

BENJAMIN LIMSO, PETITIONER, VS. COMMISSIONER DE GUZMAN, JR., ET. AL., RESPONDENTS.

G.R. No. 51651. November 05, 1985

Ponente: PLANA, J.

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PLANA, J.:

Challenged in these four petitions are three orders dated July 19, 1978, September 17, 1979 and December 17, 1979, all issued by public respondents in SEC Case No. 1613 entitled "Potenciano Ilusorio, et al., Plaintiffs, versus Bank of America NT & SA, et al., Defendants".

FACTS. û

1. In March, 1974, the Bank of Asia (ASIA), the First Insular Bank of Cebu, Inc. (INSULAR) and the Bank of America (BA) executed a Consolidation Agreement under which they û

- a. Agreed to consolidate resources and organize the Insular Bank of Asia and America (IBAA);
- b. Divided the shares of stock of IBAA so that each group would own 30%, with the remaining 10% going to Dai-Ichi Kangyo Bank of Japan; and
- c. Further stipulated that:

"None of the parties to this Agreement (and in the case of ASIA and INSULAR, the Majority of their respective successors in interest as covered by their pooling agreements) shall sell their shares in the consolidated bank to any other party without first offering the shares proportionately to the other two or their nominees on the same terms. The shares offered to but not purchased by one party or its nominees shall in turn be offered to the other party or its nominees under the same terms; if the other party declines to purchase said shares, the selling party shall be entitled to sell said shares to any party as long as said shares are offered under the same terms.

"Any and all shares issued by the consolidated bank subsequent to creation of said bank shall be offered first to the parties hereto on a pro rata basis so as to maintain the percentages of ownership reflected in the section entitled 'RELATIVE CONTRIBUTIONS'.

"No other foreign or domestic bank may be invited to participate in the equity of the consolidated bank without approval of more than four-fifths (4/5) of the entire membership of the Board of Directors of the consolidated bank." (Emphasis supplied.)

The consolidation Agreement was signed for INSULAR by its Board Chairman, Eduardo J. Aboitiz; for ASIA, by its President, Edgardo T. Kalaw; and for BA, by its President, Alden W. Clausen.

2. After the incorporation of IBAA, INSULAR and ASIA ceased to exist as separate corporate entities; hence, Aboitiz and Kalaw ceased to have authority to speak as officers thereof.

3. In December, 1977, BA decided to offer to sell to the ASIA and INSULAR Groups all its IBAA shares at

P206.88 per share, later reduced to 189.17 per share. The offer was made thru Aboitiz and Kalaw, then IBAA Board Chairman and President, respectively, on the implicit assumption that they were authorized to act for the offerees, although they did not show any authorization therefor and no one asked for it. (Because of this assumption, the individual IBAA stockholders belonging to the ASIA and INSULAR Groups were not notified by BA of its sales offer, notwithstanding the provision in the Consolidation Agreement, incorporated into the IBAA Articles of Incorporation by reference, that for the purpose of the stipulated right of first refusal given to the parties to the Agreement, "parties" shall mean, in respect of ASIA and INSULAR, "the majority of their respective successors in interest as covered by their pooling agreements.")

Kalaw purportedly replied for both the ASIA Group and the INSULAR Group. In his letter to BA dated February 1, 1978, copy furnished the INSULAR Group thru Aboitiz, Kalaw said: "...neither of our groups (is) willing to increase our holdings in IBAA." Subsequently, i.e. March 14, 1978, upon BA's request, Aboitiz and Kalaw confirmed this in writing to BA: " ... we wish to confirm that neither of our two groups is willing to take up the shares of IBAA which you would like to dispose, and you are therefore free to negotiate with prospective buyers the sale of your shares without first offering the shares at each negotiation price to the existing stockholders." Eight days after, however, Aboitiz made this qualification:

"...should the shares be offered at the level of P140 to P150, we would request you to contact us, as at that price level we might like to exercise the option to buy the shares.

"We are not, therefore, relinquishing our option, but are merely doing so at the present levels of your offering price to give you more flexibility and ease in negotiation with other buyers." (Letter of Aboitiz to BA dated March 22, 1978, copy furnished Edgardo Kalaw.)

4. While Aboitiz and Kalaw in alleged representation of the INSULAR and ASIA Groups were not willing to take up the IBAA shares of BA as offered, they allegedly submitted their nominees to BA pursuant to the terms of the Consolidation Agreement. Kalaw allegedly nominated Daniel Go or the National Bank of Detroit as buyer for the BA interest that the ASIA Group would otherwise be entitled to buy, while Aboitiz nominated Gotianun who wanted to buy nothing less than the entire 30% BA holding of IBAA shares. (TSN of joint hearing in G.R. No. L-51651, G.R. No. L-51678, G.R. No. L-53493 and G.R. No. L-53543, July 12, 1984, pp. 59-67.)

