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SECOND DIVISION

[G.R. No. 178523. June 16, 2010]

MAKATI SPORTS CLUB, INC., *petitioner, vs.* **CECILE H. CHENG, MC FOODS, INC., and RAMON SABARRE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED. — Under Section 1 of Rule 45 of the Rules of Court, such a petition shall raise only questions of law which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual.

2. COMMERCIAL LAW; CORPORATION CODE; CERTIFICATE OF STOCK, DEFINED. — A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not a stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. It is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but is not essential to the existence of a share of stock or the nature of the relation of shareholder to the corporation.

3. REMEDIAL LAW; EVIDENCE; FRAUD IS A QUESTION OF FACT THAT MUST BE ALLEGED AND PROVED. — Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or

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equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another. It is a question of fact that must be alleged and proved. It cannot be presumed and must be established by clear and convincing evidence, not by mere preponderance of evidence. The party alleging the existence of fraud has the burden of proof. On the basis of the above disquisitions, this Court finds that petitioner has failed to discharge this burden. No matter how strong the suspicion is on the part of petitioner, such suspicion does not translate into tangible evidence sufficient to nullify the assailed transactions involving the subject MSCI Class "A" share of stock.

APPEARANCES OF COUNSEL

Solis Medina Limpingco & Fajardo for petitioner.
Law Firm of R.V. Domingo for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated June 25, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 80631, affirming the decision[3] dated August 20, 2003 of the Regional Trial Court (RTC), Branch 138, Makati City in Civil Case No. 01-837.

The facts of the case, as narrated by the RTC and adopted by the CA, are as follows:

On October 20, 1994, plaintiff's Board of Directors adopted a resolution (Exhibit 7) authorizing the sale of 19 unissued shares at a floor price of ₱400,000 and ₱450,000 per share for Class A and B, respectively.

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[1] *Rollo*, pp. 10-53.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Edgardo P. Cruz and Lucenito N. Tagle, concurring; *id.* at 55-64.

[3] *Rollo*, pp. 127-130.

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Defendant Cheng was a Treasurer and Director of plaintiff in 1985. On July 7, 1995, Hodreal expressed his interest to buy a share, for this purpose he sent the letter, Exhibit 13. In said letter, he requested that his name be included in the waiting list.

It appears that sometime in November 1995, McFoods expressed interest in acquiring a share of the plaintiff, and one was acquired with the payment to the plaintiff by McFoods of ₱1,800,000 through Urban Bank (Exhibit 3). On December 15, 1995, the Deed of Absolute Sale, Exhibit 1, was executed by the plaintiff and McFoods Stock Certificate No. A 2243 was issued to McFoods on January 5, 1996. On December 27, 1995, McFoods sent a letter to the plaintiff giving advise (sic) of its offer to resell the share.

It appears that while the sale between the plaintiff and McFoods was still under negotiations, there were negotiations between McFoods and Hodreal for the purchase by the latter of a share of the plaintiff. On November 24, 1995, Hodreal paid McFoods ₱1,400,000. Another payment of ₱1,400,000 was made by Hodreal to McFoods on December 27, 1995, to complete the purchase price of ₱2,800,000.

On February 7, 1996, plaintiff was advised of the sale by McFoods to Hodreal of the share evidenced by Certificate No. 2243 for ₱2.8 Million. Upon request, a new certificate was issued. In 1997, an investigation was conducted and the committee held that there is *prima facie* evidence to show that defendant Cheng profited from the transaction because of her knowledge.

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Plaintiff's evidence of fraud are – [a] letter of Hodreal dated July 7, 1995 where he expressed interest in buying one (1) share from the plaintiff with the request that he be included in the waiting list of buyers; [b] declaration of Lolita Hodreal in her Affidavit that in October 1995, she talked to Cheng who assured her that there was one (1) available share at the price of ₱2,800,000. The purchase to be validated by paying 50% immediately and the balance after thirty (30) days; [c] Marian Punzalan, Head, Membership Section of the plaintiff declared that she informed Cheng of the intention of Hodreal to purchase one (1) share and she gave to Cheng the contact telephone number of Hodreal; and [d] the authorization from Sabarre to claim the stock certificate.[4]

[4] *Id.* at 56-57; 128-129.

