

GERARDO O. LANUZA, JR., PETITIONER, VS. MA. VIVIAN YUCHENGCO, ADOLFO M. DUARTE, NORBERTO C. NAZARENO, ANTONIO A. LOPA, RAMON B. ARNAIZ, LUIS J. L. VIRATA AND ANTONIO GARCIA, JR....

G.R. NO. 157033. March 28, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

With the merger of the Makati Stock Exchange, Inc. (MKSE), and the Manila Stock Exchange into what is now known as the Philippine Stock Exchange, did the issue of disqualification by respondents to hold seats in the Board of Governors of the defunct MKSE become academic?

In this petition for review, we take a close look at the Decision[1] dated 13 September 2002 of the Court of Appeals in CA-G.R. SP No. 68120 which dismissed the election protest filed with the Securities and Exchange Commission-Securities Investigations and Clearing Department (SEC-SICD) by petitioner against respondent for being moot.

The facts, in brief, are as follows:

During the annual meeting of members of the MKSE, on 26 February 1993, fifteen (15) members of the Board of Governors were elected for a term of one year. Nine (9) of them, including respondents herein, were nominees and stockholders of corporate members of the MKSE, namely:

1. Ma. Vivian Yuchengco The First Res. Management and Sec. Corp.
2. Adolfo M. Duarte UCPB Securities, Inc.
3. Myron C. Papa Papa Securities Corp.
4. Norberto C. Nazareno Citicorp Vickers Phils., Inc.
5. George Uy-Tioco Phil. Asia Equity Sec., Inc.
6. Antonio A. Lopa Equitiworld Sec., Inc.
7. Ramon B. Arnaiz Peregrine Sec. Phils., Inc.
8. Luis J.L. Virata Jardine Fleming Exchange Capital Sec., Inc.
9. Antonio Garcia, Jr. ASJ Securities Corporation[2]

Prior to the election of the board members of the MKSE, petitioner, a member thereof, had already filed on 1 December 1992, SEC Case No. 04348, which principally sought the disqualification of the above-mentioned

persons to act and serve as members of the Board of Governors of MKSE. Petitioner alleged that they were not qualified to act and serve as members of the Board of Governors of MKSE pursuant to the MKSE Amended By-Laws, in Section 1 of Article VII thereof, which states:

Section I – No person shall be eligible to serve as a member of the Board of Governors, who shall not be at the time of his election, a member in a good standing.[3] (Emphasis supplied.)

Paragraph K, Section I, Article II of the said Amended Constitution defines a member to be a “member-corporation or a natural person who has been accepted as a member of the MKSE and who owns a seat in the MKSE.” furthermore, Section 1, Article V of the Amended Constitution of the MKSE declares, “members shall be known to have and own one seat in the exchange.”[4]

When respondents emerged as victors in the election, petitioner filed an election protest[5] against herein respondents on 11 March 1993 before the SEC-SICD, on the ground that none of them were members of the MKSE. The Election Protest was docketed as SEC Case No. 04417. Petitioner alleged anew that respondents, while nominees of the corporate members of the MKSE, did not own stocks therein, and were not actually members of the MKSE at the time of their selection. In contra, respondents maintained in their Answer that their election was in keeping with the Amended Constitution and By-Laws of the MKSE. They alluded to Article V, Section 2 thereof on “Membership-Eligibility-Admission,” unanimously amended by its members in accordance with the Revised Securities Act. This Act was signed into law on 23 February 1982 and allows a corporate member to designate any of its stockholders of legal age as its nominee to act on its behalf in the MKSE, to attend meetings, vote and be voted upon or be appointed to any position and exercise the rights and perform the obligation appurtenant to such position.[6]

On 20 April 1993, considering that the facts, legal issues and the parties involved in SEC Cases No. 04348 and No. 04417 were completely identical, an Order was issued by the SICD Hearing Panel, transferring the latter case to the Hearing Panel hearing the former case inasmuch as it has been filed earlier.[7] Thus, the cases were heard jointly.

