Supreme Court E-Library

be afforded compassion for the embarrassment, humiliation and, above all, injustice caused to him and his family by his unfounded dismissal. This Court cannot help surmising the painful stigma that must have caused petitioner, the incursion on his dignity and reputation, for having been adjudged, albeit wrongfully, a dishonest man, and worse, a thief. Consequently, this Court finds it fair and just to award petitioner full back wages from 1 April 1975 when he was illegally dismissed, to 12 March 1984 when he was reinstated. The payment shall be without deduction or qualification.

WHEREFORE, the petition is *GRANTED*. The decision of respondent Commission on Audit dated 23 July 1985 is *REVERSED* and *SET ASIDE*, and a new one entered ordering public respondents, the Chairman of the Commission on Audit, the Minister (now Secretary) of Land Transportation and Communications, the Regional Director of Telecom Regional Office No. IV, or whoever may be sitting in office in their stead, to pay the full amount of petitioner's back salaries from 1 April 1975 to 12 March 1984 based on his latest salary scale.

SO ORDERED.

Cruz (Chairman), Griño-Aquino, Davide, Jr., and *Quiason, JJ.,* concur.

FIRST DIVISION

[G.R. No. 93417. September 14, 1993]

CONSTANCIO T. BAGUIO, *petitioner, vs.* **COURT OF APPEALS (Fourteenth Division), LAS PALMAS INTERNATIONAL MANPOWER CORPORATION, SPOUSES DONALDO PALMA and CONSUELO P. PALMA, and CYNTHIA C. CALAPRE,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROBATIVE VALUE OF HEARSAY EVIDENCE. — The testimony of Joaquin Versoza, petitioner's witness, that respondent Consuelo Palma told him that the payment of the back wages of the employees of respondent corporation was drawn from the money paid by petitioner is hearsay. Hearsay evidence whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay rule.

2. COMMERCIAL LAW; PRIVATE CORPORATIONS; TRANSFER OF SHARES OF STOCK; WHEN VALID AS AGAINST THIRD PERSONS. — Under Section 63 of the Corporation Code, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transfer, the date of the transfer and the number of the certificates and shares transferred.

APPEARANCES OF COUNSEL

Baguio, Lopez, Tanpiengco and Associates for petitioner.
Alavarta for private respondents.

D E C I S I O N

QUIASON, *J.*:

This is an appeal by *certiorari* under Rule 45 of the Revised Rules of Court to review the decision of the Court of Appeals in CA-G.R. CV No. 09806, reversing the decision of the Regional Trial Court, Branch 39, Manila, and dismissing the complaint in Civil Case No. 83-21928.

The complaint in Civil Case No. 83-21928 was filed by petitioner against private respondents to collect a sum of money. In substance, the complaint alleged that respondents Donaldo Palma and Consuelo P. Palma, being officers of respondent Las Palmas International Corporation sold to petitioner 600 shares of stock of said corporation. However, said respondents

Supreme Court E-Library

neither delivered the shares nor returned the payment to him. Petitioner prayed for the refund of the amount of ₱60,000.00 which he allegedly paid for the shares, together with various sums representing moral and other damages.

In their answer with counter-claim, respondents Palmas claimed that petitioner failed to pay for said shares. As affirmative defense, they alleged that there was no receipt issued to prove payment.

After trial, the trial court ruled in favor of petitioner and ordered private respondents jointly and severally, to refund petitioner the amounts of ₱60,000.00 representing the purchase price paid for the shares, with legal interest; ₱20,000.00 as exemplary damages and ₱10,000.00 as attorney's fees and costs (*Rollo*, p. 68).

The Court of Appeals found that petitioner had been engaged in the business of labor recruitment in Saudi Arabia. When he returned to the Philippines, he opened an office at the Sotto Yuvienco Building at General Luna Street, Ermita, Manila.

Respondent Donaldo Palma was the president of respondent Las Palmas; his wife, respondent Consuelo Palma, was the vice-president and treasurer; and respondent Cynthia G. Calapre was the corporate secretary. Respondents Palmas were also officers of Masters & Mates Association of the Philippines, a sublessee of a portion of the office space leased by petitioner.

In the early part of April 1982, petitioner saw respondent Donaldo Palma to collect his 25% share in the profits earned by respondents Palmas when they sent 21 workers to Saudi Arabia.

Instead of paying petitioner, respondents Palmas offered to sell to him 600 shares of stock of respondent Las Palmas for ₱60,000.00 and to make him a director and vice-president of the corporation.

As to the subsequent events, the trial court accepted as true the version of petitioner. According to the trial court, respondents Palmas went to the office of petitioner on July 8, 1982 at 7:00

Supreme Court E-Library

P.M., where petitioner handed the amount of ₱60,000.00 in ₱100.00-bills to them in the presence of Jose Baldeo, Jr., a security guard of the building. Respondents Palmas, in turn delivered to petitioner a copy of the Board Resolution No. 001, series of 1982 of respondent corporation (Exh. A) and the secretary's certificate (Exh. B). When petitioner asked for a receipt, respondents Palmas assured him that the board resolution and the secretary's certificate were better evidence of payment than an ordinary receipt. He was likewise told that the stock certificate would be issued in December 1982, after the board meeting. Respondents Palmas used the money to pay their employees, whose salaries had not been paid for several months.

