

ABACUS SECURITIES CORPORATION, PETITIONER, VS. RUBEN U. AMPIL, RESPONDENT.

G.R. NO. 160016. February 27, 2006

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PANGANIBAN, CJ:

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation. In particular, the laws and regulations requiring payment of traded shares within specified periods are meant to protect the economy from excessive stock market speculations, and are thus mandatory.

In the present case, respondent cannot escape payment of stocks validly traded by petitioner on his behalf. These transactions took place before both parties violated the trading law and rules. Hence, they fall outside the purview of the *pari delicto* rule.

The Case

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the March 21, 2003 Decision[2] and the September 19, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 68273. The assailed Decision disposed as follows:

"UPON THE VIEW WE TAKE OF THIS CASE THUS, this appeal is hereby DISMISSED. With costs." [4]

The CA denied reconsideration in its September 19, 2003 Resolution.

The Facts

The factual antecedents were summarized by the trial court (and reproduced by the CA in its assailed Decision) in this wise:

"Evidence adduced by the [petitioner] has established the fact that [petitioner] is engaged in business as a broker and dealer of securities of listed companies at the Philippine Stock Exchange Center.

"Sometime in April 1997, [respondent] opened a cash or regular account with [petitioner] for the purpose of buying and selling securities as evidenced by the Account Application Form. The parties' business relationship was governed by the terms and conditions [stated therein] x x x.

"Since April 10, 1997, [respondent] actively traded his account, and as a result of such trading activities, he accumulated an outstanding obligation in favor of [petitioner] in the principal sum of P6,617,036.22 as of April 30, 1997.

"Despite the lapse of the period within which to pay his account as well as sufficient time given by [petitioner] for [respondent] to comply with his proposal to settle his account, the latter failed to do so. Such that [petitioner] thereafter sold [respondent's] securities to set off against his unsettled obligations.

"After the sale of [respondent's] securities and application of the proceeds thereof against his account,

[respondent's] remaining unsettled obligation to [petitioner] was P3,364,313.56. [Petitioner] then referred the matter to its legal counsel for collection purposes.

"In a letter dated August 15, 1997, [petitioner] through counsel demanded that [respondent] settle his obligation plus the agreed penalty charges accruing thereon equivalent to the average 90-day Treasury Bill rate plus 2% per annum (200 basis points).

"In a letter dated August [26], 1997, [respondent] acknowledged receipt of [petitioner's] demand [letter] and admitted his unpaid obligation and at the same time request[ed] for 60 days to raise funds to pay the same, which was granted by [petitioner].

"Despite said demand and the lapse of said requested extension, [respondent] failed and/or refused to pay his accountabilities to [petitioner].

"For his defense, [respondent] claims that he was induced to trade in a stock security with [petitioner] because the latter allowed offset settlements wherein he is not obliged to pay the purchase price. Rather, it waits for the customer to sell. And if there is a loss, [petitioner] only requires the payment of the deficiency (i.e., the difference between the higher buying price and the lower selling price). In addition, it charges a commission for brokering the sale.

"However, if the customer sells and there is a profit, [petitioner] deducts the purchase price and delivers only the surplus – after charging its commission.