On 22 September 1993, the parties stipulated and agreed on the following matters:

- a) that the main issue in this case involves purely a question of law;
- b) that the suit is an election protest which is summary in nature;
- c) that the main issue is hereby submitted for partial decision on the basis of the pleadings filed; and
- d) that the issue of damages will be litigated later, after the Hearing Panel shall have rendered decision on the main issue. [8] (Emphasis supplied.)

On 03 March 1994, the SICD rendered a Partial Decision[9] on the main issue, disqualifying respondents from sitting and serving as members of the Board of Governors of MKSE, and further declaring the positions they were occupying as vacant. The dispositive portion of the Partial Decision states:

IN CONSIDERATION OF ALL THE FOREGOING, judgment is hereby rendered, thus:

- a) Defendants are hereby disqualified from sitting and serving as members of the Board of Governors of Makati Stock Exchange; and further declaring the positions they presently occupy as VACANT.[10]

Forthwith, respondents appealed the Partial Decision rendered by the SICD to the SEC En Banc. On 22 July 1997, the SEC En Banc dismissed the appeal instituted by respondents for being moot, stating as follows:

Considering that the issue in this Appeal, being the disqualification of the Board of Governors of the Makati

Stock Exchange Inc. (MKSE) elected during the annual meeting of February 26, 1993, has become moot and academic by virtue of the merger of the Manila Stock Exchange and the Makati Stock Exchange that paved the way for the organization and establishment of the Philippine Stock Exchange, this instant Appeal should be, as it is hereby DISMISSED.[11]

Despite the tone of the above Order of Dismissal by the SEC En Banc declaring the issue of disqualification of respondents as moot and despite receipt thereof by petitioner, the latter did not budge against the order. peculiarly, on 11 January 2000, more than two years after the SEC En Banc's Order, respondents filed a Motion to Dismiss SEC Cases No. 04348 and No. 04417 before the SEC-SICD on the ground that the cases have become moot. On 27 January 2000, the SEC-SICD issued an Order[12] denying said motion to dismiss for being a prohibited pleading under the New Rules of Procedure of the SEC.

On 15 February 2000, respondents filed a Motion for Reconsideration.

In the interregnum, Republic Act No. 8799 otherwise known as "The Securities Regulation Code" took effect on 8 August 2000, which transferred to regional trial courts the SEC's jurisdiction over cases involving intra-corporate disputes. Accordingly, the instant case was transferred to the Regional Trial Court (RTC) of Makati, Branch 138, and was docketed therein as Civil Case No. 01-745.

On 02 October 2001, the trial court issued an Order denying the Motion for Reconsideration filed by respondents. In the trial court's rationale -

For resolutions are: (a) Motion for Reconsideration of the Order of the Securities and Exchange Commission before whom this case was originally filed denying defendants' Motion to Dismiss and (b) Motion to Set Hearing for Reception of Evidence for the Plaintiff.

In asking for the dismissal of the complaint defendants claimed that this case became moot and academic because Makati Stock Exchange the corporation where the dispute arose has merged with Manila Stock Exchange and a new entity named Philippine Stock Exchange was organized and established. Defendants' other ground is that plaintiff failed to prosecute this case for unreasonable length of time.

The merger of Makati Stock Exchange and Manila Stock Exchange resulting in the establishment of the Philippine Stock Exchange did not render the causes of action presented in the Complaint moot and academic considering plaintiff's counterclaim of P250,000.00 against all defendants whom he claims to be jointly and severally liable to him. With respect to the second ground the recitals in the motion are not sufficient to support the relief prayed for.

WHEREFORE, the Motion for Reconsideration is denied.[13]

In effect, the trial court has reversed the Order of the SEC En Banc, declaring the present case to be moot.

Respondents filed a petition for certiorari before the Court of Appeals attacking the order of the trial court denying respondents' motion for reconsideration as well as the order of the SEC-SICD, dated 27 January 2000, denying herein respondents' motion to dismiss.

