Supreme Court E-Library

THIRD DIVISION

[G.R. No. 104720. April 4, 2001]

PILIPINAS LOAN COMPANY, INC., *petitioner, vs.* **HON. SECURITES AND EXCHANGE COMMISSION AND FILIPINAS PAWNSHOP, INC.,**[1] *respondents.*

SYNOPSIS

Private respondent Filipinas Pawnshop, Inc., a corporation engaged in the business of extending loans on the security of personal or real properties, filed a complaint against herein petitioner Pilipinas Loan Company, Inc., a lending corporation, before the Prosecution and Enforcement Department (PED) of the SEC alleging, among others, that the petitioner violated its articles of incorporation when it engaged in pawnshop business despite the prohibition contained therein that it cannot engage in pawnbroking as defined in Presidential Decree (PD) 114.

In its Answer, petitioner denied that it is engaged in the pawnshop business, alleging that it is a lending investor duly registered with the Central Bank. It questioned the jurisdiction of the SEC claiming that the power to look into violations of PD 114 rests solely with the Central Bank. Thereafter, the PED issued an Order, directing the petitioner, among others, to cease and desist from further engaging in the business of pawnshop. The SEC affirmed the Order of the PED with modification ordering the petitioner, among others, to cease and desist from further engaging in business as a "pawnshop" until the proper license shall have been secured from the Central Bank. Petitioner sought recourse before the Court of Appeals, which, in its Decision, upheld the jurisdiction of the SEC but modified its assailed decision. Petitioner elevated the matter before the Supreme Court when the appeal court denied its motion for reconsideration.

The Court found the petition unmeritorious.

Basic is the rule that it is the allegations in the complaint that vests jurisdiction. The Court, in the case of Philippine

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[1] This case was re-raffled to herein *ponente* pursuant to this Court's Resolution in A.M. No. 00-9-03-SC dated February 27, 2001.

Supreme Court E-Library

Woman's Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc. (292 SCRA 785), held that when the thrust of a complaint is on the *ultra vires* act of a corporation, that is the complained act of a corporation is contrary to its declared corporate purposes, the SEC has jurisdiction to entertain the complaint before it. In the case at bar, the thrust of private respondent's complaint is the violation of petitioner's primary franchise. Section 5 of PD 114 invoked by petitioner mandates that a corporation desiring to engage in the pawnshop business must first register with the SEC. Hence, the complaint filed by private respondent against petitioner called upon the SEC to exercise its adjudicatory and supervisory powers. By law, the SEC has absolute jurisdiction, supervision and control over all corporations that are enfranchised to act as corporate entities. A violation by a corporation of its franchise is properly within the jurisdiction of the SEC.

Petition denied.

SYLLABUS

1. **COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; HAS JURISDICTION OVER COMPLAINT INVOLVING *ULTRA VIRES* ACT OF A CORPORATION.**— Basic is the rule that it is the allegations in the complaint that vests jurisdiction. A case in point is *Philippine Woman's Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc.* wherein we held that when the thrust of a complaint is on the *ultra vires* act of a corporation, that is the complained act of a corporation is contrary to its declared corporate purposes, the SEC has jurisdiction to entertain the complaint before it.

2. **ID.; ID.; HAS JURISDICTION OVER VIOLATION BY A CORPORATION OF ITS FRANCHISE.**— It must be recalled that the complaint of private respondent alleged that the articles of incorporation of petitioner contained this prohibition: "without, however, engaging in pawnbroking as defined in PD 114" and despite this restriction, petitioner allegedly continued to actually operate and do business as a pawnshop. The complaint thus treats of a violation of petitioner's primary franchise. Section 5 of PD 114, the same law invoked by petitioner, mandates that a corporation desiring to engage in

Supreme Court E-Library

the pawnshop business must first register with the SEC. Without question, the complaint filed by private respondent against petitioner called upon the SEC to exercise its adjudicatory and supervisory powers. By law, the SEC has absolute jurisdiction, supervision and control over all corporations that are enfranchised to act as corporate entities. A violation by a corporation of its franchise is properly within the jurisdiction of the SEC.

