

FRANCISCO R. NUNGA, JR. AND VICTOR D. NUNGA, PETITIONERS, VS. FRANCISCO N. NUNGA III, RESPONDENT.*G.R. No. 178306. December 18, 2008*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-178306/>**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated 31 January 2007 and Resolution[2] dated 4 June 2007 of the Court of Appeals in CA-G.R. CV No. 78424. The appellate court, in its assailed decision, reversed the Decision[3] dated 25 October 2002 of the Regional Trial Court (RTC) of the City of San Fernando, Pampanga, Branch 42, in Commercial Case No. 018, which ordered the registration of the transfer of ownership of the disputed shares of stock in the Rural Bank of Apalit, Inc. (RBA) in favor of petitioners; and in its resolution, denied the Motion for Reconsideration of the aforementioned decision.

Presented hereunder are the factual antecedents of the case.

On 30 January 1996, the RBA conducted its Annual Stockholders' Meeting at its principal office in San Vicente, Apalit, Pampanga. Attending the said meeting were stockholders representing 28,150 out of the 35,956 total outstanding shares of stock of RBA.[4] Petitioner Francisco R. Nunga, Jr. (Francisco Jr.), his son petitioner Victor D. Nunga (Victor), and his nephew respondent Francisco N. Nunga III (Francisco III) were among the stockholders of RBA. However, petitioner Francisco Jr. was not present at the meeting, as he was then in the United States of America where he is a naturalized citizen.

Quorum having been established at the meeting, the stockholders proceeded with the election of the RBA Board of Directors to serve for the fiscal year 1996. Francisco III was voted the Chairman of the Board; with Ma. Elena Rueda, Ma. Rosario Elena Nacario, Cecilia Viray and Dwight Nunga, the Members. In the same meeting, stockholder Jesus Gonzalez (Gonzalez) made known his intention to sell his shareholdings.

Victor, thereafter, informed his father, Francisco Jr., of Gonzalez's intention to sell his shares. Francisco Jr. then instructed Victor to inquire from Gonzalez the terms of the sale. After a series of negotiations, Gonzalez ultimately agreed to sell his shares of stock to Francisco Jr.

On 19 February 1996, Gonzalez executed a Contract to Sell[5] in favor of Francisco Jr., which pertinently provided:

CONTRACT TO SELL

KNOW ALL MEN BY THESE PRESENTS:

This CONTRACT TO SELL, executed this 19th day of February, 1996, at Quezon City, by:

JESUS J. GONZALE[Z], of legal age, Filipino citizen, married to Cristina D. Gonzale[z], residing at No. 10 2nd Ave., Crame, Quezon City, hereinafter referred to as the VENDOR;

in favor of
FRANCISCO D. (sic) NUNGA, JR., of legal age, single, residing at Poblacion, Masantol, Pampanga[,] hereinafter referred to as the "PURCHASER";

WITNESSETH:

That the VENDOR is the absolute registered owner of several shares of stocks of the RURAL BANK OF APALIT, INC. located at Apalit, Pampanga, more particularly described as follows:

Stock Cert. No.

No. of Shares
Represented

Date of Issue

Journal Folio No.

5

250

May, 1978

1

36

122

Jan., 1991

1

105

264

Feb., 1991

5

152

487

Nov., 1993

7

166

8

Feb, 1994

7

181

525

July, 1994

8

213

336

That the VENDOR has offered to sell the abovestated (sic) shares of stocks and the PURCHASER has agreed to purchase the same for a total consideration of P200,000;

That it is hereby agreed that out of the total consideration or contract price, the purchaser will pay the amount of FIFTY THOUSAND PESOS (P50,000.00), receipt of which is herein acknowledged by the purchaser, at the date and place below stated and the remaining balance of P150,000 will be paid in full on February, (sic) 28, 1996;

That it is further agreed that the VENDOR will execute an authorization in favor of the herein purchaser or his representative, Victor D. Nunga[,] to retrieve all the corresponding Stocks (sic) Certificates as above indicated from the Apalit Rural Bank, Inc.

WHEREFORE, for and in consideration of the total amount of P200,000 (sic) receipt in part of which is herein acknowledged in the amount of P50,000.00, the vendor hereby agrees to sell, cede and transfer all the above stated shares of stocks to the PURCHASER, his heirs[,] successors, and assigns, absolutely free from any encumbrance and lien whatsoever.

IN WITNESS WHEREOF, I have hereunto set my signature this 19th day of FEBRUARY, (sic) 1996, at Quezon City, Philippines.

