

**WACK WACK CONDOMINIUM CORPORATION, WELBILT
CONSTRUCTION CORPORATION AND EUGENIO JUAN GONZALEZ,
PETITIONERS, VS. THE COURT OF APPEALS, HON. JUANITO B.
ALMOSA, JR., IN HIS CAPACIT...**

G.R. No. 78490. November 23, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a Petition for Review on certiorari questioning the two Resolutions* of the Court of Appeals affirming the orders of respondent Securities and Exchange Commission (SEC) Hearing Officer denying petitioners' Motion to Dismiss SEC Case No. 2675.** Briefly, the undisputed facts are as follows:

Private respondent Josefina Bayot (Bayot, for brevity) bought and fully paid for a condominium unit in the Wack Wack Condominium building. Petitioner Welbilt Construction Corporation (Welbilt, for brevity) is the developer of said condominium building, while the petitioner Wack Wack Condominium Corporation (Wack Wack, for brevity) owns the common areas of said building and is the manager of the condominium project. Petitioner Eugenio Gonzalez is the President of both the Welbilt and Wack Wack and, with Welbilt, holds the controlling interest in Wack Wack. Bayot, having fully paid for her unit, was issued Condominium Certificate of Title 727, and as such became a stockholder of Wack Wack. Sometime in July, 1984, the latter issued an undated Statement of Account in Bayot's name listing specified assessments against her and her unit, most of which assessments were assailed by her as unreasonable, arbitrary and/or unauthorized in their contract of sale. The total amount of said assessments was P112,367.72. On July 17, 1984, Wack Wack filed with the Sheriff of Pasig, a petition for extrajudicial sale of Bayot's unit to answer for the outstanding assessments which had remained unpaid. The required notices and publication were made, the sale being set for August 24, 1984. On August 23, 1984, Bayot, through counsel, filed a petition before the SEC for Injunction and Damages with a prayer for a preliminary injunction to restrain the Sheriff of Pasig from going on with the sale. On that same date, and on motion of private respondent, the SEC Hearing Officer issued a temporary restraining order addressed to the said Sheriff.

On September 10, 1984, petitioners herein filed a petition for mandamus before the Regional Trial Court (RTC) of Pasig to compel the Pasig Sheriff to go on with the extrajudicial sale. On October 5, 1984, said court issued an order to the effect that since the 20-day period of the restraining order had already lapsed, "the same may now be disregarded and the extrajudicial foreclosure given due course". Bayot was completely unaware of the petition for mandamus and the consequent order of the RTC because she was not made a party thereto and thus received no notice thereof.

In the meantime, hearings on the preliminary injunction were going on, with several postponements granted at the instance of herein petitioners. On October 23, 1984, when Bayot finished presentation of her evidence and both parties were present before the SEC, counsel for petitioners herein again asked for postponement on the ground that their main witness, petitioner Eugenio Gonzalez, was abroad. After granting the postponement, the hearing

officer reset the hearing for November 16, 1984 at 9:30 o'clock in the morning. At that hearing of October 23, 1984, counsel for petitioners said nothing about the petition for mandamus although it had already been granted, and the writ issued, on October 5, 1984. At this stage, the SEC Hearing Officer and Bayot still had no knowledge of said mandamus.

Sometime after this last hearing, counsel for private respondent received a second notice of extrajudicial foreclosure, and immediately filed a motion with the SEC for another order to restrain the Pasig Sheriff from proceeding with the extrajudicial sale. Notice of said motion was sent to petitioners with the statement that a restraining order would be issued immediately upon receipt of said notice by the said petitioners, which date fell on November 15, 1984.

On November 16, 1984, at 9:30 o'clock in the morning, the date set for the next SEC hearing, counsel for petitioners did not appear but instead sent a motion for postponement on the ground that their witness, petitioner Eugenio Gonzalez, was still abroad. Over the strong objections of private respondent's counsel, postponement was granted on the condition that this would be the last. Hearing was reset for December 3, 1984. At 10:00 o'clock of the same day (November 16), in spite of the Pasig Sheriff's receipt of the second restraining order, the extrajudicial sale took place with the petitioners as the highest bidders.

