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SECOND DIVISION

[G.R. No. L-57905. August 1, 1985]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **HON. JOAQUIN ILUSTRE, JR., BERNARDO SILVERIO, LOURDES SILVERIO, MIGUEL ANGELO SILVERIO, ELIZABETH ANN SILVERIO, JOSE BERNARDO SILVERIO and ROBERTO NOEL SILVERIO,** *respondents.*

SYLLABUS

COMMERCIAL LAW; PRESIDENTIAL DECREE NO. 902-A; INTRA-CORPORATE DISPUTE AMONG STOCKHOLDERS FOR RECOVERY OF MANAGEMENT AND CONTROL OF A CORPORATION FALLS WITHIN THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION.— From the allegations of the complaint in Civil Case No. 6599, it is evident that there exists an intra-corporate relationship between the parties: both the Silverios and the DBP are stockholders of ISAROG, while PHINMA acts as manager thereof. And while the case was instituted in the guise of a complaint for rescission, it is clear that the action is essentially for recovery from the DBP and PHINMA of the control and management of ISAROG. Thus, the Silverios seek in their complaint to set aside the election of the directors and officers of ISAROG, as well as the appointment of PHINMA as its manager. Obviously, therefore, jurisdiction over the case at bar pertains to the SEC; and petitioner DBP is correct in assailing the competence of the CFI, now RTC of Albay, to try and decide Civil Case No. 6599.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Angara, Concepcion, Regala & Cruz Law Office for private respondents.

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DECISION

ESCOLIN, *J.*:

In this petition for *certiorari* with preliminary injunction, the Development Bank of the Philippines, DBP for short, seeks to annul and set aside the restraining order issued by the respondent Judge Joaquin Ilustre, Jr. in Civil Case No. 6599 of the then Court of First Instance of Albay, entitled "*Isarog Pulp and Paper Co., et al. v. DBP, et al.*" Contending that said civil case falls within the exclusive jurisdiction of the Security and Exchange Commission, DBP further prays that respondent judge be stopped from further proceeding with the case.

Isarog Pulp and Paper Co. Inc., ISAROG for short, was originally a family corporation owned or controlled by respondents Bernardo Silverio, Lourdes Silverio, Miguel Angelo Silverio, Elizabeth Ann Silverio, Jose Bernardo Silverio and Roberto Noel Silverio.

Sometime in 1973, ISAROG entered into a contract with the French firm Creusot Loire Enterprise, CLE for short, for the construction, on a turn-key basis, of an *abaca* pulp and paper mill at Kilakao, Daraga, Albay. The erection of the mill was subsidized by a syndicate of French banks. To finance the purchase of the plant, ISAROG had applied for financial assistance with the DBP, and upon approval of the application, DBP extended a guaranty in the total amount of FF40, 329, 150. 00 in favor of the foreign financiers. Since the mill was to utilize *abaca* as raw material, DBP further granted ISAROG a ₱17.5 million agricultural loan for the rehabilitation and operation of its *abaca* plantation.

Soon after the completion of the plant in 1975, there arose a controversy between ISAROG and CLE on the question of the 'guarantee test run' of the mill. While ISAROG claimed that the plant was technically defective and could not produce its guaranteed capacity, CLE alleged that its inability to rectify the defects was due to ISAROG's failure to perform its obligation under the contract. As a result of this dispute CLE abandoned

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the project, prompting ISAROG to file an action against the French company before the Arbitration Court of the International Chamber of Commerce in Geneva, where CLE likewise filed its counterclaims.

ISAROG also instituted in the then Court of First Instance of Rizal a complaint against DBP to enjoin the latter from making further remittances on its guaranty in favor of the French financiers until CLE shall have fully complied with its obligation under the contract. It appears, however, that this case was eventually dismissed after the parties had forged a memorandum agreement dated March 18, 1977 whereby DBP agreed —

"a) to conduct a joint re-study of the project;

b) to extend financial and other assistance to ISAROG as may be determined in the joint re-study;

c) to convert portion of ISAROG's liability into equity upon agreement of the parties;

d) to refrain collecting matured and maturing amortizations of ISAROG's liability until after completion of joint re-study; and

e) to prosecute the claim against CLE and to advance the consequent expenses reimbursible from any arbitral award."

Pursuant to paragraph (b) of the above agreement, DBP approved additional financial accommodations in favor of ISAROG. Thus, on September 7, 1977, DBP guaranteed ISAROG's restructured ₱14 million loan with Bancom Corporation; on March 15, 1978, it extended a foreign currency loan of $400,000.00 and $384,120.00 to ISAROG for rectification of the deficiencies of the mill; on August 9, 1978, it extended a foreign currency loan of $2 million to ISAROG to liquidate its loan with Bancom, and on the same date still another loan of $3 million to liquidate past due installments on its foreign loans; on August 8, 1979, DBP restructured ISAROG's agricultural loan of ₱17.5 million; in September 1979, it granted ISAROG a foreign currency loan in the aggregate sum of $11.8 million to refinance its loans with BFCE/PARIBAS and City Bank N.A.

