

NAUTICA CANNING CORPORATION, FIRST DOMINION PRIME HOLDINGS, INC. AND FERNANDO R. ARGUELLES, JR., PETITIONERS, VS. ROBERTO C. YUMUL, RESPONDENT.

G.R. NO. 164588. October 19, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioners assail the September 26, 2001 Decision[1] of the Court of Appeals in CA-G.R. SP No. 61919, affirming in toto the Decision of the Securities and Exchange Commission (SEC) En Banc in SEC Case No. 10-96-5455, as well as the July 16, 2004 Resolution[2] denying the motion for reconsideration.

The facts of the case show that Nautica Canning Corporation (Nautica) was organized and incorporated on May 11, 1994 with an authorized capital stock of P40,000,000 divided into 400,000 shares with a par value of P100.00 per share. It had a subscribed capital stock of P10,000,000 with paid-in subscriptions from its incorporators as follows:[3]

Name No. of Shares Amount Subscribed
Amount Paid

ALVIN Y. DEE 89,991 P8,999,100 P4,499,100

JONATHAN Y. DEE 2 200 200

JOANNA D. LAUREL 2 200 200

DARLENE EDSA MARIE

GONZALES 2 200 200

JENNIFER Y. DEE 2 200 200

ROBERTO C. YUMUL 1 100 100

JERRY ANGPING 10,000 1,000,000 500,000

100,000 P10,000,000 P5,000,000

On December 19, 1994, respondent Roberto C. Yumul was appointed Chief Operating Officer/General Manager of Nautica with a monthly compensation of P85,000 and an additional compensation equal to 5% of the company's operating profit for the calendar year.[4] On the same date, First Dominion Prime Holdings, Inc., Nautica's parent company, through its Chairman Alvin Y. Dee, granted Yumul an Option to Purchase[5] up to

15% of the total stocks it subscribed from Nautica.

On June 22, 1995, a Deed of Trust and Assignment[6] was executed between First Dominion Prime Holdings, Inc. and Yumul whereby the former assigned 14,999 of its subscribed shares in Nautica to the latter. The deed stated that the 14,999 "shares were acquired and paid for in the name of the ASSIGNOR only for convenience, but actually executed in behalf of and in trust for the ASSIGNEE."

In March 1996, Nautica declared a P35,000,000 cash dividend, P8,250,000 of which was paid to Yumul representing his 15% share.

After Yumul's resignation from Nautica on August 5, 1996, he wrote a letter[7] to Dee requesting the latter to formalize his offer to buy Yumul's 15% share in Nautica on or before August 20, 1996; and demanding the issuance of the corresponding certificate of shares in his name should Dee refuse to buy the same. Dee, through Atty. Fernando R. Arguelles, Jr., Nautica's corporate secretary, denied the request claiming that Yumul was not a stockholder of Nautica.

On September 6, 1996[8] and September 9, 1996,[9] Yumul requested that the Deed of Trust and Assignment be recorded in the Stock and Transfer Book of Nautica, and that he, as a stockholder, be allowed to inspect its books and records.

Yumul's requests were denied allegedly because he neither exercised the option to purchase the shares nor paid for the acquisition price of the 14,999 shares. Atty. Arguelles maintained that the cash dividend received by Yumul is held by him only in trust for First Dominion Prime Holdings, Inc.

Thus, Yumul filed on October 3, 1996, before the SEC a petition for mandamus with damages, with prayer that the Deed of Trust and Assignment be recorded in the Stock and Transfer Book of Nautica and that the certificate of stocks corresponding thereto be issued in his name.[10]

On October 12, 2000, the SEC En Banc rendered the Decision,[11] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondents, as follows:

- Declaring petitioner as a stockholder of respondent Nautica;
- Declaring petitioner as beneficial owner of 14,999 shares of Nautica under the Deed of Trust and Assignment dated June 22, 1995
- Declaring petitioner to be entitled to the right of inspection of the books of the corporation pursuant to the pertinent provisions of the Corporation Code; and
- Directing the Corporate Secretary of Nautica to recognize and register the Deed of Trust and Assignment dated June 22, 1995.

SO ORDERED.[12]

On appeal, the Court of Appeals affirmed the decision of the SEC En Banc. Petitioners' motion for reconsideration was denied in a Resolution dated July 16, 2004.

Hence, this petition.

At the outset, we note that petitioners' recourse to this Court via a "combined" petition under Rule 65 and an appeal under Rule 45 of the Rules of Court is irregular. A petition for review under Rule 45 is the proper remedy of a party aggrieved by a decision of the Court of Appeals, which is not identical to a petition for certiorari under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals is appealed by filing a

petition for review, which is a continuation of the appellate process over the original case.[13] On the other hand, the writ of certiorari under Rule 65 is filed when petitioner has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.

