

PHILIPPINE STOCK EXCHANGE, INC. AND THE MEMBERS OF ITS BOARD OF GOVERNORS, PETITIONERS, VS. THE MANILA BANKING CORPORATION AND THE SECURITIES INVESTIGATION CLEARING DEPARTMENT H...

G.R. No. 147778. July 23, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

By this petition for review on certiorari, petitioners seek the reversal of the November 20, 2000 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 58111, as reiterated in its Resolution[2] of April 4, 2001, upholding the March 7, 2000 order of the Securities and Exchange Commission (SEC) en banc in SEC Case No. 08-98-6075, which in turn sustained the order issued by its Securities Investigation and Clearing Department (SICD) Hearing Panel in SEC Case No. 08-98-6075 denying petitioners' motion to dismiss the Petition for Mandamus with Claim for Damages lodged thereat by respondent The Manila Banking Corporation (TMBC).

The facts:

On October 1, 1980, TMBC acquired Manila Stock Exchange (MSE) Seat No. 97, registered in the name of Roberto K. Recio (Recio), through an execution sale which arose from a levy on execution to satisfy a loan obligation of Recio to TMBC. Thereafter, TMBC requested MSE to record its ownership of MSE Seat No. 97 in MSE's membership books. Initially, MSE refused to register TMBC in its membership books and contested the latter's ownership of said seat. According to MSE, its by-laws allow only individuals or corporations engaged primarily in the business of stocks and bonds brokers and dealers in securities to be a member or to hold a seat in the MSE. In the end, TMBC settled for a mere acknowledgment from MSE of its legal or naked ownership of, or proprietary right over, MSE Seat No. 97 which was done by MSE through its Acknowledgment Letter dated August 19, 1996.

Before the aforementioned acknowledgment of MSE's title, particularly on July 17, 1992, the Philippine Stock Exchange, Inc. (PSEI) was incorporated unifying the MSE and the Makati Stock Exchange (MKSE) into one exchange. On April 16, 1994, the PSEI issued a certificate of membership to Recio as Member No. 29.

Believing that MSE Seat No. 97 became PSE Seat No. 29 of the unified exchanges and that the certificate of membership to PSEI was issued to Recio on the basis of his previous ownership of MSE Seat No. 97, TMBC sought to rectify the PSEI's listing of Recio as a member without any reservation or annotation therein that TMBC owns proprietary rights over PSE Seat No. 29. Armed with MSE's acknowledgment of its legal ownership or naked title over MSE Seat No. 97, TMBC sought PSEI's recognition of its legal ownership of PSE Seat No. 29. However, TMBC's efforts were met with PSEI's repeated refusal.

This was the state of things when TMBC lodged a Petition for Mandamus with Claim for Damages, at the SEC SICD, against herein petitioners PSEI and its Board of Governors. The case was docketed as SEC Case No.

08-98-6075. The petition prayed that the SEC order the PSEI to acknowledge TMBC's proprietary interest or legal or naked ownership of PSE Seat No. 29 to enable TMBC to register said seat to a qualified nominee or otherwise sell the same to a qualified vendee.

Petitioners filed a motion to dismiss the aforesaid action on the following grounds: the SEC had no jurisdiction to try and hear the same; the petition failed to state TMBC's cause of action against petitioners; and the remedy of mandamus was improper.

In the order dated June 14, 1999, the SEC through its SICD Hearing Panel denied said motion to dismiss. The subsequent motion for reconsideration of the said order was also denied in the order dated September 16, 1999.

Thereafter, petitioners elevated the case to the SEC en banc by way of a petition for certiorari. Armed with the same arguments, petitioners sought to annul and set aside the twin orders of the SICD Hearing Panel.

On March 7, 2000, the SEC en banc issued an Order^[3] denying the petition, thus:

WHEREFORE, PREMISES CONSIDERED, the instant Petition for Certiorari, with a prayer for the issuance of a Temporary Restraining Order and/or preliminary injunction is hereby DENIED.

SO ORDERED.

In time, petitioners filed with the CA a petition for review with prayer for the issuance of a temporary restraining order and writ of preliminary injunction maintaining the same grounds and urging the CA to annul and set aside the en banc order of the SEC and ultimately, order the dismissal of TMBC's mandamus petition against them.

