

**SIXTO P. CRISOSTOMO, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, SPOUSES SHOJI YAMADA AND MICHIO YAMADA AND SPOUSES TOMOTADA ENATSU AND EDITA ENATSU, RESPONDENTS.***G.R. Nos. 89095 & 89555. November 06, 1989*

Ponente: GRIÑO-AQUINO, J.

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In his petition for certiorari,[1] the petitioner seeks to annul and set aside the en banc resolution dated February 14, 1989 of the Securities and Exchange Commission in SEC EB Case No. 191 and the concurring opinions thereto (Annexes F, G, and H, pp. 39-62, Rollo), as well as its orders dated June 27, 1989 and July 21, 1989 (Annexes M and O, pp. 83-86, Rollo) directing the corporate secretary of the United Doctors Medical Center, Inc. (hereafter "UDMC") to call a special meeting of the stockholders to elect the officers and directors in the implementation of the SEC's aforementioned en banc resolution of February 14, 1989, which the Court of Appeals affirmed in its decision dated June 8, 1989 in CA-G.R. SP No. 17435, entitled "Sixto Crisostomo, petitioner vs. Securities and Exchange Commission, Spouses Dr. Shoji Yamada and Michio Yamada, and Spouses Dr. Tomotada Enatsu and Edit a Enatsu, respondents." On August 1, 1989, the Court of Appeals denied Crisostomo's motion for reconsideration of its decision. On August 24, 1989, he filed a petition for review of said decision in this Court (G.R. No. 89555) which was originally assigned to the Third Division, but was later consolidated with G.R. No. 89095.

At first blush, the petitions sound like a patriotic defense of the Constitution, but, at bottom they are only an artful scheme to defraud a group of foreign investors who had been persuaded by the officers of UDMC to invest P57 million to save the corporation (its assets as well as those of the Crisostomos) from imminent foreclosure by the Development Bank of the Philippines (DBP) to which UDMC was indebted in the sum of P55 million. It is the kind of operation that sullies our collective image as a people and sets back our government's heroic efforts to attract foreign investments to our country.

The antecedent facts, culled from the decision of the Court of Appeals, are as follows:

Sixto Crisostomo, Felipe Crisostomo (deceased), Veronica Palanca, Juanito Crisostomo, Carlos Crisostomo, Ricardo Alfonso, Regino Crisostomo and Ernesto Crisostomo (known as the Crisostomo group) were the original stockholders of the United Doctors Medical Center (UDMC) which was organized in 1968 with an authorized capital stock of P1,000,000 (later increased to P15,000,000 in 1972). They owned approximately 40% of UDMC's outstanding capital stock, while the 60% majority belonged to the members of the United Medical Staff Association (UMSA), numbering approximately 150 doctors and medical personnel of UDMC.

Despite their minority status, the Crisostomo group has managed UDMC from its inception, with Juanito Crisostomo as president, Ricardo Alfonso, Sr. as chairman of the board, Carlos Crisostomo as corporate secretary and Sixto Crisostomo as director and legal counsel.

In 1988, UDMC defaulted in paying its loan obligation of approximately P55 million to the DBP. In the last quarter of 1987, UDMC's assets (principally its hospital) and those of the Crisostomos which had been given as collateral to the DBP, faced foreclosure by the Asset Privatization Trust (APT), which had taken over UDMC's loan obligation to the DBP.

To stave off the threatened foreclosure, UDMC, through its principal officers, Ricardo Alfonso and Juanito Crisostomo, persuaded the Yamadas and Enatsus (Shoji Yamada and Tomotada Enatsu are Japanese doctors) to invest fresh capital in UDMC. The wife of Tomolada Enatsu, Edita Enatsu, is a Filipina. They invested approximately P57 million in UDMC.

The investment was effected by means of: (1) a Stock Purchase Agreement; and (2) an Amended Memorandum of Agreement whereby the group subscribed to 82.09% of the outstanding shares of UDMC.

Both transactions were duly authorized by the board of directors and stockholders of UDMC. They were submitted to, scrutinized by, and, finally, approved by the Board of Investments, the Central Bank of the Philippines, and the Securities and Exchange Commission. The elaborate governmental approval process was done openly and with full knowledge of all concerned, including Sixto Crisostomo, the corporate legal counsel. Upon the completion of the governmental approval process, shares of stock, duly signed by UDMC's authorized officers, were issued to the Yamadas and Enatsus.

This capital infusion not only saved the assets of the UDMC (especially the hospital) from foreclosure but also freed the Crisostomos from their individual and solidary liabilities as sureties for the DBP loan.