(signed)

JESUS J. GONZALES

Vendor

On even date, Victor gave the initial payment of P50,000.00 to Gonzalez, who duly acknowledged the same.[6] In exchange, Gonzalez handed Victor RBA Stock Certificates No. 105, No. 152 and No. 166. As to the four other certificates that were in the possession of the RBA, Gonzalez issued a letter[7] addressed to Isabel Firme (Firme), the RBA Corporate Secretary, which instructed the latter to turn over to Victor the remaining stock certificates in Gonzalez's name. Upon being presented with Gonzalez's letter, Firme gave Victor Stock Certificate No. 181, but alleged that Stock Certificates No. 5 and No. 36 could no longer be located in the files of RBA. Firme advised Victor to merely reconstitute the missing stock certificates.[8] A reading of the said Contract to Sell would reveal, however, that the same was only notarized on 28February 1996.

Before Francisco Jr. and Victor could pay the balance of the contract price for Gonzalez's RBA shares of stock, Gonzalez entered into another contract involving the very same shares. It would appear that on 27 February 1996, Gonzalez executed a Deed of Assignment[9] of his RBA shares of stock in favor of Francisco III, the relevant terms of which recite:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

For value (sic) consideration received, the undersigned ASSIGNOR JESUS GONZALE[Z], of legal age, Filipino and resident of #10 2ND AVENUE, CUBAO, QUEZON CITY, METRO MANILA hereby sells, assigns and transfers unto FRANCISCO N. NUNGA III (AS ASSIGNEE), Filipino, of legal age and with postal address at 1122 Alhambra St., Ermita 1000 Metro Manila, his assigns and successors, all their rights,

titles and interests to the following shares of stocks owned by the ASSIGNOR in Apalit Rural Bank, Inc., with par value of one hundred pesos only (P100.00) per share, free from all liens and encumbrances.

Date

SC. No.

No. of Shares

Amount

May 24, 1969

4 (sic)

250

P 25,000.00

January 02, 1975

36

122

12,200.00

February 19, 1991

105

264

26,400.00

November 10, 1993

152

487

48,700.00

February 22, 1994

166

8

800.00

July 25, 1994

181

525

52,500.00

February 2, 1996

213

336

33,600.00

IN WITNESS WHEREOF, the ASSIGNOR have (sic) cause (sic) these presents to be signed at Quezon City, this 27 day of February, 1996.

(signed)

JESUS J. GONZALE[Z]

Vendor

At the same time the afore-quoted Deed was executed, Francisco III paid in full the agreed purchase price of P300,000.00 using a BPI (Bank of the Philippine Islands) Family Bank Check No. 0347505 issued in favor of Gonzalez. An acknowledgment receipt signed by Gonzalez and witnessed by his wife Cristina D. Gonzalez evidenced the payment.[10] Since the stock certificates covering the shares were already in Victor's possession, Gonzalez immediately wrote Victor a letter,[11] demanding that Victor hand over the said stock certificates to Francisco III, the supposed new owner of the shares.

The next day, on 28 February 1996, Francisco Jr. arrived from the United States of America. He and Victor then promptly proceeded to the residence of Gonzalez in order to pay the balance of P150,000.00 of the purchase price stated in their Contract to Sell with Gonzalez. Gonzalez, however, informed them that he already sold his shares of stock to Francisco III.[12] After discussing the matter, Gonzalez was somehow convinced to accept the balance of the purchase price and sign his name at the dorsal portion of the stock certificates to endorse the same to Francisco Jr. Gonzalez also executed a Deed of Absolute Sale[13] in favor of Francisco Jr., which states:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF ABSOLUTE SALE, executed this 28th day of February, 1996, at SAN JUAN, M.M. by:

JESUS J. GONZALE[Z], of legal age, Filipino citizen, married to Cristina D. Gonzale[z], residing at No. 10 2nd Ave., Crame, Quezon City, hereinafter referred to as the VENDOR;

in favor of

FRANCISCO R. NUNGA, JR., of legal age, married, residing at Poblacion, Masantol, Pampanga[,], hereinafter referred to as the "PURCHASER"[;]

WITNESSETH:

That the VENDOR is the absolute registered owner of several shares of stocks of the RURAL BANK OF APALIT, INC. located at Apalit, Pampanga, more particularly described as follows:

Stock Cert. No.

No. of Shares

Represented

Date of Issue

Journal Folio

No.

5

250

May, 1978

1

36

122

Jan., 1991

1

105

264

Feb., 1991

5

152

487

Nov., 1993

7

166

8

Feb., 1994

7

181

525

July, 1994

8

213

336

That Stock Certificate Nos. 5 and 36 respectively representing 250 and 122 shares of the Rural Bank of Apalit[,] Inc. were lost and is (sic) currently in the process of reconstitution;

That the VENDOR has offered to sell the abovestated (sic) shares of stocks and the PURCHASER has agreed to purchase the same.

