

**RAMON GIL ABAD AND CONSUELO R. ABAD, PETITIONERS, VS.
COURT OF FIRST INSTANCE OF PANGASINAN, BRANCH VIII,
PRESIDED OVER BY HONORABLE JUDGE MODESTO S. BASCOS, AND
DIMENSIONAL CON...**

G.R. Nos. 58507-08. February 26, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners seek the review and the setting aside, on a question of law, of the Orders of Branch 8 of the then Court of First Instance (now Regional Trial Court) of Pangasinan in Civil Case No. D-5216[1] and Civil Case No. D-5408:[2] (a) of 25 May 1981 dismissing Civil Case No. D-5408 on the ground that the Securities and Exchange Commission (SEC), and not the respondent court, has original exclusive jurisdiction over the subject matter thereof; (b) of 27 May 1981 dismissing Civil Case No. D-5216 on the same ground aforesaid; and (c) of 12 October 1981 denying petitioners' motion for reconsideration in the aforesaid cases. They then pray that the respondent Court be ordered to take cognizance of, hear and decide said cases.

The undisputed facts of the controversy are simple.

Respondent corporation, hereinafter referred to as DIMCONTRAD, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office in Baguio City. In response to a call for investors, petitioner Ramon Gil Abad invested various sums with DIMCONTRAD on different dates, as follows: (a) P21,000.00 on 15 December 1979; (b) P1,000.00 on 15 January 1980; (c) P1,000.00 on 15 March 1980; and (d) P1,000.00 on 15 May 1980, subject to the following terms and conditions:

- 1) The term of each investment is six (6) months counted from the respective dates above indicated; hence, their respective maturities fell on 15 June 1980, 15 July 1980, 15 September 1980 and 15 November 1980;
- 2) The investor is guaranteed a share in the profits for six (6) months at the rate equal to 5% of the invested amount to be paid to him on the 15th day of each month starting on the 15th day of the month next following the date the investment was made;
- 3) On maturity date, DIMCONTRAD shall return to the investor the amount invested plus a share in the last months's profit.

Upon receipt of the amount for each investment, DIMCONTRAD delivered to Ramon an official receipt, an instruction slip and a promissory note.[3]

Upon the other hand, Consuelo R. Abad, wife of Ramon, also invested money in DIMCONTRAD, as follows: (a) P12,500.00 on 8 February 1980; (b) P2,700.00 on 8 March 1980; (c) P1,000.00 on 8 April 1980; (d) P1,000.00 on 8 May 1980. The said investments, totalling P17,000.00, were subject to the same terms and conditions as those of her husband's. Upon receipt of every investment, DIMCONTRAD delivered to Consuelo an official receipt, instruction slip and a promissory note.[4]

The promissory notes issued to Ramon and Consuelo uniformly provide:

"That Dimensional Construction, Trade and Development Corporation x x x hereby binds itself and promises the return of certain amount of monetary investment in Philippine currency at the time of maturity in favor of the investor written hereunder or in favor of any member of his family or any third person whom he may designate to receive said amount at the time said amount is to be returned subject to the terms and conditions set forth hereunder."

As for the 15 December 1979 investment of Ramon, DIMCONTRAD was only able to pay Ramon his share in the profits for the months of January, February, March and April 1980. For the 15 January 1980 investment, it likewise failed to pay the shares in profit for the months of May, June and July 1980. It completely failed to pay Ramon's shares in the profits for his March and May 1980 investments.

Upon maturity of his P21,000.00 investment, Ramon tried to collect the said amount together with the corresponding unpaid monthly shares in profit but DIMCONTRAD prevailed upon him to extend the date of maturity to 5 July 1980.[5] He agreed thereto. When again he attempted to collect the matured investment together with the unpaid monthly shares in the profit as agreed upon on 5 July 1980, DIMCONTRAD refused.

On 15 July 1980, upon maturity of the 15 January investment, Ramon tried to collect the same together with the unpaid guaranteed monthly shares, but respondent corporation again failed and refused to repay the investment. The latter also refused to return the sums invested in March and May.

Subsequently, due to loss of confidence and in the exercise of his contractual rights, Ramon tried to collect all his investments in the total sum of P24,000.00 together with all the unpaid monthly shares in the profits amounting to P2,850.00, but DIMCONTRAD refused to pay the same.