"[Respondent] further claims that all his trades with [petitioner] were not paid in full in cash at anytime after purchase or within the T+4 [4 days subsequent to trading] and none of these trades was cancelled by [petitioner] as required in Exhibit "A-1". Neither did [petitioner] apply with either the Philippine Stock Exchange or the SEC for an extension of time for the payment or settlement of his cash purchases. This was not brought to his attention by his broker and so with the requirement of collaterals in margin account. Thus, his trade under an offset transaction with [petitioner] is unlimited subject only to the discretion of the broker. x x x [Had petitioner] followed the provision under par. 8 of Exh. "A-1" which stipulated the liquidation within the T+3 [3 days subsequent to trading], his net deficit would only be P1,601,369.59. [Respondent] however affirmed that this is not in accordance with RSA [Rule 25-1 par. C, which mandates that if you do not pay for the first] order, you cannot subsequently make any further order without depositing the cash price in full. So, if RSA Rule 25-1, par. C, was applied, he was limited only to the first transaction. That [petitioner] did not comply with the T+4 mandated in cash transaction. When [respondent] failed to comply with the T+3, [petitioner] did not require him to put up a deposit before it executed its subsequent orders. [Petitioner] did not likewise apply for extension of the T+4 rule. Because of the offset transaction, [respondent] was induced to [take a] risk which resulted [in] the filing of the instant suit against him [because of which] he suffered sleepless nights, lost appetite which if quantified in money, would amount to P500,000.00 moral damages and P100,000.00 exemplary damages."[5]

In its Decision[6] dated June 26, 2000, the Regional Trial Court (RTC) of Makati City (Branch 57) held that petitioner violated Sections 23 and 25 of the Revised Securities Act (RSA) and Rule 25-1 of the Rules Implementing the Act (RSA Rules) when it failed to: 1) require the respondent to pay for his stock purchases within three (T+3) or four days (T+4) from trading; and 2) request from the appropriate authority an extension of time for the payment of respondent's cash purchases. The trial court noted that despite respondent's non-payment within the required period, petitioner did not cancel the purchases of respondent. Neither did it require him to deposit cash payments before it executed the buy and/or sell orders subsequent to the first unsettled transaction. According to the RTC, by allowing respondent to trade his account actively without cash, petitioner effectively induced him to purchase securities thereby incurring excessive credits.

The trial court also found respondent to be equally at fault, by incurring excessive credits and waiting to see how

his investments turned out before deciding to invoke the RSA. Thus, the RTC concluded that petitioner and respondent were in *pari delicto* and therefore without recourse against each other.

Ruling of the Court of Appeals

The CA upheld the lower court's finding that the parties were in *pari delicto*. It castigated petitioner for allowing respondent to keep on trading despite the latter's failure to pay his outstanding obligations. It explained that "the reason [behind petitioner's act] is elemental in its simplicity. And it is not exactly altruistic. Because whether [respondent's] trading transaction would result in a surplus or deficit, he would still be liable to pay [petitioner] its commission. [Petitioner's] cash register will keep on ringing to the sound of incoming money, no matter what happened to [respondent]."[7]

The CA debunked petitioner's contention that the trial court lacked jurisdiction to determine violations of the RSA. The court *a quo* held that petitioner was estopped from raising the question, because it had actively and voluntarily participated in the assailed proceedings.

Hence, this Petition.[8]

Issues

Petitioner submits the following issues for our consideration:

"I.

Whether or not the Court of Appeal's ruling that petitioner and respondent are in *pari delicto* which allegedly bars any recovery, is in accord with law and applicable jurisprudence considering that respondent was the first one who violated the terms of the Account Opening Form, [which was the] agreement between the parties.

"II.

Whether or not the Court of Appeal's ruling that the petitioner and respondent are in *pari delicto* is in accord with law and applicable jurisprudence considering the Account Opening Form is a valid agreement.

"III.

Whether or not the Court of Appeal's ruling that petitioner cannot recover from respondent is in accord with law and applicable jurisprudence since the evidence and admission of respondent proves that he is liable to petitioner for his outstanding obligations arising from the stock trading through petitioner.

"IV.

Whether or not the Court of Appeal's ruling on petitioner's alleged violation of the Revised Securities Act [is] in accord with law and jurisprudence since the lower court has no jurisdiction over violations of the Revised Securities Act."[9]

Briefly, the issues are (1) whether the *pari delicto* rule is applicable in the present case, and (2) whether the trial court had jurisdiction over the case.

The Court's Ruling

The Petition is partly meritorious.

