Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-40620. May 5, 1979]

RICARDO L. GAMBOA, LYDIA R. GAMBOA, HONORIO DE LA RAMA, EDUARDO DE LA RAMA, and the HEIRS OF MERCEDES DE LA RAMA-BORROMEO, *petitioners, vs.* **HON. OSCAR R. VICTORIANO as Presiding Judge of the Court of First Instance of Negros Occidental, Branch II, BENJAMIN LOPUE, SR., BENJAMIN LOPUE, JR., LEONITO LOPUE, and LUISA U. DACLES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INTERLOCUTORY ORDER NOT PROPER SUBJECT THEREOF.** — An order denying the motion to dismiss a complaint is merely interlocutory and cannot be the subject of a petition for *certiorari*. The proper procedure to be followed in such a case is to continue with the trial of the case on the merits and, if the decision is adverse, to reiterate the issue on appeal. It would be a branch of orderly procedure to allow a party to come before the Supreme Court every time an order is issued with which he does not agree.

2. **ID.; ID.; ID.; NOT PROPER IF ASSAILED ORDER WAS NOT ISSUED CAPRICIOUSLY.** — Where a motion to dismiss is based on a compromised agreement between the plaintiffs and some of the defendants, but the agreement expressly provided that the same "shall not in any way constitute or be considered as a waiver or abandonment of any claim or cause of action against the other defendants," the trial court's denial of the said motion cannot be said to have been issued capriciously, arbitrarily, or whimsically, so as to warrant the issuance of a writ of *certiorari*.

3. **CIVIL LAW; CONTRACTS; COMPROMISE AGREEMENT; BINDING EFFECT.** — The fact that plaintiffs — after filing a complaint to nullify a resolution of defendants directors authorizing the sale of unissued shares of stock to themselves (defendants directors) — latter entered into a compromise

Supreme Court E-Library

agreement with some of the defendants, whereby the latter waived or transferred their rights over the questioned shares in favor of plaintiffs, but no consideration was mentioned in the agreement for such transfer of rights, it was held that the plaintiffs are not estopped from pursuing the case against the other defendants as there is nothing in the agreement which could be construed as an admission by plaintiffs, that the resolution was valid. On the contrary, the fact that no consideration was mentioned in the agreement for transfer of the rights to plaintiffs, the agreement may be construed as an admission by contracting defendants of the validity of plaintiff' claim.

4. **COMMERCIAL LAW; CORPORATIONS; ACTS OF CORPORATION; GENERALLY, CANNOT BE CONTROLLED BY THE COURT; EXCEPTION.** — The well-known rule is that courts cannot undertake to control the discretion of the board of directors about administrative matters as to which they have legitimate to power of action, and contracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to wanton destruction to the rights of the minority, as when plaintiffs aver that the defendants (members of the board), have concluded a transaction among themselves as will result to serious injury to the plaintiffs stockholders.

5. **ID.; ID.; STOCKHOLDERS; HAVE THE RIGHT TO INSTITUTE A DERIVATIVE SUIT.** — An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect and vindicate corporate rights, whenever the officials of the corporation refuses to sue, or are the ones to be used or hold the control of the corporation. In such actions, the suing stockholders is regarded as a nominal party, with the corporation as the real party in interest. Thus, a derivative suit will not lie where stockholders are vindicating their own individual interest or prejudice, and not that of the corporation.

6. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DISMISSAL; MISJOINDER OF PARTIES NOT A GROUND; THEREFOR.** — Misjoinder of parties is not a ground to dismiss an action.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Exequiel T. Alejandro for petitioners.
Acuña Lirazan & Associates for private respondents.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* to review the order of the respondent judge, dated January 2, 1975, denying the petitioners' motion to dismiss the complaint filed in Civil Case No. 10257 of the Court of First Instance of Negros Occidental, entitled, "*Benjamin Lopue, Sr., et al., plaintiffs, versus Ricardo Gamboa, et al., defendants*," as well as the order dated April 4, 1975, denying the motion for the reconsideration of said order.

In the aforementioned Civil Case No. 10257 of the Court of First Instance of Negros Occidental, the herein petitioners, Ricardo L. Gamboa, Lydia R. Gamboa, Honorio de la Rama, Eduardo de la Rama, and the late Mercedes de la Rama-Borromeo, now represented by her heirs, as well as Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi, were sued by the herein private respondents, Benjamin Lopue, Sr., Benjamin Lopue, Jr., Leonito Lopue, and Luisa U. Dacles, to nullify the issuance of 823 shares of stock of the Inocentes de la Rama, Inc. in favor of the said defendants. The gist of the complaint, filed on April 4, 1972, is that the plaintiffs, with the exception of Anastacio Dacles, who was joined as a formal party, are the owners of 1,328 shares of stock of the Inocentes de la Rama, Inc., a domestic corporation, with an authorized capital stock of 3,000 shares, with a par value of ₱100.00 per share, 2,177 of which were subscribed and issued, thus leaving 823 shares unissued; that upon the plaintiffs' acquisition of the shares of stock held by Rafael Ledesma and Jose Sicangco, Jr., then President and Vice-President of the corporation, respectively, the defendants Mercedes R. Borromeo, Honorio de la Rama, and Ricardo Gamboa, remaining members of the board of directors of the corporation, in order to forestall the takeover

