FIRST DIVISION

[G.R. No. 188769. August 3, 2016]

JOSEPH OMAR O. ANDAYA, *petitioner, vs.* **RURAL BANK OF CABADBARAN, INC., DEMOSTHENES P. ORAIZ and RICARDO D. GONZALEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; MANDAMUS; THE REMEDY TO COMPEL THE REGISTRATION OF THE TRANSFER OF SHARES OF STOCK AND THE CORRESPONDING ISSUANCE OF STOCK CERTIFICATES.— It is already settled jurisprudence that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of mandamus to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. This remedy is available even upon the instance of a *bona fide* transferee who is able to establish a clear legal right to the registration of the transfer. This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin* x x x. Thus, in *Pacific Basin Securities Co., Inc., v. Oriental Petroleum and Minerals Corp.*, this Court stressed that the registration of a transfer of shares is ministerial on the part of the corporation x x x. Consequently, transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates. x x x Andaya has been able to establish that he is a *bona fide* transferee of the shares of stock of Chute. x x x There is no doubt that Andaya had the standing to initiate an action for mandamus to compel the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book and to issue new stock certificates in his name. As the transferee of the shares, petitioner stands to be benefited or injured by the judgment in the instant petition, a judgment that will either order the bank to recognize the legitimacy of the transfer and petitioner's status as stockholder or to deny the legitimacy thereof.

2. ID.; ID.; ID.; ID.; MAY BE ISSUED WHEN THE REGISTERED OWNER HERSELF HAD REQUESTED THE REGISTRATION OF THE TRANSFER OF SHARES OF STOCK; CASE AT BAR.— Reiterating the ruling in *Rivera v. Florendo* and *Hager v. Bryan*, the Court therein maintained that a mere endorsement of stock certificates by the supposed owners of the stock could not be the basis of an action for mandamus in the absence of express instructions from them. According to the Court, the reason behind this ruling was that the corporation's duty and legal obligation therein were not so clear and indisputable as to justify the issuance of the writ. x x x In the instant case, however, the submitted documents did not merely consist of an endorsement. Rather, petitioner presented several undisputed documents, among which was respondent Oraiz's letter to Chute denying her request to transfer the stock standing in her name in favor of Andaya. This letter clearly indicated that the registered owner herself had requested the registration of the transfer of shares of stock.

3. ID.; ID.; ID.; ID.; REQUISITES.— Section 3, Rule 65 of the Rules of Court, provides for the rules governing a petition for mandamus x x x. [A] writ of mandamus to enforce a ministerial act may issue only when petitioner is able to establish the presence of the following: (1) right clearly founded in law and is not doubtful; (2) a legal duty to perform the act; (3) unlawful neglect in performing the duty enjoined by law; (4) the ministerial nature of the act to be performed; and (5) the absence of other plain, speedy, and adequate remedy in the ordinary course of law.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CLOSE CORPORATIONS; RESTRICTIONS ON THE RIGHT TO TRANSFER SHARES UNDER SECTION 98 OF THE CODE APPLY ONLY TO CLOSE CORPORATIONS.— Respondents primarily challenge the mandamus suit on the grounds that the transfer violated the bank stockholders' right of first refusal and that petitioner was a buyer in bad faith. Both parties refer to Section 98 of the Corporation Code to support their arguments x x x. It must be noted that Section 98 applies only to close corporations. Hence, before the Court can allow the operation of this section in the case at bar, there must first be a factual determination that respondent Rural Bank of Cabadbaran is

indeed a close corporation. There needs to be a presentation of evidence on the relevant restrictions in the articles of incorporation and bylaws of the said bank. From the records or the RTC Decision, there is apparently no such determination or even allegation that would assist this Court in ruling on these two major factual matters. With the foregoing, the validity of the transfer cannot yet be tested using that provision. These are the factual matters that the parties must first thresh out before the RTC.

APPEARANCES OF COUNSEL

Samuel A.M. Jardin for petitioner.
Ricardo D. Gonzalez and *Henry C. Filoteo* for respondents.

