

**COMMART (PHILS.), INC., JESUS, CORAZON, ALBERTO, AND
BERNARD ALL SURNAMED MAGLUTAC, PETITIONERS, VS.
SECURITIES & EXCHANGE COMMISSION AND ALICE
MAGLUTAC, RESPONDENTS.**

G.R. No. 85318. June 03, 1991

Ponente: PARAS, J.

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PARAS, J.:

Petitioners, in the instant petition for review on certiorari, seek the reversal of the en banc Order of the respondent Securities & Exchange Commission dated September 12, 1988 denying the petition for certiorari (SEC-EB 115-117) filed by the petitioners herein and ordering that the original complaint (SEC Case No. 2673) be remanded to the Securities Investigation and Clearing Department for further proceeding, for having been rendered in grave abuse of discretion amounting to lack of or in excess of jurisdiction and in contravention of existing laws and jurisprudence.

Commart (Phils.), Inc., (Commart for short) is a corporation organized by two brothers, Jesus and Mariano Maglutac, to engage in the brokerage business for the importation of fertilizers and other products/commodities.

Jesus T. Maglutac (Jesus for short) ran the company as president, chairman of the board, and chairman of the executive committee, while Mariano T. Maglutac (Mariano for short) served as executive vice-president and vice-chairman of the executive committee until April 1984.

Sometime in June 1984, the two brothers agreed to go their separate ways, with Mariano being persuaded to sell to Jesus his shareholdings in Commart amounting to 25% of the outstanding capital stock. As part of the deal, a "Cooperative Agreement" was signed, between Commart (represented by Jesus) and Mariano, in which, among others, Commart ceded to Mariano or to an "acceptable entity" he may create, a portion of its business, with a pledge of mutual cooperation for a certain period so as to enable Mariano to get his own corporation off the ground, so to speak.

Mariano's wife, Alice M. Maglutac (private respondent herein) who has been for years a stockholder and director of Commart, did not dispose of her shareholdings, and thus continued as such even after the sale of Mariano's equity.

As broker and indenter, Commart's principal income came from commissions paid to it in U.S. dollars by foreign suppliers of fertilizers and other commodities imported by Planters Products, Inc. and other local importers.

Shortly after the sale of his equity in Commart to Jesus, Mariano allegedly discovered that for several years, Jesus and his wife Corazon (who was herself a director) had been siphoning and diverting to their private bank accounts in the United States and in Hongkong gargantuan amounts sliced off from commissions due Commart from some foreign suppliers. Consequently, on August 22, 1989, spouses Mariano and Alice Maglutac filed a complaint (SEC Case No. 2673) with the Securities & Exchange Commission (SEC for short) against Jesus T. Maglutac,

Victor Cipriano, Clemente Ramos, Carolina de los Reyes, Corazon Maglutac, Alberto Maglutac and Bernardo Maglutac (Jesus as Chairman and the rests as members of the Board of Directors of Commart).

In their Complaint, Mariano and Alice Maglutac alleged, among others, that "Jesus T. Maglutac, by means of secret arrangements with foreign suppliers, embodied in and evidenced by, correspondences and other documents discovered just recently, has been diverting into his private bank accounts and converting to his own personal benefit and advantage substantial portions of the commission income of the corporation, to the prejudice of the corporation, its stockholders and its creditors. (Petition, Annex B, p. 2; Rollo, p. 20) Thus, complainants prayed, among others, that judgment be rendered as follows -

"(a) Ordering respondents Jesus T. Maglutac, Corazon Maglutac, and Victor Cipriano to account for and to turn over or deliver to the Corporation the sum of US\$2,539,918.97, or its equivalent in Philippine currency, with legal interest thereon from the respective dates of misappropriation or, at the very least, from date of filing of this suit, together with such other and further sums as may be proved to have likewise been misappropriated by them;

"(b) Ordering all the respondents, as members of the Board of Directors, to take such remedial steps as would protect the corporation from further depredation of its funds and property;