Supreme Court E-Library

by the plaintiffs of the afore-named corporation, surreptitiously met and elected Ricardo L. Gamboa and Honorio de la Rama as president and vice-president of the corporation, respectively, and thereafter passed a resolution authorizing the sale of the 823 unissued shares of the corporation to the defendants, Ricardo L. Gamboa, Lydia R. Gamboa, Honorio de la Rama, Ramon de la Rama, Paz R. Battistuzzi, Eduardo de la Rama, and Mercedes R. Borromeo, at par value, after which the defendants Honorio de la Rama, Lydia de la Rama-Gamboa, and Enzo Battistuzzi were elected to the board of directors of the corporation; that the sale of the unissued 823 shares of stock of the corporation was in violation of the plaintiffs' and pre-emptive rights and made without the approval of the board of directors representing 2/3 of the outstanding capital stock, and is in disregard of the strictest relation of trust existing between the defendants, as stockholders thereof; and that the defendants Lydia de la Rama-Gamboa, Honorio de la Rama, and Enzo Battistuzzi were not legally elected to the board of directors of the said corporation and has unlawfully usurped or intruded into said office to the prejudice of the plaintiffs. Wherefore, they prayed that a writ of preliminary injunction be issued restraining the defendants from committing, or continuing the performance of an act tending to prejudice, diminish or otherwise injure the plaintiffs' rights in the corporate properties and funds of the corporation, and from disposing, transferring, selling, or otherwise impairing the value of the 823 shares of stock illegally issued by the defendants; that a receiver be appointed to preserve and administer the property and funds of the corporation; that defendants Lydia de la Rama-Gamboa, Honorio de la Rama, and Enzo Battistuzzi be declared as usurpers or intruders into the office of director in the corporation and, consequently, ousting them therefrom and declare Luisa U. Dacles as a legally elected director of the corporation; that the sale of 823 shares of stock of the corporation be declared null and void; and that the defendants be ordered to pay damages and attorney's fees, as well as the costs of suit.[1]

---

[1] *Rollo*, p. 48.

Supreme Court E-Library

Acting upon the complaint, the respondent judge, after proper hearing, directed the clerk of court "to issue the corresponding writ of preliminary injunction restraining the defendants and/or their representatives, agents, or persons acting in their behalf from the commission or continuance of any act tending in any way to prejudice, diminish or otherwise injure plaintiffs' rights in the corporate properties and funds of the corporation 'Inocentes de la Rama, Inc.' and from disposing, transferring, selling or otherwise impairing the value of the certificates of stock allegedly issued illegally in their names on February 11, 1972, or at any date thereafter, and ordering them to deposit with the Clerk of Court the corresponding certificates of stock for the 823 shares issued to said defendants on February 11, 1972, upon plaintiffs' posting a bond in the sum of ₱50,000.00, to answer for any damages and costs that may be sustained by the defendants by reason of the issuance of the writ, copy of the bond to be furnished to the defendants.'[2] Pursuant thereto, the defendants deposited with the clerk of court the corporation's certificates of stock Nos. 80 to 86, inclusive, representing the disputed 823 shares of stock of the corporation.[3]

On October 31, 1972, the plaintiffs therein, now private respondents, entered into a compromise agreement with the defendants Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi,[4] whereby the contracting parties withdrew their respective claims against each other and the aforenamed defendants waived and transferred their rights and interests over the questioned 823 shares of stock in favor of the plaintiffs, as follows:

"3. That the defendants Ramon L. de la Rama, Paz de la Rama Battistuzzi and Enzo Battistuzzi will waive, *cede*, transfer or otherwise convey, as they hereby waive, *cede*, transfer and convey, free from all liens and encumbrances unto the plaintiffs, in such proportion as the plaintiffs may among themselves determine, all of the rights,

---

[2] *Id.*, p. 10.

[3] *Id.*, p. 102.

[4] *Id.*, p. 63.

Supreme Court E-Library

interests, participations or title that the defendants Ramon L. de la Rama, Paz de la Rama Battistuzzi, Enzo Battistuzzi now have or may have in the eight hundred twenty-three (823) shares in the capital stock of the corporation 'INOCENTES DE LA RAMA, INC.' which were issued in the names of the defendants in the above-entitled case on or about February 11, 1972, or at any date thereafter and which shares are the subject-matter of the present suit."

