

**ROBERT YOUNG, FOR HIMSELF AND AS LEGAL REPRESENTATIVE,  
OF THE DECEASED MARTIN YOUNG, AND RICHARD YOUNG,  
PETITIONERS, VS. THE HONORABLE JULIO A. SULIT, JR., ASSOCIATE  
COMMISSIONER...**

*G.R. No. 57839. June 27, 1988*

Ponente: YAP, C.J.

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**YAP, C.J.:**

In this petition for certiorari, prohibition, and mandamus with prayer for a preliminary injunctive writ, petitioners seek to annul and set aside the order of respondent Commissioner Julio A. Sulit, Jr. dated August 20, 1981 which enjoined the Sheriff of Manila from further enforcing the writ of execution in SEC Case No. 1763 and to withdraw garnishment of the funds of the Gimenez Stock Brokerage, Inc.

The facts which gave rise to this case are as follows: Petitioners Martin Young, Robert Young and Richard Young filed three separate complaints against private respondent Gimenez Stock Brokerage & Co., Inc., with the Securities and Exchange Commission, charging the respondent with illegal disposal of the plaintiffs' stocks and other illegal acts allegedly committed as broker of petitioners. These complaints were docketed as SEC Case No. 1763.

After due proceedings, the Commission (Hearing Officer Ben Cristobal) rendered a decision, the dispositive portion of which reads as follows:

"Accordingly, the respondent is ordered, as it is hereby ordered, to pay a fine of P3,000.00 with the warning that a repetition of the violations of the aforementioned SEC Rules and regulations and/or the malpractices complained of would invite a higher penalty, and pay complainants their respective claims, as follows:

**"TO MARTIN YOUNG**

(a) The sum of P269,918.40 representing the total sales proceeds of the following securities:

Baguio Gold Anglo-Phil. Oil

American Asiatic Hixbar

Blue Ridge Philippine Overseas

Pacifica Poge (Triton)

Pioneer Trans-Asia.

which securities were sold from January 5 to March, 1976, plus interest thereon at the legal rate counted from the date of extra-judicial demand up to and until the account is fully paid;

(b) The sum of P501,598.22 representing the difference between the price on the date of the sale as against the

price on later dates as shown by Exhibit "F-I";

(c) The sum of P421,640.94 representing illegal charges debited from his account;

(d) The sum of P26,860.00 representing the sales price of 800,000 shares of Sulu Sea Stock sold sometime in April 1976;

(e) The sum of P22,000.00 representing the difference in the price of 1,200,000 Sulu Sea Stocks which were alleged to have been lost at the time of demand with the running price of P0.034 per share and the price of the stock upon actual delivery which went down to only P0.012 per share;

(f) moral damages in the sum of P200,000.00;

(g) exemplary damages in the sum of P100,000.00; and

(h) attorney's fees of P100,000.00;

#### **TO ROBERT YOUNG**

(a) The sum of P44,209.14 representing the sales proceeds of Baguio Gold securities sold without complainant's consent;

(b) P114,333.12 representing the net proceeds had complainant sold the same when the price was higher;

(c) P34,532.12 representing illegal charge debited against complainant's account;

(d) P32,742.90 representing sales proceeds of various securities of herein complainant which were sold from January 13 to March 13, 1976.

(d) moral damages in the sum of P100,000.00;

(e) exemplary damages in the sum of P50,000.00; and

(f) attorney's fees in the sum of P50,000.00;

#### **TO RICHARD YOUNG**

(a) The sum of P28,172.14 representing the sales proceeds of Baguio Gold Securities sold without complainant's consent;

(b) P72,859.98 representing net proceeds had complainant been able to sell the same when the price was higher;

(c) P43,322.30 representing illegal charges debited from complainant's account with the respondent.

(d) P103,690.00 representing sales proceeds from the sale of numerous securities belonging to the complainant;

(e) moral damages in the sum of P100,000.00

(f) exemplary damages in the sum of P50,000.00 and

(g) attorney's fees in the sum of P50,000.00 and.

Respondent's counterclaim is hereby DISMISSED WITHOUT COSTS.

SO ORDERED."