WHEREFORE, for and in consideration of the total amount of TWO HUNDRED THOUSAND PESOS (P 200,000.00), receipt of which in full is herein acknowledged, the VENDOR hereby sells, cedes and transfers all the above stated shares of stocks to the PURCHASER, his heirs, successors, and assigns, absolutely free from any encumbrance and lien whatsoever.

IN WITNESS WHEREOF, I have hereunto set my signature this 28 day of FEB (sic), 1996, at SAN JUAN, MM, Philippines.

(signed)

JESUS J. GONZALE[Z]

Vendor

Incidentally, on that same day, Francisco III delivered to Firme the Deed of Assignment which Gonzalez executed in his favor, and a copy of Gonzalez's letter to Victor dated 27 February 1996 demanding the latter to surrender the stock certificates in his possession to Francisco III. Accordingly, on 1 March 1996, Firme wrote Victor a letter[14] requesting that the latter immediately comply with the enclosed 27 February 1996 letter of Gonzalez.

Victor refused to comply with Firme's request and instead demanded that the sale of shares of stock by Gonzalez in favor of Francisco Jr. on 28 February 1996 be entered into the Corporate Book of Transfer of RBA. Firme, in turn, rejected Victor's demand, alleging that Francisco III already bought Gonzalez's shares.[15]

Consequently, on 14 March 1996, Victor filed a Petition[16] with the Securities and Exchange Commission (SEC) against Francisco III and Firme, which was docketed as SEC Case No. 03-96-5288. Victor prayed that the SEC declare null and void the Stockholders' Meeting held on 30 January 1996 for lack of the required majority quorum; as well as the votes cast for the shares of the deceased stockholders, namely, Teodorico R. Nunga, Carmencita N. Nunga and Jesus Enrico N. Nunga. Victor additionally requested that the transfer of Gonzalez's RBA shareholdings to Francisco Jr. be annotated on the RBA Corporate Transfer Book and new stock certificates be issued in favor of Francisco Jr. Victor finally pleaded that Francisco III and Firme be ordered to jointly pay him P50,000.00 as attorney's fees, damages and litigation expenses.

On the same date, Francisco III likewise filed a Complaint[17] against Gonzalez, Francisco Jr., and Victor before the SEC, which was docketed as SEC Case No. 03-96-5292. Francisco III sought the issuance of a Temporary Restraining Order (TRO) against Francisco Jr. and Victor, who were allegedly conspiring to oust him and the other members of the RBA Board of Directors. Francisco III also prayed, inter alia, for judgment ordering (a) Victor to surrender Gonzalez's stock certificates in order that the same may be transferred to Francisco III's name; and (b) Francisco Jr. and Victor to desist from attempting to register the purported sale by Gonzales of his RBA shares of stock to Francisco Jr., who had already become a naturalized American citizen and was, thus, disqualified from owning shares in RBA.

Francisco III and Firme filed their joint Answer[18] in SEC Case No. 03-96-5288, while Francisco Jr. and Victor filed their Answer[19] in SEC Case No. 03-96-5292. Gonzalez, however, was considered in default in both SEC cases for failure to file his answers despite notice.

Eventually, Francisco Jr.[20] and Victor filed a Motion for Consolidation[21] of the two cases pending before the SEC, alleging that they involved common questions of fact and law, which required the presentation of similar evidence. Said Motion was granted in an Order[22] dated 30 September 1996. Thereafter, SEC Cases No. 03-96-5288 and No. 03-96-5292 were jointly heard.

After the parties submitted their respective Offers of Evidence, but before the SEC could rule on the same, the cases were eventually turned over to the RTC pursuant to Administrative Circular AM No. 00-11-03[23] of the Supreme Court dated 21 November 2000.[24]

In the RTC, SEC Cases No. 03-96-5288 and No. 03-96-5292 were docketed as Commercial Cases No. 001 and No. 018, respectively.

Francisco Jr. and Victor subsequently filed a Motion to Resolve their Formal Offer of Exhibits, which the SEC

was not able to act upon. In an Order[25] dated 30 April 2002, the RTC admitted the formal offers of evidence in both cases.