R E S O L U T I O N

SERENO, *C.J.*:

This case concerns the dismissal[1] of an action for mandamus that sought to compel respondents Rural Bank of Cabadbaran, Inc., Demosthenes P. Oraiz, and Ricardo D. Gonzalez to register the transfer of shares of stock and issue the corresponding stock certificates in favor of petitioner Joseph Omar O. Andaya. The Cabadbaran City Regional Trial Court (RTC) ruled that petitioner Andaya was not entitled to the remedy of mandamus, since the transfer of the subject shares of stock had not yet been recorded in the corporation's stock and transfer book, and the registered owner, Conception O. Chute, had not given him a special power of attorney to make the transfer. Andaya has filed a Rule 45 petition directly before this Court, insisting that he has a cause of action to institute the suit.

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[1] The assailed Decision dated 17 April 2009 and Order dated 15 July 2009 of the Cabadbaran City Regional Trial Court (Branch 34) in SP Civil Case No. 06-06 were penned by Judge Dax Gonzaga Xenos. RTC Decision, *rollo,* pp. 136-139; RTC Order, *rollo,* pp. 147-148.

FACTS

Andaya bought from Chute 2,200 shares of stock in the Rural Bank of Cabadbaran for ₱220,000.[2] The transaction was evidenced by a notarized document denominated as Sale of Shares of Stocks.[3] Chute duly endorsed and delivered the certificates of stock to Andaya and, subsequently, requested the bank to register the transfer and issue new stock certificates in favor of the latter.[4] Andaya also separately communicated[5] with the bank's corporate secretary, respondent Oraiz, reiterating Chute's request for the issuance of new stock certificates in petitioner's favor.

A few days later, the bank's corporate secretary wrote[6] Chute to inform her that he could not register the transfer. He explained that under a previous stockholders' Resolution, existing stockholders were given priority to buy the shares of others in the event that the latter offered those shares for sale (*i.e.,* a right of first refusal). He then asked Chute if she, instead, wished to have her shares offered to existing stockholders. He told her that if no other stockholder would buy them, she could then proceed to sell her shares to outsiders.

Meanwhile, the bank's legal counsel, respondent Gonzalez, informed[7] Andaya that the latter's request had been referred to the bank's board of directors for evaluation. Gonzalez also furnished him a copy of the bank's previous reply to Chute

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[2] RTC Decision, p. 1, *rollo,* p. 136.

[3] Sale of Shares of Stocks, Annex A of the Petition. *rollo,* pp. 35-36.

[4] RTC Decision, p. 1, *rollo*, p. 136.

[5] Letter-request of Andaya dated 15 October 2004, Annex A of the Petition, *rollo*, p. 49.

[6] Letter of the bank's corporate secretary to Mrs. Chute dated 20 October 2004, Annex A of the Petition, *rollo,* p. 50; RTC Decision, p. 1, *rollo,* p. 136.

[7] Reply of the bank's legal counsel to Andaya dated 22 October 2004, Annex A of the Petition, *rollo*, p. 51.

concerning a similar request from her. Andaya responded[8] by reiterating his earlier request for the registration of the transfer and the issuance of new certificates of stock in his favor. Citing Section 98 of the Corporation Code, he claimed that the purported restriction on the transfer of shares of stock agreed upon during the 2001 stockholders' meeting could not deprive him of his right as a transferee. He pointed out that the restriction did not appear in the bank's articles of incorporation, bylaws, or certificates of stock.

The bank eventually denied the request of Andaya.[9] It reasoned that he had a conflict of interest, as he was then president and chief executive officer of the Green Bank of Caraga, a competitor bank. Respondent bank concluded that the purchase of shares was not in good faith, and that the purchase "could be the beginning of a hostile bid to take-over control of the [Rural Bank of Cabadbaran]."[10] Citing *Gokongwei v. Securities and Exchange Commission,*[11] respondent insisted that it may refuse to accept a competitor as one of its stockholders. It also maintained that Chute should have first offered her shares to the other stockholders, as agreed upon during the 2001 stockholders' meeting.

Consequently, Andaya instituted an action for mandamus and damages[12] against the Rural Bank of Cabadbaran; its corporate secretary, Oraiz; and its legal counsel, Gonzalez. Petitioner sought to compel them to record the transfer in the bank's stock and transfer book and to issue new certificates of stock in his name.

