Supreme Court E-Library

the trial court's judgment. Petitioners' repurchase of the subject lot within the five-year redemption period of Section 4 of R.A. No. 1597 is within the purview of a redemption by a co-owner which inures to the benefit of all other co-owners of the property.

WHEREFORE, the petition is *DENIED*. The assailed decision of the Court of Appeals dated October 13, 1995, and its resolution dated February 7, 1996 in CA-G.R. CV No. 37751 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Bellosillo, Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 129777. January 5, 2001]

TCL SALES CORPORATION and ANNA TENG, *petitioners, vs.* **HON. COURT OF APPEALS AND TING PING LAY,** *respondents.*

SYNOPSIS

Private respondent, in several deeds of transfer, bought stocks from the stockholders of petitioner corporation. However, the corporate secretary refused to record the transactions. Thus, a petition for *mandamus* was filed with the Securities and Exchange Commission (SEC). Judgment was rendered by the hearing officer ordering petitioners to record the transfers, to issue new certificates in the name of private respondent and to pay attorney's fees and moral damages. On appeal, the award of attorney's fees and moral damages was deleted by the SEC *en banc*. A motion for its reconsideration was filed on June 23, 1996 but the same was denied. Petitioner's counsel did not receive a copy of the denial of the motion but learned of the

Supreme Court E-Library

same on August 22, 1996 when his messenger verified the records of the case with the SEC. On September 25, 1996, a petition for review was filed with the Court of Appeals. The same was dismissed for having been filed out of time. Hence, this recourse, petitioner assailing the dismissal of the appeal and the jurisdiction of the SEC over cases which does not involve intra corporate disputes.

The period of appeal from a decision of the SEC to the Court of Appeals is 15 days. Where counsel of record did not receive a copy of the denial of the motion for reconsideration but eventually received notice thereof by verification of his messenger, the date of verification is construed as date of receipt. Thus, a party has fifteen days from date thereof to file an appeal. The filing thereof 19 days after the last day of filing is considered late and did not vest jurisdiction to the SEC.

The SEC has jurisdiction over actions for *mandamus* to enforce the recording of the transfer of shares even if the proponent is not yet a stockholder of record. The rationale behind is to protect and encourage investments made by the public.

A party is estopped from questioning the jurisdiction of the Securities and Exchange Commission where it has submitted its case for decision and accepted the judgment, only if favorable, and attached it for lack of jurisdiction when the decision rendered is adverse.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; APPEAL FROM DECISIONS OF SECURITIES AND EXCHANGE COMMISSION TO COURT OF APPEALS; 15-DAY PERIOD OF APPEAL; WHERE THERE IS NO SERVICE OF PROCESS, PERIOD RECKONED ON DATE WHERE COUNSEL BECAME AWARE OF DENIAL OF MOTION FOR RECONSIDERATION. — August 6, 1996, was the date when petitioners themselves through Henry Teng received notice of the decision of the SEC denying their motion for reconsideration, not counsel of record of said party. When a party is represented by counsel, service of process must be made on counsel and not on the party. This well-settled rule applies to proceedings before the SEC, as the Rules of Court apply suppletorily thereto. However, petitioners' counsel

Supreme Court E-Library

eventually received notice of the decision. Atty. Ruben V. Lopez, petitioners' counsel of record at the time, was aware of the order denying the motion for reconsideration on August 22, 1996, when his messenger, a certain Mario Ballesteros, verified the records of the case in the SEC on said date. Said counsel's motion requesting a copy of the August 6, 1996 decision manifests this. Furthermore, the petition for review was prepared for filing and the verification affidavit was executed by Henry Teng both on September 13, 1996 or ten days before the alleged date of receipt by petitioners' counsel of the SEC order denying petitioners' motion for reconsideration. These material dates in the record betray counsel's claim of receipt of notice of the SEC *en banc* decision only on September 23, 1996. When Atty. Lopez had notice of the SEC order through his messenger on August 22, 1996, petitioners had fifteen days from this date or until September 6, 1996, within which to file the petition for review with the Court of Appeals. Instead, petitioners filed their petition on September 25, 1996, or nineteen days after the last date for filing the petition. Petitioners thus filed their petition with the Court of Appeals way beyond the reglementary period, and it did not acquire jurisdiction over the case.