As it had been agreed in the Amended Memorandum of Agreement between UDMC and the Japanese group that upon the latter's acquisition of the controlling interest in UDMC, the corporation would be reorganized, a special stockholders' meeting and board of directors' meeting were scheduled to be held on August 20, 1988.

However, on the eve of the meetings, i.e., on August 19, 1988, Sixto Crisostomo, supposedly acting for himself, filed SEC Case No. 3420 against Juanito Crisostomo, Ricardo Alfonso, Shoji Yamada, Michiyo Yamada, Tomotada Enatsu and Edita Enatsu, praying, among other things, (1) to stop the holding of the stockholders' and board of directors' meetings; (2) to disqualify the Japanese investors from holding a controlling interest in UDMC and from being elected directors or officers of UDMC; and (3) to annul the Memorandum of Agreement and Stock Purchase Agreement because they allegedly did not express the true agreement of the parties (pp. 194-203, Rollo).

Two weeks later, on September 2, 1988, Crisostomo filed Civil Case No. 88-1823 in the Regional Trial Court of Makati, Metro Manila, where he also sought a preliminary injunction and the identical reliefs prayed for by him in SEC Case No. 3420 (pp. 317-335, Rollo). It was dismissed by the trial court for lack of jurisdiction and is pending appeal in the Court of Appeals where it is docketed as CA-G.R. No. 20285-CV.

On September 13, 1988, the hearing officer, Antonio Esteves, granted the application for a writ of preliminary injunction enjoining the respondents —

"x x x from holding the special meeting of the stockholders and of the Board of Directors of United Doctors Medical Center, [Inc.] (UDMC) scheduled on August 20, 1988 or any subsequent meetings; from adopting resolutions to elect new directors and appoint new officers; from approving resolutions directly or indirectly affecting the operations, organizational structure, and financial condition of the corporation, x x x and from disbursing funds of the said corporation except those ordinary day-to-day expenses pending the final termination of this case." (p. 30, Rollo.)

The private respondents' motion for reconsideration of this order was denied by the hearing officer on November 16, 1988. In the same order, he created a management committee to administer UDMC (pp. 32-35, Rollo).

The respondents appealed by certiorari to the SEC en banc. On February 14, 1989, Commissioner Jose C. Laureta,

with whom Commissioners Rosario N. Lopez and Gonzalo T. Santos separately concurred, set aside the preliminary injunction issued by Esteves and the management committee which he created. The dispositive part of the decision reads:

"WHEREFORE, premises considered, the instant petition for certiorari is GRANTED and the Commission en banc ORDERS:

"1. That the questioned orders of the hearing officer in SEC Case No. 3420 of September 13, 1988 and November 16, 1988, be immediately vacated;

"2. That a special stockholders' meeting of UDMC be held for the purpose of allowing the stockholders of record of the corporation to elect a new board of directors, which special meeting is hereby directed to be scheduled within 10 days from receipt of a copy of this resolution by the incumbent corporate secretary or acting corporate secretary of UDMC, and to this end, that such officer be, as he hereby is, directed: (a) to issue a call for such special meeting and serve notice thereof on all stockholders of record of the corporation, in accordance with Section 6 of Article VII of UDMC's by-laws;

and (b) to submit to the Commission, through the Commission Secretary, a written report of his compliance with this particular order of the Commission, not later than 5 days prior to the scheduled date of the proposed UDMC special stockholders' meeting;

"3. That upon the election of a new board of directors of UDMC, that such board be, as it hereby is, enjoined to meet as promptly as possible for the purpose of electing a new set of officers of the corporation in order to ensure its proper management;

"4. That the hearing officer be, as he hereby is, directed to continue with the proceedings of SEC Case No. 3420, and to do so with all deliberate speed, for the purpose of resolving the alleged violation of certain rights of Sixto Crisostomo, as a stockholder of UDMC, particularly, his right to inspect the corporate books and records of UDMC, his preemptive right to subscribe to the P60 million increase in the authorized capital of UDMC, and his appraisal rights; and

"5. That the board of directors and officers of UDMC be, as they hereby are, ordered to submit to the Commission, through the Chairman, a written report as to its plans as regards its nursing school, such report to be submitted at least one month prior to the commencement of the school year 1989-1990.

"SO ORDERED." (pp. 49-50, Rollo.)

Sixto Crisostomo sought a review of the SEC's en banc resolution in the Court of Appeals (CA-G.R. SP No. 17435).