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Thus, petitioner sought judgment that would order respondents to pay the sum of ₱1,000,000.00, representing the amount allegedly defrauded, together with interest and damages.

After trial on the merits, the RTC rendered its August 20, 2003 decision, dismissing the complaint, including all counterclaims.

Aggrieved, Makati Sports Club, Inc. (MSCI) appealed to the CA, arguing that the RTC erred in finding neither direct nor circumstantial evidence that Cecile H. Cheng (Cheng) had any fraudulent participation in the transaction between MSCI and Mc Foods, Inc. (Mc Foods), while it allegedly ignored MSCI's overwhelming evidence that Cheng and Mc Foods confabulated with one another at the expense of MSCI.

After the submission of the parties' respective briefs, the CA promulgated its assailed Decision, affirming the August 20, 2003 decision of the RTC. Hence, this petition anchored on the grounds that—

THE APPELLATE COURT ERRED IN UPHOLDING THE CONCLUSION OF THE TRIAL COURT THAT PETITIONER DID NOT PROFFER CLEAR AND CONVINCING EVIDENCE SHOWING THAT THE RESPONDENTS DEFRAUDED THE PETITIONER DESPITE OVERWHELMING EVIDENCE TO THE CONTRARY AS SHOWN BY THE FOLLOWING:

(A) RESPONDENTS CHENG AND SABARRE'S OWN ADMISSIONS, MARIAN PUNZALAN'S AFFIDAVIT, AND OTHER PERTINENT DOCUMENTARY EVIDENCE ALL UNEQUIVOCALLY PROVE THAT RESPONDENT CHENG HAD INTIMATE PARTICIPATION IN THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO MC FOODS, INC. FOR THE CONSIDERATION OF ONE MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00).

(B) RESPONDENT CHENG'S ADMISSIONS AND OTHER PERTINENT DOCUMENTARY EVIDENCE RELATED TO THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO RESPONDENT MC FOODS, INC. AND THE RESALE OF THE SAME TO SPOUSES HODREAL PROVE THAT THE SALE OF THE SAID UNISSUED SHARE TO MC FOODS, INC. AT ONE

MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00) WAS MADE WITH A VIEW TO RESELL THE SAME AT A PROFIT TO THE HODREAL SPOUSES AT THE AMOUNT OF TWO MILLION EIGHT HUNDRED PESOS (PHP2,800,000.00); THE "RESALE" OF THE SAID SHARE TO THE SPOUSES HODREAL OCCURRING EVEN BEFORE MC FOODS, INC. GAINED OWNERSHIP OVER THE SAID UNISSUED SHARE.

(C) THE UTTER LACK OF DOCUMENTARY EVIDENCE SHOWING THAT MC FOODS, INC. EVINCED A DESIRE TO PURCHASE PETITIONER'S UNISSUED SHARES CONCLUSIVELY PROVES THAT MC FOODS, INC. NEVER MADE ANY FORMAL OFFER TO BUY AN UNISSUED M[SC]I SHARE FROM PETITIONER'S BOARD OF DIRECTORS AND/OR MEMBERSHIP COMMITTEE, COURSING THE SAID TRANSACTION CLANDESTINELY THROUGH RESPONDENT CHENG.

(D) RESPONDENT CHENG'S OWN ADMISSIONS INDUBITABLY PROVE THAT SHE DELIBERATELY CONCEALED THE FACT THAT THERE WERE OTHER UNISSUED M[SC]I SHARES AVAILABLE FOR PURCHASE BY THE SPOUSES HODREAL, CHOOSING INSTEAD TO BROKER THE "RESALE" OF THE SHARE PURCHASED BY MC FOODS, INC. FROM MSCI TO THE SPOUSES HODREAL AT THE PRICE OF TWO MILLION EIGHT HUNDRED THOUSAND PESOS (PHP2,800,000.00) TO THE DETRIMENT OF THE PETITIONER.

