

VINCENT E. OMICTIN, PETITIONER, VS. HON. COURT OF APPEALS (SPECIAL TWELFTH DIVISION) AND GEORGE I. LAGOS, RESPONDENTS.

G.R. NO. 148004. January 22, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari^[1] with prayer for a writ of preliminary injunction seeking the nullification of the decision rendered by the Court of Appeals (CA) on June 30, 2000, and its resolution, dated March 5, 2001 in CA-G.R. SP No. 55834 entitled “George I. Lagos v. Hon. Reinato G. Quilala, Presiding Judge of RTC, Br. 57, Makati, Hon. Elizabeth Tayo Chua, Asst. City Prosecutor, Makati City, and Vincent E. Omictin.”

In its assailed decision, the CA declared the existence of a prejudicial question and ordered the suspension of the criminal proceedings initiated by petitioner Vincent E. Omictin on behalf of Saag Phils., Inc. against private respondent George I. Lagos, in view of a pending case before the Securities and Exchange Commission (SEC) filed by the latter against the former, Saag Pte. (S) Ltd., Nicholas Ng, Janifer Yeo and Alex Y. Tan.

The facts are as follows:

Petitioner Vincent E. Omictin, Operations Manager Ad Interim of Saag Phils., Inc., filed a complaint for two counts of estafa with the Office of the City Prosecutor of Makati against private respondent George I. Lagos. He alleged that private respondent, despite repeated demands, refused to return the two company vehicles entrusted to him when he was still the president of Saag Phils., Inc..

On February 26, 1999, public prosecutor Alex G. Bagaoisan recommended the indictment of private respondent, and on the same day, respondent was charged with the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code before the Regional Trial Court (RTC), Branch 57 of Makati City. The case was docketed as Criminal Case No. 99-633, entitled “People of the Philippines v. George I. Lagos.”

On June 4, 1999, private respondent filed a motion to recuse praying that Presiding Judge Reinato G. Quilala inhibit himself from hearing the case based on the following grounds:

- a) In an order, dated May 28, 1999, the presiding judge summarily denied respondent’s motion: 1) to defer issuance of the warrant of arrest; and 2) to order reinvestigation.
- b) Immediately before the issuance of the above-mentioned order, the presiding judge and Atty. Alex Y. Tan, SAAG Philippines, Inc.’s Ad Interim President, were seen together.^[2]

On June 24, 1999, private respondent filed a motion to suspend proceedings on the basis of a prejudicial question because of a pending petition with the Securities and Exchange Commission (SEC) involving the same parties.

It appears that on January 7, 1999, private respondent filed SEC Case No. 01-99-6185 for the declaration of nullity of the respective appointments of Alex Y. Tan and petitioner as President Ad Interim and Operations

Manager Ad Interim of Saag Phils., Inc., declaration of dividends, recovery of share in the profits, involuntary dissolution and the appointment of a receiver, recovery of damages and an application for a temporary restraining order (TRO) and injunction against Saag (S) Pte. Ltd., Nicholas Ng, Janifer Yeo, Tan and petitioner. [3]

In the action before the SEC, private respondent averred that Saag (S) Pte. Ltd. is a foreign corporation organized and existing under the laws of Singapore, and is fully owned by Saag Corporation (Bhd). On July 1, 1994, he was appointed as Area Sales Manager in the Philippines by Thiang Shiang Hiang, Manager of Saag (S) Pte. Ltd. Pursuant to his appointment, respondent was authorized to organize a local joint venture corporation to be known as Saag Philippines, Inc. for the wholesale trade and service of industrial products for oil, gas and power industries in the Philippines.

On September 9, 1994, Saag Philippines, Inc. was incorporated with Saag (S) Pte. Ltd. as the majority stockholder. Private respondent was appointed to the board of directors, along with Rommel I. Lagos, Jose E. Geronimo, Gan Ching Lai and Thiang Shiang Hiang, and was elected president of the domestic corporation.

Later, due to intra-corporate disputes, Gan and Thiang resigned and divested their shares in Saag Corporation (Bhd), thereby resulting in a change in the controlling interest in Saag (S) Pte. Ltd.