In the now assailed Decision dated 13 September 2002, respondents found refuge in the Court of Appeals, which ruled in their favor. The dispositive portion thereof reads:

WHEREFORE, the instant petition is hereby GRANTED and the order of the SICD dated January 27, 2000 and that of the RTC of Makati, Branch 138 dated 02 October 2001 are SET ASIDE. Let the election protest filed with the SICD against petitioners be dismissed. No costs.[14]

The subsequent motion for reconsideration having been denied, petitioner now lay his cause before us via this

petition, based on the following standpoints:

1. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THE CASE BELOW HAS BEEN RENDERED MOOT AND ACADEMIC.
2. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THE CONTINUATION OF THE PROCEEDING BELOW WOULD SERVE NO USEFUL PURPOSE.[15]

The key issue for our consideration is whether the closing down of the MKSE operates to render academic the issue of disqualification by respondents to hold seats in the Board of Governors of the said MKSE.

Petitioner takes exception to the ruling of the Court of Appeals that the instant case is now moot. He waxes lyrical on the SEC En Banc's use of the word "dismiss" in its order. By the plain text of the said order, it was obvious that the SEC En Banc had ruled adversely against respondents and ergo, favorably to him, petitioner rationalizes.

Petitioner's logic is flawed.

The SEC En Banc has dismissed the appeal filed by respondents for being moot in light of the recent merger of the MKSE and the Manila Stock Exchange into the Philippine Stock Exchange. The Court of Appeals was of the same mind as the SEC En Banc. It was of the opinion that the case no longer presents justiciable controversy because the issues involved have become academic and dead.

To the mind of this Court, the verdict of the Court of Appeals, echoing that of the SEC En Banc was, in law and in fact, apt.

The tone of the SEC Order was such that in light of the abolition of the MKSE, the appeal filed by respondents before it has become an empty exhortation. As adroitly observed by the Court of Appeals, the SEC En Banc dismissed the appeal filed by the respondents to forestall any further action on the matter of respondents' disqualification. Such Order operates to write finis to the issue of disqualification and all other issues necessarily connected thereto.

Recall that the main relief prayed for by petitioner in his complaint included, inter alia: (1) an injunction to restrain and enjoin respondents from acting as Governors of the MKSE, (2) a declaration that respondents are not suited and qualified to act as members of the Board of Governors thereof, (3) the ouster of respondents as members of the Board of Governors of MKSE, and (4) the nullification of all acts of the MKSE Board of Governors at the time of its control by respondents.

With the folding up of the MKSE, what purpose will it serve to issue an injunction to restrain respondents from acting as Governors of the MKSE which has already gone kaput? What is the point in disqualifying respondents from holding seats in an organization that is already functus officio?

No practical or useful purpose would be served by passing on the merits of respondents' disqualification, which, as it stands is a non-issue. Courts will not determine a moot question in a case in which no practical relief can be granted.[16] It is unnecessary to indulge in academic discussion of a case presenting a moot question[17] as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[18]

As articulated by the appellate court, the justification for this conclusion follows:

...We shall abide by the general rule considering that whenever a government entity, which is either a party to or object of the action is abolished, the continuation of the proceedings would serve no useful purpose. In the instant case, what was abolished was a corporate entity, which was a juridical person just like government entities and similarly situated. There is no need for us here to lay down the governing principle in this case because no one would be affected by it anyway since the MKSE no longer exists.[19]

Perhaps, more important, after the SEC En Banc had rendered the Order dismissing the appeal of the respondents on the ground that the disqualification of the respondents as members of the Board of Governors of the MKSE has become moot, petitioner did not appeal such adjudication by the SEC En Banc in due time. It is doctrinaire that a resolution dismissing a petition for being moot and academic resolves the issues raised in the pleadings, and upon attaining finality, becomes the law of the case and constitutes a bar to any relitigation of the same issues in any other proceedings under the principle of *res judicata*.^[20] At best, the Motion to Dismiss filed by respondents before the SICD, its Order denying said motion, the subsequent motion for reconsideration filed by respondents and the Order of the trial court denying the motion, constitute trifling, if not bane, actions.

Petitioner further contends that even assuming in *gratia argumenti* that the issue on disqualification has become academic, the issue on damages, nonetheless, survives, as it is severable from the issue of disqualification.