On 25 October 2002,[26] the RTC promulgated its Decision. With respect to Commercial Case No. 001, Victor's Petition, the RTC ruled:

The Court, after a careful study on the evidences on record finds that [herein petitioner Victor] failed to substantiate the allegation in the petition. [Victor] failed to controvert the documentary evidences presented by [herein respondent Francisco III] to wit: Minutes of the Stockholders Meeting, showing the number of shares present in person or in proxy[;] written Proxy in favor of Dwight N. Nunga in (sic) behalf of deceased Teodorico R. Nunga by virtue of the Extrajudicial Settlement of estate in (sic) behalf of Carmencita Noel Nunga proxy executed by Ma. Del Carmen N. Leveriza in her capacity as the Judicial Administratrix duly appointed by the RTC Branch 60, Makati[,] Metro Manila in Special Proceedings No. M-1461[27] ; Affidavit of respondent Isabel C. Firme stating thereat the fact that the certificate of stock delivered for registration in the Corporate Transfer Book were mere xerox copies thus, the refusal. Thus further, proved [Victor's] lack of cause of action against [Francisco III] and as a result of which damages on the part of [Francisco III] and Isabel C. Firme who were constrained to hire the services of their counsel to protect their right (sic). (Emphasis ours.)

As regards Commercial Case No. 018,[28] Francisco III's Complaint, the RTC decreed:

The Court[,] after a careful study on the aforementioned evidences (sic) on record[,] finds and holds that [herein petitioner Francisco Jr.] has a better right over the subject shares considering that the Contract to Sell was executed prior to the Deed of Assignment presented by the [herein respondent Francisco III]. The Court gleaned also from the evidences (sic) that the Deed of Assignment was executed in bad faith as [Francisco III] is aware of the transaction between [herein petitioner Victor] in (sic) behalf of his father and [Gonzalez], thus, the conclusion that the Deed of Assignment was executed with malice. The Contract to Sell may not be a public instrument[29] but being a consensual contract it is, therefore, valid there being a meeting of the mind (sic) between the parties. Further, there being no contention on (sic) the contrary, on the validity of the Deed of Absolute Sale interposed by [Gonzalez] coupled with the proof of full payment and the endorsement of the Stock Certificate at the back by the owner[,] which is the only operative act of valid transfer of shares of stock certificate provided for by law and jurisprudence, clearly convinced the Court that the latter honored the transaction between him and [Victor] in (sic) behalf of his father [Francisco Jr.] and[,] to bind third parties, the fact of transfer should be registered with the transfer book of the corporation.

x x x x

Further, with respect to the issue on the citizenship of [Francisco Jr.], not being qualified to own such share (sic), the Court is inclined to give credence on (sic) the contention of the latter[,] it being supported by R.A. 8179[,] known as "An Act to Further Liberalize Foreign Investment,["] to wit:

SEC. 9. Investment Rights of Former Natural-born Filipinos. - For purposes of this Act, former natural born citizens of the Philippines shall have the same investment rights of a Filipino citizen in Cooperatives under Republic Act No. 6938, Rural Banks under Republic Act No. 7353, Thrift Banks and Private Development Banks under Republic Act No. 7906, and Financing Companies under Republic Act No. 5980."

Furthermore, insofar as (sic) [Gonzalez], the same was (sic) considered as in default for failure to appear and participate despite notice. (Emphasis ours.)

In the end, the RTC disposed of the two cases in this wise:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in Commercial Case No. 001 ordering the dismissal of the Petition filed by [herein petitioner Victor] against [herein respondent Francisco III] and Isabel C. Firme.

Insofar as Commercial Case No. 018[,] judgment is hereby rendered in favor of the [herein petitioners Victor and Francisco Jr.] and against [Francisco III] ordering the following:

- 1) Ordering the Corporate Secretary of the Rural Bank of Apalit, Inc, (sic) to register the fact of the transfer of ownership in favor of [Francisco Jr.] and to cancel Stock certificate (sic) in the name of Jesus [Gonzalez] and to issue a new one (sic) in the name of [Francisco Jr.] upon presentation of Stock Certificate Nos. 105, 152, 166, 181, 213, 5 and 36 duly endorsed by Jesus [Gonzalez];
- 2) The [respondent Francisco III] to pay the [petitioners Victor and Francisco Jr.] the amount of P100,000.00 [for] moral damages[;]
- 3) The amount of P100,000.00 [for] exemplary damages[;]
- 4) The amount of P50,000.00 [for] attorneys (sic) fees and the cost of suit.[30]

Francisco III filed a Motion for Partial Reconsideration[31] of the afore-quoted Decision, but it was denied by the RTC in an Order[32] dated 31 January 2003. Thus, Francisco III filed with the RTC a Notice of Appeal.[33] His appeal before the Court of Appeals was docketed as CA-G.R. CV No. 78424.