As stated at the threshold hereof, the CA, in the herein challenged decision dated November 20, 2000, dismissed the petition for lack of merit, to wit:

All told, the SEC committed no reversible errors in issuing the assailed orders.

WHEREFORE, the petition for review is DISMISSED for lack of merit.

SO ORDERED.^[4]

Their motion for reconsideration having been denied by the CA in its resolution of April 4, 2000,^[5] petitioners are now before the Court praying for the nullification of the CA decision dated November 20, 2000 and for the dismissal of the petition filed by TMBC docketed as SEC Case No. 08-98-6075 reiterating the same arguments.

At the outset, the Court notes that upon the denial of their motion to dismiss by the SICD Hearing Panel, petitioners filed a petition for certiorari with the SEC en banc. An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, because it leaves something to be done by the court before the case is finally decided on the merits. The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered.^[6] In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[7] The same does not obtain here.

The SEC en banc correctly sustained the SICD Hearing Panel's denial of petitioners' motion to dismiss. We quote with approval the findings of the SEC en banc on this matter:

The hearing panel held that although it entertains doubts as to the truth of the facts averred, it shall not dismiss the complaint. We believe that the hearing panel exercised its judgment within its proper limits in issuing said order. On the contrary, the factual issues of the case are not merely confined to the question of membership,

but also to the existence of the devices and schemes amounting to fraud as alleged by the petitioner below [TMBC]. If it is convinced that there are factual issues which should be discussed in the answer and ventilated during the trial on the merits, such as whether or not the transferor of the MSE was a PSE member, the rights of the successor-in-interest of a purported member of the PSE, Inc., and the evidence supporting the allegations of herein respondent [TMBC] regarding bad faith and fraud committed by PSE against TMBC, it is within the limits of its power considering the fact that there are evidence supporting its ruling. (Words in brackets ours.)

We cannot fault the SICD Hearing Panel in requiring a more in-depth and thorough determination of issues raised before it. After all, the allegations in the mandamus petition sufficiently stated a cause of action against the petitioners. Verily, the complaint should contain a concise statement of ultimate facts. Ultimate facts refer to the principal, determinative, constitutive facts upon which rest the existence of the cause of action. The term does not refer to details of probative matter or particulars of evidence which establish the material elements.[8] Section 6 of the SEC Revised Rules of Procedure merely requires, thus:

SECTION 6. Complaint - The complaint shall contain the names and residences of the parties, a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer further or other relief/s as may be deemed just and equitable.

In a number of cases,[9] this Court has repeatedly held that so rigid is the prescribed norm that if the Court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.

It is axiomatic that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint or the petition irrespective of whether the plaintiff is entitled to all or some of the claims or reliefs asserted therein. The three tribunals below are unanimous in appreciating TMBC's cause of action against petitioners and that the same falls within the ambit of Section 5(a) of P.D. 902-A, [10] as aptly ratiocinated by the CA in its ruling, thus:

In the present case, it is our perception that what respondent TMBC alleged to be the device and scheme utilized by petitioners, was in the petition expounded exhaustively enough as to intelligently inform the petitioner about the overt acts therein referred to as constituting the device or scheme. For this reason, the SEC committed no error in refusing to dismiss the petition filed before it. xxx [T]he petition bristles with recitals of facts and statements demonstrating petitioners' perpetration of devices and schemes amounting to fraud.

xxx A careful study of the petition filed with the SEC by respondent TMBC reveals that the factual allegations therein set forth sufficiently make out a case of fraud, misrepresentation and bad faith against petitioners. Among the salient allegations were: (1) that the MSE had already recognized the legal or naked ownership of respondent TMBC to MSE Seat No. 97, yet PSE, acting through its board of Governors, composed of members of the MSE, unjustifiably refused to recognize the corresponding seat in the PSE; (2) that TMBC's predecessor-in-interest, Mr. Roberto K. Recio was issued a Certificate of Membership by the PSE; and (3) that Mr. Recio was consistently listed as member of the PSE in the PSE's Monthly Report.