3. **ID.; ID.; JURISDICTION.**— Aside from the supervision and control powers granted by Section 3 of PD 902-A to the SEC, Section 5 thereof provides that: "Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have 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 of the stockholders, partners, members of associations or organizations registered with the commission.'" Clearly, the recital in the complaint of private respondent that petitioner is engaged in the pawnshop business when it is not authorized to do so by its articles of incorporation amounts to fraud, detrimental not only to the corporation but also to the stockholders and the public. The relationship in this controversy is a category of relationship over which the SEC has exclusive jurisdiction, thus: "(a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members or officers; (c) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners or associates themselves."

4. **ID.; ID.; FACTUAL FINDINGS THEREOF RESPECTED WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.**— We reject petitioner's claim that the SEC relied solely on the photographs in reaching the conclusion that petitioner is engaged in pawnshop activities. Aside from the questioned photographs, other evidence such as affidavits of the past customers of petitioner and the supposed "promissory note" between

Supreme Court E-Library

petitioner and its customers were also submitted to the SEC. The SEC and the Court of Appeals were one in ruling that the so-called "promissory note" was more of a pawn ticket than an instrument of indebtedness. We see no cogent reason to set aside the factual findings of the SEC, also upheld by the Court of Appeals, based on the settled rule that the findings of fact of the SEC must be respected as long as they are supported by substantial evidence, as in this case.

5. **ID.; CORPORATION LAW; CORPORATION; POWERS; CORPORATION MUST NOT GO BEYOND POWERS GRANTED TO IT BY ITS ARTICLES OF INCORPORATION.**— A corporation, under the Corporation Code, has only such powers as are expressly granted to it by law and by its articles of incorporation, those which may be incidental to such conferred powers, those reasonably necessary to accomplish its purposes and those which may be incident to its existence. In the case at bar, the limit of the powers of petitioner as a corporation is very clear, it is categorically prohibited from "engaging in pawnbroking as defined under PD 114." Hence, in determining what constitutes pawnbrokerage, the relevant law to consider is PD 114. This reference to PD 114 is also in line with Article 2123 of the Civil Code that states that: xxx Indispensable therefore to the determination of whether or not petitioner had violated its articles of incorporation, was an inquiry by the SEC if petitioner was holding out itself to the public as a pawnshop. It must be stressed that the determination of whether petitioner violated PD 114 was merely incidental to the regulatory powers of the SEC, to see to it that a corporation does not go beyond the powers granted to it by its articles of incorporation.

6. **ID.; ID.; ID.; ARTICLES OF INCORPORATION; GIVES JURIDICAL POWER TO CORPORATION AND PLACES IT WITHIN SEC JURISDICTION.**— Jurisprudence has laid down the principle that it is the certificate of incorporation that gives juridical personality to a corporation and places it within SEC jurisdiction. The case of *Orosa, Jr. vs. Court of Appeals* teaches that this jurisdiction of the SEC is not affected even if the authority to operate a certain specialized activity is withdrawn by the appropriate regulatory body other than the SEC. With more reason that we cannot sustain the submission of petitioner that a declaration by the Central Bank that it violated PD 114 is a condition precedent before the SEC can take cognizance of the complaint against petitioner.

Supreme Court E-Library

7. **ID.; ID.; ID.; PETITIONER VIOLATED ITS ARTICLES OF INCORPORATION WHEN IT HELD ITSELF OUT TO THE PUBLIC AS A PAWNSHOP.** — The totality of the evidence substantially establishes the conclusion that petitioner contravened its articles of incorporation when it held itself out to the public as a pawnshop.

8. **ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; ESSENCE; NO VIOLATION OF RIGHT TO DUE PROCESS IN CASE AT BAR.**— Due process is not necessarily tantamount to a full-blown trial. The essence of due process is simply the opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the ruling or action taken. The records of this case show that petitioner was accorded every opportunity to be heard during the conference before the PED wherein the parties were required to file their position papers, and on appeal before the SEC *en banc.*

APPEARANCES OF COUNSEL

Martinez and Perez Law Offices for petitioner.
The Solicitor General for public respondent.
Santiago Arevalo Tomas and Associates for private respondents.