"(c) Declaring rescinded or annulled the disposition of complainant Mariano T. Maglutac's shares of stock to respondent Jesus T. Maglutac and ordering the restoration to the former of all his executive positions with all the rights and privileges thereunto appertaining; or, in the alternative, ordering that said complainant be paid the equivalent of one-fourth of the actual market value of COMMART's present assets including goodwill, taking into consideration also the total sums misappropriated by respondents Jesus T. Maglutac, Corazon Maglutac, and Victor Cipriano which rightfully belonged to COMMART; and

"(d) Ordering respondents to pay complainants attorney's fees equivalent to twenty (20%) per cent of the total amounts awarded and recovered, plus such further sums as may be proved to have been incurred as and by way of litigation expenses." (pp. 24-25, Rollo)

In response to the aforementioned Complaint, two Motions to Dismiss were filed. The records reveal that:

"(a) On October 17, 1984, Albert and Bernard Maglutac moved to dismiss on the ground that Mariano Maglutac has no capacity to sue and the complaint states no cause of action against them.

"(b) On October 20, 1984, Jesus & Corazon Maglutac likewise moved to dismiss on the ground that respondent Commission does not have jurisdiction over the nature of the suit."

These motions were opposed by complainants Alice and Mariano Maglutac. While said incidents were pending, complainants filed an Amended Complaint whereby Commart was impleaded as party complainant and praying that Commart be placed under receivership and the properties of Jesus & Corazon Maglutac and Victor Cipriano be attached. It is alleged in the Amended Complaint that complainant Commart is the corporation in whose behalf and for whose benefit this derivative suit is brought; that complainant Alice M. Maglutac is a minority stockholder in good standing of Commart while her husband complainant Mariano T. Maglutac was, likewise, until June 25, 1984 or thereabouts, a stockholder of Commart.

Motions to dismiss said Amended Complaint were also filed by present petitioners and were also duly opposed by complainants Mariano and his wife.

On May 10, 1985 Commart filed a Manifestation/Notice of Dismissal, manifesting that "it withdraws and dismisses the action taken in its behalf by complainants Mariano T. Maglutac and Alice M. Maglutac against all respondents." (Petition, Annex E, p. 3; Rollo, pp. 42-44)

This was opposed by complainants on the ground, among other doctrines, that in a derivative suit the corporation is not allowed to be an active participant and has no control over the suit against the real defendants; that the suing shareholder has the right of control.

On May 27, 1985, the Hearing Panel issued an Order denying all the motions to dismiss as well as the so called manifestation/notice of dismissal on the finding *inter alia* that -

"Respondents maintain that the present action is basically one for annulment/rescission of sale with alternative prayer for reinstatement of employment status; that the action is not a derivative suit considering that the nature of the action is one for annulment and the fact that complainant Mariano Maglutac being a non-stockholder is not qualified to institute a derivative suit; that the action does not in anyway make mention of an actionable wrong against respondents Albert and Bernard Maglutac, Clemente Ramos and Carolina de los Reyes.

"By way of opposition, complainants alleged that the instant action should be characterized as a minority stockholders' derivative suit; that complainant Alice Maglutac is not merely a nominal party but a real party in interest; that Mariano T. Maglutac's rights as a stockholder have been injured through the machinations and maneuvering of respondent Jesus Maglutac; that the prayer for rescission or annulment of contract is merely the logical consequence of the exercise of jurisdiction by this Commission.