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As likewise stipulated in said agreement, ISAROG's past due obligation of ₱30 million was converted into preferred shares of DBP in ISAROG while ISAROG's arrearages in various industrial and agricultural loans, totalling ₱45 million, were converted into common shares of DBP. These transactions resulted in DBP obtaining approximately 91% of the total outstanding shares of ISAROG, thereby enabling it to elect a substantial majority in the board of directors. In 1977, the board of directors, in order to prevent the continuing financial losses of the company arising from alleged incompetence of the Silverio management, created an executive committee to assume direct management of the firm. Although respondent Bernardo Silverio nominally retained the position of president of the corporation, and his son Miguel Angelo Silverio continued as executive vice-president, all effective powers were lodged in the hands of the executive committee. The board of directors further contracted with the Philippine Investment Management, Inc., PHINMA for short, to act as management consultant for the company.

On May 18, 1981, the Silverios sent DBP a letter, charging the latter with having violated the memorandum agreement of March 18, 1977, and giving notice that they were declaring the agreement rescinded. The Silverios further demanded the return of the ownership, management and control of ISAROG.

Meanwhile, notices were sent out for the holding of the annual meeting of stockholders of ISAROG in Makati on June 30, 1981. Although notified thereof, the Silverios did not attend the meeting, but they sent a representative to record the proceedings. At said meeting, a new set of board of directors was elected by the majority stockholders representing 91% of the equity of the corporation. The new board appointed a new set of executive officers to manage the operations of the company. Respondents Bernardo Silverio and his son Miguel Angelo were not reappointed to their former positions of president and executive vice-president, respectively.

On July 9, 1981, the Silverios instituted Civil Case No. 6599 against petitioner DBP and PHINMA in the Court of First Instance of Albay, entitled "*Isarog Pulp and Paper Co., Inc.*,

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Bernardo G. Silverio, et al. vs. Development Bank of the Philippines and Philippine Investment and Management Consultancy, Inc." They prayed *inter alia* that the memorandum agreement of March 18, 1977 be declared rescinded; that the parties be restored to the positions they were occupying before the signing of said agreement; and that defendants DBP and PHINMA be ordered to pay actual, moral and exemplary damages as well as attorney's fees.

In the same complaint, the Silverios sought the issuance, *ex-parte*, of a writ of preliminary injunction or temporary restraining order to enjoin and prohibit defendants, their officers, attorneys, agents and all persons acting on their behalf from ousting the Silverio family from ISAROG, particularly Bernardo G. Silverio as president and Miguel Angelo Silverio as executive vice-president; from exercising any or all rights pertaining to the shares of stocks acquired by DBP; from withdrawing or removing funds deposited with the banks in the name of ISAROG; from making or effecting any reorganization in the management of the corporation; from acting and representing themselves as members of the ISAROG board of directors or as ISAROG's stockholders; from taking, exercising and in any manner interferring in, the control and management of ISAROG.

On July 10, 1981, the Silverios filed an urgent *ex-parte* motion, reiterating their prayer for issuance of a writ of preliminary injunction and/or temporary restraining order.[1] That same day, the respondent judge issued a restraining order enjoining petitioner DBP from performing or committing any of the acts enumerated in the above-mentioned complaint.

On July 30, 1981, DBP filed a motion to dismiss the complaint on the ground, among others, that the case falls within the exclusive jurisdiction of the SEC. It also filed an opposition to the application for preliminary injunction and/or restraining order, as well as a motion to lift such injunction or restraining order if one had already been issued. The motion to lift was denied

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[1] Annex B.

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for lack of merit. The respondent judge later issued an order holding in abeyance resolution of petitioner's motion to dismiss until the Silverios shall have adduced evidence in the case. DBP moved for reconsideration of the order, which respondent judge denied. Hence, the present recourse.

The Silverios contend that since their complaint is for rescission of the compromise agreement of March 18, 1977, plus damages, the same is properly cognizable by the Court of First Instance (now the Regional Trial Court), and not by the Securities and Exchange Commission. It should not be overlooked, however, that said compromise agreement had long been executed and implemented and that as a result thereof, DBP had acquired 91% of the equity of ISAROG. Although the Silverios challenge the legality of the conversion by DBP of the majority shares of stocks of ISAROG, it is undeniable that DBP is a stockholder of the corporation. In fact, the illegal acts, devices and schemes allegedly employed by DBP which might have prompted the Silverios to sue for rescission of the memorandum agreement were done by the former in its capacity as such stockholder.

Under Section 5 of PD No. 902-A, the Securities and Exchange Commission has original and exclusive jurisdiction to hear and decide cases involving:

"a] Devices and 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 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;

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"c] Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."

From the allegations of the complaint in Civil Case No. 6599, it is evident that there exists an intra-corporate relationship between the parties: both the Silverios and the DBP are stockholders of ISAROG, while PHINMA acts as manager thereof. And while the case was instituted in the guise of a complaint for rescission, it is clear that the action is essentially for recovery from the DBP and PHINMA of the control and management of ISAROG. Thus, the Silverios seek in their complaint to set aside the election of the directors and officers of ISAROG, as well as the appointment of PHINMA as its manager.

Obviously, therefore, jurisdiction over the case at bar pertains to the SEC; and petitioner DBP is correct in assailing the competence of the CFI, now RTC of Albay, to try and decide Civil Case No. 6599.

WHEREFORE, the petition is hereby granted, and Civil Case No. 6599 of the defunct Court of First Instance of Albay is hereby dismissed for lack of jurisdiction. The restraining order issued by the respondent judge, dated July 10, 1981, is set aside. No costs.

SO ORDERED.

Aquino (Chairman), Gutierrez, Jr., Cuevas, and *Alampay, JJ.*, concur.

Concepcion Jr. and *Abad Santos, JJ.*, took no part.