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[8] Letter of Andaya dated 29 October 2004, Annex A of the Petition, *rollo,* pp. 52-53; RTC Decision, p. 2, *rollo*, p. 137.

[9] Letter of the bank dated 3 November 2004, Annex A of the Petition, *rollo,* p. 54; RTC Decision, p. 2, *rollo,* p. 137.

[10] Letter of the bank dated 3 November 2004, Annex A of the Petition, *rollo,* p. 54.

[11] 178 Phil. 266 (1979).

[12] RTC Decision, p. 2, *rollo*, p. 137; Complaint of Andaya, Annex A of the Petition, *rollo,* pp. 27-32.

The RTC issued a Decision dismissing the complaint. Citing *Ponce v. Alsons Cement Corporation*[13] the trial court ruled that Andaya had no standing to compel the bank to register the transfer and issue stock certificates in his name.[14] It explained that he had failed "[to show] that the transfer of subject shares of stock [was] recorded in the stock and transfer book of [the] bank or that [he was] authorized by [Chute] to make the transfer."[15] According to the trial court, *Ponce* requires that a person seeking to transfer shares must appear to have an express instruction and a specific authority from the registered stockholder, such as a special power of attorney, to cause the disposition of stocks registered in the stockholder's name. It ruled that "[w]ithout the sale first registered or an authority from the transferor, it [was] therefore unmistakably clear that [Andaya had] no cause of action for mandamus against [the] bank."

Consequently, Andaya directly filed with this Court a Rule 45 petition for review on *certiorari* assailing the RTC Decision on pure questions of law.

ISSUES

The Court culls the issues raised by petitioner as follows:

1. Whether Andaya, as a transferee of shares of stock, may initiate an action for mandamus compelling the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book, as well as issue new stock certificates in his name
2. Whether a writ of mandamus should issue in favor of petitioner

OUR RULING

The petition is partly meritorious.

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[13] 442 Phil. 98 (2002).

[14] RTC Decision, pp. 3-4, *rollo,* pp. 138-139.

[15] RTC Decision, p. 3, *rollo,* p. 138.

It is already settled jurisprudence[16] that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of mandamus to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. This remedy is available even upon the instance of a *bona fide* transferee[17] who is able to establish a clear legal right to the registration of the transfer.[18] This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin*:[19]

A person who has purchased stock, and who **desires to be recognized as a stockholder,** for the purpose of voting, **must secure a standing by having the transfer recorded** upon the books. If the transfer is not duly made upon request, **he has, as his remedy, to compel it to be made.**[20] (Emphases supplied)

Thus, in *Pacific Basin Securities Co., Inc., v. Oriental Petroleum and Minerals Corp.,*[21] this Court stressed that the registration of a transfer of shares is ministerial on the part of the corporation:

Clearly, **the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.** The Court had ruled in *Rural Bank of Salinas,*

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[16] *Teng v. Securities and Exchange Commission,* G.R. No. 184332, 17 February 2016; *Pacific Basin Securities Co., Inc. v. Oriental Petroleum,* 558 Phil. 425 (2007); *Rural Bank of Salinas, Inc. v. Court of Appeals,* G.R. No. 96674, 26 June 1992, 210 SCRA 510, 515-516; *Price v. Martin,* 58 Phil. 707 (1933); *Fleischer v. Botica Nolasco Co., Inc.*, 47 Phil. 583 (1925).

[17] *Id*.

[18] *Lim Tay v. Court of Appeals,* 355 Phil. 381 (1998); *Price v. Martin, supra.* See, *e.g.*: *Teng v. Securities and Exchange Commission, supra* note 16.

[19] *Price v. Martin, supra* note 16, at p. 713. See also *Torres v. Court of Appeals*, 344 Phil. 348 (1997).

[20] *Price v. Martin, supra* note 16, at p. 713.

[21] *Supra* note 16.

Inc. v. Court of Appeals that the **corporation's obligation to register is ministerial,** citing *Fletcher,* to wit:

> In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.
>
> The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by mandamus.