On December 3, 1984, petitioners filed with the SEC a Motion to Dismiss SEC Case No. 2675 on the ground that the same had become moot and academic because of the foreclosure sale and that the SEC lacked jurisdiction. On March 22, 1985, the SEC denied the Motion to Dismiss and, after their Motion for Reconsideration was also denied, the petitioners filed a Petition for Certiorari with the Intermediate Appellate Court (now the Court of Appeals).

Through two Resolutions, dated May 13, 1987 and November 25, 1986, the Court of Appeals upheld the SEC's denial of petitioners' Motion to Dismiss SEC Case No. 2675. Now, this Petition for Review on certiorari. In the meantime, Bayot died, her counsel withdrew and new counsel has entered appearance on behalf of her heirs.

The main issues before Us are whether the extrajudicial sale of the condominium unit in question has rendered moot and academic SEC Case No. 2675, and whether the foreclosure proceeding is within the SEC jurisdiction.

The dispute before the SEC arose due to the assessments which the petitioners made against Bayot's unit and which the latter refused to pay on the ground that they were unreasonable, arbitrary and/or unauthorized by their contract of sale. Under the Condominium Act[1] and the by-laws[2] of the Wack Wack, assessments upon a condominium constitute a lien on such condominium and may be enforced by judicial or extrajudicial foreclosure. The said Act and by-laws were made part of the contract of sale between the parties. When Bayot refused to pay said assessments, the petitioners sought to enforce the lien on Bayot's condominium by extrajudicial foreclosure. It was at this point that Bayot brought the matter before the SEC which issued the two restraining orders under the circumstances previously described. The SEC has so far been prevented from deciding the issue of the validity of the assessments due to the extrajudicial sale of the unit in question. And the dispute was aggravated and the proceedings became protracted because of the various legal proceedings/motions which the parties subsequently resorted to in order to resolve their dispute.

We agree with the Court of Appeals and the SEC that the dispute as to the validity of the assessments is purely an intra-corporate matter between Wack Wack and its stockholder, Bayot, and is thus within the exclusive original jurisdiction of the SEC.[3] And since the extrajudicial sale was authorized by Wack Wack's by-laws and was the result of the non-payment of said assessments, the legality of such foreclosure is necessarily an issue also within the exclusive original jurisdiction of the SEC, contrary to petitioners' contention that the SEC has no jurisdiction over such foreclosure it being an action quasi-in-rem. Just because the property has already been sold

extrajudicially does not mean that the questioned assessments have now become legal and valid or that they have become immaterial. In fact, the validity of the foreclosure depends on the legality of the assessments and the issue must be determined by the SEC if only to insure that the private respondent was not deprived of her property without having been heard. If there were no valid assessments, then there was no lien on the property, and if there was no lien, what was there to foreclose? Thus, SEC Case No. 2675 has not become moot and academic and the SEC retains its jurisdiction to hear and decide the case despite the extrajudicial sale.

The private respondent assails the validity of the foreclosure on the ground that it was in violation of the second restraining order issued by the SEC. On the other hand, petitioners claim that the second restraining order was beyond the authority of the SEC to issue, and this contention was upheld by the Court of Appeals. We do not agree with the Court of Appeals. Said Court based its opinion on the following provision:

“8. Preliminary injunction not granted without notice; issuance of restraining order. -- No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the Court to which the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the court must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated.

x x x.”[4]