In this case, petitioners' speedy, available and adequate remedy is appeal via Rule 45, and not certiorari under Rule 65. Notwithstanding petitioners' procedural lapse, we shall treat the petition as one filed under Rule 45.

The petition is partly meritorious.

Petitioners contend that Yumul was not a stockholder of Nautica; that he was just a nominal owner of one share as the beneficial ownership belonged to Dee who paid for said share when Nautica was incorporated. They presented China Banking Corporation Check No. A2620636 and Citibank Check No. B82642 as proof of payment by Dee; a letter by Dee dated July 15, 1994 requesting the corporate secretary of Nautica to issue a certificate of stock in Yumul's name but in trust for Dee; and Stock Certificate No. 6 with annotation "ITF Alvin Y. Dee" which means that respondent held said stock "In Trust For Alvin Y. Dee".

We are not persuaded.

Indeed, it is possible for a business to be wholly owned by one individual. The validity of its incorporation is not affected when such individual gives nominal ownership of only one share of stock to each of the other four incorporators. This is not necessarily illegal.[14] But, this is valid only between or among the incorporators privy to the agreement. It does bind the corporation which, at the time the agreement is made, was non-existent. Thus, incorporators continue to be stockholders of a corporation unless, subsequent to the incorporation, they have validly transferred their subscriptions to the real parties in interest. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.[15]

In the case at bar, the SEC and the Court of Appeals correctly found Yumul to be a stockholder of Nautica, of one share of stock recorded in Yumul's name, although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws, as well as the General Information Sheet filed with the SEC indicated that Yumul was an incorporator and subscriber of one share.[16] Even granting that there was an agreement between Yumul and Dee whereby the former is holding the share in trust for Dee, the same is binding only as between them. From the corporation's vantage point, Yumul is its stockholder with one share, considering that there is no showing that Yumul transferred his subscription to Dee, the alleged real owner of the share, after Nautica's incorporation.

We held in *Ponce v. Alsons Cement Corp.*[17] that:

... [A] transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.

Hence, without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates[.]

Moreover, the contents of the articles of incorporation bind the corporation and its stockholders. Its contents cannot be disregarded considering that it was the basic document which legally triggered the creation of the

corporation.[18]

The Court of Appeals, in affirming the factual findings of SEC, held that:

The evidence submitted by petitioners to establish trust is palpably incompetent, consisting mainly of the self-serving allegations by the petitioners and the China Banking Corporation checks issued as payment for the shares of stock of Nautica. Dee did not testify on the supposed trust relationship between him and Yumul. While Atty. Arguelles testified, his testimony is barren of probative value since he had no first-hand knowledge of the relationship in question. The isolated fact that Dee might have paid for the share in the name of Yumul did not by itself make the latter a man of straw. Such act of payment is so nebulous and equivocal that it can not yield the meaning which the petitioners would want to squeeze from it without the clarificatory testimony of Dee.[19]

We see no cogent reason to set aside the factual findings of the SEC, as upheld by the Court of Appeals. Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by the Supreme Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration,[20] moreso if the same has been upheld by the appellate court, as in this case.

Besides, other than petitioners' self-serving assertion that the beneficial ownership belongs to Dee, they failed to show that the subscription was transferred to Dee after Nautica's incorporation. The conduct of the parties also constitute sufficient proof of Yumul's status as a stockholder. On April 4, 1995, Yumul was elected during the regular annual stockholders' meeting as a Director of Nautica's Board of Directors.[21] Thereafter, he was elected as president of Nautica.[22] Thus, Nautica and its stockholders knowingly held respondent out to the public as an officer and a stockholder of the corporation.

Section 23 of Batas Pambansa (BP) Blg. 68 or The Corporation Code of the Philippines requires that every director must own at least one share of the capital stock of the corporation of which he is a director. Before one may be elected president of the corporation, he must be a director.[23] Since Yumul was elected as Nautica's Director and as President thereof, it follows that he must have owned at least one share of the corporation's capital stock.

Thus, from the point of view of the corporation, Yumul was the owner of one share of stock. As such, the SEC correctly ruled that he has the right to inspect the books and records of Nautica,[24] pursuant to Section 74 of BP Blg. 68 which states that the records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

As to whether or not Yumul is the beneficial owner of the 14,999 shares of stocks of Nautica, petitioners allege that Yumul was given the option to purchase shares of stocks in Nautica under the Option to Purchase dated December 19, 1994. However, he failed to exercise the option, thus there was no cause or consideration for the Deed of Trust and Assignment, which makes it void for being simulated or fictitious.[25]

Anent this issue, the SEC did not make a categorical finding on whether Yumul exercised his option and also on the validity of the Deed of Trust and Assignment. Instead, it held that:

... Although unsubstantiated, the apparent objective of the respondents' allegation was to refute petitioners' claim over the shares covered by the Deed of Trust and Assignment. This must therefore be deemed as nothing but a ploy to deprive petitioner of his right over the shares in question, which to us should not be countenanced.[26]

Neither did the Court of Appeals rule on the issue as it only held that:

Petitioners also contend that the Deed is a simulated contract.