(E) RESPONDENTS CHENG AND SABARRE'S ADMISSIONS, MSCI'S BY-LAWS AND DOCUMENTARY EVIDENCE RELATING TO THE TWO IRREGULAR SALES TRANSACTIONS ALL POINT TO THE CONCLUSION THAT MC FOODS, INC. IN RESELLING ITS MSCI SHARE TO SPOUSES HODREAL FAILED TO GIVE MSCI A CREDIBLE OPPORTUNITY TO REPURCHASE THE SAME IN ACCORDANCE WITH SECTION 30 (E) OF MSCI'S BY-LAWS.

(F) RESPONDENT CHENG'S OWN DOCUMENTARY EVIDENCE PROVES THAT RESPONDENTS FALSIFIED AN ENTRY IN MC FOODS, INC.'S "OFFER" TO SELL ITS SHARE TO MSCI IN AN EFFORT TO COAT THE RESELLING OF THE

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SAID SHARE TO SPOUSES HODREAL WITH A SEMBLANCE OF REGULARITY[.]

(G) FINALLY, PERHAPS THE MOST OVERLOOKED MATTER BY THE TRIAL COURT AND THE APPELLATE COURT IS THE SINGULAR UNDENIABLE FACT THAT RESPONDENT CHENG DURING THE PERIOD IN WHICH THE ABOVE-MENTIONED TRANSACTIONS CAME INTO FRUITION WAS A MEMBER OF THE BOARD OF DIRECTORS AND THE TREASURER OF MSCI, THIS FACT ALONE TAINTS THE PARTICIPATION OF RESPONDENT CHENG IN THE SAID IRREGULAR TRANSACTIONS WITH BAD FAITH.[5]

The petition should be denied.

At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, such a petition shall raise only questions of law which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual.[6]

A perusal of the assignment of errors and the discussion set forth by MSCI would readily show that the petition seeks a review of all the evidence presented before the RTC and reviewed by the CA; therefore, the issue is factual. Accordingly, the petition should be dismissed outright, especially considering that

[5] *Id.* at 18-20.

[6] *Rivera v. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009, 586 SCRA 269; *Samaniego-Celada v. Abena*, G.R. No. 145545, June 30, 2008, 556 SCRA 569.

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the very same factual circumstances in this petition have already been ruled upon by the CA.

However, MSCI seeks to evade this rule that the findings of fact made by the trial court, particularly when affirmed by the appellate court, are entitled to great weight and even finality, claiming that its case falls under two of the well-recognized exceptions, to wit: (1) that the judgment of the appellate court is premised on a misapprehension of facts or that it has failed to consider certain relevant facts which, if properly considered, will justify a different conclusion; and (2) that the findings of fact of the appellate court are ostensibly premised on the absence of evidence, but are contradicted by the evidence on record.[7]

MSCI insists that Cheng, in collaboration with Mc Foods, committed fraud in transacting the transfers involving Stock Certificate No. A 2243 (Certificate A 2243) on account of the following circumstances—(1) on November 24, 1995, Joseph L. Hodreal (Hodreal) paid the first installment of ₱1,400,000.00 for the purchase of a Class "A" share in favor of Mc Foods;[8] (2) on November 28, 1995, Mc Foods deposited to MSCI's account an Allied Banking Corporation manager's check for the purchase of the same share in the amount of ₱1,800,000.00,[9] *sans* an official receipt from MSCI;[10] (3) on December 15, 1995, MSCI and Mc Foods executed a Deed of Sale for the purchase of a Class "A" share;[11] (4) on December 27, 1995, Hodreal paid the last installment of ₱1,400,000.00 to Mc Foods;[12] (5) on December 27, 1995, Mc Foods sent a letter to MSCI, offering to sell its purchased share of stock in the amount of

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[7] *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486; *Allied Banking Corporation v. Court of Appeals*, 461 Phil. 517 (2003).

[8] Per Official Receipt No. 1601 issued by Mc Foods; *rollo*, p. 84.

[9] Per Deposit Slip dated November 28, 1995; *rollo*, p. 103.

[10] Per Stock Sale Transaction – Original Issues (as of June 1996) of MSCI; *rollo*, p. 144.

[11] *Rollo*, pp. 142-143.