The above provision is silent as to a second restraining order. However, the reason behind the law is to prevent the preliminary injunction from becoming an instrument of injustice, when it is issued without a hearing and is allowed to continue for an indefinite period. Only in case of probable irreparable injury to the petitioner may such a restraint without hearing be granted, and only for a period of twenty days, at which time it automatically terminates. Thus, this Court has previously held that under the above provision, a temporary restraining order cannot exist indefinitely.[5] On the other hand, the circumstances of the present case are unusual. To repeat, due to postponements at the instance of Wack Wack, it was only on October 23, 1984 that counsel for the private respondent was able to finish presenting his evidence in support of the preliminary injunction. On said date, when petitioners were supposed to present their evidence in opposition to the preliminary injunction, their counsel again asked for postponement alleging that their main witness was in the United States. It should be remembered that at that time, petitioners’ counsel said nothing about the mandamus which it had obtained previously, i.e., on October 5, 1984. Both the SEC and the private respondent’s counsel were completely unaware of said mandamus, and were thus led to believe that the petitioners were willing to go on with the hearings and to present their evidence in opposition to the preliminary injunction. To top it all, at the hearing on November 16, 1984, the same day of the extrajudicial sale, counsel for petitioners, without personally appearing before the SEC, sent a motion for another postponement on the ground that their witness was still abroad. All these circumstances strongly suggest a premeditated plan to effect the extrajudicial sale with the least possible opportunity on the part of Bayot to stop it by legal means.

It is not surprising therefore that Bayot, taken aback by the second notice of foreclosure, had no choice but to ask the SEC for a second restraining order. Notice of the motion for such order reached petitioners on November 15, 1984, a day before the date set for the extrajudicial sale on November 16, 1984. In this connection, petitioners claim that the 3-day notice required by law for motions was not complied with and that such lack of notice rendered the second restraining order ineffective. Under the circumstances, We believe that the petitioners, by

their own objectionable conduct, had forfeited any right they may have had with respect to the 3-day notice requirement. On the other hand, the Sheriff, despite having received the restraining order, went ahead with the sale -- perhaps feeling secure in his position because of the order of the RTC giving due course to the extrajudicial sale. Paranthetically, We should point out that this Court has previously held that a court has no power to interfere with a judgment or order of another co-equal court as this may lead to confusion and may seriously hinder the administration of justice.[6] And as far as its judicial functions are concerned, the SEC is a co-equal body with the Regional Trial Court. Thus, the Pasig RTC should not have entertained the petition for mandamus.

Lastly, this Court cannot allow one of the parties in a case to use the provisions of law and jurisprudence on the matter to shield him from the effects of his objectionable acts intended to deceive the other party and deprive the latter of his day in court. We therefore hold that under the peculiar circumstances of this case, the second restraining order issued by the SEC Hearing Officer on November 15, 1984 was valid and effective.

WHEREFORE, the SEC order denying the Motion to Dismiss SEC Case No. 2675 entitled “Josefina Bayot vs. Wack Wack Condominium Corporation, Welbilt Construction Corporation and Eugenio Juan Gonzalez”, is AFFIRMED, and the case is remanded to the SEC for further proceedings.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

* CA-G.R. SP No. 07740, dated November 25, 1986 and May 13, 1987, respectively, both penned by Justice Fidel P. Purisima and concurred in by Justice Carolina Griño-Aquino and Justice Vicente V. Mendoza and Justice Jorge Imperial, respectively.

** Josefina M. Bayot vs. Eugenio Juan Gonzalez, Wack Wack Condominium Corporation, Welbilt Construction Corporation and Ms. Grace Belvis.

[1] RA 4726, Sec. 20 provides:

“Sec. 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney’s fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located, x x x.”

[2] Section 5 of Article 5 of the By-Laws of Wack Wack stipulates, inter alia, that, in the event a member defaults in the payment of any assessment duly levied in accordance with the Master Deed with Declaration of Restrictions of the condominium project and their By-Laws, the Board of Directors may enforce collection thereof by any of the remedies provided by the Condominium Act and other pertinent laws.

[3] P.D. 902-A, Section 5 provides:

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

x x x xxx

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; x x x.”

[4] Interim Rules and Guidelines, dated January 11, 1983 implementing B.P. Blg. 224.

[5] See *Dionisio vs. CFI of South Cotabato*, Br. II, 124 SCRA 222 (1983) and *Board of Transportation vs. Castro*, 125 SCRA 410 (1983).

[6] See *Calderon vs. Gomez*, 21 SCRA 1002 (1967).

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