5. On July 14, 1978, in alleged disregard of the right of the ASIA Group or its nominee, BA concluded the sale of all its IBAA shares to Andrew Gotianun for the total price of about P64 Million (P178 per share). Gotianun paid P20 million as down-payment and subsequently, after securing Central Bank approval of the sale, paid the balance of more than P44 million. Gotianun then tried to register the transfer in the IBAA corporate books; but the corporate secretary refused because some members of the ASIA Group assailed the sale as violative of the provisions of the Consolidation Agreement on (a) the right of first refusal and (b) the purchase of IBAA shares by a bank, among others.

6. On July 19, 1978, the ASIA Group filed SEC Case No. 1613 to annul the BA-Gotianun sale with a prayer for preliminary injunction to restrain its implementation pendente lite. On the same day, SEC issued ex parte a temporary restraining order (TRO) enjoining —

- a) Enforcement of the sale;
- b) Registration of the sale in IBAA corporate books;
- c) Reorganization of the Board of Directors of IBAA, its executive staff and other officers and employees; and
- d) Assignment or sale of any right acquired by Gotianun under the questioned sales agreement.

7. Hearings were commenced on the plea for preliminary injunction with the understanding that the evidence submitted was also to be deemed as evidence in the main case. (As of October, 1980, the plaintiffs had completed the presentation of its evidence. The defendants had not yet commenced presentation of its own. TSN of joint hearing, supra, July 12, 1984, p. 70.)

8. In December, 1979, motions to lift the SEC TRO of July 19, 1978 were filed. After the filing of opposition and reply, and hearings thereon, the motions were deemed submitted for resolution in February, 1980.

9. In March and April, 1980, without waiting for the resolution of the above motions, Gotianun (G.R. 53493) and BA (G.R. 53543) filed certiorari cases with the Supreme Court to annul the SEC TRO of July 19, 1978, invoking the following grounds:

a) The ASIA Group or any of its members is not entitled to injunctive relief because firstly, it had waived its right of first refusal; and secondly, the BA-Gotianun sale was not a sale to a bank and therefore its approval by more than 4/5 of the members of the IBAA board of directors was not necessary under the terms of the Consolidation Agreement.

b) SEC Associate Commissioner de Guzman had exhibited bias and prejudged the case in favor of the ASIA Group.

c) The refusal of Associate Commissioner de Guzman to lift the TRO after the lapse of 21 months from its issuance and despite numerous hearings and voluminous evidence presented was an evasion of positive duty and constituted a grave abuse of discretion.

10. On April 21, 1980, the Supreme Court issued a preliminary injunction in G.R. 53493 and G.R. 53543 enjoining SEC from giving continued force and effect to SEC TRO of July 19, 1978 and directing SEC to return to Gotianun all IBAA certificates of stock bought by him for the purpose of registration of the sale in IBAA corporate books, save that no subsequent sale or assignment of his rights by virtue thereof could be made without the prior approval of the Court. The sale has since been registered in the corporate books and the Gotianun group, with others, has assumed control of IBAA.

11. Before the above certiorari cases assailing the SEC TRO of July 19, 1978 were filed, some disputes had arisen.

It should be recalled that one of the acts enjoined by the said SEC TRO was "the reorganization of the board of directors of IBAA, its executive staff and other officers and employees."

In July, 1979, IBAA effected a reorganization of its board of directors and executive staff, including the executive committee and loan committees. Alleging that this reorganization violated the TRO of July 19, 1978, and that it was a BA-Aboitiz Group conspiracy to promote the interests of Gotianun and ease out the ASIA Group from active participation in IBAA management, the latter filed a motion in SEC Case No. 1613 to cite BA and the Aboitiz Group for contempt and to annul the reorganization. Pending hearing on the motion, SEC issued an order on September 17, 1979 enjoining the implementation of the IBAA reorganization and prohibiting the movement of IBAA officers without SEC approval. BA and the Aboitiz Group forthwith filed motions for reconsideration of said order. But there was delay in acting thereon.

12. The above motions for reconsideration were pending before SEC when Limso, an IBAA Director, filed a certiorari case with the Supreme Court (G.R. L-51651) assailing the validity of the SEC Order of September 17, 1979 on the ground that it constitutes an unlawful interference with the powers of the IBAA board in the management of corporate affairs. A similar case (G.R. L-51678) was also filed by Aboitiz.

13. On October 18, 1979, the Supreme Court issued a TRO restraining SEC from enforcing its order of September

17, 1979 or any other order limiting IBAA exercise of its lawful corporate powers.

14. On December 17, 1979, SEC issued an ex parte order abolishing the IBAA board of directors and creating a management committee with the same composition as the abolished board except that the four directors representing BA were replaced. In issuing the order, SEC invoked Sec. 6(d) of PD 902-A, as amended by PD 1653, which empowered SEC "to create and appoint a management committee, board, or body to undertake the management of corporations, partnerships or other associations in appropriate cases wherein there is imminent danger of dissipation, loss or wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, any of the party-litigants or the general public."

The above SEC order was issued upon the petition of the ASIA Group on the ground that BA, having wholly sold its IBAA stocks, had no more interest in IBAA and would even be benefited if IBAA suffered business paralization or losses.