As December 1982 came and no certificate of stock was issued to him, petitioner became suspicious of respondents Palmas. Sometime in May 1983, petitioner inquired from the Securities and Exchange Commission about the legal personality of respondent corporation. He discovered that the board resolution (Exh. A) and secretary's certificate (Exh. B) were not recorded with said office. Moreover, the corporate secretary listed in the SEC records was a certain Anabelle Acapulco and not respondent Calapre.

Petitioner, having lost his patience, ejected Master and Mates Association of the Philippines, the agency owned by respondents Palmas.

On the other hand, the Court of Appeals held that the board resolution (Exh. A) and secretary's certificate (Exh. B) did not attest that petitioner had paid the purchase price of ₱60,000.00. It also held that petitioner's witness, Jose Baldea Jr., did not actually see the payment of ₱60,000.00 to respondents Palmas and what was actually witnessed by him was petitioner's act of counting the peso-bills. According to the said court, if on July 8, 1982 when petitioner allegedly paid respondents Palmas, why did he not insist that his unpaid 20%-25% commission for sending 21 overseas contract workers to Saudi Arabia, should serve as his payment for the shares, subject to adjustment if the commission was less than the value of the shares of stocks?

Supreme Court E-Library

The pivotal issue in this appeal is a question of fact, *i.e.*, whether on July 8, 1982, petitioner actually paid respondent Palmas the sum of ₱60,000.00, the price of the shares of stock sold to him.

Considering the large amount of the money alleged to have been paid and the absence of a receipt to evidence the payment by petitioner to respondents, petitioner should have presented at least convincing evidence as to the source of the money. If the money was withdrawn from his bank deposits, he could easily have secured a certification to that effect. Evidence of this nature could have bolstered petitioner's claim that such a big sum of money passed hands on July 8, 1982.

Petitioner argues that the Court of Appeals failed to appreciate the finding of the trial court that his witness, Jose Baldea Jr., actually saw the payment made to respondents-spouses. If payment ever took place, Baldea, Jr. was no longer in the office of petitioner. A perusal of the transcript of stenographic notes supports this conclusion, thus,

"ATTY. BAGUIO

At about that time between 6:30 to 7:00 o'clock (sic) in the evening, on July 8, 1982, after you parked the car of Constancio Baguio, inside the compound of Sotto Yuvienco Building, what did you do next?

A I went upstairs to return the key of Mr. Constancio Baguio, sir.

Q Did you see Constancio Baguio inside the office.

A Yes sir.

Q What was Constancio Baguio doing when you entered his office to return the key of his car.

A He was counting money in hundred Peso bills and I joked him that "*Marami ka palang pera boss, mag-good time tayo sa labas*" which, if translated in English would mean you have plenty of money boss, let's have a goodtime outside.

Q And what did Constancio Baguio tell you, in answer to your joke.

Supreme Court E-Library

A He answered that he was going to use the money to pay Mr. Donaldo and Consuelo Palma.

Q How long did you stay inside the office of Constancio Baguio.

A About 2 to 3 minutes, sir.

Q And after that, where did you go.

A While I was going down, I met the Spouses Donaldo and Consuelo Palma on the way to the office, in the stairway going to the office of Mr. Constancio Baguio.

Q Before you left the office of Constancio Baguio, did Mr. Baguio tell you anything.

A Yes sir.

Q What did he tell you.

A He instructed me that if the Spouses Palma comes, to send them upstairs to his office, but if other persons would come, not to send them in.

Q You said you met the Palmas, the spouses at the stairway as they were going up to the office of Constancio Baguio. When you met, did you say anything.

A I greeted them Good Evening, sir.

Q What else, if any.

A They asked me if Mr. Constancio Baguio was there, and I answered he was, and that there was instruction for me to let them in.

Q From the stairway, where did you proceed.

A I went back to my post, sir.

Q After that time, when you met spouses Donaldo and Consuelo Palma, in the stairway, leading to the office of Constancio Baguio, after that, did you see again the Spouses Donaldo and Carmen Palma that same evening of July 8, 1982.

A Yes sir.

Q Where.

A Upstairs and when they were about to leave.

Supreme Court E-Library

Q You mean leaving the premises of Sotto Yuvienco Building.

A Yes sir."
(TSN, 16 April 1984, pp. 11-13).

The testimony of Joaquin Versoza, petitioner's witness, that respondent Consuelo Palma told him that the payment of the back wages of the employees of respondent corporation was drawn from the money paid by petitioner is hearsay. Hearsay evidence whether objected to or not, has not probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay rule (*People vs. Nebreja,* 203 SCRA 45 [1991]).

Petitioner cites another erroneous finding of fact of the appellate court in holding that the board resolution (Exh. A) and the secretary's certificate (Exh. B) do not make any reference to the receipt of ₱60,000.00.

