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SECOND DIVISION

[G.R. No. 80682. August 13, 1990]

EMBASSY FARMS, INC., *petitioner, vs.* **HON. COURT OF APPEALS (INTERMEDIATE APPELLATE COURT), HON. ZENAIDA S. BALTAZAR, Judge of the Regional Trial Court, Branch CLVIII (158), Pasig, Metro Manila, VOLTAIRE B. CRUZ, Deputy Sheriff, Branch CLVIII, Regional Trial Court, Pasig, Metro Manila and EDUARDO B. EVANGELISTA,** *respondents*.

SYLLABUS

1. MERCANTILE LAW; CORPORATIONS; SHARES OF STOCK; NO EFFECTIVE TRANSFER THEREOF TO ANOTHER PERSON, ABSENT DELIVERY OF THE INDORSED CERTIFICATE OF STOCK. — From the pleadings submitted by the parties it is clear that although EBE has indorsed in blank the shares outstanding in his name he has not delivered the certificate of stocks to AGA because the latter has not fully complied with his obligations under the memorandum of agreement. There being no delivery of the indorsed shares of stock AGA cannot therefore effectively transfer to other person or his nominees the undelivered shares of stock. For an effective transfer of shares of stock the mode and manner of transfer as prescribed by law must be followed. As provided under Section 3 of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, shares of stock may be transferred by delivery to the transferree of the certificate properly indorsed. Title may be vested in the transferree by the delivery of the duly indorsed certificate of stock. However, no transfer shall be valid, except as between the parties until the transfer is properly recorded in the books of the corporation. In the case at bar the indorsed certificate of stock was not actually delivered to AGA so that EBE is still the controlling stockholder of Embassy Farms despite the execution of the memorandum of agreement and the turn over of control and management of the Embassy Farms to AGA on August 2, 1984.

2. ID.; ID.; INTRA-CORPORATE CONTROVERSY; WHEN PRESENT. — Contrary to petitioner's contention the dispute

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at bar is not an intracorporate controversy within the exclusive and original jurisdiction of the Securities and Exchange Commission under Presidential Decree No. 902-A as amended by Presidential Decree No. 1758. To be an intracorporate controversy it must pertain to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.

3. ID.; ID.; ID.; DISPUTE DOES NOT FALL WITHIN THE SPECIAL JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION WHERE THE SAME DOES NOT INVOLVE THE ENFORCEMENT OF RIGHTS AND OBLIGATIONS UNDER THE CORPORATION CODE OR THE INTERNAL OR INTRA-CORPORATE AFFAIRS OF THE CORPORATION.— Basically the conflict here is between AGA and EBE arising from a contract denominated as a memorandum of agreement. Here the controversy in reality involves the contractual rights and obligations of AGA and EBE under the memorandum of agreement and not to the enforcement of rights and obligations under the corporation code or the internal or intracorporate affairs of the corporation. AGA or his nominees are not even the lawful stockholders of Embassy Farms because EBE for a justifiable reason has withheld the delivery of the indorsed certificate of stocks so that the supposed transfer by virtue of the memorandum of agreement could not be properly recorded in the book of the corporation. The dispute therefore does not fall within the special jurisdiction of the Securities and Exchange Commission but with regular Courts. AGA or his nominees unduly dragged the petitioner Embassy Farms in order to resist the order of the Pasig Court and to confuse the real and legitimate issue in the case at bar.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; WRIT CANNOT BE ISSUED BY THE TRIAL COURT TO ENJOIN ACTS BEING PERFORMED OR ABOUT TO BE PERFORMED OUTSIDE ITS TERRITORIAL BOUNDARIES; EXCEPTION; APPLIED TO CASE AT BAR. — On the enforceability of the order of the Pasig Court,