Before the Court of Appeals, Francisco III argued that the RTC erred in: (1) ruling that Francisco Jr. had a better right over the disputed shares of stock, considering that the prior contract which he had entered into with Gonzalez was a mere contract to sell; (2) finding that the Deed of Assignment in Francisco III's favor was executed in bad faith, inasmuch as it was not supported by any of the evidence presented by all the parties; and (3) giving retroactive effect to Republic Act No. 8179,[34] which grants former natural born citizens (such as Francisco Jr.) equal investment rights in rural banks of the Philippines as Philippine citizens. In relation to his third assignment of error, Francisco III pointed out that Republic Act No. 8179 took effect only on 16 April 1996, after Francisco Jr. entered into the questionable contracts with Gonzalez; hence, the said statute cannot benefit Francisco Jr.

On 31 January 2007, the Court of Appeals rendered its assailed Decision favoring Francisco III. It held that Francisco Jr. cannot invoke the provisions of Republic Act No. 8179 based on the following ratiocination:

In the instant case, there is nothing in Republic Act No. 8179 [An Act to Further Liberalize Foreign Investment] which provides that it should retroact to the date of effectivity of Republic Act No. 7353 [The Rural Banks Act of 1992]. Neither is it necessarily implied from Republic Act No. 8179 that it or any of its provisions should be given a retroactive effect. On the contrary, there is an express provision in Republic Act No. 8179 that it "shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation in the Philippines." Being crystal clear on its prospective application, it must be given its literal meaning and applied without further interpretation (BPI Leasing Corporation vs. Court of Appeals, 416 SCRA 4, 13 [2003]). Republic Act No. 8179 was published on March 31, 1996 at the Manila Times and Malaya; hence, it took effect on April 15, 1996. x x x.

Republic Act No. 7353 specifically states that "the capital stock of any rural bank shall be fully owned and held directly or indirectly by citizens of the Philippines xxx." It bears stressing that the use of the word "shall" alone, applying the rule on statutory construction, already underscores the mandatory nature of the law, and hence; (sic) requires adherence thereto. xxx Therefore, it is Our considered view that the sale and the subsequent transfer on February 28, 1996 of the shares of stock of JESUS [Gonzalez] to FRANCISCO, JR., a naturalized American citizen, were made in patent violation of Republic Act No. 7353. Considering that Republic Act No. 7353 did not contain any provision authorizing the validity of the sale and transfer of the shares of stock to a foreigner, specifically to a former natural-born citizen of the Philippines, the same should be deemed null and void pursuant to Article 5 of the Civil Code of the Philippines, which reads:

"ART. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the

law itself authorizes their validity."

x x x The fact that Republic Act No. 8179 expressly granted to former natural-born citizens of the Philippines investment rights similar to those of citizens of the Philippines bolsters the view that Republic Act No. 7353 indeed prohibited foreign nationals from owning shares of stock in rural banks. Had it been necessarily implied from the provisions of Republic Act No. 7353 that foreign nationals could own shares of stock in rural banks, the legislature would not have wasted time and effort in inserting a new provision granting to former natural-born citizens of the Philippines equal investment rights in Republic Act No. 8179.

Furthermore, there is no merit in the assertion of FRANCISCO JR. and VICTOR that Republic Act No. 8179 should be given a retroactive effect in accordance with the following rule:

"The principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law; but if a right be declared for the first time by a new law it shall take effect from the time of such declaration, even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin." x x x.

Republic Act No. 8179 cannot be applied retroactively insofar as the instant case is concerned, as its application would prejudice the (sic) FRANCISCO III who had acquired vested right over the shares of stock prior to the effectivity of the said law. Such right was vested to him when the Deed of Assignment was executed by Jesus in his favor on February 27, 1996. Undoubtedly, FRANCISCO III had a better right over the shares of stock of JESUS inasmuch as the validity of the Deed of Assignment was not affected despite the prior execution of the Contract to Sell in favor of FRANCISCO JR. on February 19, 1996. As previously adverted to, the said Contract, as well as the Deed of Absolute Sale and the subsequent transfer of the shares of stock to FRANCISCO JR., was null and void for violating a mandatory provision of Republic Act No. 7353. x x x.[35]

The Court of Appeals, however, decided to award Francisco III only attorney's fees and cost of suit, but not moral and exemplary damages:

We hold that FRANCISCO III is not entitled to moral damages. FRANCISCO III made no mention in his Complaint and during the hearing that he sustained mental anguish, serious anxiety, wounded feelings and other emotional and mental sufferings by reason of the double sale. x x x.

Likewise, FRANCISCO III is not entitled to exemplary damages. x x x In the instant case, FRANCISCO III failed to sufficiently prove his entitlement to moral, temperate or compensatory damages. Hence, his claim for exemplary damages must similarly fail.

