 June 2005, 460 SCRA 473, 487-488.

[35]He was paid on November 17, 1999; rollo, p. 103.

[36]Article 1231 of the Civil Code provides that obligations are extinguished by payment or performance.

[37] We also note that private respondents could not be located thus they were not served any of our resolutions in this case and they did not file any pleading before this Court. Petitioner should seek the assistance of the Integrated Bar of the Philippines and this Court's Office of the Bar Confidant.

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