As for Consuelo's monthly shares in the profits, DIMCONTRAD was able to pay her only for the months of March, April and May for her 8 February 1980 investment; for the months of April and May 1980 for her 8 March 1980 investment; and for the month of May 1980 insofar as her 8 April 1980 investment is concerned. DIMCONTRAD failed to pay any share in profits on her 8 May 1980 investment. She then demanded the return of all her matured investments amounting to P17,200.00. Notwithstanding repeated demands, DIMCONTRAD failed and refused to return the same together with the guaranteed shares in the profits amounting to P2,975.00.

Thus, on 4 September 1980, Ramon filed a complaint for "Sum of Money and Damages" against DIMCONTRAD with the then court of First Instance of Pangasinan, which was docketed as Civil Case No. D-5216 and which was raffled to Branch 8 thereof at Dagupan City,[6] alleging the foregoing investments he had made and the failure and refusal of DIMCONTRAD to return to him said investments pursuant to the promissory notes with the unpaid guaranteed shares in the profits. In support of his claim for attorney's fees and damages, he alleges as follows:

x x x

"15. That due to illegal, unreasonable and fraudulent actions of the defendant as alleged in the foregoing paragraphs hereof plaintiff was constrained to file this suit for which he contracted the services of the undersigned counsel at a contingent fee of twenty five percent (25%) of the entire sums from defendant, and is likely to incur other litigation expenses of approximately P5,000.00;

16. That due to the illegal, unreasonable and fraudulent acts of the defendants as alleged in the preceding paragraphs hereof plaintiff suffered mental torture and anguish, serious anxiety, loss of sleep and appetite and has developed nervousness all of which may be assessed at not less than P10,000.00;

17. That under the circumstances of this case as alleged in the preceding paragraphs hereof it is evident that defendant employed deception, unfair business practices, and has acted wantonly, recklessly, and imprudently

in procuring the investments of the plaintiff which justify the award of exemplary damages against the defendant of not less than P20,000.00 in order to give an example to others for the public good;"

On 11 September 1980, Ramon filed in Civil Case No. D-5216 a Motion for Preliminary Attachment praying therein that certain properties of DIMCONTRAD be attached,[7] which the latter opposed.[8]

On 6 November 1980, DIMCONTRAD filed its Answer with Counterclaim[9] in Civil Case No. D-5216. As Special and Affirmative Defenses, it alleges that: (a) it had invested the amounts invested by the plaintiff in legitimate projects and industrial concerns and had been paying the shares of its profits for some months, but that it stopped paying it because it had to wait for the new board of directors and (b) the complaint states no cause of action.

On 10 December 1980, respondent Court issued a writ of preliminary attachment.[10]

On 7 January 1981, Consuelo, assisted by her husband Ramon, also filed a complaint[11] for "Sum of Money and Damages with Preliminary Attachment" against DIMCONTRAD in the abovenamed court which docketed it as Civil Case No. D-5408. She alleges therein the dates when she made her investments, attaching thereto the official receipts, instruction slips and promissory notes issued by DIMCONTRAD, and the latter's failure and refusal to return the investments pursuant to the promissory notes and pay the guaranteed profits. In support of her application for preliminary attachment, she alleges:

x x x

"10. That there exists a prima facie evidence (sic) that defendant employed fraudulent means to induce the plaintiff to make her investments as can be gleaned from the following circumstances, to wit:

- (a) defendant suddenly closed and abandoned its branch offices in Dagupan City and Urdaneta, Pangasinan shortly after the maturity of plaintiff's first investment;
- (b) defendant abandoned and closed its restaurant and disco business in Dagupan City shortly after closing its branch offices in Pangasinan;
- (c) defendant's principal officers can no longer be located at its principal office in Baguio City where they ought to be found under normal circumstances; and
- (d) there are other numerous investors of defendant whose large investments have matured, but remained outstanding and unpaid until the present and have likewise filed their claims in court;

11. That defendant is about to dispose of its properties, particularly the following:

x x x

with the intention of defrauding its creditors, x x x."

In both complaints, the petitioners pray for: (a) the return of their investments, with legal interest thereon, (b) payment of the unpaid guaranteed monthly profits, (c) attorney's fees, and (d) miscellaneous litigation expenses. In Civil Case No. D-5216, petitioner Ramon Abad further asks for moral and exemplary damages.