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We see no cogent reason to depart from the ruling of the trial court which was sustained by the Court of Appeals. Generally, an injunction under Section 21 of Batas Pambansa Bilang 129 is enforceable within the region. The reason is that the trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial boundaries. However, to avoid an irreparable prejudice We allowed in *Dagupan Electric Corporation et al. v. Pano* (95 SCRA 693) the enforcement of an injunction to restrain acts committed outside the territorial jurisdiction of the issuing Court. In Dagupan case We ruled that a Court of First Instance has jurisdiction to try a case although the acts sought be restrained are committed outside its territorial jurisdiction where the principal business addresses of the parties and the decisions on the acts to be restrained are located and originated within the Court's jurisdiction. Here to avoid an injustice and irreparable injury We apply the exception rather than the general rule. Both parties are residents of the National Capital Region. AGA is a resident of 7-A Lake Street, San Juan, Metro Manila while EBE is residing at 113 R. Tirona Street, BF Homes, Parañaque, Metro Manila. AGA filed the case with the Pasig Court and the injunction as an equitable remedy intended to preserve the *status quo* is directed against AGA, his nominees and agents. Besides, as noted by the Pasig Court all orders to be enforced and executed at Embassy Farms in Loma de Gato, Marilao, Bulacan emanated from its main office which is located at the 2nd Floor, Agora Complex, Domingo Street, San Juan, Metro Manila.

5. ID.; ID.; ID.; INJUNCTION BOND; PARTY ENJOINED IS AMPLY PROTECTED AGAINST LOSS OR DAMAGE IN CASE IT IS FINALLY DECIDED THAT THE INJUNCTION OUGHT NOT TO HAVE BEEN GRANTED. — Finally, on the issue whether or not the writ of injunction was irregularly issued as it was issued on July 30, 1987 one day ahead of the injunction bond, suffice it to say that aside from the factual findings of the Court of Appeals that the date July 31, 1987, appearing on the bond is a typographical error it must be pointed out that with the injunction bond the party enjoined is amply protected against loss or damage in case it is finally decided that the injunction ought not to have been granted.

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APPEARANCES OF COUNSEL

Romeo Z. Comia for petitioner.
Manuel Y. Macias for private respondents.

D E C I S I O N

PARAS, *J.*:

This is a petition for *certiorari* and prohibition with preliminary injunction seeking to set aside the resolution* dated October 13, 1987 in CA-G.R. SP No. 12817 entitled "*Eduardo B. Evangelista v. Honorable Camilo O. Montesa, et al*." and CA-G.R. SP. No. 12834 entitled "*Embassy Farms, Inc. v. Hon. Zenaida S. Baltazar, et al*." lifting the restraining order dated September 22, 1987, and the resolution dated November 3, 1987 denying petitioner's motion for reconsideration.

It appears on record that sometime on August 2, 1984, Alexander G. Asuncion (AGA for short) and Eduardo B. Evangelista (EBE for short) entered into a Memorandum of Agreement (Annex "A" for the petition). Under said agreement EBE obligated himself to transfer to AGA 19 parcels of agricultural land registered in his name with an aggregate area of 104,447 square meters located in Loma de Gato, Marilao, Bulacan, together with the stocks, equipment and facilities of a piggery farmed owned by Embassy Farms, Inc. a registered corporation wherein ninety (90) percent of its shares of stock is owned by EBE. EBE also obligated himself to cede, transfer and convey "in a manner absolute and irrevocable any and all of his shares of stocks" in Embassy Farms Inc. to AGA or his nominees "until the total of said shares of stock so transferred shall constitute 9% of the paid-in-equity of said corporation" within a reasonable time from signing of the document. Likewise, EBE obligated to turn over to AGA the effective control and management of the piggery upon the signing of the agreement.

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* Penned by Associate Justice Celso L. Magsino and concurred in by Associate Justices Jose A. R. Melo and Esteban M. Lising.

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On the other hand, AGA obligated himself, upon signing of the agreement to pay to EBE the total sum of close to ₱8,630,000.00. Within reasonable time from signing of the agreement AGA obligated himself to organize and register a new corporation with an authorized capital stock of ₱10,000,000.00 which upon registration will take over all the rights and liabilities of AGA.

Pursuant to clause 8 of the Memorandum of Agreement, on August 2, 1984, EBE turned over to AGA the effective control and management of the piggery at Embassy Farms. Likewise, in accordance with clause 15 of the Memorandum of Agreement EBE served as President and Chief Executive of the Embassy Farms with a monthly salary of ₱15,000. EBE also endorsed in blank all his shares of stock including that of his wife and three nominees with minor holdings in Embassy Farms Inc. Out of the total 3,125 shares of stocks EBE has 2,725 shares, his wife Epifania has 250 shares, while Angel Santos, Armando Martin and Teofilo Mesina had 50 shares, each registered in their names. Said shares of 3,125 correspond to the paid subscription because as reflected in the Articles of Incorporation (Annexes "B") EBE subscribed 10,900 shares, Epifania Evangelista 1,000 shares, while Angel Santos, Armando Martin and Teofilo Mesina had 200 shares each subscription in the capital stocks of the corporation. However, despite the indorsement, EBE retained possession of said shares and opted to deliver to AGA only upon full compliance of the latter of his obligations under the Memorandum of Agreement.