On June 8, 1989, the Court of Appeals dismissed his petition and lifted the temporary restraining order that it had issued against the SEC's resolution (Annex K, pp. 65-81, Rollo). Petitioner filed a motion for reconsideration (pp. 418-434, Rollo). The Court of Appeals required the private respondents to comment but it denied the petitioner's motion to reinstate the writ of preliminary injunction (Annex L, p. 82, Rollo).

On motion of the private respondents (Annex K, p. 413, Rollo), the SEC en banc issued an order on June 27, 1989 directing the secretary of UDMC to call a special stockholders' meeting to elect a new board of directors and officers of the

corporation (Annex F). Petitioner asked the SEC to recall that order on account of his pending motion for reconsideration in the Court of Appeals. The motion was opposed by the private respondents. On July 21, 1989, the SEC denied petitioner's motion (p. 86, Rollo). Whereupon, he filed this petition for certiorari and prohibition with a prayer for preliminary injunction alleging that the SEC en banc abused its discretion:

- in setting aside Esteves' orders;

- in allowing the Japanese group to have control of UDMC for it will result in culpable violation of Section 7, Article XII of the 1987 Constitution which provides that no private lands shall be transferred or conveyed except to individuals or corporations qualified to acquire or hold land of the public domain, meaning corporations at least sixty per centum of whose capital is owned by Filipino citizens (Sec. 2, Article XII, 1987 Constitution); and in allowing the Japanese investors to own more than 40% of the capital stock of UDMC (which operates a nursing and midwifery school) in violation of Section 4 (2) Article XIV of the 1987 Constitution which provides that educational institutions x x x shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens.

- The public and private respondents, in their comments on the petition, asked that the petition be dismissed and that the petitioner be cited for contempt for forum-shopping.

We find no merit in the petition. The first allegation that the SEC en banc erred in reversing the orders of the hearing officer, Esteves, is the same ground raised by the petitioner in CA-G.R. No. SP 17435. The issue is frivolous for the authority of the SEC en banc to review, revise, reverse, or affirm orders of its hearing officers is too elementary to warrant any debate.

Equally unmeritorious are the second and third grounds of the petition — that the P57 million investment of the Japanese group in UDMC violates the constitutional provisions restricting the transfer or conveyance of private lands (Art. XIII, Sec. 7. 1987 Constitution) and the ownership of educational institutions (Art. XIV, Sec. Ufa], 1987 Constitution), to citizens of the Philippines or corporations at least 60% of the capital of which is owned by Filipino citizens. While 82% of UDMC's capital stock is indeed subscribed by the Japanese group, only 30% (equivalent to 171,721 shares or PI 7,1 72.00) is owned by the Japanese citizens, namely, the Yamada spouses and Tomotada Enatsu. 52% is owned by Edita Enatsu, who is a Filipino. Accordingly, in its application for approval/registration of the foreign equity investments of these investors, UDMC declared that 70% of its capital stock is owned by Filipino citizens, including Edita Enatsu. That application was approved by the Central Bank on August 3, 1988 (p. 249, Rollo).

The investments in UDMC of Doctors Yamada and Enatsu do not violate the Constitutional prohibition against foreigners practicing a profession in the Philippines (Section 14, Article XII, 1987 Constitution) for they do not practice their profession (medicine) in the Philippines, neither have they applied for a license to do so. They only own shares of stock in a corporation that operates a hospital. No law limits the sale of hospital shares of stock to doctors only. The ownership of such shares does not amount to engaging (illegally) in the practice of medicine, or, nursing. If it were otherwise, the petitioner's stockholding in UDMC would also be illegal.

The SEC's orders dated June 27, 1989 and July 21, 1989 (directing the secretary of UDMC to call a stockholders' meeting, etc.) are not premature, despite the petitioner's then pending motion for reconsideration of the decision of the Court of Appeals. The lifting by the Court of Appeals of its writ of preliminary injunction in CA-G.R. SP No. 17435 cleared the way for the implementation by the SEC's en banc resolution in SEC EB Case No. 191. The SEC need not wait for the Court of Appeals to resolve the petitioner's motion for reconsideration for a judgment decreeing the dissolution of a preliminary injunction is immediately executory. It "shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal." (Sec. 4, Rule 39, Rules of Court; Marcelo Steel Corp. vs. Court of Appeals, 54 SCRA 89 [1973]; Aguilar vs. Tan, 31 SCRA 205 [1970]; Sitia Teco vs. Ventura, 1 Phil. 497 [1902]; Watson & Co., Ltd. vs. M. Enriquez, I Phil. 480 [1902]).