Main Issue: Applicability of the *Pari Delicto* Principle

In the present controversy, the following pertinent facts are undisputed: (1) on April 8, 1997, respondent opened a cash account with petitioner for his transactions in securities;[10] (2) respondent's purchases were consistently

unpaid from April 10 to 30, 1997;[11] (3) respondent failed to pay in full, or even just his deficiency,[12] for the transactions on April 10 and 11, 1997;[13](4) despite respondent's failure to cover his initial deficiency, petitioner subsequently purchased and sold securities for respondent's account on April 25 and 29;[14] (5) petitioner did not cancel or liquidate a substantial amount of respondent's stock transactions until May 6, 1997.[15]

The provisions governing the above transactions are Sections 23 and 25 of the RSA[16] and Rule 25-1 of the RSA Rules, which state as follows:

"SEC. 23. Margin Requirements. –

x x x x x x x x

(b) It shall be unlawful for any member of an exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer –

(1) On any security other than an exempted security, in contravention of the rules and regulations which the Commission shall prescribe under subsection (a) of this Section;

(2) Without collateral or on any collateral other than securities, except (i) to maintain a credit initially extended in conformity with the rules and regulations of the Commission and (ii) in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (1) of this subsection.

x x x x x x x x"

"SEC. 25. Enforcement of margin requirements and restrictions on borrowings. – To prevent indirect violations of the margin requirements under Section 23 hereof, the broker or dealer shall require the customer in nonmargin transactions to pay the price of the security purchased for his account within such period as the Commission may prescribe, which shall in no case exceed three trading days; otherwise, the broker shall sell the security purchased starting on the next trading day but not beyond ten trading days following the last day for the customer to pay such purchase price, unless such sale cannot be effected within said period for justifiable reasons. The sale shall be without prejudice to the right of the broker or dealer to recover any deficiency from the customer. x x x."

"RSA RULE 25-1

"Purchases and Sales in Cash Account

"(a) Purchases by a customer in a cash account shall be paid in full within three (3) business days after the trade date.

"(b) If full payment is not received within the required time period, the broker or dealer shall cancel or otherwise liquidate the transaction, or the unsettled portion thereof, starting on the next business day but not beyond ten (10) business days following the last day for the customer to pay, unless such sale cannot be effected within said period for justifiable reasons.

"(c) If a transaction is cancelled or otherwise liquidated as a result of non-payment by the customer, prior to any subsequent purchase during the next ninety (90) days, the customer shall be required to deposit sufficient funds in the account to cover each purchase transaction prior to execution.

x x x x x x x x

"(f) Written application for an extension of the period of time required for payment under paragraph (a) be made by the broker or dealer to the Philippine Stock Exchange, in the case of a member of the Exchange, or to the Commission, in the case of a non-member of the Exchange. Applications for the extension must be based

upon exceptional circumstances and must be filed and acted upon before the expiration of the original payment period or the expiration of any subsequent extension."

Section 23(b) above -- the alleged violation of petitioner which provides the basis for respondent's defense -- makes it unlawful for a broker to extend or maintain credit on any securities other than in conformity with the rules and regulations issued by Securities and Exchange Commission (SEC). Section 25 lays down the rules to prevent indirect violations of Section 23 by brokers or dealers. RSA Rule 25-1 prescribes in detail the regulations governing cash accounts.

The United States, from which our country's security policies are patterned,[17] abound with authorities explaining the main purpose of the above statute on margin[18] requirements. This purpose is to regulate the volume of credit flow, by way of speculative transactions, into the securities market and redirect resources into more productive uses. Specifically, the main objective of the law on margins is explained in this wise:

"The main purpose of these margin provisions xxx is not to increase the safety of security loans for lenders. Banks and brokers normally require sufficient collateral to make themselves safe without the help of law. Nor is the main purpose even protection of the small speculator by making it impossible for him to spread himself too thinly -- although such a result will be achieved as a byproduct of the main purpose.