Notwithstanding the non-delivery of the shares of stocks, in a Deed of Transfer of Shares of Stock dated August 1984, but notarized on June 20, 1985, AGA transferred a total of 8,602 shares to several persons.

For failure to comply with his obligations, EBE intimated the institution of appropriate legal action.

On April 10, 1986, AGA pre-empted EBE by filing an action for rescission of the Memorandum of Agreement with damages. The case was docketed as Civil Case No. 53335 and assigned to Branch CLVIII, Regional Trial Court, National Capital Judicial Region, Pasig, Metro Manila alleging among others, EBE's

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misrepresentation on the piggery business since said business is actually losing and EBE's failure to execute the deeds of conveyance of the 19 parcels of land.

The Pasig Court in its order dated July 30, 1987, granted a writ of preliminary injunction the dispositive portion of which reads, *viz*:

"WHEREFORE, this Court hereby orders the issuance of a writ of preliminary injunction whereby restraining the plaintiff, his nominees, agents, security guards, employees and all persons claiming under him from disposing of in any manner removing and carrying away the stocks including rights sucklings, equipment and other facilities in Embassy Farms, Inc. in Bo. Loma de Gato, Marilao, Bulacan; from harassing defendant and his employees and associates; and preventing defendant, assisted by his said employees and associates from discharging, performing and exercising his duties, prerogatives as director, president and chief executive of Embassy Farms, Inc. until further orders from this Court subject to defendant's filing a bond with this Court in the amount of ₱1,750,000.00 executed in favor of herein plaintiff, Alexander G. Asuncion, conditioned upon defendant's payment to such plaintiff Asuncion of all damages which the latter may sustain by reason of this injunction in the event the Court shall finally decide otherwise and in case said plaintiff, Alexander G. Asuncion is adjudged entitled to such damages.

SO ORDERED." (p. 258, *Rollo*)

On September 14, 1987, the Pasig Court on EBE's motion issued an order to break open the premises of Embassy Farms to enforce the writ of preliminary injunction dated July 30, 1987.

On September 18, 1987, Embassy Farms, Inc. filed a petition with the Court of Appeals for prohibition with preliminary injunction. The case was docketed as CA-G.R. 12834 and entitled "*Embassy Farms, Inc. v. the Hon. Zenaida S. Baltazar, et al.*" In its resolution dated September 22, 1987, the Fifth Division of the Court of Appeals enjoined the enforcement of the Pasig Court's order dated July 30, 1987.

Meanwhile, on July 30, 1987, Embassy Farms Incorporated instituted an action for Injunction with damages against EBE. In its complaint it alleged that sometime on July 11, 1987, EBE

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forced his way inside the Embassy Farms and while inside took some cash and check amounting to ₱423,275.45. The case was docketed as Civil Case No. 348-11-89 and raffled to Branch 19, Regional Trial Court's 3rd Judicial Region, Malolos, Bulacan.

On August 10, 1987, upon a motion to dismiss filed by EBE, the Malolos Court issued an order, the dispositive portion provides, *viz*:

"WHEREFORE, the motion to dismiss is hereby denied for lack of merit, and a writ of preliminary injunction is hereby issued enjoining defendant, his agent and/or any person claiming right under him to refrain or desist from interfering in the management and operation of Embassy Farms, Inc. at Barangay Loma de Gato, Marilao, Bulacan, until further orders from this Court, subject to plaintiffs filing of a bond in the amount of ₱150,000.00 executed in favor of defendant conditioned for the payment of all damages which the latter may sustain by reason of this injunction and in case said defendant is adjudged entitled thereto.

SO ORDERED." (p. 296, *Rollo*)

On August 27, 1987, EBE filed a motion for the reconsideration of the order dated August 10, 1987 of the Malolos Court.

On September 15, 1987, without awaiting the resolution of his motion for reconsideration, EBE filed a Petition for *Certiorari* and Prohibition with preliminary injunction with the Court of Appeals, docketed as CA-G.R. No. 12817.