However, as to his claim for attorney's fees and cost of suit, We find it to be tenable as the records of the case clearly reveal that FRANCISCO III was compelled to litigate or to incur expenses to protect his interest because of the double sale. x x x. Under the circumstances obtaining in the instant case, We deem that the award of P20,000.00 as attorney's fees is reasonable.[36]

The fallo of the Court of Appeals Decision thus reads:

WHEREFORE, the foregoing premises considered, the Decision dated October 25, 2002 of Branch 42 of the Regional Trial Court of San Fernando, Pampanga with respect to Commercial Case No. 018 is hereby REVERSED and SET ASIDE. A new one is hereby rendered ORDERING the following:

- 1) Victor Nunga to surrender the stock certificates of Jesus Gonzalez to the Corporate Secretary of Rural Bank of Apalit, Inc.;
- 2) [T]he Corporate Secretary of Rural Bank of Apalit, Inc. to register the assignment of shares of stock in favor of Francisco Nunga III, to cancel the stock certificates of Jesus Gonzale[z], and to issue new ones in the name

of Francisco Nunga III; and,

3) Jesus Gonzale[z], Francisco Nunga, Jr., and Victor Nunga to pay, jointly and severally, the sum of P20,000.00 as attorney's fees, plus the cost of suit.[37]

Francisco Jr. and Victor, together with Gonzalez, filed a Motion for Reconsideration[38]of the foregoing Decision. Their Motion, however, was denied by the Court of Appeals in its assailed Resolution dated 4 June 2007.

Refusing to concede, Francisco Jr. and Victor filed the instant Petition,[39] which they anchor on the following assignment of errors:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THE SALE OF THE SHARES OF STOCK OF GONZALE[Z] TO FRANCISCO JR., NULL AND VOID AB INITIO ON THE BASIS OF THE ALLEGED DISQUALIFICATION OF FRANCISCO JR. UNDER REPUBLIC ACT NO. 7353?

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT FRANCISCO III HAS A VESTED RIGHT TO THE SHARES OF STOCK OF GONZALE[Z], WHICH WOULD BE IMPAIRED BY THE RETROACTIVE APPLICATION OF REPUBLIC ACT NO. 8179?

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED [IN] AWARDING DAMAGES TO FRANCISCO III AND WITHDRAWING THE AWARD OF NOMINAL DAMAGES TO PETITIONERS BY THE TRIAL COURT?

Essentially, the fundamental issue that this Court is called upon to resolve is who among the parties to this case has a better right to the disputed RBA shares of stock.

Francisco Jr. and Victor contend that the consummated sale of the RBA shares of stock by Gonzalez to Francisco Jr. gives the latter a superior right over the same, since the transaction complied with all the elements of a valid sale. Contrary to the ruling of the Court of Appeals, Francisco Jr. and Victor claim that there was no provision in Republic Act No. 7353, prior to its amendment, which explicitly prohibited any transfer of shares to individuals who were not Philippine citizens, or which declared such a transfer void. Hence, there was an implied recognition by the legislature that to declare the nullity of such acts would be more disadvantageous and harmful to the purposes of the law. Moreover, Francisco Jr. and Victor contend that the passage of Republic Act No. 8179, An Act to Further Liberalize Foreign Investment, cured whatever legal infirmity there may have been in the purchase by Francisco Jr. of the RBA shares of stock from Gonzalez. As Republic Act No. 8179 expressly creates and declares for the first time a substantive right, then it may be given retroactive effect. The Deed of Assignment between Francisco III and Gonzalez did not confer upon Francisco III a vested interest that could be impaired by the retroactive application of Republic Act No. 8179. The Deed was not only executed later in time, but the check issued for its payment was also never encashed. There was, therefore, a total absence of consideration, making the said contract between Francisco III and Gonzalez inexistent.

The Court finds the Petition devoid of merit.

As the Court of Appeals declared, Francisco Jr. was disqualified from acquiring Gonzalez's shares of stock in RBA. The argument of Francisco Jr. and Victor that there was no specific provision in Republic Act No. 7353 which prohibited the transfer of rural bank shares to individuals who were not Philippine citizens or declared such transfer void, is both erroneous and unfounded.

Section 4 of Republic Act No. 7353 explicitly provides:

Section 4. x x x With exception of shareholdings of corporations organized primarily to hold equities in rural banks as provided for under Section 12-C of Republic Act 337, as amended, and of Filipino-controlled domestic banks, the capital stock of any rural bank shall be fully owned and held directly or indirectly by citizens of the Philippines or corporations, associations or cooperatives qualified under Philippine laws to own and hold such capital stock: x x x. (Emphasis ours.)