To the mind of the Court, petitioner is, even so, not entitled to the damages he seeks, particularly to attorney's fees and litigation expenses.

Yes, what was appealed to the SEC En Banc was the Partial Decision of the SEC Hearing Panel, which partial decision dealt exclusively on the issue of respondents' disqualification. Recall, however, that the result of the "partial" adjudication on the main issue of disqualification is determinative of the issue of damages per stipulation of the parties themselves, whereby the "main issue" of whether or not respondents were disqualified from holding seats in the board of the defunct MKSE was to be resolved first before the SEC Hearing Panel resolved the issue on damages. Thus, the parties, including petitioner, have admitted that the matter of disqualification of respondents is the "main issue," which the secondary issue of damages derives its life from. With the main issue of disqualification having been rendered academic, the ancillary issue on damages has likewise become a fusty issue. It has no leg to stand on.

Then, too, it is an unbending rule that what determines the nature of an action as well as the court which has jurisdiction over it are the allegations in the complaint and the character of the relief sought.^[21] The complaint filed by petitioner prayed, *inter alia*, that after trial on the merits, a judgment be rendered adjudging defendants jointly and severally liable to plaintiff for attorney's fees in the amount of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) and for expenses of litigation.^[22]

Article 2208 of the New Civil Code provides that in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

Along the same vein, attorney's fees may be awarded in such instances when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party.[23]

In the instant case, a perusal of the complaint filed by petitioner failed to indicate any of the circumstances under Article 2208 of the New Civil Code so as to entitle him to the award of attorney's fees and to expenses of litigation. He failed to allege in his complaint that he had exerted all means to settle the squabble amicably and that such efforts turned fruitless, thereby prompting him to file the present case. Indeed, from the face of the complaint, the award of attorney's fees and litigation expenses is devoid of any vestige of legal rationalization.

WHEREFORE, the instant petition is hereby DENIED. The Decision dated 13 September 2002 of the Court of Appeals in CA-G.R. SP No. 68120 and the Resolution dated 5 February 2003 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.

Tinga, J., no part, former counsel of a party.

[1] Rollo, pp. 24-30. Penned by Justice Buenaventura J. Guerrero with Justices Eloy R. Bello, Jr. and Juan Q. Enriquez, Jr., concurring.

[2] Rollo, p. 37.

[3] Rollo, p. 37.

[4] Rollo, p. 37.

[5] Rollo, pp. 23-40.

[6] CA Rollo, pp. 46-52.

[7] Rollo, p. 35.

[8] Rollo, p. 35.

[9] Rollo, pp. 33-41. Rendered by Hearing Officers Ysobel S. Yasay-Murillo and Juanito B. Almosa, Jr.

[10] Rollo, p. 41.

[11] Rollo, p. 42. Rendered by Perfecto R. Yasay, Jr., Chairman and Associate Commissioners Fe Eloisa C. Gloria, Rosalinda U. Casiguran, Edijer A. Martinez, and Danilo L. Concepcion.

[12] Rollo, p. 43. Rendered by George P. Palmares, Hearing Officer.

[13] Rollo, p. 44. Rendered by Judge Sixto Marella, Jr.

[14] Rollo, p. 30.

[15] Rollo, p. 17.

- [16] Villarico v. Court of Appeals, G.R. No. 132115, 04 January 2002, 373 SCRA 23.
- [17] Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor, G.R. No. 96663, 10 August 1999, 312 SCRA 104.
- [18] Philippine Law Dictionary, 2nd Ed., p. 397, citing Mitre v. Tan Torres, 52 OG 266.
- [19] Rollo, pp. 29-30.
- [20] Rosete v. Court of Appeals, G.R. No. 107841, 14 November 1996, 264 SCRA 147.
- [21] Ten Forty Realty and Development Corp. v. Cruz, G.R. No. 151212, 10 September 2003, 410 SCRA 484.
- [22] CA Rollo, pp. 27-28.
- [23] Producers Bank of the Phils. v. Court of Appeals, G.R. No. 111584, 17 September 2001, 365 SCRA 326.

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