[12] Per voucher of Mc Foods; *id.* at 87.

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₱2,800,000.00;[13] (6) on January 5, 1996, Certificate A 2243 was issued to Mc Foods by MSCI;[14] and (7) on January 29, 1996, Mc Foods and Hodreal executed a Deed of Sale for the same share of stock.[15]

Based on the above incidents, MSCI asserts that Mc Foods never intended to become a legitimate holder of its purchased Class "A" share but did so only for the purpose of realizing a profit in the amount of ₱1,000,000.00 at the expense of the former. MSCI further claims that Cheng confabulated with Mc Foods by providing it with an insider's information as to the status of the shares of stock of MSCI and even, allegedly with unusual interest, facilitated the transfer of ownership of the subject share of stock from Mc Foods to Hodreal, instead of an original, unissued share of stock. According to MSCI, Cheng's fraudulent participation was clearly and overwhelmingly proven by the following circumstances: (1) sometime in October 1995, Lolita Hodreal, wife of Hodreal, talked to Cheng about the purchase of one Class "A" share of stock and the latter assured her that there was already an available share for ₱2,800,000.00;[16] (2) the second installment payment of ₱1,400,000.00 of spouses Hodreal to Mc Foods was received by Cheng on the latter's behalf;[17] (3) Marian N. Punzalan (Punzalan), head of MSCI's membership section, informed Cheng about Hodreal's intention to purchase a share of stock and Cheng asked her if there was a quoted price for it, and for Hodreal's contact number;[18] and (4) on January 29, 1996, Cheng claimed Certificate A 2243 on behalf of Mc Foods,[19] per letter

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[13] Received by MSCI on Dec. 28, 1995; *rollo*, p. 100.

[14] *Rollo*, p. 97.

[15] *Id.* at 95-96.

[16] Per Lolita Hodreal's Affidavit dated April 18, 1998; *id.* at 85.

[17] Per Cheng's letter dated December 27, 1995; *rollo*, p. 88.

[18] Per Marian N. Punzalan's Affidavit dated October 30, 2001; *rollo*, p. 90.

[19] Per Stock Transfer Data Sheet of MSCI; *rollo*, p. 102.

of authority dated January 26, 1996, executed by Mc Foods in favor of Cheng.[20]

The Court is not convinced.

It is noteworthy that, as early as July 7, 1995, Hodreal already expressed to the MSCI Membership Committee his intent to purchase one Class "A" share and even requested if he could be included in the waiting list of buyers. However, there is no evidence on record that the Membership Committee acted on this letter by replying to Hodreal if there still were original, unissued shares then or if he would indeed be included in the waiting list[21] of buyers. All that Punzalan did was to inform Cheng of Hodreal's intent and nothing more, even as Cheng asked for Hodreal's contact number. It may also be observed that, although established by Punzalan's affidavit that she informed Cheng about Hodreal's desire to purchase a Class "A" share and that Cheng asked for Hodreal's contact number, it is not clear when Punzalan relayed the information to Cheng or if Cheng indeed initiated contact with Hodreal to peddle Mc Foods' purchased share.

While Punzalan declared that, in December 1995, she received a Deed of Absolute Sale between MSCI and Mc Foods of a

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[20] *Rollo*, p. 101.

[21] Amended By-Laws of MSCI, Sec. 3.

SEC. 3. *Waiting List*. There shall be a Waiting List to be kept by the Membership committee which shall be a register of the names of persons desiring to be regular members due to non-availability of shares of stock to be issued in their names or to the corporation represented by such persons. Order of priority in the Waiting List shall be established based on the order of filing of the applications, provided, however, that the number of applications that can be included in the list shall not exceed one hundred (100) at any given time. Names of applicants shall be posted in the Club Bulletin Board for a period of thirty (30) days and if no objections are raised by any regular member shall be included in the Waiting List upon approval by the Membership Committee, and confirmation by the Board, provided, however, that the Board may delete the name of any applicant at any time at its discretion.

Applicants in the Waiting List shall be notified by the Membership Committee of the availability of shares of stock for sale as provided for under Section 33(b) herein.