These allegations would suffice to constitute a cause of action against petitioners. That petitioners have a valid defense is another matter. At any rate, matters such as the propriety of the refusal of TMBC's membership to PSE and veracity of the assertion that MSE Seat No. 97 is separate and distinct from PSE Seat No. 29, among others, are best ventilated during trial. They require evidentiary proof and support that can be better threshed out in a full blown trial on the merits. These matters, indeed, would not yet go into the question of the absence of a cause of action as a ground to dismiss.[11]

As to the propriety of mandamus as a remedy, petitioners claim it was not their ministerial duty to acknowledge

the proprietary, legal or naked ownership of TMBC over PSE Seat No. 29. True, the Court has invariably ruled that generally, the performance of an official act or duty, which necessarily involves the exercise of discretion or judgment, cannot be compelled by mandamus. However, the Court has also declared that the general rule does not apply in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority.[12] These exceptions apply to the present case. As aptly observed by the CA and we quote:

It is beyond cavil that the MSE had already recognized the legal or naked ownership of private respondent to MSE Seat No. 97, but for reasons only known to them, the PSE Board of Governors, who are members of the MSE, adamantly refused to recognize the corresponding seat in the PSE. In fact, it is not seriously disputed that MSE Seat No. 97 became PSE Seat No. 29 upon the latter's incorporation. Petitioners' dubious claim that they could not acknowledge the proprietary interest of respondent TMBC over the seat since allegedly even respondent Roberto K. Recio was not a recognized member due to his failure to so apply is belied by the facts. For one thing Mr. Recio was issued a Certificate of Membership by the PSE. For another, Mr. Recio's name has consistently appeared as a member of the PSE in the PSE's Monthly Report. Given these facts, it cannot be gainsaid that petitioner's refusal to acknowledge respondent TMBC's proprietary right over PSE Seat No. 29 was grossly unjust and tyrannical and, therefore controllable by the extraordinary writ of mandamus.

In fine, the Court finds no reversible error committed by the CA in affirming the order of the SEC and in rendering the herein challenged decision.

On a final note, on July 18, 2000, prior to the promulgation of the assailed CA decision, Republic Act No. 8799 otherwise known as The Securities Regulation Code was enacted and upon its effectivity, the SEC's jurisdiction over this case was transferred to the courts of general jurisdiction or the Regional Trial Courts. [13]

WHEREFORE, the petition is DENIED and the assailed decision and resolution of the CA are AFFIRMED.

Costs against the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Renato C. Dacudao (ret.), with Associate Justices Salome A. Montoya and Merceditas Gozo-Dadole, concurring; rollo, pp. 78-87.

[2] Id., at 40.

[3] Rollo, pp.238-241.

[4] Supra, note 1.

[5] Rollo, p. 89.

[6] Rule XVI, SECTION 1. Decision, Order or Ruling Subject to Appeal. Only final decisions, orders or rulings shall be subject to appeal to the Commission en banc.

No interlocutory or incidental order shall stay the progress of an action, nor shall it be subject of appeal to the Commission en banc until a final decision, order or ruling is rendered for one party or the other, except as provided in Rule XV hereof.

[7] *Bernardo v. CA*, 388 Phil. 793 (2000); *Diaz v. Diaz*, 387 Phil. 314 (2000).

[8] *Diana M. Barcelona v. Court of Appeals and Tadeo R. Bengzon*, G.R. No. 130087, September 24, 2003, 412

SCRA 41, 48.

[9] Republic Bank v. Cuaderno, G.R. No. 22399, 19 SCRA 677(1967); Boncato vs. Siasan, G.R. No. 29094, September 4, 1985, 138 SCRA 414; Sumalinong vs. Doronio, G.R. No. 42281, April 6, 1990, 184 SCRA 187.

[10] Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices and schemes employed by or any act of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the commission.

[11] Equitable Philippine Commercial International Bank and Rafael B. Buenaventura v. Hon. Court of Appeals and Santa Rosa Mining Co., Inc., G.R. No. 143556, March 16, 2004, 425 SCRA 544, 553.

[12] Roque v. Office of the Ombudsman, 366 Phil. 568 (1999) citing Angchangco, Jr. v. Ombudsman, G.R. No. 122728, 13 February 1997, 268 SCRA 301; First Philippine Holdings Corporation v. Sandiganbayan, 323 Phil. 36 (1996); Kant Kwong v. Presidential Commission on Good Government, No. L-79484, 7 December 1987, 156 SCRA 222.

[13] 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 these 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 payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

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