"Respondents' contention that the Commission has no jurisdiction over the subject matter or the nature of the action is devoid of merit. It is a cardinal principle in legal procedure that what determines the subject matter or the nature of the action are the facts alleged in the complaint as constituting the cause of action. A perusal of the complaint, as well as, the amended complaint would show that the action is one for "mismanagement", for the complainants alleged, *inter alia* that 'x x x respondent Jesus T. Maglutac, by means of secret arrangements with foreign suppliers embodied' in, and evidenced by, correspondences and other documents discovered just recently, has been diverting into his private bank accounts and converting to his own personal benefit and advantage substantial portions of the commission income of the corporation, to the prejudice of the corporation, its stockholders and its creditors and enumerated immediately thereafter the alleged specific acts of mismanagement. Viewed therefrom, the Commission has jurisdiction." (pp.127-128, Rollo)

On June 18, 1985 Commart filed a motion for reconsideration and on August 29, 1985, Jesus and Corazon Maglutac also filed a similar motion to have the Order of May 27, 1985 reconsidered and set aside. These motions were duly opposed by Mariano and Alice Maglutac.

Acting on the Motion for Reconsideration, the Hearing Panel issued on November 12, 1985, an Order modifying its previous order "by dismissing this case insofar as Mariano T. Maglutac is concerned" but affirming the said order "in all other respects." (Annex F to Petition, pp. 46, 49, Rollo)

Not satisfied with such modification present petitioners as respondents in SEC Case No. 2673 went to the SEC en banc on a petition for certiorari, prohibition and mandamus with prayer for preliminary injunction. They contend - (a) that the Hearing Panel acted with grave abuse of discretion in not dismissing the case for failure of Alice Maglutac to exhaust intra-corporate remedies, and (b) that grave abuse was likewise committed in not dismissing the case on the ground that the complaint did not show clearly that Alice Maglutac was a stockholder at the time the questioned transaction occurred.

On September 12, 1988, the Commission en banc issued an Order denying the aforesaid petition and remanding the case to the Securities Investigation and Clearing Department for further proceedings. It ruled (a) that exhaustion of intra-corporate remedy before filing suit "may be dispensed with where it is clear that it is unavailable or futile" as was the case here. (p. 2, Order of Sept. 12, 1988, Annex A to Petition) citing *Everett v. Asia Banking Corp.*, 49 Phil. 512, and *Republic Bank v. Cuaderno*, 19 SCRA 671, and (b) that the mere allegation

in the complaint that complainant is still a stockholder of Commart "is sufficient to vest jurisdiction to this Commission" but complainant must prove at the time of reception of evidence that she was also a stockholder at the time the acts complained of occurred. (Id., p. 3)

"Although complainant Alice Maglutac failed to exhaust an intra--corporate remedy before filing this case, the said condition precedent may be dispensed with where it is clear that it unavailable or futile. Thus it was held that:

‘Where the board of directors in a corporation is under the complete control of the principal defendants in the case and it is obvious that a demand upon the board of directors to institute an action and prosecute the same effectively would be useless, the action may be brought by one or more of the stockholders without such demand (Everett v. Asia Banking Corp., 49 Phil. 512; Republic Bank v. Cuaderno, et al., No. L-22399, March 30, 1967).’

"A stockholder can file a derivative suit provided there is an allegation in the complaint that she is such at the time the acts complained of occurred, and at the time the suit is brought (Hawes v. Oakland, 14 Otto [104 U.S.], 450, 456; S.C. 5972, 13 Fletcher 345, cited in Alvendia. The Law of Private Corporations in the Philippines, First Ed., p. 361). The requirement that said facts be pleaded is merely procedural although the necessity of the existence of these facts in order to give rise to the right of action is substantive (Pascual v. Del Saz Orozco, 19 Phil. 97). And equity considerations warrant the liberal interpretation of the rules of procedure to the end that technicalities should not stand in the way of equitable relief (Vol. I, Francisco, Civil Procedure, 2nd ed., p. 157, 1973 ed.). Mere allegation therefore that complainant is still a stockholder of Commart is sufficient to vest jurisdiction to this Commission. Complainant must however prove at the time of reception of evidence that she was also a stockholder at the time the acts complained of occurred." (pp. 10--11, Memorandum by public respondent)

Hence, this petition.