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Class "A" share for ₱1,800,000.00 signed by Atty. Rico Domingo and Cheng, in their respective capacities as then President and Treasurer of MSCI, and by Ramon Sabarre, as President of Mc Foods, what she merely did was to inquire from her immediate superior Becky Peñaranda what share to issue; and the latter, in turn, replied that it should be an original share. Thereafter, Punzalan prepared a letter, signed by then corporate secretary, Atty. Rafael Abiera, to be sent to MSCI's stock transfer agent for the issuance of the corresponding certificate of stock. Then, Certificate A 2243 was issued in favor of Mc Foods on January 5, 1996.

Also in point are the powers and duties of the MSCI's Membership Committee, *viz*.:

> SEC. 29. (a) The *Membership Committee* shall process applications for membership; ascertain that the requirements for stock ownership, including citizenship, are complied with; submit to the Board its recommended on applicants for inclusion in the Waiting List; take charge of auction sales of shares of stock; and exercise such other powers and perform such other functions as may be authorized by the Board.[22]

Charged with ascertaining the compliance of all the requirements for the purchase of MSCI's shares of stock, the Membership Committee failed to question the alleged irregularities attending Mc Foods' purchase of one Class "A" share at ₱1,800,000.00. If there was really any irregularity in the transaction, this inaction of the Management Committee belies MSCI's cry of foul play on Mc Foods' purchase of the subject share of stock. In fact, the purchase price of ₱1,800,000.00 cannot be said to be detrimental to MSCI, considering that it is the same price paid for a Class "A" share in the last sale of an original share to Land Bank of the Philippines on September 25, 1995, and in the sale by Marina Properties Corporation to Xanland Properties, Inc. on October 23, 1995.[23] These circumstances have not been denied by MSCI. What is more, the purchase price of

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[22] *Rollo*, p. 75.

[23] Per Cheng's Affidavit; *id.* at 139.

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₱1,800,000.00 is ₱1,400,000.00 more than the floor price set by the MSCI Board of Directors for a Class "A" share in its resolution dated October 20, 1994.[24]

Further, considering that Mc Foods tendered its payment of ₱1,800,000.00 to MSCI on November 28, 1995, even assuming *arguendo* that it was driven solely by the intent to speculate on the price of the share of stock, it had all the right to negotiate and transact, at least on the anticipated and expected ownership of the share, with Hodreal.[25] In other words, there is nothing wrong with the fact that the first installment paid by Hodreal preceded the payment of Mc Foods for the same share of stock to MSCI because eventually Mc Foods became the owner of a Class "A" share covered by Certificate A 2243. Upon payment by Mc Foods of ₱1,800,000.00 to MSCI and the execution of the Deed of Absolute Sale on December 15, 1995, it then had the right to demand the delivery of the stock certificate in its name. The right of a transferee to have stocks transferred to its name is an inherent right flowing from its ownership of the stocks.[26]

It is MSCI's stance that Mc Foods violated Section 30(e) of MSCI's Amended By-Laws on its pre-emptive rights, which provides—

SEC. 30. x x x .

(e) *Sale of Shares of Stockholder*. Where the registered owner of share of stock desires to sell his share of stock, he shall first offer the same in writing to the Club at fair market value and the

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[24] Exhibit "7" as cited by both RTC and CA in their respective assailed Decisions.

[25] CIVIL CODE, Art. 1461.

Art. 1461. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void.

[26] M. DEFENSOR SANTIAGO, *Corporation Code Annotated* (2000), p. 168.

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club shall have thirty (30) days from receipt of written offer within which to purchase such share, and only if the club has excess revenues over expenses (unrestricted retained earning) and with the approval of two-thirds (2/3) vote of the Board of Directors. If the Club fails to purchase the share, the stockholder may dispose of the same to other persons who are qualified to own and hold shares in the club. If the share is not purchased at the price quoted by the stockholder and he reduces said price, then the Club shall have the same pre-emptive right subject to the same conditions for the same period of thirty (30) days. Any transfer of share, except by hereditary succession, made in violation of these conditions shall be null and void and shall not be recorded in the books of the Club.