D E C I S I O N

GONZAGA-REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court of the Decision[2] of the Court of Appeals in CA-G.R. SP No. 25782 entitled "*Pilipinas Loan Company, Inc. vs. Honorable Securities and Exchange Commission and Filipinas Pawnshop, Inc.*" dated October 31, 1991 and Resolution dated March 19, 1992 which denied

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[2] Per Associate Justice Celso L. Magsino, concurred in by Associate Justices Artemon D. Luna and Jainal D. Rasul, Special Seventh Division.

Supreme Court E-Library

the motion for reconsideration of herein petitioner Pilipinas Loan Company, Inc. (petitioner).

Private respondent Filipinas Pawnshop, Inc. (private respondent) is a duly organized corporation registered with the Securities and Exchange Commission (SEC) on February 9, 1959 with its principal place of business located along Pedro Gil St., Paco, Metro Manila. The articles of incorporation of private respondent states that its primary purpose is to extend loans at legal interest on the security of either personal properties or on the security of real properties, and to finance installment sales of motor vehicles, home appliances and other chattels.

Petitioner is a lending corporation duly registered with the SEC on July 27, 1989 with some of its places of business located along Pedro Gil, Sta. Ana, Manila and Onyx St., cor. Augusto Francisco St., San Andres, Paco, Manila. Based on its articles of incorporation, the primary purpose of petitioner is:

"To act as a lending investor or, otherwise, to engage in the practice of lending money or extending loans on the security of real or personal, tangible or intangible properties whether as pledge, real or chattel mortgage or otherwise, x x x without however, engaging in pawnbroking as defined under PD 114."

On September 11, 1990, private respondent filed a complaint against petitioner with the Prosecution and Enforcement Department (PED) of the SEC docketed as PED CASE No. 90-0737. The complaint alleged that: (1) petitioner, contrary to the restriction set by the Commission, has been operating and doing business as a pawnbroker, pawnshop or "*sanglaan*" in the same neighborhood where private respondent has had its own pawnshop for 30 years in violation of its primary purpose and without the *imprimatur* of the Central Bank to engage in the pawnshop business thereby causing unjust and unfair competition with private respondent; and (2) the business name of petitioner, "PILIPINAS" Loan, bears similarity in spelling and phonetics with the corporate name of private respondent, "FILIPINAS" Pawnshop, creating constant confusion in the minds of the public and the customers of private respondent. In the same complaint, private respondent urged the SEC to:

Supreme Court E-Library

(1) order petitioner to change its business name, Pilipinas Loan, and cease from using it in the near future; (2) order Pilipinas Loan to cease and desist from engaging in the business of pawnbroking as defined under PD No. 114; and (3) impose upon the director, officers, employees or persons responsible such penalties as may be proper under the law.

On October 18, 1990, petitioner filed its Comment/Answer questioning the power of the SEC to take cognizance of the complaint involving (1) a supposed violation of the Pawnshop Regulations Act which is more properly within the jurisdiction of the Central Bank; and (2) the determination of whether a corporate name is confusingly similar to another which is within the jurisdiction of the regular courts. Petitioner denied that it is engaged in the pawnshop business, alleging that it is a lending investor duly registered with the Central Bank.

On October 18, 1991, private respondent filed its reply to the Comment/Answer.

On April 8, 1991, the PED of the SEC issued an Order directing petitioner to amend its articles of incorporation by changing the word "Pilipinas" in its corporate name, and to cease and desist from further engaging in the business of pawnshop or "*sanglaan.*"

On August 13, 1991, the SEC *en banc* rendered a Decision affirming with modification the aforementioned Order. The Decision ordered petitioner to (1) amend its articles of incorporation by deleting the word "pledge" in its primary purpose and the word "Pilipinas" as part of its corporate name and substituting another word in lieu thereof within fifteen (15) days from receipt of the decision; and (2) to cease and desist from further engaging in business as a "pawnshop" or "pawnbroker" or "*sanglaan*" as defined in Presidential Decree No. 114, otherwise known as the Pawnshop Regulation Act, until the proper license shall have been secured from the Central Bank of the Philippines.