The board resolution (Exh. A) is reproduced as follows:

BOARD RESOLUTION NO. 001
Series of 1982—

RESOLVED, as it is hereby resolved, that MR. CONSTANCIO BAGUIO be accepted as a stockholder with Six Hundred (600) shares. Such shares were taken from the shares of CAPT. DONALDO V. PALMA.

RESOLVED FURTHER, that MR. CONSTANCIO BAGUIO is the elected Director which complete (sic) the Board and also become (sic) the VICE-PRESIDENT/INTERNATIONAL of LAS PALMAS INTERNATIONAL MANPOWER CORPORATION effective on the date stated."

The secretary's certificate (Exh. B) is reproduced as follows:

SECRETARY'S CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned, of legal age, Filipino, with postal address at 1615 Pedro Gil St., Paco, Metro-Manila, Corporate Secretary of LAS PALMAS INTERNATIONAL MANPOWER CORPORATION, with

Supreme Court E-Library

offices at Room 701-702 Don Santiago Building, 1344 Taft Avenue, Metro-Manila, do (sic) hereby certify:

THAT, —

In the Special Meeting of the Board of Directors of the LAS PALMAS INTERNATIONAL MANPOWER CORPORATION held on June 28, 1982 the following resolutions was (sic) adopted:

BOARD RESOLUTION NO. 001
Series of 1982

RESOLVED, as it is hereby resolved, that MR. CONSTANCIO BAGUIO was accepted as stockholder with Six Hundred (600) shares which represents ₱60,000.00. Such shares of MR. CONSTANCIO BAGUIO were taken from the shares of CAPT. DONALDO V. PALMA.

RESOLVED FURTHER, that MR. CONSTANCIO BAGUIO has been accepted as member of the Board of Directors of LAS PALMAS INTERNATIONAL MANPOWER CORPORATION which complete the Board and also become the VICE PRESIDENT/INTERNATIONAL of above firm effective as of June 28, 1992.

IN WITNESS WHEREOF, I have hereunto affixed my signature this of July 1982.

(SGD.) CYNTHIA G. CALAPRE
Corporate Secretary

(*Rollo*, pp. 69-70).

Indeed, the board resolution (Exh. A), contains no reference to the purchase price, much less its receipt by respondents Palmas. If at all, it is the secretary's certificate (Exh. "B"), which makes mention of the purchase price. This, notwithstanding, said secretary's certificate fails to acknowledge receipt of the purchase price. In fact, it limits itself to the phrase "Mr. CONSTANCIO BAGUIO was accepted as stockholder with Six Hundred (600) shares which represents ₱60,000.00." A statement that the 600 shares of stock are worth ₱60,000.00 is different from a statement that petitioner had paid the ₱60,000.00 to respondents spouses.

Supreme Court E-Library

Besides, the board resolution (Exh. A) was an act of the corporation and not of respondents Palmas. The corporation had nothing to do with the business transactions between its officers in their personal capacity and petitioner.

In voting for the adoption of the resolution, the majority of the directors merely relied on information given them by respondents Palmas, regarding the transaction with petitioner. The majority of the directors, therefore, cannot be charged with knowledge of the transfer of the shares of stock to petitioner, much less the payment made by petitioner to respondents Palmas.

Under Section 63 of the Corporation Code, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transfer, the date of the transfer and the number of the certificates and shares transferred. Petitioner has not shown compliance with this law.

Petitioner further cites that if it were true that respondents Palmas failed to receive his payment they should have passed another board resolution, specifically cancelling the offer contained in board resolution (Exh. A). There was no need to issue another resolution cancelling the board resolution, Exhibit A, because no certificate of stock was issued and no transfer of shares was recorded in the books of the corporation pursuant thereto. More so, if we consider that the transaction is not between the corporation and petitioner but between private respondents *qua* stockholders and petitioner.

Petitioner cannot claim that being a member of the board of directors and occupying the position of Vice-President-International necessarily imply that he must have owned duly-paid shares of stock.

The election of a person to the board of directors of a corporation does not necessarily mean that he has paid for the shares recorded in his name. In most cases, nominee directors do not pay for the qualifying shares assigned to them. Likewise, the Corporation Code does not require that one elected or

Supreme Court E-Library

appointed as vice-president of a corporation should be the owner of shares of stock of the corporation.

WHEREFORE, the appealed decision is hereby *AFFIRMED* and the petition for review on *certiorari* is hereby *DISMISSED* for lack of merit.

SO ORDERED.

Cruz (Chairman), Griño-Aquino, Davide, Jr., and *Bellosillo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 94311. September 14, 1993]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORBERTO VILLAGRACIA, ELMER PAGLINAWAN, ALFONSO PASTORAL, NELSON LEDESMA, NIXON LEDESMA, and WILFREDO V. GAMPA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER CLEAR AND POSITIVE IDENTIFICATION OF THE ACCUSED. — Bereft of merit is the contention of the appellants that they were merely presented by the investigators to the complainants. There is no rule requiring that before a suspect can be identified as the culprit, he should first be placed in a police line-up and then pinpointed by the victim. What is important is the positiveness of the victim that the persons charged were the malefactors. Such identification goes to the credibility of the witness which was tested at the trial. This positive identification of the victim was bolstered when appellants removed their masks while walking on the street, for the place was illuminated by