x x x x x x x x

"The main purpose is to give a [g]overnment credit agency an effective method of reducing the aggregate amount of the nation's credit resources which can be directed by speculation into the stock market and out of other more desirable uses of commerce and industry x x x."[19]

A related purpose of the governmental regulation of margins is the stabilization of the economy.[20] Restrictions on margin percentages are imposed "in order to achieve the objectives of the government with due regard for the promotion of the economy and prevention of the use of excessive credit."[21]

Otherwise stated, the margin requirements set out in the RSA are primarily intended to achieve a macroeconomic purpose -- the protection of the overall economy from excessive speculation in securities. Their recognized secondary purpose is to protect small investors.

The law places the burden of compliance with margin requirements primarily upon the brokers and dealers.[22] Sections 23 and 25 and Rule 25-1, otherwise known as the "mandatory close-out rule,"[23] clearly vest upon petitioner the obligation, not just the right, to cancel or otherwise liquidate a customer's order, if payment is not received within three days from the date of purchase. The word "shall" as opposed to the word "may," is imperative and operates to impose a duty, which may be legally enforced. For transactions subsequent to an unpaid order, the broker should require its customer to deposit funds into the account sufficient to cover each purchase transaction prior to its execution. These duties are imposed upon the broker to ensure faithful compliance with the margin requirements of the law, which forbids a broker from extending undue credit to a customer.

It will be noted that trading on credit (or "margin trading") allows investors to buy more securities than their cash position would normally allow.[24] Investors pay only a portion of the purchase price of the securities; their broker advances for them the balance of the purchase price and keeps the securities as collateral for the advance or loan.[25] Brokers take these securities/stocks to their bank and borrow the "balance" on it, since they have to pay in full for the traded stock. Hence, increasing margins[26] i.e., decreasing the amounts which brokers may lend for the speculative purchase and carrying of stocks is the most direct and effective method of discouraging an abnormal attraction of funds into the stock market and achieving a more balanced use of such resources.

"x x x [T]he x x x primary concern is the efficacy of security credit controls in preventing speculative excesses that produce dangerously large and rapid securities price rises and accelerated declines in the prices of given securities issues and in the general price level of securities. Losses to a given investor resulting from price declines in thinly margined securities are not of serious significance from a regulatory point of view. When forced sales occur and put pressures on securities prices, however, they may cause other forced sales and the resultant snowballing effect may in turn have a general adverse effect upon the entire market." [27]

The nature of the stock brokerage business enables brokers, not the clients, to verify, at any time, the status of the client's account. [28] Brokers, therefore, are in the superior position to prevent the unlawful extension of credit. [29] Because of this awareness, the law imposes upon them the primary obligation to enforce the margin requirements.

Right is one thing; obligation is quite another. A right may not be exercised; it may even be waived. An obligation, however, must be performed; those who do not discharge it prudently must necessarily face the consequence of their dereliction or omission. [30]

Respondent Liable for the First, But Not for the Subsequent Trades

Nonetheless, these margin requirements are applicable only to transactions entered into by the present parties subsequent to the initial trades of April 10 and 11, 1997. Thus, we hold that petitioner can still collect from respondent to the extent of the difference between the latter's outstanding obligation as of April 11, 1997 less the proceeds from the mandatory sell out of the shares pursuant to the RSA Rules. Petitioner's right to collect is justified under the general law on obligations and contracts. [31]

Article 1236 (second paragraph) of the Civil Code, provides:

"Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor." (Emphasis supplied)

Since a brokerage relationship is essentially a contract for the employment of an agent, principles of contract law also govern the broker-principal relationship. [32]