Aggrieved, petitioner filed a petition for review before the Court of Appeals docketed as CA G.R. SP No. 25782.

Supreme Court E-Library

On October 31, 1991 the Court of Appeals rendered a Decision affirming with modification the decision of the SEC. The dispositive portion of the now assailed decision reads:

"WHEREFORE, premises considered, the decision appealed from is hereby modified, setting aside that portion ordering petitioner to amend its articles of incorporation by deleting the word "pledge" in its primary purposes and the word "Pilipinas" as part of its corporate name. However, petitioner Pilipinas Loan Co., Inc., its directors, officers agents or other persons acting in its behalf are forthwith ordered to CEASE AND DESIST from further engaging in business as a pawnshop or "pawnbroker" or "*sanglaan*" as defined in Presidential Decree No. 114, otherwise known as the Pawnshop Regulation Act until the proper license shall have been secured from the Central Bank of the Philippines. In all other respects, the decision is affirmed."[3]

On March 19, 1992, the Court of Appeals issued a Resolution denying the motion for reconsideration filed by petitioner.

Hence, this petition for review anchored on these grounds:

"1. Respondent Court of Appeals gravely erred in not holding that the determination by the Central Bank of alleged violation of PD No. 114 is a condition precedent to the exercise by respondent Securities and Exchange Commission of its regulatory power over petitioner.

2. Respondent Court of Appeals gravely erred in not ruling that the finding by respondent SEC is not supported by substantial evidence and that petitioner was denied of its right to due process.

3. Respondent Court of Appeals erred in holding that the activities of petitioner constitute pawnbroking."[4]

While petitioner concedes that the SEC has jurisdiction to determine whether the condition or restriction in the articles of incorporation of a corporation has been violated, petitioner disputes the authority of the SEC to determine whether a registered entity is violating PD 114. Petitioner maintains that PD 114 vests this authority solely in the Central Bank.

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[3] *Rollo*, p. 47.

[4] *Ibid.*, pp. 18-19.

Supreme Court E-Library

In upholding the jurisdiction of the SEC, the Court of Appeals ruled that there is nothing in PD 114 that grants exclusively to the Central Bank the authority to determine if there has been a violation of said decree. Petitioner insists that this interpretation is erroneous on the ground that it runs counter to the time-honored maxim of *expressio unius est exclusio alterius*. The express and specific mention of the Central Bank in PD 114 allegedly implies the exclusion of other governmental agencies from making a determination of violations of the provisions of said decree. In support of its argument, petitioner cites Section 17 of PD 114 that provides:

"Section 17. Grant of authority to the Central Bank. The Central Bank is hereby authorized (a) to issue rules and regulations to implement the provisions contained therein; (b) to require from pawnshops reports of condition and such other reports necessary to determine compliance with the provisions of this Decree; (c) to exercise visitorial powers whenever deemed necessary; (d) to impose such administrative sanctions including the imposition of fines for violations of this Decree and regulations issued by the Central Bank in pursuance thereto."

Petitioner points out that in the enforcement of PD 114, the Central Bank is possessed with investigatory or inquisitorial powers which include the power to inspect, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, production of documents, *etc*. Allegedly, it is only after the Central Bank has made a determination of whether petitioner is engaged in pawnbroking that the SEC can exercise its regulatory powers over petitioner. Petitioner thus insists that the jurisdiction of the SEC is limited to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such entities. The SEC allegedly cannot arrogate unto itself the power to look into violations of PD 114 when such power rests solely with the Central Bank.

The petition is without merit.

Supreme Court E-Library

Petitioner conjures a supposed conflict of jurisdiction between the Central Bank and the SEC by insisting that it is only the Central Bank that has jurisdiction over violations of PD 114. The argument is misplaced. Basic is the rule that it is the allegations in the complaint that vests jurisdiction.[5] A case in point is *Philippine Woman's Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc.*[6] wherein we held that when the thrust of a complaint is on the *ultra vires* act of a corporation, that is the complained act of a corporation is contrary to its declared corporate purposes, the SEC has jurisdiction to entertain the complaint before it.