Barely three months after, or on June 23, 1998, private respondent resigned his post as president of Saag Phils., Inc. while still retaining his position as a director of the company.[4] According to private respondent, the joint venture agreement (JVA) between him or Saag Phils., Inc. and Saag (S) Pte. Ltd. provided that should the controlling interest in the latter company, or its parent company Saag Corp. (Bhd), be acquired by any other person or entity without his prior consent, he has the option either to require the other stockholders to purchase his shares or to terminate the JVA and dissolve Saag Phils., Inc. altogether. Thus, pursuant to this provision, since private respondent did not give his consent as regards the transfer of shares made by Gan and Thiang, he made several requests to Nicholas Ng, who replaced Gan as director, and Janifer Yeo, Executive Director of Saag (S) Pte. Ltd., to call for a board meeting in order to discuss the following: a) implementation of the board resolution declaring dividends; b) acquisition of private respondent's shares by Saag (S) Pte. Ltd.; c) dissolution of Saag Phils., Inc.; and d) the termination of the JVA.

Ng and Yeo failed to appear, however, in the scheduled board meetings. Instead, on September 30, 1998 they issued a letter appointing Alex Y. Tan as President Ad Interim of Saag Phils., Inc. Tan, in turn, appointed petitioner Omictin as the company's Operations Manager Ad Interim.

Citing as a reason the absence of a board resolution authorizing the continued operations of Saag Phils., Inc., private respondent retained his possession of the office equipment of the company in a fiduciary capacity as director of the corporation pending its dissolution and/or the resolution of the intra-corporate dispute. He likewise changed the locks of the offices of the company allegedly to prevent Tan and petitioner from seizing company property.

Private respondent stressed that Tan's appointment was invalid because it was in derogation of the company by-laws requiring that the president must be chosen from among the directors, and elected by the affirmative vote of a majority of all the members of the board of directors.[5] As Tan's appointment did not have the acquiescence of the board of directors, petitioner's appointment by the former is likewise allegedly invalid. Thus, neither has the power or the authority to represent or act for Saag Phils., Inc. in any transaction or action before the SEC or any court of justice.

The trial court, in an order dated September 8, 1999, denied respondent's motion to suspend proceedings and motion to recuse.

His motion for reconsideration having been denied by the trial court in its order issued on October 29, 1999, respondent filed with the CA the petition for certiorari[6] assailing the aforesaid orders.

On June 30, 2000, the CA rendered its challenged decision. The pertinent portion reads:

In a case for estafa, a valid demand made by an offended party is one of the essential elements. It appears from the records that the delay of delivery of the motor vehicles by petitioner to Saag Corporation is by reason of petitioner's contention that the demand made by Omictin and Atty. Tan to him to return the subject vehicles is not a valid demand. As earlier mentioned, petitioner filed a case with the SEC questioning therein private respondents' appointment.

If the SEC should rule that the dissolution of Saag Phils. is proper, or that the appointments of private respondents are invalid, the criminal case will eventually be dismissed due to the absence of one of the essential elements of the crime of estafa.

Based on the foregoing, it is clear that a prejudicial question exists which calls for the suspension of the criminal proceedings before the lower court.

WHEREFORE, in view of the foregoing, the assailed Order of September 8, 1999 and October 29, 1999, are hereby MODIFIED. The motion to suspend proceedings is hereby GRANTED and respondent court is hereby enjoined from hearing Criminal Case No. 99-633, entitled "People of the Philippines v. George I. Lagos," until the termination of the case with the Securities and Exchange Commission. The denial of the motion to recuse is hereby AFFIRMED.

SO ORDERED.[7]

Incidentally, on January 18, 2001, the SEC case[8] was transferred to the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, pursuant to A.M. No. 00-11-03-SC[9] implementing the Securities and Regulation Code (Republic Act No. 8799)[10] enacted on July 19, 2000, vesting in the RTCs jurisdiction over intra-corporate disputes.[11]

Meanwhile, on March 5, 2001, the CA, addressing petitioner's motion for reconsideration of the aforementioned decision, issued its assailed resolution:

Considering that the petition for review on certiorari of the 30 June 2000 decision of this Court, filed by the Office of the Solicitor General before the Supreme Court has already TERMINATED on November 20, 2000 and a corresponding entry of judgment has already been issued by the High Court, that the same is final and executory, the private respondent's motion for reconsideration of the decision 30 June 2000 before this Court is NOTED for being moot and academic.

