

UNION GLASS & CONTAINER CORPORATION AND CARLOS PALANCA, JR., IN HIS CAPACITY AS PRESIDENT OF UNION GLASS & CONTAINER CORPORATION, PETITIONERS, VS. THE SECURITIES AND EXCHANGE CO...

G.R. No. 64013. November 28, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This petition for certiorari and prohibition seeks to annul and set aside the Order of the Securities and Exchange Commission, dated September 25, 1981, upholding its jurisdiction in SEC Case No. 2035, entitled "Carolina Hofileña, Complainant, ver-sus Development Bank of the Philippines, et al., Respondents."

Private respondent Carolina Hofileña, complainant in SEC Case No. 2035, is a stockholder of Pioneer Glass Manufacturing Corporation, Pioneer Glass for short, a domestic corporation engaged in the operation of silica mines and the manufacture of glass and glassware. Since 1967, Pioneer Glass had obtained various loan accommodations from the Development Bank of the Philippines [DBP], and also from other local and foreign sources which DBP guaranteed.

As security for said loan accommodations, Pioneer Glass mortgaged and/or assigned its assets, real and personal, to the DBP, in addition to the mortgages executed by some of its corporate officers over their personal assets. The proceeds of said financial exposure of the DBP were used in the construction of a glass plant in Rosario, Cavite, and the operation of seven silica mining claims owned by the corporation.

It appears that through the conversion into equity of the accumulated unpaid interests on the various loans amounting to P5.4 million as of January 1975, and subsequently increased by another P2.2 million in 1976, the DBP was able to gain control of the outstanding shares of common stocks of Pioneer Glass, and to get two, later three, regular seats in the corporation's board of directors.

Sometime in March, 1978, when Pioneer Glass suffered serious liquidity problems such that it could no longer meet its financial obligations with DBP, it entered into a dacion en pago agreement with the latter, whereby all its assets mortgaged to DBP were ceded to the latter in full satisfaction of the corporation's obligations in the total amount of P59,000,000.00. Part of the assets transferred to the DBP was the glass plant in Rosario, Cavite, which DBP leased and subsequently sold to herein petitioner Union Glass and Container Corporation, hereinafter referred to as Union Glass.

On April 1, 1981, Carolina Hofileña filed a complaint before the respondent Securities and Exchange Commission against the DBP, Union Glass and Pioneer Glass, docketed as SEC Case No. 2035. Of the five causes of action pleaded therein, only the first cause of action concerned petitioner Union Glass as transferee and possessor of the glass plant. Said first cause of action was based on the alleged illegality of the aforesaid dacion en pago resulting from: [1] the supposed unilateral and unsupported undervaluation of the assets of Pioneer Glass

covered by the agreement; [2] the self-dealing indulged in by DBP, having acted both as stockholder/director and secured creditor of Pioneer Glass; and [3] the wrongful inclusion by DBP in its statement of account of P26M as due from Pioneer Glass when the same had already been converted into equity.

Thus, with respect to said first cause of action, respondent Hofileña prayed that the SEC issue an order:

"1. Holding that the so-called dacion en pago conveying all the assets of Pioneer Glass and the Hofileña personal properties to Union Glass be declared null and void on the ground that the said conveyance was tainted with:

"A. Self-dealing on the part of DBP which was acting both as a control-ling stockholder/director and as secured creditor of the Pioneer Glass, all to its advantage and to that of Union Glass, and to the gross prejudice of the Pioneer Glass;

"B. That the dacion en pago is void because there was gross undervaluation of the assets included in the so-called dacion en pago by more than 100% to the pre-judice of Pioneer Glass and to the undue advantage of DBP and Union Glass;

"C. That the DBP unduly fa-vored Union Glass over ano-ther buyer, San Miguel Corporation, notwithstanding the clearly advantageous terms offered by the latter to the prejudice of Pioneer Glass, its other creditors and so called 'minority stockholders.'

"2. Holding that the assets of the Pioneer Glass taken over by DBP and part of which was delivered to Union Glass particularly the glass plant to be returned accordingly.

"3. That the DBP be ordered to accept and recognize the appraisal conducted by the Asian Appraisal Inc. in 1975 and again in 1978 of the asset of Pioneer Glass."[1]

In her common prayer, Hofileña asked that DBP be sentenced to pay Pioneer Glass actual, consequen-tial, moral and exemplary damages, for its alleged illegal acts and gross bad faith; and for DBP and Union Glass to pay her a reasonable amount as attorney's fees.[2]

On April 21, 1981, Pioneer Glass filed its answer. On May 8, 1981, petitioners moved for dismissal of the case on the ground that the SEC had no juris-diction over the subject matter or nature of the suit. Respondent Hofileña filed her opposition to said mo-tion, to which herein petitioners filed a rejoinder.