It must be recalled that the complaint of private respondent alleged that the articles of incorporation of petitioner contained this prohibition: "without, however, engaging in pawnbroking as defined in PD 114" and despite this restriction, petitioner allegedly continued to actually operate and do business as a pawnshop. The complaint thus treats of a violation of petitioner's primary franchise. Section 5 of PD 114, the same law invoked by petitioner, mandates that a corporation desiring to engage in the pawnshop business must first register with the SEC. Without question, the complaint filed by private respondent against petitioner called upon the SEC to exercise its adjudicatory and supervisory powers. By law, the SEC has absolute jurisdiction, supervision and control over all corporations that are enfranchised to act as corporate entities.[7] A violation by a corporation of its franchise is properly within the jurisdiction of the SEC.

A corporation, under the Corporation Code, has only such powers as are expressly granted to it by law and by its articles of incorporation,[8] those which may be incidental to such conferred powers, those reasonably necessary to accomplish

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[5] FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM,* VOL. I, 7th REV. ED., p. 9.

[6] 292 SCRA 785 (1998).

[7] See Section 3 of PD No. 902-A.

[8] Corporation Code, Sec. 45.

Supreme Court E-Library

its purposes and those which may be incident to its existence.[9] In the case at bar, the limit of the powers of petitioner as a corporation is very clear, it is categorically prohibited from "engaging in pawnbroking as defined under PD 114." Hence, in determining what constitutes pawnbrokerage, the relevant law to consider is PD 114. This reference to PD 114 is also in line with Article 2123 of the Civil Code that states that:

"Art. 2123. With regard to pawnshops and other establishments, which are engaged in making loans secured by pledges, the special laws and regulations concerning them shall be observed, and subsidiarily, the provisions of this Title."

Indispensable therefore to the determination of whether or not petitioner had violated its articles of incorporation, was an inquiry by the SEC if petitioner was holding out itself to the public as a pawnshop. It must be stressed that the determination of whether petitioner violated PD 114 was merely incidental to the regulatory powers of the SEC, to see to it that a corporation does not go beyond the powers granted to it by its articles of incorporation.

Jurisprudence has laid down the principle that it is the certificate of incorporation that gives juridical personality to a corporation and places it within SEC jurisdiction.[10] The case of *Orosa, Jr. vs. Court of Appeals*[11] teaches that this jurisdiction of the SEC is not affected even if the authority to operate a certain specialized activity is withdrawn by the appropriate regulatory body other than the SEC. With more reason that we cannot sustain the submission of petitioner that a declaration by the Central Bank that it violated PD 114 is a condition precedent before the SEC can take cognizance of the complaint against petitioner.

Aside from the supervision and control powers granted by Section 3 of PD 902-A to the SEC, Section 5 thereof provides that:

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[9] *Ibid.*, Sec. 2.

[10] *Orosa vs. Court of Appeals*, 193 SCRA 391 (1991), p. 396.

[11] *Ibid.*

Supreme Court E-Library

"Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have *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 of the stockholders, partners, members of associations or organizations registered with the commission'". (Italics supplied)

Clearly, the recital in the complaint of private respondent that petitioner is engaged in the pawnshop business when it is not authorized to do so by its articles of incorporation amounts to fraud, detrimental not only to the corporation but also to the stockholders and the public. The relationship involved in this controversy is a category of relationship over which the SEC has exclusive jurisdiction, thus:

"(a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members or officers; (c) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners or associates themselves."[12]

We agree with the Court of Appeals that petitioner cannot invoke the jurisdiction of the Central Bank in view of its own avowal that it is not a pawnshop and neither is it engaged in the business as a pawnshop. The Court of Appeals correctly ruled that:

"It must be noted that upon close scrutiny, PD No. 114 provides that the supervisory powers of the Central Bank extends merely to pawnshops registered with it in accordance with Sec. 6 of the same law. In connection with this, we take judicial notice of the Rules and Regulations for Pawnshops (CB Circular No. 374) enacted pursuant

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[12] *Ibid.*, p. 397.