On 2 March 1981, defendant in Civil Case No. D-5408 filed an Omnibus motion to: (1) annul all proceedings, (2) lift and dissolve all attachments, levies or executions, and (3) dismiss all cases. A similar motion was filed in Civil Case No. D-5216 on 30 January 1981.[12] The principal ground alleged in support of the motion to dismiss is lack of jurisdiction on the part of the trial court. DIMCONTRAD maintains that SEC has jurisdiction over the claims of petitioners pursuant to Section 5(a) of P.D. No. 902-A, as amended.

The respondent Court thereafter promulgated two (2) orders, one on 25 May 1981 (Civil Case No. D-5408) and the other on 27 May 1981 (Civil Case No. D-5216) dismissing the said cases on the ground that since the plaintiffs therein allege fraud in the acquisition of investments, the matter falls within the jurisdiction of the SEC.[13]

Petitioners then jointly moved for a reconsideration of the said Orders[14] on 22 June 1981 which the respondent Court denied in its Order[15] of 12 October 1981, ruling therein that:

"x x x From the very allegations of the complaint, the plaintiffs admit having made investments at different times, different sums of money, with the defendant corporation at a fixed return of investment. In his (sic) motion and rejoinder, plaintiffs, thru counsel, alleged that plaintiffs are collecting their investments from the defendant corporation at the agreed rate of interest. But the plaintiffs can not now abandon the allegations of the complaint in which they stated several times in different paragraphs that they made investments of different amounts at different times with the defendant which they admit is a private corporation duly organized and existing in accordance with the laws of the Philippines duly registered with the Securities and Exchange Commission, further alleging in par. 10 of the complaint that 'there exists prima facie evidence that defendant employed fraudulent means to induce the plaintiffs to make investments'. (p. 4, par. 10, Complaint).

Verily, this Court believes that, as already discussed in the order of May 27, 1981, the Securities and Exchange Commission (SEC) has the jurisdiction in view of sub-paragraphs (a) and (b) of Section 5 of PD No. 902-A reorganizing said commission and giving it additional powers."

From this dismissal, the petitioners filed the present petition on 23 December 1981. On 18 January 1982, this Court resolved to require the respondents to comment on the petition,[16] which they complied with. Petitioners filed a Reply thereto.

In the Resolution of 1 December 1982,[17] this Court resolved to: (a) give due course to the petition; (b) consider respondents' Comment as the Answer to the petition; (c) require the parties to file simultaneous Memoranda within twenty (20) days from notice; and (d) require the SEC to act as amicus curiae in this case and submit a Memorandum within twenty (20) days from notice.

The parties submitted their Memoranda. The SEC, as amicus curiae, filed its Memorandum on 9 April 1983;[18] it submits therein that it has the exclusive and original jurisdiction over Civil Cases Nos. D-5216 and D-5408 filed in the court below and subject of the instant petition considering that the petitioners allege as common ground for their complaints private respondent's purported deception, unfair business practices, fraudulent schemes and devices as means to induce the former to make the corresponding investments, which fall under paragraph (a) of Section 5, P.D. No. 902-A, as amended. If further informed this Court that private respondent was earlier investigated by the SEC, in the process of which the latter's officers, members of the board of directors, agents, solicitors, representatives, employees and other persons acting in their behalf were enjoined from selling, soliciting, as well as offering investment contracts to the public and from receiving monetary deposits or payments in connection therewith. Moreover, respondent corporation was directed to show cause why its corporate franchise or certificate of registration should not be suspended or revoked. The SEC had likewise initiated the filing of separate criminal cases against respondent corporation in the Court of First Instance of Pampanga.

Essential to the resolution of the present controversy is Section 5 of P.D. No. 902-A, as amended, which provides:

"SECTION 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:

- (a) Devices or 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 of 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.
- (d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (As added by P.D. 1758)."

Petitioners maintain that:

"I

CIVIL CASES NOS. D-5216 AND D-5408 INVOLVE THE COLLECTION OF SUMS OF MONEY ARISING FROM CONTRACTUAL RELATIONSHIP (sic), AND THEREFORE, PARTAKE THE NATURE (sic) OF ACTIONS FOR SPECIFIC PERFORMANCE WHICH FALL WITHIN THE ORIGINAL EXCLUSIVE JURISDICTION OF THE COURT OF FIRST INSTANCE (NOW REGIONAL TRIAL COURTS); and

II

THE PROVISIONS OF PRESIDENTIAL DECREE NO. 902-A DO NOT APPLY TO THE CASES AT BAR."

