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THIRD DIVISION

[G.R. No. 69259. January 26, 1988]

DELPHER TRADES CORPORATION, and DELFIN PACHECO, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT and HYDRO PIPES PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1.COMMERCIAL LAW; CORPORATION LAW; STOCK HOLDER; STOCK SUBSCRIPTION AS MEANS OF BECOMING A STOCK HOLDER IN A CORPORATION.— After incorporation, one becomes a stockholder of a corporation by subscription or by purchasing stock directly from the corporation or from individual owners thereof. In the case at bar, in exchange for their properties, the Pachecos acquired 2,500 original unissued no par value shares of stocks of the Delpher Trades Corporation. Consequently, the Pachecos became stockholders of the corporation by subscription. "The essence of the stock subscription is an agreement to take and pay for original unissued shares of a corporation, formed or to be formed."

2. ID.; ID.; SHARES OF STOCK; NO-PAR VALUE SHARES, CONSTRUED.— "A no-par value share does not purport to represent any stated proportionate interest in the capital stock measured by value, but only an aliquot part of the whole number of such shares of the issuing corporation. The holder of no-par shares may see from the certificate itself that he is only an aliquot sharer in the assets of the corporation. But this character of proportionate interest is not hidden beneath a false appearance of a given sum in money, as in the case of par value shares. The capital stock of a corporation issuing only no-par value shares is not set forth by a stated amount of money, but instead is expressed to be divided into a stated number of shares, such as, 1,000 shares. This indicates that a shareholder of 100 such shares is an aliquot sharer in the assets of the corporation, no matter what value they may have, to the extent of 100/1,000 or 1/10. Thus, by removing the par value of shares, the attention of persons interested in the financial condition of a corporation is focused upon the value of assets and the amount of its debts."

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3. **ID.; ID.; INCORPORATION OF A CORPORATION; INVESTMENT IN ANOTHER WAY TO CHANGE NATURE OF OWNERSHIP; CASE AT BAR.**— It is to be stressed that by their ownership of the 2,500 no par shares of stock, the Pachecos have control of the corporation. Their equity capital is 55% as against 45% of the other stockholders, who also belong to the same family group. In effect, the Delpher Trades Corporation is a business conduit of the Pachecos. What they really did was to invest their properties and change the nature of their ownership from unincorporated to incorporated form by organizing Delpher Trades Corporation to take control of their properties and at the same time save on inheritance taxes.

4. **TAXATION; RESORT TO LEGAL MEANS TO DECREASE PAYMENT OF TAXES BY A TAXPAYER; RIGHT CANNOT BE DOUBTED.**— The records do not point to anything wrong or objectionable about this "estate planning" scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted."

5. **CIVIL LAW; CONTRACTS; DEED OF EXCHANGE; NOT CONSIDERED A DEED OF SALE.**— The "Deed of Exchange" of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale. There was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another. The ownership remained in the same hands. Hence, the private respondent has no basis for its claim of a right of first refusal under the lease contract.

D E C I S I O N

GUTIERREZ, JR., *J.*:

The petitioners question the decision of the Intermediate Appellate Court which sustained the private respondent's contention that the deed of exchange whereby Delfin Pacheco and Pelagia Pacheco conveyed a parcel of land to Delpher Trades Corporation in exchange for 2,500 shares of stock was actually a deed of sale which violated a right of first refusal under a lease contract.

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Briefly, the facts of the case are summarized as follows:

"In 1974, Delfin Pacheco and his sister, Pelagia Pacheco, were the owners of 27,169 square meters of real estate identified as Lot No. 1095, Malinta Estate, in the Municipality of Polo (now Valenzuela), Province of Bulacan (now Metro Manila) which is covered by Transfer Certificate of Title No. T-4240 of the Bulacan land registry.