On July 23, 1981, SEC Hearing Officer Eugenio E. Reyes, to whom the case was assigned granted the motion to dismiss for lack of jurisdiction. However, on September 25, 1981, upon motion for reconsideration filed by respondent Hofileña, Hearing Officer Reyes reversed his original order by upholding the SEC's jurisdiction over the subject matter and over the per-sons of petitioners. Unable to secure a reconsideration of the Order as well as to have the same reviewed by the Commission En Banc, petitioners filed the ins-tant petition for certiorari and prohibition to set aside the order of September 25, 1981, and to prevent respondent SEC from taking cognizance of SEC Case No. 2035.

The issue raised in the petition may be propoun-ded thus: Is it the regular court or the SEC that has jurisdiction over the case?

In upholding the SEC's jurisdiction over the case Hearing Officer Reyes rationalized his conclusion thus:

"As correctly pointed out by the complainant, the present action is in the form of a derivative suit instituted by a stockholder for the benefit of the corporation, respon-dent Pioneer Glass and Manufacturing Corporation, principally against another stockholder, respondent Development Bank of the Philippines, for alleged illegal acts and gross bad faith which resulted in the dacion en pago arrangement now being questioned by

complainant. These alleged illegal acts and gross bad faith came about precisely by virtue of respondent Development Bank of the Philippines' status as a stockholder of co-respondent Pioneer Glass Manufacturing Corporation although its status as such stockholder, was gained as a result of its being a creditor of the latter. The derivative nature of this instant action can also be gleaned from the common prayer of the complainant which seeks for an order directing respondent Development Bank of the Philippines to pay co-respondent Pioneer Glass Manufacturing Corporation damages for the alleged illegal acts and gross bad faith as above-mentioned.

"As far as respondent Union Glass and Container Corporation is concerned, its inclusion as a party-respondent by virtue of its being an indispensable party to the present action, it being in possession of the assets subject of the dacion en pago and, therefore, situated in such a way that it will be affected by any judgment thereon." [3]

In the ordinary course of things, petitioner Union Glass, as transferee and possessor of the glass plant covered by the dacion en pago agreement, should be joined as party-defendant under the general rule which requires the joinder of every party who has an interest in or lien on the property subject matter of the dispute. [4] Such joinder of parties avoids multiplicity of suits as well as ensures the convenient, speedy and orderly administration of justice.

But since petitioner Union Glass has no intra-corporate relation with either the complainant or the DBP, its joinder as party-defendant in SEC Case No. 2035 brings the cause of action asserted against it outside the jurisdiction of the respondent SEC.

The jurisdiction of the SEC is delineated by Section 5 of PD No. 902-A as follows:

"Sec. 5. In addition to the regulatory and adjudicative function of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and devices, it shall have original and exclusive jurisdiction to hear and decide cases involving:

- a] Devices and schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or the stockholders, partners, members of associations or organizations registered with the Commission;
- b] Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;
- c] Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."

This grant of jurisdiction must be viewed in the light of the nature and function of the SEC under the law. Section 3 of PD No. 902-A confers upon the latter "absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines x x x". The principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development. [5]

It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations.

Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must per-tain to any of the following relationships: [a] bet-ween the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, mem-bers, or officers; [c] between the corporation, part-nership or association and the state in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves.

The fact that the controversy at bar involves the rights of petitioner Union Glass who has no intra--corporate relation either with complainant or the DBP, places the suit beyond the jurisdiction of the respondent SEC. The case should be tried and decided by the court of general jurisdiction, the Regional Trial Court. This view is in accord with the rudimentary principle that administrative agencies, like the SEC, are tribunals of limited jurisdiction[6] and, as such, could wield only such powers as are specifically granted to them by their enabling statutes.[7] As We held in *Sunset View Condominium Corp. vs. Campos, Jr.*:[8]

"Inasmuch as the private res-pondents are not shareholders of the petitioner condominium corpo-ration, the instant cases for col-lection cannot be a 'controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or asso-ciates, respectively', which controversies are under the original and exclusive jurisdiction of the Securities & Exchange Commission, pursuant to Section 5[b] of P.D. No. 902-A. x x x"