Supreme Court E-Library

to the authority given to the Central Bank to issue rules and regulations to implement the provisions of PD 114, where it provides the following:

'Sec. 11. *Powers of Pawnshop.— A duly organized and licensed 'pawnshop* has, in general, the power to engage in the business of lending money on the security of personal property within the framework and limitations of PD No. 114 and this circular, *subject to the regulatory and supervisory powers of the Central Bank.*

'Sec. 36. *Examination, Inspection, or Investigation.* — The official of the Central Bank in charge of non-bank financial intermediary and his duly designated representatives are hereby authorized to conduct an examination, inspection, or investigation of books, records, business affairs, administration, and financial condition of *any pawnshop*, whenever said official deems it necessary for the effective implementation of Presidential Decree No. 114 and of this Circular. x x x'

Furthermore, under CB Circular No. 381 providing for the Procedure For Processing Complaints Against Pawnshops, it is provided that:

'The Monetary Board, Central Bank of the Philippines, pursuant to its Chapter and Presidential Decree No. 114, entitled, The Pawnshop Regulation Act, has promulgated the following procedures for processing complaints against pawnshops;

1. Complaints against pawnshops must be filed with the Office of Non Bank Financial Intermediaries (ONBFI), Central Bank of the Philippines, in writing and signed under oath by the complainant';

The foregoing must have also impelled Director Olaso of the Central Bank to send private respondent a reply letter (Exh. C) apprising it that only over pawnshops, and not lending institutions, does the Central Bank exercise supervisory powers. Considering that petitioner is admittedly not a registered pawnshop operator, any complaint filed against it is not cognizable by the Central Bank."[13] (Italics supplied)

The mere fact that a portion of the SEC decision stated that copies of the same be furnished the Central Bank does not necessarily mean that the SEC recognized the jurisdiction of

[13] *Rollo*, p. 43.

Supreme Court E-Library

the Central Bank over PD 114 violations. Obviously, the SEC had already assumed jurisdiction over the case and had in fact disposed of it, the transmission of a copy of said decision to the Central Bank was mainly to apprise the latter of the disposition of the case so that it may accordingly act on it.

Petitioner bewails the alleged violation of substantive due process when the SEC rendered the assailed decision based on evidence which petitioner claims it did not receive. The SEC allegedly reached the conclusion that petitioner is engaged in pawnshop activities based on the photographs attached by private respondent to its position paper. The photographs in question show that petitioner used a billboard with the inscription "*SANGLAAN*" in front of its office. Petitioner however claims that it was not furnished a copy of the position paper of private respondent and that these photographs were not presented during the hearing before the PED. Except for said photographs, petitioner points out that private respondent did not adduce any other evidence to substantiate its claim that petitioner is engaged in pawnshop activities. Petitioner asserts that the photographs cannot be considered as substantial evidence.

We are not persuaded. Due process is not necessarily tantamount to a full-blown trial. The essence of due process is simply the opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the ruling or action taken.[14] The records of this case show that petitioner was accorded every opportunity to be heard during the conference before the PED wherein the parties were required to file their position papers, and on appeal before the SEC *en banc*.

Contrary to the claim of petitioner, the Court of Appeals found that the evidence presented by private respondent was duly appended to the position paper submitted to the PED and to the SEC *en banc*. Assuming *arguendo* that petitioner was not furnished a copy of the photographs, it is now too late in the day for petitioner to raise this matter before us when it could have

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[14] *Villareal vs. Court of Appeals*, 219 SCRA 293 (1993), p. 301.

Supreme Court E-Library

submitted this issue before the hearing officer and the SEC *en banc*. The records fail to support petitioner's insistence that it raised this issue before the SEC. In its appeal before the SEC, petitioner merely harped on the fact that in ruling for private respondent, the hearing officer relied only on the photographs without mentioning that petitioner did not receive a copy of said photographs. Plainly then, the SEC could not have addressed this issue for the simple reason that it was not duly informed of this matter, a situation which was petitioner's own making.