The right to collect cannot be denied to petitioner as the initial transactions were entered pursuant to the instructions of respondent. The obligation of respondent for stock transactions made and entered into on April 10 and 11, 1997 remains outstanding. These transactions were valid and the obligations incurred by respondent concerning his stock purchases on these dates subsist. At that time, there was no violation of the RSA yet. Petitioner's fault arose only when it failed to: 1) liquidate the transactions on the fourth day following the stock purchases, or on April 14 and 15, 1997; and 2) complete its liquidation no later than ten days thereafter, applying the proceeds thereof as payment for respondent's outstanding obligation. [33]

Elucidating further, since the buyer was not able to pay for the transactions that took place on April 10 and 11, that is at T+4, the broker was duty-bound to advance the payment to the settlement banks without prejudice to the right of the broker to collect later from the client. [34]

In securities trading, the brokers are essentially the counterparties to the stock transactions at the Exchange. [35] Since the principals of the broker are generally undisclosed, the broker is personally liable for the contracts thus made. [36] Hence, petitioner had to advance the payments for respondent's trades. Brokers have a right to be reimbursed for sums advanced by them with the express or implied authorization of the principal, [37] in this case, respondent.

It should be clear that Congress imposed the margin requirements to protect the general economy, not to give the

customer a free ride at the expense of the broker.[38] Not to require respondent to pay for his April 10 and 11 trades would put a premium on his circumvention of the laws and would enable him to enrich himself unjustly at the expense of petitioner.

In the present case, petitioner obviously failed to enforce the terms and conditions of its Agreement with respondent, specifically paragraph 8 thereof, purportedly acting on the plea[39]of respondent to give him time to raise funds therefor. These stipulations, in relation to paragraph 4,[40]constituted faithful compliance with the RSA. By failing to ensure respondent's payment of his first purchase transaction within the period prescribed by law, thereby allowing him to make subsequent purchases, petitioner effectively converted respondent's cash account into a credit account. However, extension or maintenance of credits on nonmargin transactions, are specifically prohibited under Section 23(b). Thus, petitioner was remiss in its duty and cannot be said to have come to court with "clean hands" insofar as it intended to collect on transactions subsequent to the initial trades of April 10 and 11, 1997.

Respondent Equally Guilty for Subsequent Trades

On the other hand, we find respondent equally guilty in entering into the transactions in violation of the RSA and RSA Rules. We are not prepared to accept his self-serving assertions of being an "innocent victim" in all the transactions. Clearly, he is not an unsophisticated, small investor merely prodded by petitioner to speculate on the market with the possibility of large profits with low -- or no -- capital outlay, as he pictures himself to be. Rather, he is an experienced and knowledgeable trader who is well versed in the securities market and who made his own investment decisions. In fact, in the Account Opening Form (AOF), he indicated that he had excellent knowledge of stock investments; had experience in stocks trading, considering that he had similar accounts with other firms.[41] Obviously, he knowingly speculated on the market, by taking advantage of the "no-cash-out" arrangement extended to him by petitioner.

We note that it was respondent who repeatedly asked for some time to pay his obligations for his stock transactions. Petitioner acceded to his requests. It is only when sued upon his indebtedness that respondent raised as a defense the invalidity of the transactions due to alleged violations of the RSA. It was respondent's privilege to gamble or speculate, as he apparently did so by asking for extensions of time and refraining from giving orders to his broker to sell, in the hope that the prices would rise. Sustaining his argument now would amount to relieving him of the risk and consequences of his own speculation and saddling them on the petitioner after the result was known to be unfavorable.[42] Such contention finds no legal or even moral justification and must necessarily be overruled. Respondent's conduct is precisely the behavior of an investor deplored by the law.

In the final analysis, both parties acted in violation of the law and did not come to court with clean hands with regard to transactions subsequent to the initial trades made on April 10 and 11, 1997. Thus, the peculiar facts of the present case bar the application of the *pari delicto* rule -- expressed in the maxims "*Ex dolo malo non oritur actio*" and "*In pari delicto potior est conditio defendentis*" -- to all the transactions entered into by the parties. The *pari delicto* rule refuses legal remedy to either party to an illegal agreement and leaves them where they were.[43] In this case, the *pari delicto* rule applies only to transactions entered into after the initial trades made on April 10 and 11, 1997.