"On April 3, 1974, the said co-owners leased to Construction Components International Inc. the same property and providing 'that during the existence or after the term of this lease' the lessor should he decide to sell the property leased shall first offer the same to the lessee and the latter has the priority to buy under similar conditions. (Exhibits A to A-5)

"On August 3, 1974, lessee Construction Components International, Inc. assigned its rights and obligations under the contract of lease in favor of Hydro Pipes Philippines, Inc. with the signed conformity and consent of lessors Delfin Pacheco and Pelagia Pacheco (Exhs. B to B-6 inclusive).

"The contract of lease, as well as the assignment of lease were annotated at the back of the title, as per stipulation of the parties (Exhs. A to D-3 inclusive).

"On January 3, 1976, a deed of exchange was executed between lessors Delfin and Pelagia Pacheco and defendant Delpher Trades Corporation whereby the former conveyed to the latter the leased property (TCT No. T-4240) together with another parcel of land also located in Malinta Estate, Valenzuela, Metro Manila (TCT No. 4273) for 2,500 shares of stock of defendant corporation with a total value of ₱1,500,000.00 (Exhs. C to C-5, inclusive)" (pp. 44-45, *Rollo*)

On the ground that it was not given the first option to buy the leased property pursuant to the proviso in the lease agreement, respondent Hydro Pipes Philippines, Inc., filed an amended complaint for reconveyance of Lot. No. 1095 in its favor under conditions similar to those whereby Delpher Trades Corporation acquired the property from Pelagia Pacheco and Delfhin Pacheco.

After trial, the Court of First Instance of Bulacan ruled in favor of the plaintiff. The dispositive portion of the decision reads:

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"ACCORDINGLY, judgment is hereby rendered declaring the valid existence of the plaintiff's preferential right to acquire the subject property (right of first refusal) and ordering the defendants and all persons deriving rights therefrom to convey the said property to plaintiff who may offer to acquire the same at the rate of ₱14.00 per square meter, more or less, for Lot 1095 whose area is 27,169 square meters only. Without pronouncement as to attorney's fees and costs. (Appendix I; Rec., pp. 246-247)." (Appellant's Brief, pp. 1-2; p. 134, *Rollo*)

The lower court's decision was affirmed on appeal by the Intermediate Appellate Court.

The defendants-appellants, now the petitioners, filed a petition for *certiorari* to review the appellate court's decision.

We initially denied the petition but upon motion for reconsideration, we set aside the resolution denying the petition and gave it due course.

The petitioners allege that:

"The denial of the petition will work great injustice to the petitioners, in that:

"1. Respondent Hydro Pipes Philippines, Inc. ('private respondent') will acquire from petitioners a parcel of *industrial* land consisting of 27,169 square meters or 2.7 hectares (located right after the Valenzuela, Bulacan exit of the toll expressway) for only *₱14/sq. meter*, or a total of *₱380,366*, although the prevailing value thereof is approximately ₱300/sq. meter or ₱8.1 Million;

"2. Private respondent is allowed to exercise its right of first refusal even if there is no 'sale' or transfer of actual ownership interests by petitioners to third parties; and

"3. Assuming *arguendo* that there has been a transfer of actual ownership interests, private respondent will acquire the land *not* under 'similar conditions' by which it was transferred to petitioner Delpher Trades Corporation, as provided in the same contractual provision invoked by private respondent." (pp. 251-252, *Rollo*)

The resolution of the case hinges on whether or not the "Deed of Exchange" of the properties executed by the Pachecos on the one hand and the Delpher Trades Corporation on the other

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was meant to be a contract of sale which, in effect, prejudiced the private respondent's right of first refusal over the leased property included in the "deed of exchange."