The compromise agreement was approved by the trial court on December 4, 1972.[5]

As a result, the defendants filed a motion to dismiss the complaint, on November 19, 1974, upon the grounds: (1) that the plaintiffs' cause of action had been waived or abandoned; and (2) that they were estopped from further prosecuting the case since they have, in effect, acknowledged the validity of the issuance of the disputed 823 shares of stock. The motion was denied on January 2, 1975.[6]

The defendants also filed a motion to declare the defendants Ramon L. de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi in contempt of court, for having violated the writ of preliminary injunction when they entered into the aforesaid compromise agreement with the plaintiffs, but the respondent judge denied the said motion for lack of merit.[7]

On February 10, 1975, the defendants filed a motion for the reconsideration of the order denying their motion to dismiss the complaint,[8] and subsequently, an Addendum thereto, claiming that the respondent court has no jurisdiction to interfere with the management of the corporation by the board of directors, and the enactment of a resolution by the defendants, as members of the board of directors of the corporation, allowing the sale of the 823 shares of stock to the defendants was purely a

---

[5] *Id.*, p. 12.

[6] *Id.*, p. 15.

[7] *Id.*, p. 99.

[8] *Id.*, p. 4, par. VII of the Petition.

Supreme Court E-Library

management concern which the courts could not interfere with.[9] When the trial court denied said motion and its addendum, the defendants filed the instant petition for *certiorari* for the review of said orders.

The petition is without merit. The questioned order denying the petitioners' motion to dismiss the complaint is merely interlocutory and cannot be the subject of a petition for *certiorari*. The proper procedure to be followed in such a case is to continue with the trial of the case on the merits and, if the decision is adverse, to reiterate the issue on appeal. It would be a breach of orderly procedure to allow a party to come before this Court every time an order is issued with which he does not agree.

Besides, the order denying the petitioners' motion to dismiss the complaint was not capriciously, arbitrarily, or whimsically issued, or that the respondent court lacked jurisdiction over the cause as to warrant the issuance of the writ prayed for. As found by the respondent judge, the petitioners have not waived their cause of action against the petitioners by entering into a compromise agreement with the other defendants in view of the express provision of the compromise agreement that the same "shall not in any way constitute or be considered a waiver or abandonment of any claim or cause of action against the other defendants." There is also no estoppel because there is nothing in the agreement which could be construed as an affirmative admission by the plaintiff of the validity of the resolution of the defendants which is now sought to be judicially declared null and void. The foregoing circumstances and the fact that no consideration was mentioned in the agreement for the transfer of rights to the said shares of stock to the plaintiffs are sufficient to show that the agreement was merely an admission by the defendants Ramon de la Rama, Paz de la Rama-Battistuzzi, and Enzo Battistuzzi of the validity of the claim of the plaintiffs.

The claim of the petitioners, in their Addendum to the motion for reconsideration of the order denying the motion to dismiss

---

[9] *Id.*, p. 147, p. 2 of Memorandum for the Respondents.

Supreme Court E-Library

the complaint, questioning the trial court's jurisdiction on matters affecting the management of the corporation, is without merit. The well-known rule is that courts cannot undertake to control the discretion of the board of directors about administrative matters as to which they have legitimate power of action,[10] and contracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to a wanton destruction of the rights of the minority.[11] In the instant case, the plaintiffs aver that the defendants have concluded a transaction among themselves as will result to serious injury to the interests of the plaintiffs, so that the trial court has jurisdiction over the case.

The petitioners further contend that the proper remedy of the plaintiffs would be to institute a derivative suit against the petitioners in the name of the corporation in order to secure a binding relief after exhausting all the possible remedies available within the corporation.

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.[12] In the case at bar, however, the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation. At any rate, it is yet too early in the proceedings since the issues have not been joined. Besides, misjoinder of parties is not a ground to dismiss an action.[13]

---

[10] *Govt. vs. El Hogar Filipino*, 50 Phil. 399.

[11] *Ingersoll vs. Malabon Sugar Co.*, 53 Phil. 745.

[12] *Republic Bank vs. Cuaderno*, L-22399, March 30, 1967, 19 SCRA 671 and cases cited therein.

[13] Sec. 11, Rule 3, Revised Rules of Court.

Supreme Court E-Library

WHEREFORE, the petition should be, as it is hereby DISMISSED for lack of merit. With costs against the petitioners.

SO ORDERED.

Antonio (Actg. Chairman), Aquino, Santos, and *Abad Santos., JJ.*, concur.

SECOND DIVISION

[G.R. No. L-43324. May 5, 1979]

ANDRES PATALINJUG, *petitioner, vs.* **HON. JUDGE E. L. PERALTA, THE SHERIFF OF CEBU CITY and LIBERATION STEAMSHIP CO., INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; NOTICE TO BOTH PARTY AND COUNSEL IS INDISPENSABLE. — Normally, notice to counsel is notice to parties. However, in pre-trials, the notice must be served separately upon the party affected thereby and his counsel of record, stating therein purpose, time and place of the pre-trial conference and requiring said party and his counsel to appear thereat. The service to the party may be made directly to him or through his counsel who shall be required to serve the notice upon the party. This is so because while the presence of the parties at the trial and other proceedings is not necessary, their presence is a must at the pre-trial because one of the purposes of pre-trial is to explore the possibility of an amicable settlement, and counsel cannot compromise the interest of his client without the latter's expressed and special authority.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE DEFENDANT WAS DECLARED IN DEFAULT FOR FAILURE