Simulation is "the declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for the purposes of deception, the appearances of a judicial act which does not exist or is different with that which was really executed." The characteristic of simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties.

The requisites for simulation are: (a) an outward declaration of will different from the will of the parties; (b) the false appearance must have been intended by mutual agreement; and (c) the purpose is to deceive third persons. These requisites have not been proven in this case.[27]

Thus, other than defining and enumerating the requisites of a simulated contract or deed, the Court of Appeals did not make a determination whether the SEC has the jurisdiction to resolve the issue and whether the questioned deed was fictitious or simulated.

In *Intestate Estate of Alexander T. Ty v. Court of Appeals*, [28] we held that:

" The question raised in the complaints is whether or not there was indeed a sale in the absence of cause or consideration. The proper forum for such a dispute is a regular trial court. The Court agrees with the ruling of the Court of Appeals that no special corporate skill is necessary in resolving the issue of the validity of the transfer of shares from one stockholder to another of the same corporation. Both actions, although involving different property, sought to declare the nullity of the transfers of said property to the decedent on the ground that they were not supported by any cause or consideration, and thus, are considered void ab initio for being absolutely simulated or fictitious. The determination whether a contract is simulated or not is an issue that could be resolved by applying pertinent provisions of the Civil Code, particularly those relative to obligations and contracts. Disputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction. No special skill is necessary that would require the technical expertise of the SEC. (Emphasis supplied)

Thus, when the controversy involves matters purely civil in character, it is beyond the ambit of the limited jurisdiction of the SEC. As held in *Viray v. Court of Appeals*, [29] the better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties, but also the nature of the question that is the subject of their controversy. This, however, is now moot and academic due to the passage of Republic Act No. 8799 or The Securities Regulation Code which took effect on August 8, 2000. The Act transferred from the SEC to the regional trial court jurisdiction over cases involving intra-corporate disputes. Thus, whether or not the issue is intra-corporate, it is now the regional trial court and no longer the SEC that takes cognizance of the controversy.

Considering that the issue of the validity of the Deed of Trust and Assignment is civil in nature, thus, under the competence of the regular courts, and the failure of the SEC and the Court of Appeals to make a determinative finding as to its validity, we are constrained to refrain from ruling on whether or not Yumul can compel the corporate secretary to register said deed. It is only after an appropriate case is filed and decision rendered thereon by the proper forum can the issue be resolved.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The September 26, 2001 Decision of the Court of Appeals in CA-G.R. SP No. 61919, is **AFFIRMED** insofar as it declares respondent Roberto C. Yumul as a subscriber and stockholder of one share of stock of Nautica Canning Corporation. The Decision is **REVERSED** and **SET ASIDE** insofar as it affirms the validity of the Deed of Trust and Assignment and orders its registration in the Stock and Transfer Book of Nautica Canning Corporation.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 9-29. Penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Wenceslao I. Agnir, Jr. and Mariano C. Del Castillo.

[2] Id. at 30-31.

[3] CA Rollo, pp. 80-81.

[4] Id. at 249.

[5] Id. at 272-275.

[6] Id. at 127-128.

[7] Id. at 239.

[8] Id. at 126.

[9] Id. at 129.

[10] Id. at 59-73.

[11] Id. at 53-58.

[12] Id. at 57.

[13] Mercado v. Court of Appeals, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 469.

[14] Villaneuva, Philippine Corporate Law, 1998, pp. 166-167.

[15] Ponce v. Alsons Cement Corporation, 442 Phil. 98, 109-110 (2002).

[16] CA Rollo, p. 56.

[17] Supra.

[18] Lanuza v. Court of Appeals, G.R. No. 131394, March 28, 2005.

[19] Rollo, p. 25.

[20] Quiambao v. Court of Appeals, G.R. No. 128305, March 28, 2005.

[21] CA Rollo, p. 254.

[22] Rollo, p. 15.

[23] Section 25, BP Blg. 68.

[24] CA Rollo, p. 56.

[25] Id. at 138.

[26] Id. at 57.

[27] Rollo, p. 27.

[28] G.R. Nos. 112872 & 114672, April 19, 2001, 356 SCRA 661, 667-668.

[29] G.R. No. 92481, November 9, 1990, 191 SCRA 308, 323.

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