15. Gotianun then filed petitions in intervention in G.R. No. L-51651 and G.R. No. L-51678 (which were admitted by the Court) assailing the SEC order of December 17, 1979 on the following grounds:

- a) SEC has no power to abolish a corporate board of directors. PD 1653 which authorizes the SEC to appoint management committees for corporations, does not apply to banks which were governed by the Central Bank Act.
- b) Even if it is assumed that SEC had the power to appoint a management board or committee for a bank, its order of December 17, 1979 was without due process of law because it was issued without notice and hearing, besides being confiscatory.
- c) The SEC order abolishing the IBAA board and creating a management committee violates the Supreme Court TRO of October 18, 1979 prohibiting the SEC from limiting IBAA exercise of its lawful corporate powers.
- d) Corporate directors may not be removed except by quo warranto.
- e) Abolition of IBAA board denies the directors thereof due process of law.

An Urgent Petition was also filed by the petitioner in G.R. No. L-51678 praying for the issuance ex-parte of a restraining order against the enforcement of the assailed SEC order of December 17, 1979.

16. On December 19, 1979, the Supreme Court issued a TRO enjoining the implementation of SEC order of December 17, 1979.

17. On October 1, 1985, upon motion of the parties who had made an amicable settlement, the Court resolved to dismiss G.R. Nos. 51651, 51678 and 53493 for having become moot and academic. With this dismissal, the instant resolution pertains only to the disposition of G.R. No. 53543.

ASSESSMENT. —

1. SEC TRO of July 19, 1978. — On the basis of the foregoing, we are not prepared to hold that the SEC TRO of July 19, 1978 was issued by respondent de Guzman with grave abuse of discretion.

- (a) It was issued pursuant to a verified complaint with allegations which, if established, would probably warrant the annulment of the BA-Gotianun sale of IBAA shares of stock.
- (b) Gotianun allegedly was aware of the stipulation in the Consolidation Agreement that the majority of the successors in interest of the former stockholders of the defunct ASIA (who have become IBAA stockholders)

or their nominees had the right of first refusal. If really such was the case, Gotianun — in the absence of a waiver of said right — could not be deemed a buyer in good faith. Conversely, if Gotianun was not aware of ASIA Group's right of first refusal when he bought the BA shares in 1978, he could claim to be a buyer in good faith regardless of whether there was a waiver or not.

(c) There was a specific allegation under oath that the ASIA Group did not waive its right of first refusal.

(d) One of the reliefs prayed for in SEC Case No. 1613 was the issuance of an injunction or restraining order against the assignment or sale to third parties of whatever rights Gotianun might have acquired by virtue of the BA-Gotianun sale. It was evident that the immediate grant of this particular relief, among others, was essential to preserve the rights of the parties and forestall undue legal entanglements. Indeed, this was conditionally recognized by this Court when on April 21, 1980 it issued a preliminary injunction enjoining respondent de Guzman from giving continued force and effect to the said TRO of July 19, 1978 "save that no subsequent sale or assignment of his (Gotianun) rights by virtue thereof may be made without prior approval of this Court."

(e) In short, when respondent de Guzman issued the disputed TRO of July 19, 1978, there was a prima facie showing that the plaintiffs in SEC Case No. 1613 were entitled to an injunctive relief, such that the issuance ex-parte of a temporary restraining order under the circumstances then prevailing cannot, as we now look back with the benefit of hind sight be condemned as tainted with grave abuse of discretion.

The setting, however, was altogether different 17 months later, i.e., in December, 1979, when motions to lift the SEC TRO of July 19, 1978 were filed in SEC Case No. 1613. The issues raised in the motions were dependent upon factual questions on which extended hearings had been held and evidence taken in the SEC, aside from the numerous memoranda submitted by the parties. It may be presumed that by and large, the SEC was then already in a position to act on the motions, but it tarried and allowed protracted quibbling which effectively extended the life of the TRO that had long been issued without the benefit of hearing and without bond. Its inaction was an evasion of its positive duty to resolve the motions with all deliberate speed, amounting to a grave abuse of discretion under the circumstances and violative of the rule which frowns upon prolonged or indefinite "temporary res-training orders" issued ex-parte. (See *Board of Transportation vs. Castro*, 125 SCRA 410.) Incidentally, it was the same policy considerations which impelled the subsequent issuance on April 16, 1982 of Presidential Decree No. 224 fixing twenty days as the maximum duration of an ex-parte restraining order and providing for its automatic termination.

2. With the dismissal of G.R. Nos. 51651 and 51678, the validity of the SEC TRO of September 17, 1979 as well as its Order of December 17, 1979 has ceased to be in issue.

RESOLUTION. —

Upon the foregoing considerations, the Court Resolved to ANNUL and SET ASIDE the SEC TRO of July 19, 1978 effective as of April 21, 1980, when this Court enjoined the continued enforcement of the said TRO.

SO ORDERED.

Concepcion, Jr., De La Fuente, and Patajo, JJ., concur.

Teehankee, Escolin, Gutierrez, Jr., and Alampay, JJ., in the result.

Makasiar, C.J., Aquino, Abad Santos, Melencio-Herrera, and Cuevas, JJ., no part.

Relova, J., on leave.

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