As heretofore pointed out, petitioner Union Glass is involved only in the first cause of action of Hofileña's complaint in SEC Case No. 2035. While the Rules of Court, which applies suppletorily to proceedings before the SEC, allows the joinder of causes of action in one complaint, such procedure however is subject to the rules regarding jurisdiction, venue and joinder of parties.[9] Since petitioner has no intra-corporate relationship with the complainant, it cannot be joined as party-defendant in said case as to do so would violate the rule on jurisdiction. Hofileña's complaint against petitioner for cancellation of the sale of the glass plant should there-fore be brought separately before the regular court. But such action, if instituted, shall be suspended to await the final outcome of SEC Case No. 2035, for the issue of the validity of the dacion en pago posed in the last mentioned case is a prejudicial question, the resolution of which is a logical antecedent of the issue involved in the action against petitioner Union Glass. Thus, Hofileña's complaint against the latter can only prosper if final judgment is rendered in SEC Case No. 2035, annulling the dacion en pago executed in favor of the DBP.

WHEREFORE, the instant petition is hereby granted, and the questioned Orders of respondent SEC, dated September 25, 1981, March 25, 1982 and May 28, 1982, are hereby set aside. Respondent Commission is ordered to drop petitioner Union Glass from SEC Case No. 2035, without prejudice to the filing of a separate suit before the regular court of justice. No pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Makasiar, JJ., joins J., Aquino in his dissent.

Teehankee, J., files a brief concurrence.

Aquino, J., see dissent.

[1] p. 38, Rollo.

[2] p. 40, Rollo.

[3] p. 24, Rollo.

[4] 59 Am. Jur. 2d 530.

[5] Vide, Whereas Clauses of P.D. 902-A.

[6] 2 Am. Jur. 2d. 150.

[7] 2 Am. Jur. 2d. 21.

[8] 104 SCRA 295.

[9] Section 5, Rule 2 of the Rules of Court.

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DISSENTING OPINION

AQUINO, J.:

I dissent with due deference to Justice Escolin's opinion. What are belatedly assailed in this certiorari and prohibition case filed on May 17, 1983 are the order of September 25, 1981 of Eugenio E. Reyes, a SEC hearing officer, and the orders of March 25 and May 28, 1982 of Antonio R. Manabat, another SEC hearing officer.

Although a jurisdictional issue is raised and jurisdiction over the subject matter may be raised at any stage of the case, nevertheless, the petitioners are guilty of laches and nonexhaustion of the remedy of appeal with the Securities and Exchange Commission en banc.

The petitioners resorted to the special civil actions of certiorari and prohibition because they assail the orders of mere SEC hearing officers. This is not a review of the order, decision or ruling of the SEC sitting en banc which, according to section 6 of Presidential Decree No. 902-A (1976), may be made by this Court "in accordance with the pertinent provisions of the Rules of Court".

Rule 43 of the Rules of Court used to allow review by this Court of the SEC order, ruling or decision. Republic Act 5434 (1968) substituted the Court of Appeals for this Court in line with the policy of lightening our heavy jurisdictional burden. But this Court seems to have been restored as the reviewing authority by Presidential Decree No. 902-A.

However, section 9 of the Judiciary Reorganization Law returned to the Intermediate Appellate Court the exclusive jurisdiction to review the ruling, order or decision of the SEC as a quasi-judicial agency. The same section 9 granted to the Appellate Court jurisdiction in certiorari and prohibition cases over the SEC although not exclusive.

In this case, the SEC seems to have adopted the orders of the two hearing officers as its own orders as shown by the stand taken by the Solicitor General in defending the SEC. If that were so, that is, if the orders of the hearing officers should be treated as the orders of the SEC itself en banc, this Court would have no jurisdiction over this case. It should be the Appellate Court that should exercise the power of review.

Carolina Hofileña has been a stockholder since 1958 of the Pioneer Glass Manufacturing Corporation. Her personal assets valued at P6,804,810 were apparently or supposedly mortgaged to the DBP to secure the obligations of Pioneer Glass (p. 32, Rollo).

Pioneer Glass became indebted to the Development Bank of the Philippines in the total sum of P59,000,000. Part of the loan was used by Pioneer Glass to establish its glass plant in Rosario, Cavite. The unpaid interest on the loan amounting to around seven million pesos became the DBP's equity in Pioneer Glass. The DBP became a substantial stockholder of Pioneer Glass. Three members of the Pioneer Glass' board of directors were from the DBP.

The glass plant commenced operations in 1977. At that time, Pioneer Glass was heavily indebted to the DBP. Instead of foreclosing its mortgage, DBP maneuvered to have the mortgaged assets of Pioneer Glass, including the glass plant, transferred to the DBP by way of dacion en pago. This transaction was alleged to be an "auto contract" or a case of the DBP contracting with itself since the DBP had a dominant position in Pioneer Glass.