The Court further held in *Rural Bank of Salinas* that **the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred.**[22] (Emphasis supplied; citations omitted)

Consequently, transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates.

We also rule that Andaya has been able to establish that he is a *bona fide* transferee of the shares of stock of Chute. In proving this fact, he presented to the RTC the following documents evidencing the sale: (1) a notarized Sale of Shares of Stocks[23] showing Chute's sale of 2,200 shares of stock to petitioner; (2) a Documentary Stamp Tax Declaration/Return[24] (3) Capital Gains Tax Return;[25] and (4) stock certificates[26] covering the subject shares duly endorsed by Chute. The existence, genuineness, and due execution of these documents have been admitted[27] and remain undisputed. There is no doubt that Andaya had the standing to initiate an action for mandamus

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[22] *Id*. at 684-685.

[23] Annex A of the Petition, *rollo,* pp. 35-36.

[24] *Id*. at 37.

[25] *Id*. at 38.

[26] *Id*. at 39-48.

[27] Pre-trial Order, p. 2, Annex C of the Petition, *rollo,* p. 127.

to compel the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book and to issue new stock certificates in his name. As the transferee of the shares, petitioner stands to be benefited or injured by the judgment in the instant petition, a judgment that will either order the bank to recognize the legitimacy of the transfer and petitioner's status as stockholder or to deny the legitimacy thereof.

This Court further finds that the reliance of the RTC on *Ponce* in finding that petitioner had no cause of action for mandamus against the defendant bank was misplaced. In *Ponce,* the issue resolved by this Court was whether the petitioner therein had a cause of action for mandamus to compel the *issuance* of stock certificates, not the registration of the transfer. Ruling in the negative, the Court said in that case that without any record of the transfer of shares in the stock and transfer book of the corporation, there would be no clear basis to compel that corporation to issue a stock certificate. By the import of Section 63 of the Corporation Code, the stock and transfer book would be the main reference book in ascertaining a person's entitlement to the rights of a stockholder. Consequently, without the registration of the transfer, the alleged transferee could not yet be recognized as a stockholder who is entitled to be given a stock certificate.

In contrast, at the crux of this petition are the registration of the transfer *and* the issuance of the corresponding stock certificates. Requiring petitioner to register the transaction before he could institute a mandamus suit in supposed abidance by the ruling in *Ponce* was a palpable error. It led to an absurd, circuitous situation in which Andaya was prevented from causing the registration of the transfer, ironically because the shares had not been registered. With the logic resorted to by the RTC, transferees of shares of stock would never be able to compel the registration of the transfer and the issuance of new stock certificates in their favor. They would first be required to show the registration of the transfer in their names — the ministerial act that is the subject of the mandamus suit in the first place. The trial court confuses the application of the dicta in *Ponce*,

which is pertinent only to the issuance of new stock certificates, and not to the registration of a transfer of shares. As *Ponce* itself provides, these two are entirely different events. The RTC's anomalous reasoning cannot be given legal imprimatur by this Court.

With regard to the requisite authorization from the transferor, the Court stresses that the concern in *Ponce* was rooted in whether or not the alleged right of the petitioner therein to compel the issuance of new stock certificates was clearly established. Reiterating the ruling in *Rivera v. FIorendo*[28] and *Hager v. Bryan,*[29] the Court therein maintained that a mere endorsement of stock certificates by the supposed owners of the stock could not be the basis of an action for mandamus in the absence of express instructions from them. According to the Court, the reason behind this ruling was that the corporation's duty and legal obligation therein were not so clear and indisputable as to justify the issuance of the writ. The ambiguity of the alleged transferee's deed of undertaking with endorsement led the Court in *Ponce* to rule that mandamus would have issued had the registered owner himself requested the registration of the transfer, or had the person requesting the registration secured a special power of attorney from the registered owner.

In the instant case, however, the submitted documents did not merely consist of an endorsement. Rather, petitioner presented several undisputed documents,[30] among which was respondent Oraiz's letter to Chute denying her request to transfer the stock standing in her name in favor of Andaya. This letter clearly indicated that the registered owner herself had requested the registration of the transfer of shares of stock. There was therefore no sensible reason for the RTC to perfunctorily extract the pronouncement in *Ponce* and then disregard it in the face of admitted facts in addition to the duly endorsed stock certificates.