Eduardo Neria, a certified public accountant and son-in-law of the late Pelagia Pacheco testified that Delpher Trades Corporation is a family corporation; that the corporation was organized by the children of the two spouses (spouses Pelagia Pacheco and Benjamin Hernandez and spouses Delfin Pacheco and Pilar Angeles) who owned in common the parcel of land leased to Hydro Pipes Philippines in order to perpetuate their control over the property through the corporation and to avoid taxes; that in order to accomplish this end, two pieces of real estate, including Lot No. 1095 which had been leased to Hydro Pipes Philippines, were transferred to the corporation; that the leased property was transferred to the corporation by virtue of a deed of exchange of property; that in exchange for these properties, Pelagia and Delfin acquired 2,500 unissued no par value shares of stock which are equivalent to a 55% majority in the corporation because the other owners only owned 2,000 shares; and that at the time of incorporation, he knew all about the contract of lease of Lot No. 1095 to Hydro Pipes Philippines. In the petitioners' motion for reconsideration, they refer to this scheme as "estate planning." (p. 252, *Rollo*)

Under this factual backdrop, the petitioners contend that there was actually no transfer of ownership of the subject parcel of land since the Pachecos remained in control of the property. Thus, the petitioners allege: "Considering that the beneficial ownership and control of petitioner corporation remained in the hands of the original co-owners, there was no transfer of actual ownership interests over the land when the same was transferred to petitioner corporation in exchange for the latter's shares of stock. The transfer of ownership, if anything, was merely in form but not in substance. In reality, petitioner corporation is a mere alter ego or conduit of the Pacheco co-owners; hence the corporation and the co-owners should be deemed to be the same, there being in substance and in effect an identity of interest." (p. 254, *Rollo*)

The petitioners maintain that the Pachecos did not sell the property. They argue that there was no sale and that they

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exchanged the land for shares of stocks in their own corporation. "Hence, such transfer is not within the letter, or even spirit of the contract. There is a sale when ownership is transferred for a price certain in money or its equivalent (Art. 1468, Civil Code) while there is a barter or exchange when one thing is given in consideration of another thing (Art. 1638, Civil Code)." (pp. 254-255, *Rollo*)

On the other hand, the private respondent argues that Delpher Trades Corporation is a corporate entity separate and distinct from the Pachecos. Thus, it contends that it cannot be said that Delpher Trades Corporation is the Pacheco's same alter ego or conduit; that petitioner Delfin Pacheco, having treated Delpher Trades Corporation as such a separate and distinct corporate entity, is not a party who may allege that this separate corporate existence should be disregarded. It maintains that there was actual transfer of ownership interests over the leased property when the same was transferred to Delpher Trades Corporation in exchange for the latter's shares of stock.

We rule for the petitioners.

After incorporation, one becomes a stockholder of a corporation by subscription or by purchasing stock directly from the corporation or from individual owners thereof (*Salmon, Dexter & Co. v. Unson*, 47 Phil. 649, citing *Bole v. Fulton* [1912], 233 Pa., 609). In the case at bar, in exchange for their properties, the Pachecos acquired 2,500 original unissued no par value shares of stocks of the Delpher Trades Corporation. Consequently, the Pachecos became stockholders of the corporation by subscription. "The essence of the stock subscription is an agreement to take and pay for original unissued shares of a corporation, formed or to be formed." (Rohrlich 243, cited in Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1980 Edition, p. 430) It is significant that the Pachecos took no par value shares in exchange for their properties.

"A no-par value share does not purport to represent any stated proportionate interest in the capital stock measured by value, but only an aliquot part of the whole number of such shares of the issuing corporation. The holder of no-par shares may see from the certificate

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itself that he is only an aliquot sharer in the assets of the corporation. But this character of proportionate interest is not hidden beneath a false appearance of a given sum in money, as in the case of par value shares. The capital stock of a corporation issuing only no-par value shares is not set forth by a stated amount of money, but instead is expressed to be divided into a stated number of shares, such as, 1,000 shares. This indicates that a shareholder of 100 such shares is an aliquot sharer in the assets of the corporation, no matter what value they may have, to the extent of 100/1,000 or 1/10. Thus, by removing the par value of shares, the attention of persons interested in the financial condition of a corporation is focused upon the value of assets and the amount of its debts." (Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1980 Edition, p. 107)

Moreover, there was no attempt to state the true or current market value of the real estate. Land valued at ₱300.00 a square meter was turned over to the family's corporation for only ₱14.00 a square meter.