Hofileña alleged that although the debt to the DBP of Pioneer Glass amounted to P59,000,000, the glass plant in 1977 had a "sound value" of P77,329,000 and a "reproduction cost" of P90,403,000. She further alleged that San Miguel Corporation was willing to buy the glass plant for P40,000,000 cash, whereas it was actually sold to Union Glass & Container Corporation for the same amount under a 25-year term of payment (pp. 32-34, Rollo).

On March 31, 1981, Carmen Hofileña filed with the SEC a complaint against the DBP, Union Glass, Pioneer Glass and Rafael Sison as chairman of the DBP and Pioneer Glass boards of directors. Union Glass filed a motion to dismiss on the ground that jurisdiction over the case is lodged in the Court of First Instance. Hofileña opposed the motion. Hearing Officer Reyes in his order of July 23, 1981 dismissed the complaint on the ground that the case is beyond the jurisdiction of the SEC.

Hofileña filed a motion for reconsideration which was opposed by Union Glass. Hearing Officer Reyes in his order of September 25, 1981 reconsidered his dismissal order and ruled that Union Glass is an indispensable party because it is the transferee of the controverted assets given by way of dacion en pago to the DBP. He ruled that the SEC has jurisdiction over the case.

Union Glass filed a motion for reconsideration. Hearing Officer Antonio R. Manabat denied the motion on the ground "that the present action is an intra--corporate dispute involving stockholders of the same corporation (p. 26, Rollo).

Union Glass filed a second motion for reconsideration with the prayer that the SEC should decide the motion en banc. The hearing officer ruled that the remedy of Union Glass was to file a timely appeal. Hence, its second motion for reconsideration was denied by the hearing officer. (This ruling is a technicality which hinders substantial justice.)

It is clear that Union Glass has no cause of action for certiorari and prohibition. Its recourse was to appeal to the SEC en banc the denial of its first motion for reconsideration.

There is no question that the SEC has jurisdiction over the intra-corporate dispute between Hofileña and the DBP, both stockholders of Pioneer Glass, over the dacion en pago.

Now, does the SEC lose jurisdiction because of the joinder of Union Glass which has privity with the DBP since it was the transferee of the assets involved in the dacion en pago?

Certainly, the joinder of Union Glass does not divest the SEC of jurisdiction over the case. The joinder of Union Glass is necessary because the DBP, its transferor, is being sued regarding the dacion en pago. The defenses of Union Glass are tied up with the defenses of the DBP in 'the intra-corporate dispute. Hofileña's cause of action should not be split.

It would not be judicious and expedient to require Hofileña to sue the DBP and Union Glass in the Regional Trial

Court. The SEC is more competent than the said court to decide the intra-corporate dispute.

The SEC, as the agency enforcing Presidential Decree No. 902-A, is in the best position to know the extent of its jurisdiction. Its determination that it has jurisdiction in this case has persuasive weight.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur in the Court's judgment penned by Mr. Justice Escolin setting aside the questioned orders of respondent SEC and ordering that petitioner Union Glass be dropped from SEC Case No. 2035 for lack of SEC jurisdiction over it as a third party purchaser of the glass plant acquired by the DBP by dacion en pago from Pioneer Glass, without prejudice to Hofileña filing a separate suit in the regular courts of justice against Union Glass for recovery and cancellation of the said sale of the glass plant in favor of Union Glass.

I concur also with the statement in the Court's opinion that the final outcome of SEC Case No. 2035 with regard to the validity of the dacion en pago is a prejudicial case. If Hofileña's complaint against said dacion en pago fails in the SEC, then it clearly has no cause of action against Union Glass for cancellation of DBP's sale of the plant to Union Glass.

The purpose of this brief concurrence is with reference to the statement in the Court's opinion that "Thus, Hofileña's complaint against the latter can only prosper if final judgment is rendered in SEC Case No. 2035, annulling the dacion en pago executed in favor of the DBP," to erase any impression that a favorable judgment secured by Hofileña in SEC Case No. 2035 against the DBP and Pioneer Glass would necessarily mean that its action against Union Glass in the regular courts of justice for recovery and cancellation of the DBP sale of the glass plant to Union Glass would necessarily prosper. It must be borne in mind that as already indicated, the SEC has no jurisdiction over Union Glass as an outsider. The suit in the regular courts of justice that Hofileña might bring against Union Glass is of course subject to all defenses as to the validity of the sale of the glass plant in its favor as a buyer in good faith and should it successfully substantiate such defenses, then Hofileña's action against it for cancellation of the sale might fail as a consequence.

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