They submit that the actions filed before the court a quo are for specific performance because their principal purpose is to seek the refund of the amounts that were invested, together with the unpaid earnings thereof pursuant to the contracts entered into; petitioners aver that such actions, incapable of pecuniary estimation, fall within the jurisdiction of the respondent Court.

In support of their arguments, petitioners point to the allegations in the complaints filed with the trial court which "readily reveal that plaintiffs therein are seeking full and faithful compliance by defendant therein with its commitments to the former, namely, the refund of the entire investments and the payments of the outstanding and unpaid earnings thereof as stipulated in the investment contracts." [19] While conceding that the complaints allege fraud, even going as far as specifying the paragraphs containing the said averments, petitioners stress that these allegations do not alter the nature of the actions as the same are mere incidents to the contracts of investment sought to be enforced. The same do not refer to the schemes or devices used or employed by private respondent in its business in general, but to specific acts committed by the latter against the petitioners. Moreover, such allegations were made to substantiate petitioners' claim for damages and bolster the prayer for preliminary attachment.

Petitioners further claim that the dispute between the parties does not involve an intra-corporate controversy as nowhere in the various documents evidencing the investments of the petitioners is it provided that the latter would

automatically become stockholders of the respondent corporation upon execution thereof. Thus, the SEC cannot exercise jurisdiction over the case. Reliance is placed on the leading case of *Sunset View Condominium Corp. vs. Campos*[20] wherein the jurisdiction of the regular courts was upheld in a collection case as the same did not arise out of an intra-corporate controversy pursuant to Section 5(b) of P.D. No. 902-A.

We find the petition to be impressed with merit. Respondent Judge committed grave abuse of discretion in dismissing Civil Cases Nos. D-5216 and D-5408.

This is the second time that the matter of investments in the respondent corporation of a nature similar to those involved in the two (2) civil cases in question has been brought to this Court. We were confronted by the same issue of jurisdiction in *Bañez vs. Dimensional Construction Trade & Development Corporation*.^[21] In the said case, this Court, in upholding the jurisdiction of the regular court over a controversy involving promissory notes issued by the private respondent herein and similar to those involved here, held that:

"The recitals of the complaint in Civil Case No. 3569 disclose that plaintiff's cause of action is merely for the collection of the various sums of money that have already become payable to petitioners due to the promissory notes executed by defendant corporation which have already matured. There is no allegation nor any mention whatsoever in plaintiff's complaint that a device or scheme was resorted to by private respondent corporation amounting to fraud and misrepresentation. It is, therefore, difficult to consider that petitioner's case falls within the jurisdiction of the Securities and Exchange Commission pursuant to PD 902-A. x x x

x x x

In the promissory notes issued by private respondent corporation, it is clearly indicated therein that the sums of money received by private respondent were in the nature of investments of the petitioners, agreed upon by the parties to be returned by the corporation upon the maturity of said promissory notes. As the money received by private respondent do (sic) not constitute payment of subscription of shares, the petitioners herein did not become members of respondent Dimensional Trade and Development Corporation. In the case of *Sunset View Condominium Corporation vs. Hon. Jose C. Campos, Jr. et al.*, 104 SCRA 295, it was ruled that where the stated party-litigants 'are not shareholders of the condominium corporation, the instant cases for collection cannot be "a controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates"'. "

In the *Bañez* case, the DIMCONTRAD issued the questioned promissory notes in favor of the petitioner therein at around the same time that it issued the notes in favor of the petitioners in the instant case.

We cannot now decide differently in the case at bar. There can be no doubt that no intra-corporate dispute is involved because petitioners herein are neither actual nor prospective shareholders of DIMCONTRAD. They are merely its creditors. DIMCONTRAD, the respondent Judge and even the SEC, in the latter's Memorandum as *amicus curiae*, hold the view, however, that there are allegations in the complaint which bring the cases within the ambit of paragraph (a) of Section 5, P.D. No. 902-A, as amended. They particularly refer to paragraphs 15 and 17 of the complaint in Civil Case No. D-5216 and paragraph 10 of the complaint in Civil Case No. 5408, earlier quoted.