Copy of the decision in SEC Case No. 1763 was served on counsel of Gimenez Stock Brokerage & Co., Inc. on

May 20, 1981.

Subsequently, said counsel filed a motion for reconsideration of the decision. The date as to when said motion for reconsideration was filed is disputed. Petitioners Robert Young, et al., claim that the motion was filed only on June 25, 1981, and therefore, out of time. Upon the other hand, Gimenez Stock Brokerage contends that the motion was timely filed on June 17, 1981.

On the premise that the decision was already final and executory, the petitioners filed a motion for execution with the Securities and Exchange Commission. Hearing Officer Ben Cristobal of the Commission issued the writ of execution against private respondent.

On August 20, 1981, private respondent, through anew counsel, filed with the Commission a Notice of Appeal and an Appeal to the Commission En Banc and a Petition to Quash Writ of Execution and Preliminary Injunction with Prayer for Temporary Restraining Order.

Acting on the petition to quash writ of execution, respondent Associate Commissioner Julio A. Sulit, Jr. issued and questioned order dated August 20, 1981, prohibiting Hearing Officer Ben Cristobal and the Sheriff of Manila from further enforcing the Writ of Execution in SEC Case No. 1763, ordering the latter to withdraw garnishment of the funds of the Gimenez Stock Brokerage & Co., Inc. until further orders of the Commission, and setting the petition for hearing on August 28, 1981, at 2:00 o'clock in the afternoon. Hence this petition.

On September 10, 1981, this Court issued an order restraining private respondent Gimenez Stock Brokerage & Co., Inc., Arthur F. Gimenez, Jose A. Gimenez, Rose F. Gimenez, and George F. Gimenez from withdrawing any money from all their respective depository banks and/or from disposing of any of their assets and properties, real and personal; enjoining respondent Commissioner Julio A. Sulit, Jr. to recall his order of August 20, 1981 herein complained of to the end that the writ of execution of the decision of the Commission in SEC Case No. 1763 may be given due course provided, however, that no disposition by any of the petitioners may be made of the proceeds of said execution; and ordering respondent Commission and/or respondent Commissioner Sulit to refrain from further acting in SEC Case No. 1763 in any manner inconsistent with the said resolution except as therein directed, until further orders of this Court.

On September 17, 1981, on motion of private respondents and after hearing the parties, the Court Resolved to lift the restraining order dated September 10, 1981 provided the private respondents file a joint and several bond to be approved by the Court in the amount of Five Hundred Thousand (P500,000) Pesos to answer for whatever judgment may be rendered in the case either by the respondent Commission or this Court, it being understood that the amount of this bond has been fixed at a sum lower than the judgment in question because of the assurance of respondents that they are sufficiently solvent to meet whatever judgment, if any, may be rendered against them.

On December 29, 1981 private respondents filed the bond to lift the restraining order and on January 7, 1982, the Court lifted the restraining order if September 10, 1981.

The issue at bar is whether or not Associate Commissioner Sulit acted with grave abuse of discretion in issuing the Order of August 20, 1981 in behalf of the Commission en banc, prohibiting the hearing officer and the sheriff from further enforcing the Writ of Execution.

We agree with respondents that this petition is premature and should therefore be dismissed. The petitioners did not wait for the resolution of the respondent Securities and Exchange Commission on their prayer that the appeal be disallowed. They should have waited for the Commission to rule on the matter, but instead they filed the instant petition with this Court.

The order which is the subject of this petition is an interlocutory order which cannot be a proper object of review on certiorari. It did not put an end to the controversy. If every error committed by the trial court were to be a proper object of review of certiorari, the trial would never come to an end and the appellate court's docket would be clogged ad infinitum with the aggrieved parties-litigants filing petition after petition for writs of certiorari against every interlocutory order of the trial court. The fact that respondent Commission set the petition to quash the writ of execution for hearing negates the existence of capricious exercise of power. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.

ACCORDINGLY, the petition is denied. This case is hereby remanded to the Securities and Exchange Commission for further proceedings. The bond in the amount of Five Hundred Thousand Pesos (P500,000.00) issued by Northwest Insurance and Surety Company on December 29, 1981 is likewise hereby remanded for proper disposition.

Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

Gutierrez, Jr., J., on leave.

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