SO ORDERED.[12]

Hence, this petition raises the following issues:

I

RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION -

A) WHEN IT DECREED THAT A PREJUDICIAL QUESTION EXISTS IN THE SEC CASE FILED BY PRIVATE RESPONDENT AGAINST SAAG (S) PTE. LTD., A FOREIGN CORPORATION, ALTHOUGH THE PRIVATE COMPLAINANT IN THE CRIMINAL CASE FOR ESTAFA (WHERE PRIVATE RESPONDENT IS THE ACCUSED THEREIN) IS ACTUALLY SAAG PHILIPPINES, INC. A DOMESTIC CORPORATION WITH A SEPARATE JURIDICAL PERSONALITY OF ITS OWN AND WHICH IS NOT EVEN A PARTY IN THE SEC CASE; AND,

B) WHEN IT ORDERED THE SUSPENSION OF THE PROCEEDINGS IN CRIMINAL CASE NO. 99-633 AGAINST PRIVATE RESPONDENT.

II

THIS PETITION FOR CERTIORARI IS THE ONLY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE PREMISES.

In support of the above, petitioner argues, as follows:

1. The action before the SEC and the criminal case before the trial court do not involve any prejudicial question.[13] SEC Case No. 01-99-6185 mainly involves the dissolution of Saag (S) Pte. Ltd., the appointment of a receiver, the distribution of profits, and the authority of petitioner and Tan to represent Saag Phils., Inc. The entity which is being sued is Saag (S) Pte. Ltd., a foreign corporation over which the SEC has yet to acquire jurisdiction. Hence, any decision that may be rendered in the SEC case will neither be determinative of the innocence or guilt of the accused nor bind Saag Phils., Inc. because the same was not made a party to the action even if the former is its holding corporation;
2. Saag Phils., Inc. has a separate corporate existence and is to be treated as a separate entity from its holding or parent company, Saag (S) Pte. Ltd. The mere fact that one or more corporations are owned or controlled by the same or single stockholder is not a sufficient ground for disregarding separate corporate personalities;
3. Private respondent's petition with the SEC seeks affirmative relief against Saag (S) Pte. Ltd. for the enforcement or application of the alleged terms of the joint venture agreement (JVA) that he purportedly entered into with the foreign corporation while he was still its Area Sales Manager in the Philippines. The foreign corporation is not licensed to do business in the Philippines, thus, a party to a contract with a foreign corporation doing business in the Philippines without a license is not entitled to relief from the latter; and
4. There is no pending civil or administrative case in SEC against Saag Phils., Inc. that warrants the application of a prejudicial question and the consequent suspension of the criminal action it has instituted against private respondent. If any, the action before the SEC was merely a ploy to delay the resolution of the criminal case and eventually frustrate the outcome of the estafa case.

In sum, the main issue is whether or not a prejudicial question exists to warrant the suspension of the criminal proceedings pending the resolution of the intra-corporate controversy that was originally filed with the SEC.

A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal.[14] Here, the case which was lodged originally before the SEC and which is now pending before the RTC of Mandaluyong City by virtue of Republic Act No. 8799 involves facts that are intimately related to those upon which the criminal prosecution is based.

Ultimately, the resolution of the issues raised in the intra-corporate dispute will determine the guilt or innocence of private respondent in the crime of estafa filed against him by petitioner before the RTC of Makati. As correctly stated by the CA, one of the elements of the crime of estafa with abuse of confidence under Article 315, par. 1(b) of the Revised Penal Code is a demand made by the offended party to the offender:

The elements of estafa with abuse of confidence under subdivision No. 1, par. (b) of Art. 315 are as follows:

- That money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same;

- That there be misrepresentation or conversion of such money or property by the offender, or denial on his part of such receipt;
- That such misappropriation or conversion or denial is to the prejudice of another; and
- That there is a demand made by the offended party to the offender.[15]

Logically, under the circumstances, since the alleged offended party is Saag Phils., Inc., the validity of the demand for the delivery of the subject vehicles rests upon the authority of the person making such a demand on the company's behalf. Private respondent is challenging petitioner's authority to act for Saag Phils., Inc. in the corporate case pending before the RTC of Mandaluyong, Branch 214. Taken in this light, if the supposed authority of petitioner is found to be defective, it is as if no demand was ever made, hence, the prosecution for estafa cannot prosper. Moreover, the mere failure to return the thing received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of estafa. This is because the crime is committed by misappropriating or converting money or goods received by the offender under a lawful transaction. As stated in the case of *United States v. Bleibel*: [16]

The crime of estafa is not committed by the failure to return the things received for sale on commission, or to deliver their value, but, as this class of crime is defined by law, by misappropriating or converting the money or goods received on commission. Delay in the fulfillment of a commission or in the delivery of the sum on such account received only involves civil liability. So long as the money that a person is under obligation to deliver is not demanded of him, and he fails to deliver it for having wrongfully disposed of it, there is no estafa, whatever be the cause of the debt.