On October 13, 1987, the Fifth Division of the Court of Appeals issued a consolidated resolution in CA-G.R. Nos. 12817 and 12834 sustaining the order dated July 30, 1987 of the Pasig Court. Accordingly, it set aside and lifted the restraining order dated September 22, 1987 it issued in CA-G.R. SP No. 12834. The appellate court based its resolution on its findings in the hearing that the Board of Directors of Embassy Farms are nominees of AGA so that it considered AGA and Embassy Farms as one and the same person. It noted that EBE has not delivered the certificate of stock outstanding in his name in the books of the corporation to AGA because the latter allegedly has not complied with the terms and conditions of the

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memorandum of agreement. Also the appellate court opined that "(I)n the instant case, it will appear that no transfer of shares of stock has been made by Evangelista to Asuncion as there had been no delivery of the certificate in order to produce or effect the transfer of such shares of stock." (*Rollo*, pp. 231-232).

Embassy Farms filed a motion for reconsideration thereto but it was denied in the resolution dated November 5, 1987 of the appellate court. Hence, this petition.

The primary issue for resolution is whether or not the appellate court committed a reversible error when it sustained the order dated July 13, 1987 of the Pasig Court and lifted the restraining order it had issued in CA-G.R. SP No. 12834.

It is the contention of Petitioner that the appellate court acted without jurisdiction or in excess of jurisdiction and/or gravely abused its discretion when it sustained the order dated July 30, 1987 of the Pasig Court and lifted the restraining order it had issued on September 22, 1987 in CA-G.R. SP No. 12834. Petitioner argued that the Pasig Court has no jurisdiction to hear and decide EBE's application for the issuance of a writ of preliminary injunction in Civil Case No. 53335 because the ouster of EBE and his reinstatement as President and Chief Executive Officer of Embassy Farms is an intra-corporate matter within the exclusive and original jurisdiction of the Securities and Exchange Commission. Petitioner also claimed that the Pasig Court did not acquire jurisdiction over Embassy Farms because it was not made a party in Civil Case No. 53335. Neither could the orders of the Pasig Court be enforced at Loma de Gato, Marilao, Bulacan, the principal office of the corporation, because it is located outside of the National Capital Judicial Region. Petitioner likewise claimed that the writ of preliminary injunction issued in Civil Case No. 53335 was irregularly issued because it was issued one day ahead of the injunction bond.

We do not agree with the petitioner.

It must be stressed at the outset that the case at bar is merely an offshoot of a controversy yet to be decided on the merits by the Pasig Court. The action for rescission filed by AGA in

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Civil Case No. 53335 now pending before the Pasig Court will ultimately settle the controversy as to whether it is AGA or EBE or both parties who have reneged on their obligations under the memorandum of agreement. We do not want to pre-empt the Pasig Court on the main case.

From the pleadings submitted by the parties it is clear that although EBE has indorsed in blank the shares outstanding in his name he has not delivered the certificate of stocks to AGA because the latter has not fully complied with his obligations under the memorandum of agreement. There being no delivery of the indorsed shares of stock AGA cannot therefore effectively transfer to other person or his nominees the undelivered shares of stock. For an effective transfer of shares of stock the mode and manner of transfer as prescribed by law must be followed (*Navea v. Peers Marketing Corp.*, 74 SCRA 65). As provided under Section 3 of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, shares of stock may be transferred by delivery to the transferree of the certificate properly indorsed. Title may be vested in the transferree by the delivery of the duly indorsed certificate of stock (18 C.J.S. 928, cited in *Rivera v. Florendo*, 144 SCRA 643). However, no transfer shall be valid, except as between the parties until the transfer is properly recorded in the books of the corporation (Sec. 63, Corporation Code of the Philippines).

In the case at bar the indorsed certificate of stock was not actually delivered to AGA so that EBE is still the controlling stockholder of Embassy Farms despite the execution of the memorandum of agreement and the turn over of control and management of the Embassy Farms to AGA on August 2, 1984.

When AGA filed on April 10, 1986 an action for the rescission of contracts with damages the Pasig Court merely restored and established the *status quo* prior to the execution of the memorandum of agreement by the issuance of a restraining order on July 10, 1987 and the writ of preliminary injunction on July 30, 1987. It would be unjust and unfair to allow AGA and his nominees to control and manage the Embassy Farms despite the fact that AGA who is the source of their supposed shares

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of stock in the corporation is not asking for the delivery of the indorsed certificate of stock but for the rescission of the memorandum of agreement. Rescission would result in mutual restitution (*Magdalena Estate v. Myrick*, 71 Phil. 344) so it is but proper to allow EBE to manage the farm. Compared to AGA or his nominees EBE would be more interested in the preservation of the assets, equipment and facilities of Embassy Farms during the pendency of the main case.