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[28] 228 Phil. 616 (1986).

[29] 19 Phil. 138 (1911).

[30] Annex A of the Petition, *rollo,* pp. 35-55.

On whether the writ of mandamus should issue, Section 3, Rule 65 of the Rules of Court, provides for the rules governing a petition for mandamus, *viz:*

> SECTION 3. *Petition for mandamus.* — **When any** tribunal, **corporation**, board, **officer or person unlawfully neglects the performance of an act** which the **law specifically enjoins as a duty resulting from an office, trust, or station,** or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is **no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphases supplied)

Accordingly, a writ of mandamus to enforce a ministerial act may issue only when petitioner is able to establish the presence of the following: (1) right clearly founded in law and is not doubtful; (2) a legal duty to perform the act; (3) unlawful neglect in performing the duty enjoined by law; (4) the ministerial nature of the act to be performed; and (5) the absence of other plain, speedy, and adequate remedy in the ordinary course of law.[31]

Respondents primarily challenge the mandamus suit on the grounds that the transfer violated the bank stockholders' right of first refusal and that petitioner was a buyer in bad faith. Both parties refer to Section 98 of the Corporation Code to support their arguments, which reads as follows:

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[31] RULES OF COURT, Rule 65, Sec. 3; *Biraogo v. Del Rosario,* G.R. No. 206323, 11 April 2013 (unpublished Resolution); *Pefianco v. Morale,* 379 Phil. 468 (2000); *Lim Tay v. Court of Appeals, supra* note 18; *Garces v. Court of Appeals,* 328 Phil. 403 (1996); *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company,* 177 Phil. 569 (1979).

SECTION 98. *Validity of restrictions on transfer of shares.* — **Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith.** Said restrictions shall not be more than onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person. (Emphases supplied)

It must be noted that Section 98 applies only to close corporations. Hence, before the Court can allow the operation of this section in the case at bar, there must first be a factual determination that respondent Rural Bank of Cabadbaran is indeed a close corporation. There needs to be a presentation of evidence on the relevant restrictions in the articles of incorporation and bylaws of the said bank. From the records or the RTC Decision, there is apparently no such determination or even allegation that would assist this Court in ruling on these two major factual matters. With the foregoing, the validity of the transfer cannot yet be tested using that provision. These are the factual matters that the parties must first thresh out before the RTC.

After finding that petitioner has legal standing to initiate an action for mandamus, the Court now reinstates the action he filed and remands the case to the RTC to resolve the propriety of issuing a writ of mandamus. The resolution of the case must include the determination of all relevant factual matters in connection with the issues at bar. The RTC must also resolve petitioner's prayer for the payment of attorney's fees, litigation expenses, moral damages, and exemplary damages.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated 17 April 2009 and the Order dated 15 July 2009 of the Regional Trial Court, Branch 34, Cabadbaran City, which dismissed petitioner's action for

mandamus, are **SET ASIDE**. The action is hereby **REINSTATED** and the case **REMANDED** to the court of origin for further proceedings. The trial court is further enjoined to proceed with the resolution of this case with dispatch.

SO ORDERED.

Leonardo-de Castro, Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192297. August 3, 2016]

SUPRA MULTI-SERVICES, INC., JESUS TAMBUNTING, JR., and RITA CLAIRE T. DABU, *petitioners, vs.* **LANIE M. LABITIGAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; WILLFUL BREACH OF TRUST; THE EMPLOYEE'S ACT OF TAKING ADVANTAGE OF HER POSITION TO GRANT HERSELF A MONETARY BENEFIT EVEN IF NOT ENTITLED THERETO AND AFTER ALREADY BEING ORDERED TO STOP DOING SO CONSTITUTES BREACH OF TRUST; CASE AT BAR.— Under Article 282 (c) of the Labor Code, as amended, an employer may terminate an employment for, among other just causes, fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. x x x Respondent, as Accounting Supervisor, was occupying a managerial position.