It is to be stressed that by their ownership of the 2,500 no par shares of stock, the Pachecos have control of the corporation. Their equity capital is 55% as against 45% of the other stockholders, who also belong to the same family group.

In effect, the Delpher Trades Corporation is a business conduit of the Pachecos. What they really did was to invest their properties and change the nature of their ownership from unincorporated to incorporated form by organizing Delpher Trades Corporation to take control of their properties and at the same time save on inheritance taxes.

As explained by Eduardo Neria:

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ATTY. LINSANGAN:

"Q Mr. Neria, from the point of view of taxation, is there any benefit to the spouses Hernandez and Pacheco in connection with their execution of a deed of exchange on the properties for no par value shares of the defendant corporation?

"A Yes, sir.

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COURT:

"Q What do you mean by 'point of view'?

"A To take advantage for both spouses and corporation in entering in the deed of exchange.

ATTY. LINSANGAN:

"Q (What do you mean by 'point of view'?) What are these benefits to the spouses of this deed of exchange?

"A Continuous control of the property, tax exemption benefits, and other inherent benefits in a corporation.

"Q What are these advantages to the said spouses from the point of view of taxation in entering in the deed of exchange?

"A Having fulfilled the conditions in the income tax law, providing for tax free exchange of property, they were able to execute the deed of exchange free from income tax and acquire a corporation.

"Q What provision in the income tax law are you referring to?

"A I refer to Section 35 of the National Internal Revenue Code under par. C-sub-par. (2) Exceptions regarding the provision which I quote: 'No gain or loss shall also be recognized if a person exchanges his property for stock in a corporation of which as a result of such exchange said person alone or together with others not exceeding four persons, gains control of said corporation.'

"Q Did you explain to the spouses this benefit at the time you executed the deed of exchange?

"A Yes, sir.

"Q You also testified during the last hearing that the decision to have no par value share in the defendant corporation was for the purpose of flexibility. Can you explain flexibility in connection with the ownership of the property in question?

"A There is flexibility in using no par value shares as the value is determined by the board of directors in increasing capitalization. The board can fix the value of the shares equivalent to the capital requirements of the corporation.

"Q Now also from the point of taxation, is there any flexibility in the holding by the corporation of the property in question?

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"A Yes, since a corporation does not die it can continue to hold on to the property indefinitely for a period of at least 50 years. On the other hand, if the property is held by the spouse the property will be tied up in succession proceedings and the consequential payments of estate and inheritance taxes when an owner dies.

"Q Now what advantage is this continuity in relation to ownership by a particular person of certain properties in respect to taxation?

"A The property is not subjected to taxes on succession as the corporation does not die.

"Q So the benefit you are talking about are inheritance taxes?

"A Yes, sir." (pp. 3-5, tsn., December 15, 1981)

The records do not point to anything wrong or objectionable about this "estate planning" scheme resorted to by the Pachecos. "The legal right of a taxpayer to decrease the amount of what otherwise could be his taxes or altogether avoid them, by means which the law permits, cannot be doubted." (*Liddell & Co., Inc. v. The Collector of Internal Revenue*, 2 SCRA 632 citing *Gregory v. Helvering*, 293 U.S. 465, 7 L. ed. 596).

The "Deed of Exchange" of property between the Pachecos and Delpher Trades Corporation cannot be considered a contract of sale. There was no transfer of actual ownership interests by the Pachecos to a third party. The Pacheco family merely changed their ownership from one form to another. The ownership remained in the same hands. Hence, the private respondent has no basis for its claim of a right of first refusal under the lease contract.

WHEREFORE, the instant petition is hereby GRANTED. The questioned decision and resolution of the then Intermediate Appellate Court are REVERSED and SET ASIDE. The amended complaint in Civil Case No. 885-V-79 of the then Court of First Instance of Bulacan is DISMISSED. No costs.

SO ORDERED.

Fernan (Chairman), Bidin, and *Cortes, JJ.*, concur.

Feliciano, J., took no part.