Since the initial trades are valid and subsisting obligations, respondent is liable for them. Justice and good conscience require all persons to satisfy their debts. Ours are courts of both law and equity; they compel fair dealing; they do not abet clever attempts to escape just obligations. Ineludibly, this Court would not hesitate to grant relief in accordance with good faith and conscience.

Pursuant to RSA Rule 25-1, petitioner should have liquidated the transaction (sold the stocks) on the fourth day

following the transaction (T+4) and completed its liquidation not later than ten days following the last day for the customer to pay (effectively T+14). Respondent's outstanding obligation is therefore to be determined by using the closing prices of the stocks purchased at T+14 as basis.

We consider the foregoing formula to be just and fair under the circumstances. When petitioner tolerated the subsequent purchases of respondent without performing its obligation to liquidate the first failed transaction, and without requiring respondent to deposit cash before embarking on trading stocks any further, petitioner, as the broker, violated the law at its own peril. Hence, it cannot now complain for failing to obtain the full amount of its claim for these latter transactions.

On the other hand, with respect to respondent's counterclaim for damages for having been allegedly induced by petitioner to generate additional purchases despite his outstanding obligations, we hold that he deserves no legal or equitable relief consistent with our foregoing finding that he was not an innocent investor as he presented himself to be.

Second Issue: Jurisdiction

It is axiomatic that the allegations in the complaint, not the defenses set up in the answer or in the motion to dismiss determine which court has jurisdiction over an action.[44] Were we to be governed by the latter rule, the question of jurisdiction would depend almost entirely upon the defendant.[45]

The instant controversy is an ordinary civil case seeking to enforce rights arising from the Agreement (AOF) between petitioner and respondent. It relates to acts committed by the parties in the course of their business relationship. The purpose of the suit is to collect respondent's alleged outstanding debt to petitioner for stock purchases.

To be sure, the RSA and its Rules are to be read into the Agreement entered into between petitioner and respondent. Compliance with the terms of the AOF necessarily means compliance with the laws. Thus, to determine whether the parties fulfilled their obligations in the AOF, this Court had to pass upon their compliance with the RSA and its Rules. This, in no way, deprived the Securities and Exchange Commission (SEC) of its authority to determine willful violations of the RSA and impose appropriate sanctions therefor, as provided under Sections 45 and 46 of the Act.

Moreover, we uphold the SEC in its Opinion, thus:

"As to the issue of jurisdiction, it is settled that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.

"Indeed, after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for petitioner to question the jurisdictional power of the court. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty." [46]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are hereby MODIFIED. Respondent is ordered to pay petitioner the difference between the former's outstanding obligation as of April 11, 1997 less the proceeds from the mandatory sell out of shares pursuant to the RSA Rules, with interest thereon at the legal rate until fully paid.

The RTC of Makati, Branch 57 is hereby directed to make a computation of respondent's outstanding obligation using the closing prices of the stocks at T+14 as basis -- counted from April 11, 1997 and to issue the proper order

for payment if warranted. It may hold trial and hear the parties to be able to make this determination.

No finding as to costs in this instance.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario JJ., concur.

[1] Rollo, pp. 10-40.

[2] Annex "A" of Petition; id., pp. 42-50. Fifth Division. Penned by Justice Renato C. Dacudao, and concurred in by Justices Eugenio S. Labitoria (Division chairperson) and Danilo B. Pine (member).

[3] Annex "B" of Petition; id., p. 52.

[4] CA Decision, p. 8; id., p. 49.

[5] Id., pp. 1-3; rollo, pp. 42-44.

[6] Annex "I" of Petition, pp. 1-7; rollo, pp. 106-112; penned by Judge Reinato G. Quilala.

[7] CA Decision, p. 7; rollo, p. 48.