The petitioners invoke two grounds for reversal of the Order under review thereby raising these two issues, to wit:

1. Did the Securities and Exchange Commission err and/or commit "grave abuse of discretion" in denying the petition for certiorari and remanding the case for further proceedings despite the so-called "notice of dismissal" filed by Commart?
2. Did the Securities and Exchange Commission err and/or commit "grave abuse of discretion" in its handling of the "conflict of interest issue?" (Petition, p. 6; Rollo, p. 81)

We find the petition devoid of merit.

The complaint in SEC Case No. 2673, particularly paragraphs 2 to 9 under First Cause of Action, readily shows that it avers the diversion of corporate income into the private bank accounts of petitioner Jesus T. Maglutac and his wife. Likewise, the principal relief prayed for in the complaint is the recovery of a sum of money in favor of the corporation. This being the case, the complaint is definitely a derivative suit. Consequently, the SEC correctly held that the case was a minority stockholder's derivative suit and correctly sustained the hearing panel's denial - insofar as Alice Maglutac was concerned - of the motions to dismiss it.

A derivative suit has been the principal defense of the minority shareholder against abuses by the majority. It is a remedy designed by equity for those situations where the management, through fraud, neglect of duty, or other cause, declines to take the proper and necessary steps to assert the corporation's rights. Indeed, to grant to Commart the right of withdrawing or dismissing the suit, at the instance of majority stockholders and directors who themselves are the persons alleged to have committed breaches of trust against the interest of the corporation, would be to emasculate the right of minority stockholders to seek redress for the corporation. To consider the Notice of Dismissal filed by Commart as quashing the complaint filed by Alice Maglutac in favor of the

corporation would be to defeat the very nature and function of a derivative suit and render the right to institute the action illusory.

In any case, the suit is for the benefit of Commart itself, for a judgment in favor of the complainants will necessarily mean recovery by the corporation of the US\$2.5 million alleged to have been diverted from its coffers to the private bank accounts of its top managers and directors. Thus, the prayer in the Amended Complaint is for judgment ordering respondents Jesus and Corazon Maglutac, as well as Victor Cipriano, "to account for and to turn over or deliver to the Corporation" the aforesaid sum, with legal interest, and "ordering all the respondents, as members of the Board of Directors to take such remedial steps as would protect the corporation from further depredation of the funds and property." (pars. [a] & [b], Annex 2, Comment)

On the 'conflict of interest' issue, petitioners allege that private respondent Alice Maglutac "is a majority stockholder of M. M. International Sales, a business rival/competitor of Commart and holds only less than one percent (1%) of the entire shareholdings of Commart." According to petitioners, this being the case it is easier to believe that this so called derivative suit was filed because it is to the best interest of the company where she has a bigger and substantial interest, which in this case is M. M. International Sales, Inc.

In disposing of this contention respondent SEC ruled that jurisdiction cannot be made to depend upon the pleas and defenses set up by a defendant in a motion to dismiss or answer, otherwise jurisdiction should become dependent almost entirely upon the defendant (citing *Cardenas v. Camus*, *infra*). But it left the door open to a further consideration of the issue by stating that complainant's ownership of majority stocks of a rival corporation could not at this stage of the proceedings, defeat complainant's claims:

"Jurisdiction of the court cannot be made to depend upon the pleas or defenses pleaded by the defendant in his motion to dismiss or answer, for were we to be governed by such rule, the question of jurisdiction would depend almost entirely upon the defendant (*Cardenas v. Camus*, 5 SCRA 639). Respondents' assertion in their motion to dismiss of complainant's ownership of the majority stocks of a rival corporation, could not at this stage of the proceedings, defeat complainant's claim." (pp. 83-84, Rollo)

In other words, no real prejudice has been inflicted upon petitioners' right to be heard on this matter raised by them, since the same can still be looked into during the hearing of a derivative suit on the merits. There was, therefore, neither error nor grave abuse of discretion in the decision of the Securities & Exchange Commission not to dismiss the case but to remand it instead to the Hearing Panel for further proceedings.

WHEREFORE, for lack of merit, this Petition is DISMISSED. Costs against petitioners.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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