Otherwise stated, the afore-quoted provision categorically provides that only citizens of the Philippines can own and hold, directly or indirectly, the capital stock of a rural bank, subject only to the exception also clearly stated in the same provision. This was the very interpretation of Section 4 of Republic Act No. 7353 made by this Court in *Bulos, Jr. v. Yasuma*,^[40] on the basis of which the Court disqualified therein respondent Yasuma, a foreigner, from owning capital stock in the Rural Bank of Parañaque. In the instant case, it is undisputed that when Gonzalez executed the Contract to Sell and the Deed of Absolute Sale covering his RBA shares of stock in favor of Francisco Jr., the latter was already a naturalized citizen of the United States of America. Consequently, the acquisition by Francisco Jr. of the disputed RBA shares by virtue of the foregoing contracts is a violation of the clear and mandatory dictum of Republic Act No. 7353, which the Court cannot countenance.

Even the subsequent enactment of Republic Act No. 8179 cannot benefit Francisco Jr. It is true that under the Civil Code of the Philippines, laws shall have no retroactive effect, unless the contrary is provided.^[41] But there are settled exceptions to this general rule, such as when the statute is CURATIVE or REMEDIAL in nature, or when it CREATES NEW RIGHTS.^[42] Francisco Jr. and Victor assert that, as an exception to the cardinal rule of prospective application of laws, Republic Act No. 8179 may be retroactively applied, since it creates for the first time a substantive right in favor of natural-born citizens of the Philippines. Francisco Jr. and Victor, however, overlooked the vital exception to the exception. While it is true that a law creating new rights may be given retroactive effect, the same can only be made possible if the new right does not prejudice or impair any vested right.^[43]

The Court upholds the finding of the Court of Appeals that Republic Act No. 8179 cannot be applied retroactively to the present case, as to do so would prejudice the vested rights of Francisco III to the disputed RBA shares of stock. Francisco III, who is undeniably a citizen of the Philippines, and who is fully qualified to own shares of stock in a Philippine rural bank, had acquired vested rights to the disputed RBA shares of stock by virtue of the Deed of Assignment executed in his favor by Gonzalez.

It would not matter that Gonzalez executed the Contract to Sell in favor of Francisco Jr. prior to the Deed of Assignment in favor of Francisco III. As established in the previous discussion, the Contract to Sell between Gonzalez and Francisco Jr. was void and without force and effect for being contrary to law. It intended to effect a transfer, which was prohibited by Republic Act No. 7353. It is even irrelevant that the terms of said Contract to Sell had been fully complied with and performed by the parties thereto, and that a Deed of Absolute Sale was already executed by Gonzalez in favor of Francisco Jr. A void agreement will not be rendered operative by the parties' alleged performance (partial or full) of their respective prestations. A contract that violates the law is null and void ab initio and vests no rights and creates no obligations. It produces no legal effect at all.^[44]

With respect to the award of damages, the Court agrees in the findings of the Court of Appeals that Francisco III failed to establish his entitlement to moral damages in view of the absence of proof that he endured physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, or any similar injury.^[45] As regards the grant of exemplary damages, we likewise uphold the ruling of the appellate court that the same was not warranted under the circumstances, as FRANCISCO III was not able to prove that he was entitled to moral, temperate or compensatory damages. Exemplary damages are imposed by

way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[46] In contracts and quasi-contracts, exemplary damages may be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[47] It cannot, however, be considered as a matter of right; the court has to decide whether or not such damages should be adjudicated.[48] Before the court may consider an award for exemplary damages, the plaintiff must first show that he is entitled to moral, temperate or compensatory damages; but it is not necessary that he prove the monetary value thereof.[49]

As to the contention that the Court of Appeals erred in withdrawing the award of nominal damages to the petitioners by the RTC, the Court finds the same to be utterly misleading. The appellate court did not decree any such withdrawal, as the RTC had not awarded any nominal damages in favor of the petitioners in the first place.

However, as Francisco III was indeed compelled to litigate and incur expenses to protect his interests,[50] the Court sustains the award by the Court of Appeals of P20,000.00 as attorney's fees, plus costs of suit.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby DENIED. The assailed Decision dated 31 January 2007 and Resolution dated 4 June 2007 of the Court of Appeals in CA-G.R. CV No. 78424 are hereby AFFIRMED in toto. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal, concurring; rollo, pp. 8-26.

[2] Rollo, p. 29.

[3] Penned by Judge Pedro M. Sunga, Jr.; rollo, pp. 331-341.

[4] Rollo, pp. 116-118.

[5] Records, Vol. I, pp. 118-119.

[6] Rollo, p. 152.

[7] Id. at 108.