[8] On October 19, 2004, this Court received petitioner's Memorandum, signed by Attys. Donn P.T. Lee and Ma. Cherrie R. Cruz. Respondent's Memorandum, signed by Atty. Ramon U. Ampil was received by the Court on September 17, 2004. Thereafter, however, the Court issued a Resolution, dated June 20, 2005, requiring the Securities and Exchange Commission and the Philippine Stock Exchange to comment on the Petition, because the disposition of the issues "could have a cascading effect on the securities market and possibly on the economy." The Comment of the Philippine Stock Exchange, signed by Attys. Grace S. Ayson and Franklin Noel P. Trazo, was received on August 9, 2005 while that of the Securities and Exchange Commission, signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Amparo M. Cabotaje-Tang and Solicitor Blaise Marie E. Alaras, on September 27, 2005 -- on which date the case was deemed submitted for decision.

[9] Petition, p. 7; rollo, p. 16.

[10] See Account Application Form; id., p. 91.

[11] See Statement of Account, April 30, 1997, id., p. 89.

[12] Respondent purchased as well as sold shares on the same day.

[13] Statement of Account, April 30, 1997, supra.

[14] Ibid.

[15] See Statement of Account, May 31, 1997, id., p. 90.

[16] The law in force at the time the Complaint was instituted. It has since been superseded by Republic Act No. 8799 (Securities Regulation Code), which was approved on July 19, 2000. §§23 & 25 of the RSA were essentially reproduced in §§48 & 50, respectively of RA 8799.

[17] Act No. 2581, otherwise known as the Blue Sky Law and passed in 1916, was the first securities legislation in the country. Later in 1936, Congress of the Philippines, finding it inadequate to protect the investing public from scheming issuers, repealed Act No. 2581 and passed Commonwealth Act No. 83, the original Securities Act in the country. As the Philippines was then a colony of the United States, one would not be surprised to know that Commonwealth Act No. 83 was substantially a composite of two federal legislations in the United States (namely, the Securities Act of 1933 and the Securities Exchange Act of 1934), as well as the Uniform Sale of Securities Act. The basic regulatory structure of those two U.S. federal laws was imprinted on the original Act. Additionally, the provisions of Commonwealth Act No. 83 relating to the registration of brokers, dealers and salesmen were

substantially taken from the Uniform Sale of Securities Act. It was not until 1982 that Commonwealth Act No. 83 was repealed by Batas Pambansa Blg. 178, also known as the Revised Securities Act (RSA). The salient features of Commonwealth Act No. 83 were substantially adopted by the RSA. Rafael A. Morales, *The Philippine Securities Regulation Code (Annotated)*, 2005, pp. 2-6. See also *Philippine Stock Exchange, Inc. v. Court of Appeals, et al.*, 346 Phil. 218, October 27, 1997.

[18] "In a margin account, the securities company extends credit. A margin account is covered by a margin agreement which stipulates the terms and conditions for maintaining such an account. Under the present law, the amount of credit that may be initially extended is limited to 50 percent of the current market price of the security." (Comment of the Philippine Stock Exchange, Inc. (PSE) dated August 9, 2005, p. 2; rollo. p. 382);

"A margin account x x x is an account in which the broker lends the customer cash with which to purchase securities. Unlike a cash account, a margin account allows an investor to buy securities with money that he does not have, by borrowing the money from the broker. The RSA limits margin borrowing to a maximum of 50% of the amount invested." (Comment of the Securities and Exchange Commission (SEC) dated September 27, 2005, p. 17; rollo, p. 423).

[19] *Stonehill v. Security National Bank*, 68 F.R.D. 24, 31, June 30, 1975.

[20] Mary Ann L. Ojeda, *Securities Regulation Code with Annotations*, 2002, p. 92.

[21] Morales, *supra* at note 17, p. 304.

[22] *Stern v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 603 F2d 1073, July 16, 1979.