From said paragraphs, they conclude that the complaints involve or relate to alleged devices or schemes employed by DIMCONTRAD, its board of directors or officers amounting to fraud and misrepresentation. We have carefully read and scrutinized the complaints and We find nothing therein to sustain such a conclusion. Petitioners do not even allege therein that the call for investments, the instruction slips and the promissory notes were nothing but part of a scheme to defraud the investing public. The paragraphs preceding the aforementioned paragraphs 15, 17 and 10 do not allege any fraudulent scheme. They merely allege the investments made, the issuance by DIMCONTRAD of the official receipts, instruction slips and promissory notes, the months it failed to pay the

guaranteed shares in profits and its failure to pay the promissory notes upon maturity. Paragraphs 15 and 17 are nothing but conclusions of law to support the claims for moral and exemplary damages and attorney's fees. Paragraph 10 is intended to lay the basis for the issuance of a writ of preliminary attachment and relates to acts allegedly committed after the investments were made.

It is axiomatic that the averments of the complaint determine the nature of the action, and consequently, the jurisdiction of the courts.[22] This is because the complaint must contain a concise statement of the ultimate facts constituting the plaintiff's cause of action and must specify the relief sought.[23] No rule is better established than that which requires the complaint to contain a statement of all the facts constituting the plaintiff's cause of action.[24] Additionally, Section 5, Rule 8 of the Rules of Court provides that in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. In the case at bar, while there are allegations of fraud in the above quoted complaints, the same are not particular enough to bring the controversy within the SEC's jurisdiction. The said allegations are not statements of ultimate facts but are mere conclusions of law.

A pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law.[25] General allegations that a contract is valid or legal, or is just, fair and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, ultra vires, or against public policy, without stating facts showing its invalidity, are mere conclusions of law.[26]

Clearly, therefore, the allegations in the complaint do not bring the cases within the jurisdiction of the SEC. Shorn of unnecessary details, it is evident that the actions are simple money claims.

In *Union Glass & Container Corporation vs. Securities and Exchange Commission*,[27] We held that:

"This grant of jurisdiction (under Section 5 of PD 902-A) 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. (Vide, Whereas Clauses of P.D. 902-A).

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 pertain to any of the following relationships: [a] between the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, members, or officers; [c] between the corporation, partnership 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."

WHEREFORE, the instant petition is GRANTED. The questioned ORDERS of the respondent Court dated 25 May 1981, 27 May 1981 and 12 October 1981 are hereby REVERSED and SET ASIDE. The respondent Court is hereby directed to take cognizance of and hear and decide Civil Cases Nos. D-5216 and D-5408.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Entitled Ramon Gil Abad vs. Dimensional Construction, Trade and Development Corporation (DIMCONTRAD).

[2] Entitled Consuelo R. Abad and Ramon Gil Abad vs. Dimensional Construction, Trade and Development Corporation (DIMCONTRAD).

[3] Rollo, 31-34.

[4] Id., 62-68.

[5] Annex "K" of Complaint.

[6] Rollo, 24-30.

[7] Rollo, 35.

[8] Id., 42.

[9] Id., 45-47.

[10] Rollo, 52.

[11] Id., 55-61.

[12] Rollo, 70-75.

[13] Annexes "A" and "B" of Petition.

[14] Annex "O", Id.

[15] Annex "C", Id.

[16] Rollo, 215.

[17] Id.

[18] Id., 263.

[19] Memorandum for the Petitioners, 14.

[20] 104 SCRA 295.

[21] 140 SCRA 249 (22 November 1985).

[22] Calo vs. Roldan, et al., 76 Phil. 445; Serrano vs. Muñoz Motors, Inc., 21 SCRA 1085; Union Obrera de Tabaco, Inc. vs. Quicho, 40 SCRA 589; Vargas vs. Akai Philippines, 156 SCRA 531; see also Eugenio, Sr. vs. Velez, 185 SCRA 425.

[23] Section 3, Rule 6, Rules of Court.

[24] Pascua vs. Court of Appeals, 183 SCRA 262.

[25] Remitere vs. Vda. de Yulo, 16 SCRA 251.

[26] Id., citing 71 C.J.S., 44-45; see also Bacolod-Murcia Milling Co., Inc. vs. First Farmers Milling Co., Inc., etc., 103 SCRA 436, and Alzua and Arnalot vs. Johnson, 21 Phil. 308.

[27] 126 SCRA 31.

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