[8] With respect to Stock Certificate No. 213, the same was not mentioned in Gonzalez' letter, so Firme initially refused to give it to Victor. Said certificate was only delivered to the latter after the full payment of the agreed purchase price. (Rollo, p. 457)

[9] Rollo, p. 105.

[10] Id. at 215.

[11] Id. at 106.

[12] Id. at 458.

[13] Id. at 159-160.

[14] Id. at 109.

[15] Id. at 458.

[16] Id. at 88-93.

[17] Id. at 95-104.

[18] Id. at 119-126.

[19] Id. at 138-147.

[20] Victor alone filed the Petition in SEC Case No. 03-96-5288; however, Francisco Jr. joined him in subsequent pleadings, claiming to be also a petitioner in the said case.

[21] Records, Vol. 1, pp. 191-193.

[22] Id. at 204.

[23] RESOLUTION DESIGNATING CERTAIN BRANCHES OF REGIONAL TRIAL COURTS TO TRY AND DECIDE CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION EN BANC.

To implement the provision of Sec. 5.2 of Republic Act No. 8799 (The Securities Regulation Code), and in the interest of a speedy and efficient administration of justice and subject to the guidelines hereinafter set forth, the following branches of the Regional Trial Courts (RTC) are hereby designated to try and decide Securities and Exchange Commission (SEC) cases enumerated in Sec. 5 of P.D. No. 902-A (Reorganization of the Securities and Exchange Commission), arising within their respective territorial jurisdictions with respect to the National Capital Judicial Region and within the respective provinces in the First to the Twelfth Judicial Regions:

x x x x

THIRD JUDICIAL REGION

x x x x

Pampanga (San Fernando)

(26) Br. 42, Judge Pedro M. Sunga, Jr.

[24] Francisco III filed his Offer of Documentary Evidence (rollo, pp. 208-214) on 6 January 1998, while petitioners filed their Formal Offer of Exhibits (rollo, pp. 175-180) on 17 April 1999. Thereafter, on 15 January 2001, SEC Case No. 03-96-5292 was transferred to the RTC of Manila, Branch 46, pursuant to Administrative Circular No. 00-11-03 of the Supreme Court. The case was docketed as Civil Case No. 01-99651. SEC Case No. 03-96-5288, on the other hand, was transferred to the RTC of San Fernando, Pampanga, Branch 42 and was docketed as Civil Case No. 01-101345.

Before the RTC of Manila, Branch 46, Francisco Jr. and Victor filed an Omnibus Motion (Records, Vol. 1, pp. 229-230) on 26 September 2001, praying that SEC Case No. 03-96-5288 be jointly tried with SEC Case No. 03-96-5292. This was, however, denied in an Order (Records, Vol. 1, p. 232) dated 28 September 2001. On 5 November 2001, Victor filed a Motion for Reconsideration (Records, Vol. 1, pp. 233-236) thereof. In an Order dated 8 November 2001, the RTC of Manila, Branch 46 transferred Civil Case No. 01-99651 to the RTC of San Fernando, Pampanga, Branch 42.

[25] Records, Vol. II, p. 12.

[26] Id. at 38-39.

[27] This statement apparently refers to the written proxies executed in favor of Dwight Nunga by Teodorico R. Nunga, Carmencita N. Nunga and Ma. Rosario Elena N. Nacario. (Records, Vol. I., p. 5)

[28] Records, pp. 40-41.

[29] The Contract to Sell in favor of Francisco Jr. and Victor was notarized only on 28 February 1996 (Records, Vol. I, p. 118) or one day after the Deed of Assignment in favor of Francisco III was executed and notarized on 27 February 1996.

[30] Rollo, pp. 41-42.

[31] Id. at 259-268.

[32] Id. at 281.

[33] Id. at 282-283.

[34] An Act to Further Liberalize Foreign Investment.

[35] Rollo, pp. 20-23.

[36] Id. at 24-25.

[37] Id. at 25-26.

[38] Id. at 374-395.

[39] Id. at 34-60.

[40] G.R. No. 164159, 17 July 2007, 527 SCRA 727.

[41] Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

[42] *Frivaldo v. Commission on Elections*, 327 Phil. 521, 556 (1996).

[43] *Rattan Art & Decorations, Inc. v. Collector of Internal Revenue*, 121 Phil. 605, 611 (1965).

[44] See *Chavez v. Presidential Commission on Good Government*, 366 Phil. 863, 868-869 (1999).

[45] *Expertravel and Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147, 162.

[46] CIVIL CODE, Article 2229.

[47] CIVIL CODE, Article 2232.

[48] CIVIL CODE, Article 2233.

[49] Article 2234 of the Civil Code provides:

Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[50] Article 2208 of the Civil Code provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(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.

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