[23] See SEC's Comment, p. 33; rollo, p. 439.

[24] Morales, *supra* at note 17, p. 302.

[25] *Ibid.*

[26] Margin refers to the percentage of the value which must be paid in cash by the purchaser. (Ojeda, *supra* at note 20).

[27] *Stonehill v. Security National Bank*, *supra* at note 19.

[28] *Carolina Industries, Inc. v. CMS Stock Brokerage, Inc.*, 97 SCRA 734, May 17, 1980.

[29] *Ibid.*

[30] *Lopez, Locsin, Ledesma & Co., Inc. v. Court of Appeals*, 168 SCRA 276, December 8, 1988.

[31] See *Dominion Insurance Corp. v. CA*, 376 SCRA 239, February 6, 2002, where the Court held that while the law on agency prohibits respondent therein from obtaining reimbursement, having deviated from the instructions of the principal in the settlement of the claims of the insured, his right to recover nonetheless was held justified under Article 1236, second paragraph, Civil Code.

[32] §42 12 Am Jur 2d.

[33] RSA Rule 25-1.

[34] Comment of the SEC dated September 27, 2005, p. 21; rollo, p. 427.

[35] *Ibid.*

[36] §21 73 Am Jur 2d.

[37] §294 12 Am Jur 2d.

[38] See *Utah State University v. Bear, Stearns & Co.* (10[th] Circular 1977) 549 F2d 164, January 24, 1977.

[39]"In the event that my cash account is not liquidated within three (3) days from the date of purchase, or whenever in its sole discretion ASC considers it necessary for its own protection I hereby specifically authorize and empower ASC, without need of prior notice and demand, to sell so much of the securities in my account(s) (whether herein carried individually or jointly with others) and herein delivered as collateral necessary for the payment of any of my obligations to ASC. I hereby guarantee that such securities are free from all liens and encumbrances, it being expressly understood that in the event that any such liens are later discovered which prevent subsequent negotiation of said securities, ASC may, at its sole discretion, buy back the sold securities and collect from me whatever amount ASC may incur by reason of such buy back, including damages which it may suffer or may be required to pay. I further authorize ASC to buy, lend, borrow or arrange for the lending or borrowing of any and all securities to cover for any short-selling in such account(s), to transfer moneys or securities from any one of my account(s) to another, and to settle all outstanding obligations. It is hereby agreed and understood that I shall at all times be liable for payment of any unpaid balance owing, if any, on my account(s) together with interest, provided that I shall remain liable for any deficiency remaining in any such account(s) in the event of liquidation." (Exh. "A-1"; rollo, p. 93)

[40] "When required by ASC, I agree to make a deposit on all my purchases equivalent to the amount stipulated herein. Securities purchased on my behalf shall be registered in the name of ASC until full payment of the purchase price, which payment shall in no case be made later than as specifically required by ASC or three (3) days after the date of said purchase, whichever is earlier, without need of any notice or demand. Subject to paragraph 16 hereof, ASC may, at its sole discretion, cancel in writing any waiver of deposit requirements at [any time]." (Ibid.)

[41] Rollo, p. 91.

[42] *Insular Financing & Business Corp. v. Imperial*, 74 Phil. 331, August 31, 1943.

[43] *De Leon v. Court of Appeals*, 186 SCRA 345, June 6, 1990.

[44] *Ten Forty Realty and Development Corp. v. Cruz*, 410 SCRA 484, September 10, 2003; *Pilipinas Loan Company, Inc. v. Securities and Exchange Commission*, 356 SCRA 193, April 4, 2001.

[45] *Speed Distributing Corp. v. CA*, 425 SCRA 691, March 17, 2004; *Serrano v. Muñoz (Hi) Motors, Inc.*, 21 SCRA 1085, November 27, 1967.

[46] Comment of the SEC, *supra* at note 34, p. 37; rollo, p. 443.

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