We reject petitioner's claim that the SEC relied solely on the photographs in reaching the conclusion that petitioner is engaged in pawnshop activities. Aside from the questioned photographs, other evidence such as affidavits of the past customers of petitioner and the supposed "promissory note" between petitioner and its customers were also submitted to the SEC. The SEC and the Court of Appeals were one in ruling that the so-called "promissory note" was more of a pawn ticket than an instrument of indebtedness. We see no cogent reason to set aside the factual findings of the SEC, also upheld by the Court of Appeals, based on the settled rule that the findings of fact of the SEC must be respected as long as they are supported by substantial evidence, as in this case.[15]

The Court of Appeals appreciated the entire evidence, consisting of the affidavits, the promissory note and photographs, in this manner:

"A careful examination and analysis of the records of this case indicates that petitioner has indeed engaged in the business of pawnbroking. It is not argued that petitioner do (*sic*) lend money on the security of personal property. What must be observed though are the very prominent words "SANGLAAN" found on its billboards (Exhs. F and G) which cannot but give the impression to the public that its establishment is more of a pawnshop than a lending institution servicing different kinds of loans. The word "*SANGLAAN*", especially in big cities, have come to be associated with pawnshops and it denotes the idea of a place where one presents personal property for a loan, which is the exclusive domain of a pawnshop. Thus, the use of such

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[15] *Ibid.*, p. 300.

Supreme Court E-Library

word by petitioner was more calculated to attract customers who will acquire loans on the security of personal properties alone. That this activity is in fact undertaken can be readily deduced from the graphic and unmistakable set-up (Exhs. J and K) of petitioner's place of business which is a picture of a typical pawnshop where a person transacts through small glass openings labeled '*sangla*' and '*tubos*'. Moreover, the supposed "promissory note" evidencing a customer's transaction with petitioner, is more of a pawnticket than what it represents. We hereby quote with approval the argument advanced by private respondent on this point.

> "1. The contents of the 'pawnshop tickets' issued by respondent PILIPINAS LOAN as "promissory notes" are basically pawnshop tickets which as provided in the Pawnshop Regulation Act, PD No. 114 are the following:
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> a) Name and residence of the pawner;
> b) Date when loan is granted;
> c) Amount of the principal loan;
> d) Interest rate in percentage;
> e) Period of maturity;
> f) Description of the pawn
> g) Signature of the pawnbroker or his authorized representative;
> h) Signature of the pawner; and
> i) Other terms and conditions.
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> 2. The only document required to be executed by the customers (pawners) of respondent Pilipinas Loan is the aforesaid "Promissory Loan", which is the only document also commonly required in pawnshops or "*sanglaan*"; whereas genuine lending investors require a set of documents x x x.
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> 3. The respondent Pilipinas Loan always takes possession of the "pawn" or articles pawned to secure the loan; whereas, if it is truly operating as a Lending Investor it does not have to take possession of the article pledged or mortgaged because the borrower's capacity to pay is established, normally with a co-maker.
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> x x x x x x x x x"[16]

Thus, the totality of the evidence substantially establishes the conclusion that petitioner contravened its articles of incorporation when it held itself out to the public as a pawnshop.

[16] *Rollo*, p. 46.

Supreme Court E-Library

WHEREFORE, in view of the foregoing, the petition is *DENIED*. Costs against petitioner.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Sandoval-Gutierrez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 112012. April 4, 2001]

SOCIETE DES PRODUITS NESTLE, S.A. and NESTLE PHILIPPINES, INC. *petitioners, vs.* **COURT OF APPEALS and CFC CORPORATION,** *respondents.*

SYNOPSIS

Private respondent CFC Corporation filed with the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) an application for the registration of the trademark "FLAVOR MASTER" for its instant coffee. Petitioners opposed the application alleging that the use by private respondent of the trademark FLAVOR MASTER and its registration would likely cause confusion in the trade or deceive purchasers as the goods of private respondent might be mistaken as having originated from petitioners.

Private respondent elevated the matter before the Court of Appeals when the BPTTT denied its application. The appellate court reversed the decision of the BPTTT and ordered the latter to approve private respondent's application. In it's Decision, the appellate court held that the test to be applied in this case should be the totality or holistic test reasoning, since what is of paramount consideration is the ordinary purchaser who is, in general, undiscerningly rash in buying the more common and less expensive household products like coffee, and is therefore