2. **COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; WITH JURISDICTION OVER *MANDAMUS* EVEN WHERE PROPONENT IS NOT YET STOCKHOLDER.** — But even if the Court of Appeals had acquired jurisdiction over the case, the petition would still fail for lack of merit. The petitioners allege in the present petition that the SEC did not have jurisdiction over the petition for *mandamus* filed by Ting Ping Lay, as the same did not arise out of an intra-corporate controversy. They claim that Ting Ping Lay was not yet a stockholder of record of TCL Corporation. In the case *of Abejo vs. de la Cruz,* this Court has ruled that jurisdiction over an action for *mandamus* lies with the SEC even if the proponent thereof is not yet a stockholder of record. Thus – x x x *'There is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take cognizance of a suit seeking to enforce his rights as such stockholder.'*

3. **ID.; ID.; ID.; RATIONALE; CASE AT BAR.** — The determination of whether or not a shareholder is entitled to exercise the rights

Supreme Court E-Library

of a stockholder is within the jurisdiction of the SEC. The fact that Ting Ping Lay is allegedly not yet a stockholder of record does not remove the case from the jurisdiction of the SEC, for it is precisely the right of recording and the right to be issued stock certificates that said respondent sought to enforce by *mandamus*.

4. **ID.; ID.; JURISDICTION CONSTRUED IN RELATION TO ITS POWER OF CONTROL AND SUPERVISION OVER ALL CORPORATIONS TO ENCOURAGE PUBLIC INVESTMENTS.** — In addition, even if Ting Ping Lay were not a stockholder, he is nonetheless a member of the public whose investment in the corporation the law seeks to protect and encourage, as his purchase of the shares of stock has been established. After all, the principal function of the SEC is the supervision and control of corporations, partnerships and associations with the end in view that investments in these entities may be encouraged and protected, and their activities pursued for the protection of economic development. In other words, the jurisdiction of the SEC should be construed in relation to its power of control and supervision over all corporations to encourage active public participation in the affairs of private corporations by way of investments.

5. **REMEDIAL LAW; ACTIONS; ESTOPPEL; PARTY ESTOPPED FROM QUESTIONING JURISDICTION OF SEC WHERE IT ACTIVELY PARTICIPATED IN ITS PROCEEDINGS.** — Petitioners are also barred from questioning the jurisdiction of the SEC. While it is a rule that a jurisdictional question may be raised at any time, this, however, admits of an exception where, as in this case, estoppel has supervened. This Court has time and again frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse. Instead of opposing the exercise of jurisdiction by SEC seasonably, petitioners invoked said jurisdiction by participating in the proceedings before it. Petitioners cannot now be allowed to adopt an inconsistent posture on this score.

6. **CIVIL LAW; DAMAGES; MORAL DAMAGES; UNWARRANTED REFUSAL TO RECORD TRANSFER OF SHARES CONSTITUTED BAD FAITH; CASE AT BAR.** — Lastly, on issue of the propriety of moral damages and attorney's fees

Supreme Court E-Library

imposed on petitioners, the SEC *en banc* held that petitioners' refusal to record the transfer of shares to respondent Ting Ping Lay was not based on any lawful and valid ground. As admitted by Henry Teng during the trial before the SEC hearing officer, what motivated petitioners to ignore Ting Ping Lay's request to record the transfer of the shares was the fact that they simply did not want to grant the same. Such action, being capricious, whimsical and unwarranted, constitutes bad faith that must be sanctioned. However, the SEC *en banc* had modified and deleted the award of moral damages and attorney's fees imposed on petitioner corporation. The matter of damages now concerns only petitioner Anna Teng. For it was her refusal as corporate secretary to record the transfer of the shares, without evidence that such refusal was authorized by TCL's board of directors, that caused damage. On this point, no error was committed by respondent court in refusing to disturb the SEC's decision.

APPEARANCES OF COUNSEL

Santos L Ofracio, Jr. for petitioners.

Sycip Salazar Hernandez & Gatmaitan for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 assailing the decision[1] dated January 31, 1997 and the resolution[2] dated July 2, 1997 of the Court of Appeals in CA-G.R. SP. No. 42035 captioned *"TCL Sales Corporation, et al. vs. Ting Ping Lay."* The decision and resolution of respondent court affirmed the *en banc* decision[3] of the Securities and Exchange Commission (SEC) dated June 11, 1996, which

---

[1] *Rollo*, pp. 54-59.

[2] *Id.* at 61.

[3] *Id.* at 39-45.

Supreme Court E-Library

affirmed with modification the decision[4] of the SEC hearing officer dated July 20, 1994.

The facts as found by the Court of Appeals are as follows:

"Respondent TCL Corporation was organized and registered sometime in 1973. The incorporators were Teng Ching Lay, Henry Teng (son of Teng Ching Lay), Anna Teng (daughter of Teng Ching Lay), Ismaelita Maluto and Peter Chiu. The corporation started with an authorized capital stock of 5,000 shares valued at ₱1,000.00 per share with an aggregate value of ