

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, CUALOPING SECURITIES
CORPORATION AND FIDELITY STOCK TRANSFERS, INC.,
RESPONDENTS.**

G.R. Nos. 106425 & 106431-32. July 21, 1995

Ponente: VITUG, J.

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VITUG, J.:

The Securities and Exchange Commission ("SEC") has both regulatory and adjudicative functions.

Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' associations, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Relative to its adjudicative authority, the SEC has original and exclusive jurisdiction to hear and decide controversies and cases involving -

- Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments;
- State and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchises; and
- Investors and corporate affairs, particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms; as well as
- Petitions for suspension of payments filed by corporations, partnerships or associations possessing sufficient property to cover all their debts but which foresee the impossibility of meeting them when they respectively fall due, or possessing insufficient assets to cover their liabilities and said entities are upon petition or motu proprio, placed under the management of a Rehabilitation Receiver or Management Committee.

The petition before this Court relates to the exercise by the SEC of its powers in a case involving a stockbroker (CUALOPING) and a stock transfer agency (FIDELITY).

For the factual backdrop, we adopt the findings of the Court of Appeals; we quote:

"Cualoping Securities Corporation (CUALOPING for brevity) is a stockbroker, Fidelity Stock Transfer, Inc. (FIDELITY for brevity), on the other hand, is the stock transfer agent of Philex Mining Corporation (PHILEX for brevity).

"On or about the first half of 1988, certificates of stock of PHILEX representing one million four hundred [thousand] (1,400,000) shares were stolen from the premises of FIDELITY. These stock certificates consisting of stock dividends of certain PHILEX shareholders had been returned to FIDELITY for lack of forwarding addresses of the shareholders concerned.

"Later, the stolen stock certificates ended in the hands of a certain Agustin Lopez, a messenger of New World Security, Inc., an entirely different stock brokerage firm. In the first half of 1989, Agustin Lopez brought the stolen stock certificates to CUALOPING for trading and sale with the stock exchange. When the said stocks were brought to CUALOPING, all of the said stock certificates bore the 'apparent' indorsement (signature) in blank of the owners (the stockholders to whom the stocks were issued by PHILEX) thereof. At the side of these indorsements (signatures), the words 'Signature Verified' apparently of FIDELITY were stamped on each and every certificate. Further, on the words 'Signature Verified' showed the usual initials of the officers of FIDELITY.

"Upon receipt of the said certificates from Agustin Lopez, CUALOPING stamped each and every certificate with the words 'Indorsement Guaranteed,' and thereafter, traded the same with the stock exchange.

"After the stock exchange awarded and confirmed the sale of the stocks represented by said certificates to different buyers, the same were delivered to FIDELITY for the cancellation of the stocks certificates and for issuance of new certificates in the name of the new buyers. Agustin Lopez on the other hand was paid by CUALOPING with several checks for Four Hundred Thousand (P400,000.00) Pesos for the value of the stocks.

"After acquiring knowledge of the pilferage, FIDELITY conducted an investigation with assistance of the National Bureau of Investigation (NBI) and found that two of its employees were involved and signed the certificates.

"After two (2) months from receipt of said stock certificates, FIDELITY rejected the issuance of new certificates in favor of the buyers for reasons that the signatures of the owners of the certificates were allegedly forged and thus the cancellation and new issuance thereof cannot be effected."[1]

On 11 August 1988, FIDELITY sought an opinion on the matter from SEC, which, on 06 October 1988, summoned FIDELITY and CUALOPING to a conference. In this meeting, the parties stipulated, among other things, thusly:

"1.

That the normal procedure followed by Fidelity Stock Transfers, Inc. as transfer agent is that before stamping compares the signatures on the certificates with the specimen signature on file with it.

"2.

That there is an endorsement guaranty stamp made by Cualoping Securities Corporation.

"3.

That the checks of Cualoping Securities Corporation were made out payable to Agustin Lopez on the dates specified therein."[2]

On 26 October 1988, the Brokers and Exchange Department ("BED") of the SEC disposed of the matter in this manner:

"WHEREFORE, Fidelity Stock Transfers, Inc., is hereby ordered to replace all the subject shares and to cause the transfer thereof in the names of the buyers within ten days from actual receipt hereof.

"Cualoping Securities, Inc. for having violated Section 29 a (3) of the Revised Securities Act is hereby ordered to pay a fine of P50,000.00 within five (5) days from actual receipt hereof.

"Henceforth, all brokers are required to make out checks in payment of shares transacted only in the name of the registered owners thereof."[3]

From the above resolution, as well as that which denied a motion for reconsideration, both CUALOPING and FIDELITY appealed to the Commission En Banc.

On 14 December 1989, the Commission rendered its decision and concluded:

"WHEREFORE, premises considered, the Commission en banc, finding both Cualoping Securities Corporation and Fidelity Stock Transfers, Inc. equally negligent in the performance of their duties hereby orders them to (1) jointly replace the subject shares and for Fidelity to cause the transfer thereof in the names of the buyers and (2) to pay a fine of P50,000.00 each for hav[ing] violated Section 29 (a) of the Revised Securities Act."[4]

The decision was appealed to the Court of Appeals (CA-G.R. SP No. 19585; CA-G.R. SP No. 19659; and CA--G.R. SP No.19660). In a consolidated decision, dated 22 July 1992, the appellate court reversed the SEC and set aside SEC's order "without prejudice to the right of persons injured to file the proper action for damages."

The Commission has brought the case to this Court in the instant petition for review on certiorari, contending that the appellate court erred in setting aside the decision of the SEC which had (a) ordered the replacement of the certificates of stock of Philex and (b) imposed fines on both FIDELITY and CUALOPING.

There is partial merit in the petition.

The first aspect of the SEC decision appealed to the Court of Appeals, i.e., that portion which orders the two stock transfer agencies to "jointly replace the subject shares and for FIDELITY to cause the transfer thereof in the names of the buyers" clearly calls for an exercise of SEC's adjudicative jurisdiction. This case, it might be recalled, has started only on the basis of a request by FIDELITY for an opinion from the SEC. The stockholders who have been deprived of their certificates of stock or the persons to whom the forged certificates have ultimately been transferred by the supposed indorsee thereof are yet to initiate, if minded, an appropriate adversarial action. Neither have they been made parties to the proceedings now at bench. A justiciable controversy such as can occasion an exercise of SEC's exclusive jurisdiction would require an assertion of a right by a proper party against another who, in turn, contests it.[5] It is one instituted by and against parties having interest in the subject matter appropriate for judicial determination predicated on a given state of facts. That controversy must be raised by the party entitled to maintain the action. He is the person to whom the right to seek judicial redress or relief belongs which can be enforced against the party correspondingly charged with having been responsible for, or to have given rise to, the cause of action. A person or entity tasked with the power to adjudicate stands neutral and impartial and acts on the basis of the admissible representations of the contending parties.

In the case at bench, the proper parties that can bring the controversy and can cause an exercise by the SEC of its original and exclusive jurisdiction would be all or any of those who are adversely affected by the transfer of the pilfered certificates of stock. Any peremptory judgment by the SEC, without such proceedings having first been initiated, would be precipitate. We thus see nothing erroneous in the decision of the Court of Appeals, albeit not for the reason given by it, to set aside the SEC's adjudication "without prejudice" to the right of persons injured to file the necessary proceedings for appropriate relief.

The other issue, i.e., the question on the legal propriety of the imposition by the SEC of a P50,000 fine on each of

FIDELITY and CUALOPING, is an entirely different matter. This time, it is the regulatory power of the SEC which is involved. When, on appeal to the Court of Appeals, the latter set aside the fines imposed by the SEC, the latter, in its instant petition, can no longer be deemed just a nominal party but a real party in interest sufficient to pursue an appeal to this Court.

The Revised Securities Act (Batas Pambansa Blg. 178) is designed, in main, to protect public investors from fraudulent schemes by regulating the sale and disposition of securities, creating, for this purpose, a Securities and Exchange Commission to ensure proper compliance with the law. Here, the SEC has aptly invoked the provisions of Section 29, in relation to Section 46, of the Revised Securities Act. This law provides:

"Sec. 29. Fraudulent transactions. - (a) It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities ?

"x x x x x x x x

"(3) To engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

"Sec. 46. Administrative sanctions. — If, after proper notice and hearing, the Commission finds that there is a violation of this Act, its rules, or its orders or that any registrant has, in a registration statement and its supporting papers and other reports required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or refused to permit any unlawful examination into its affairs, it shall, in its discretion, impose any or all of the following sanctions:

"(a)

Suspension, or revocation of its certificate of registration and permit to offer securities;

"(b)

A fine of no less than two hundred (P200.00) pesos nor more than fifty thousand (P50,000.00) pesos plus not more than five hundred (P500.00) pesos for each day of continuing violation." (Italics supplied.)

There is, to our mind, no question that both FIDELITY and CUALOPING have been guilty of negligence in the conduct of their affairs involving the questioned certificates of stock. To constitute, however, a violation of the Revised Securities Act that can warrant an imposition of a fine under Section 29(3), in relation to Section 46 of the Act, fraud or deceit, not mere negligence, on the part of the offender must be established. Fraud here is akin to bad faith which implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is unlike that of the negative idea of negligence in that fraud or bad faith contemplates a state of mind affirmatively operating with furtive objectives. Given the factual circumstances found by the appellate court, neither, FIDELITY nor CUALOPING, albeit indeed remiss in the observance of due diligence, can be held liable under the above provisions of the Revised Securities Act. We do not imply, however, that the negligence committed by private respondents would not at all be actionable; upon the other hand, as we have earlier intimated, such an action belongs not to the SEC but to those whose rights have been injured.

Our attention is called by the Solicitor General on the violation by FIDELITY of SEC-BED Memorandum Circular No. 9, series of 1987, which reads:

"To expedite the release of Certificates of Securities to the buyers, the Commission reiterates the following rules in delivery of stock certificates:

"1.

Deadlines for Delivery of Documents - All requirements must be complied with the certificates of stock, as well as necessary documents required for the transfer of shares shall be delivered within the following periods:

"x x x x x x x x

"d.

From transfer agent back to clearing house and/or broker - not longer than ten (10) days from receipt of documents provided there is a 'good delivery,' where there is no 'good delivery,' the certificate and the accompanying documents shall be returned to the clearing house or broker not later than two (2) days after receipt thereof, except when defects can be readily remedied, in which case the clearing house or the broker shall instead be notified of the requirements within the same period. The notice to the clearing house or broker shall indicate that the Securities and Exchange Commission has been notified of such defective delivery." [6]

FIDELITY is candid enough to admit that it has truly failed to promptly notify CUALOPING and the clearing house of the pilferage of the certificates of stock (pp. 225, 239-240, Rollo). FIDELITY strongly asserts, however, that it has been fined by the SEC not by virtue of Memorandum Circular No. 9 but for a violation of Section 29(a)(3) of the Revised Securities Act, and that the memorandum circular is only now being raised for the first time in the instant petition.

In *Insular Life Assurance Co., Ltd., Employees Association-NATU vs. Insular Life Assurance Co., Ltd.*, [7] this Court has ruled that when issues are not specifically raised but they bear relevance and close relation to those properly raised, a court has the authority to include all such issues in passing upon and resolving the controversy. In *Bank of America, NT & SA vs. Court of Appeals*, 228 SCRA 357, we have said that "the rule that only issues or theories raised in the initial proceedings may be taken up by a party thereto on appeal should only refer to independent, not concomitant matters, to support or oppose the cause of action or defense." In this case at bench, particularly, it is not a new issue that is being raised but a memorandum-circular having the force and effect of law that has been cited to support a position that relates to the very subject matter of the controversy. On this point, accordingly, we must rule in favor of petitioner SEC.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED except the portion thereof which sets aside the imposition by the Securities and Exchange Commission of a fine on FIDELITY which is hereby REINSTATED. No costs.

SO ORDERED.

Romero, Melo, and Francisco, JJ., concur.
Feliciano, (Chairman), no part.

[1] Rollo, pp. 34-35.

[2] Rollo, p. 35.

[3] Rollo, p. 36.

[4] Rollo, p. 36.

[5] See Black's Law Dictionary, 5th Edition.

[6] Rollo, pp. 220-221.

[7] 76 SCRA 50, see also Roman Catholic Archbishop of Manila vs. Court of Appeals, 198 SCRA 300; Mecenas vs. Court of Appeals, 180 SCRA 83; Sociedad Europea de Financiacion, S.A. vs. Court of Appeals, 193 SCRA 105; Lianga Lumber Co. vs. Lianga Timber Co., Inc., 76 SCRA 223.

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