We now address the public and private respondents' separate motions to dismiss the petition and to cite

Crisostomo and his counsel for contempt of court for forum-shopping. The records show that Crisostomo had two actions pending in the Court of Appeals (CA-G.R. No. SP 17435 and CA-G.R. No. 20285 CV) when he filed the petition for certiorari (G.R. No. 89095) in this Court on July 27, 1989. The case docketed as CA-G.R. No. 20285-CV, is his appeal from the decision of the Regional Trial Court of Makati, dismissing his complaint for annulment of the Memorandum of Agreement and the Stock Purchase Agreement between UDMC and the Japanese investors. CA-G.R. No. SP 17435 is his petition for certiorari to review the SEC's en banc resolution upholding those transactions and ordering the holding of a stockholders meeting to elect the directors of the UDMC, and of a board of directors' meeting to elect the officers.

Notwithstanding the pendency of those two cases in the Court of Appeals, Crisostomo filed this petition for certiorari and prohibition on July 27, 1989 where he raises the same issues that he raised in the Court of Appeals.

The prayer of his petition in CA-G.R. No. SP 17435 reads thus:

"3) After hearing on the merits, judgment be rendered:

"a) Annulling and setting aside the questioned rulings of the respondent COMMISSION[2] for having been issued with grave abuse of discretion tantamount to lack or excess of jurisdiction; and

"b) Making permanent the preliminary injunction issued in this case against the respondents." (p. 241, Rollo.)

In his petition for certiorari (G.R. No. 89095), he also prays that —

"1. Upon the filing of this petition, a temporary restraining order issue enjoining respondents, their representatives or agents from implementing or executing the SEC opinions (Annexes 'F' 'G' and

'H') and its June 27 and July 21, 1989 orders (Annexes 'M1 and 'O') until further orders from the Honorable Court.

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"3. After notice, this petition be given due course and a writ of preliminary injunction be issued for the same purpose and effect upon such terms and conditions the Honorable Court may impose; and thereafter, judgment be rendered granting the writ prayed for and annulling and setting aside the said opinions rendered by the SEC in their stead, affirming the orders of the Hearing Officer (Annexes 'A' and 'B')." (pp. 27-28, Rollo.)

Additionally, in his petition for review (G.R. No. 89555) he prays this Court to grant "all the reliefs" prayed for by him in CA-G.R. SP No. 17435.

Here is a clear case of forum-shopping.

"There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction. (Villanueva vs. Adre, G.R. No. 80863, April 27, 1989.)" (p. 303, Rollo.)

Forum-shopping is prohibited by the Interim Rules of Court for it trifles with the courts and abuses their processes

(E. Razon, Inc. vs. Phil. Ports Authority, 101 SCRA 450). Section 17 of the Interim Rules of Court provides:

"17. Petitions for writs of certiorari, etc. — No petition for certiorari, mandamus, prohibition, habeas corpus or quo warranto may be filed in the Intermediate Appellate Court if another similar petition has been filed or is still pending in the Supreme Court. Nor may such petition be filed in the Supreme Court if a similar petition has been filed or is still pending in the Intermediate Appellate Court, unless it be to review the action taken by the Intermediate Appellate Court on the petition filed with it. A violation of this rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." (Interim Rules of Court.)

Forum-shopping makes the petitioner subject to disciplinary action and renders his petitions in this Court and in the Court of Appeals dismissible (E. Razon, Inc. vs. Philippine Ports Authority, et al, G.R. No. 75197, Resolution dated July 31, 1986; Euan vs. Lopez, Jr., 145 SCRA 34, 38-39; Collado v. Hernando, L-43886, May 30, 1988). For this reason, if not for their lack of merit, the petitions should be, as they are hereby, dismissed.

WHEREFORE, these petitions are dismissed for lack of merit. The temporary restraining order which this Court issued on August 7, 1989 in G.R. No. 89095 is hereby lifted. The Court of Appeals is ordered to immediately dismiss CA-G.R. CV No. 20285. The petitioner and his counsel are censured for engaging in forum-shopping. The petitioner is further ordered to pay double costs in this instance.

**SO ORDERED.**

Narvasa (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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[1] G.R. No. 89095 filed on July 27, 1989.

[2] SEC resolution of February 14, 1989 penned by Commissioner Laureta and the concurring opinions dated March 14, 1989 and April 21, 1989 of Commissioners Santos and Lopez, respectively (Annexes F, G, and H).

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