Contrary to petitioner's contention the dispute at bar is not an intracorporate controversy within the exclusive and original jurisdiction of the Securities and Exchange Commission under Presidential Decree No. 902-A as amended by Presidential Decree No. 1758. To be an intracorporate controversy it must pertain to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves (*Union Glass and Container Corp. v. SEC*, 126 SCRA 31; *DMRC Enterprises v. Este Del Sol Mountain Reserve Inc*., 132 SCRA 293; *Rivera v. Florendo*, 144 SCRA 643; *Abeijo v. De la Cruz*, 149 SCRA 654).

Basically the conflict here is between AGA and EBE arising from a contract denominated as a memorandum of agreement. Here the controversy in reality involves the contractual rights and obligations of AGA and EBE under the memorandum of agreement and not to the enforcement of rights and obligations under the corporation code or the internal or intracorporate affairs of the corporation. AGA or his nominees are not even the lawful stockholders of Embassy Farms because EBE for a justifiable reason has withheld the delivery of the indorsed certificate of stocks so that the supposed transfer by virtue of the memorandum of agreement could not be properly recorded in the book of the corporation. The dispute therefore does not fall within the special jurisdiction of the Securities and Exchange Commission but with regular Courts. AGA or his nominees unduly

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dragged the petitioner Embassy Farms in order to resist the order of the Pasig Court and to confuse the real and legitimate issue in the case at bar.

On the enforceability of the order of the Pasig Court, We see no cogent reason to depart from the ruling of the trial court which was sustained by the Court of Appeals. Generally, an injunction under Section 21 of Batas Pambansa Bilang 129 is enforceable within the region. The reason is that the trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial boundaries. (*C.F. Tan vs. Sarmiento*, L-24971, June 20, 1975). However, to avoid an irreparable prejudice We allowed in *Dagupan Electric Corporation et al. v. Pano* (95 SCRA 693) the enforcement of an injunction to restrain acts committed outside the territorial jurisdiction of the issuing court. In Dagupan case We ruled that a Court of First Instance has jurisdiction to try a case although the acts sought be restrained are committed outside its territorial jurisdiction where the principal business addresses of the parties and the decisions on the acts to be restrained are located and originated within the Court's jurisdiction.

Here to avoid an injustice and irreparable injury We apply the exception rather than the general rule. Both parties are residents of the National Capital Region. AGA is a resident of 7-A Lake Street, San Juan, Metro Manila while EBE is residing at 113 R. Tirona Street, BF Homes, Parañaque, Metro Manila. AGA filed the case with the Pasig Court and the injunction as an equitable remedy intended to preserve the *status quo* is directed against AGA, his nominees and agents. Besides, as noted by the Pasig Court all orders to be enforced and executed at Embassy Farms in Loma de Gato, Marilao, Bulacan emanated from its main office which is located at the 2nd Floor, Agora Complex, Domingo Street, San Juan, Metro Manila.

Finally, on the issue whether or not the writ of injunction was irregularly issued as it was issued on July 30, 1987 one day ahead of the injunction bond, suffice it to say that aside from

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the factual findings of the Court of Appeals that the date July 31, 1987, appearing on the bond is a typographical error it must be pointed out that with the injunction bond the party enjoined is amply protected against loss or damage in case it is finally decided that the injunction ought not to have been granted.

WHEREFORE, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, and *Regalado, JJ.,* concur.

Sarmiento, J., on leave.

EN BANC

[G.R. No. 82726. August 13, 1990]

CIRILO M. QUILALA, *petitioner, vs.* **THE HONORABLE COMMISSION ON ELECTIONS (Second Division), THE MUNICIPAL BOARD OF CANVASSERS OF CURRIMAO, ILOCOS NORTE, and WILBUR GO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; BOARD OF CANVASSERS; NOTICE OF SUBSEQUENT CANVASS NOT NECESSARY IN CASE AT BAR; RESPONSIBILITY OF VERIFYING WHEN ACTUAL CANVASS OF THE RETURNS WERE TO BE MADE LIES WITH THE CANDIDATE OR HIS WATCHER. — The thrust of petitioner's argument is that he was notified that the Board of Canvassers would convene to canvass the election returns for Currimao at 6:00 p.m. on January 18, 1988 at the Session Hall of the Sangguniang Bayan of Currimao. But he