The share of stock so acquired shall be offered and sold by the Club to those in the Waiting List in the order that their names appear in such list, or in the absence of a Waiting List, to any applicant.[27]

We disagree.

Undeniably, on December 27, 1995, when Mc Foods offered for sale one Class "A" share of stock to MSCI for the price of ₱2,800,000.00 for the latter to exercise its pre-emptive right as required by Section 30(e) of MSCI's Amended By-Laws, it legally had the right to do so since it was already an owner of a Class "A" share by virtue of its payment on November 28, 1995, and the Deed of Absolute Share dated December 15, 1995, notwithstanding the fact that the stock certificate was issued only on January 5, 1996. A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not a stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. It is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but is not essential to the existence of a share of stock or the nature of the relation of shareholder to the corporation.[28]

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[27] *Rollo*, p. 77.

[28] 13 Am. Jur. 2d, 769.

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Therefore, Mc Foods properly complied with the requirement of Section 30(e) of the Amended By-Laws on MSCI's pre-emptive rights. Without doubt, MSCI failed to repurchase Mc Foods' Class "A" share within the thirty (30) day pre-emptive period as provided by the Amended By-Laws. It was only on January 29, 1996, or 32 days after December 28, 1995, when MSCI received Mc Foods' letter of offer to sell the share, that Mc Foods and Hodreal executed the Deed of Absolute Sale over the said share of stock. While Hodreal had the right to demand the immediate execution of the Deed of Absolute Sale after his full payment of Mc Foods' Class "A" share, he did not do so. Perhaps, he wanted to wait for Mc Foods to first comply with the pre-emptive requirement as set forth in the Amended By-Laws. Neither can MSCI argue that Mc Foods was not yet a registered owner of the share of stock when the latter offered it for resale, in order to void the transfer from Mc Foods to Hodreal. The corporation's obligation to register is ministerial upon the buyer's acquisition of ownership of the share of stock. The corporation, either by its board, its by-laws, or the act of its officers, cannot create restrictions in stock transfers.[29]

Moreover, MSCI's ardent position that Cheng was in cahoots with Mc Foods in depriving it of selling an original, unissued Class "A" share of stock for ₱2,800,000.00 is not supported by the evidence on record. The mere fact that she performed acts upon authority of Mc Foods, *i.e.,* receiving the payments of Hodreal in her office and claiming the stock certificate on behalf of Mc Foods, do not by themselves, individually or taken together, show badges of fraud, since Mc Foods did acts well within its rights and there is no proof that Cheng personally profited from the assailed transaction. Even the statement of MSCI that Cheng doctored the books to give a semblance of regularity to the transfers involving the share of stock covered by Certificate A 2243 remains merely a plain statement not buttressed by convincing proof.

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[29] *Supra* note 26.

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Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another.[30] It is a question of fact that must be alleged and proved. It cannot be presumed and must be established by clear and convincing evidence, not by mere preponderance of evidence.[31] The party alleging the existence of fraud has the burden of proof.[32] On the basis of the above disquisitions, this Court finds that petitioner has failed to discharge this burden. No matter how strong the suspicion is on the part of petitioner, such suspicion does not translate into tangible evidence sufficient to nullify the assailed transactions involving the subject MSCI Class "A" share of stock.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated June 25, 2007 of the Court of Appeals in CA-G.R. CV No. 80631, affirming the decision dated August 20, 2003 of the Regional Trial Court, Branch 138, Makati City in Civil Case No. 01-837, is *AFFIRMED.* Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

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[30] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[31] *Rementizo v. Heirs of Pelagia Vda. de Madarieta*, G.R. No. 170318, January 15, 2009, 576 SCRA 109; *BMG Records (Phils.), Inc. v. Aparecio,* G.R. No. 153290, September 5, 2007, 532 SCRA 300.

[32] *Memita v. Masongsong*, G.R. No. 150912, May 28, 2007, 523 SCRA 244; *Philippine Realty Holdings Corporation v. Firematic Philippines, Inc.,* G.R. No. 156251, April 27, 2007, 522 SCRA 493.

[*] Additional member in lieu of Associate Justice Jose C. Mendoza per Special Order No. 842 dated June 3, 2010.