Likewise, by analogy, the doctrine of primary jurisdiction may be applied in this case. The issues raised by petitioner particularly the status of Saag Phils., Inc. vis-à-vis Saag (S) Pte. Ltd., as well as the question regarding the supposed authority of the latter to make a demand on behalf of the company, are proper subjects for the determination of the tribunal hearing the intra-corporate case which in this case is the RTC of Mandaluyong, Branch 214. These issues would have been referred to the expertise of the SEC in accordance with the doctrine of primary jurisdiction had the case not been transferred to the RTC of Mandaluyong.

Strictly speaking, the objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[17] The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.[18]

While the above doctrine refers specifically to an administrative tribunal, the Court believes that the circumstances in the instant case do not proscribe the application of the doctrine, as the role of an administrative tribunal such as the SEC in determining technical and intricate matters of special competence has been taken on by specially designated RTCs by virtue of Republic Act No. 8799.[19] Hence, the RTC of Mandaluyong where the intra-corporate case is pending has the primary jurisdiction to determine the issues under contention relating to the status of the domestic corporation, Saag Phils., Inc., vis-à-vis Saag Pte. Ltd.; and the authority of petitioner to act on behalf of the domestic corporation, the determination of which will have a direct bearing on the criminal case. The law recognizes that, in place of the SEC, the regular courts now have the legal competence to decide intra-corporate disputes.[20]

In view of the foregoing, the Court finds no substantial basis in petitioner's contention that the CA committed

grave abuse of discretion amounting to lack or excess of jurisdiction. Absent a showing of a despotic, whimsical and arbitrary exercise of power by the CA, the petition must fail.

WHEREFORE, the petition is DISMISSED. The decision and resolution of the Court of Appeals in CA-G.R. SP No. 55834, dated June 30, 2000 and March 5, 2001, respectively, are AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] Rollo, p. 42.

[3] Id. at 51.

[4] Id. at 55.

[5] Id. at 59.

[6] Under Rule 65 of the Rules of Court.

[7] Id. at 48.

[8] Now docketed as SEC Case No. MC-01-024.

[9] “Resolution Designating Certain Branches of Regional Trial Courts to Try and Decide Cases Formerly Cognizable by the Securities and Exchange Commission,” promulgated on November 21, 2000.

[10] Amended Section 5 of Presidential Decree No. 902-A which granted extensive powers to the Securities and Exchange Commission (SEC), a quasi-judicial body charged with the enforcement of all laws affecting corporations.

[11] SECTION 1. Cases covered. – These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books (Interim Rules of Procedure for Intra-Corporate Controversies, effective April 1, 2001).

[12] Rollo, p. 50.

[13] Section 7, Rule 111 of the Rules of Court provides the elements of a prejudicial question, which are: a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and b) the resolution of such issue determines whether or not the criminal action may proceed.

[14] *People v. Consing, Jr.*, 443 Phil. 454 (2003).

[15] *Pangilinan v. Court of Appeals*, G.R. No. 117363, December 17, 1999, 321 SCRA 51, citing *Reyes*, Revised Penal Code, Book II, 1993.

[16] 34 Phil. 227 (1916).

[17] *Quintos, Jr. v. National Stud Farm*, No. L-37052, November 29, 1973, 54 SCRA 210.

[18] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*, 94 Phil. 932 (1954).

[19] Section 9 of the Interim Rules of Procedure Governing Intra-Corporate Controversies states: "All cases filed under these Rules shall be tried by judges designated by the Supreme court to hear and decide cases transferred from the Securities and Exchange Commission to the Regional Trial Courts and filed directly with said courts pursuant to Republic Act No. 8799, otherwise known as the Securities and Regulation Code."

[20] *Fabia v. Court of Appeals*, G.R. No. 132684, September 11, 2002, 437 SCRA 389.

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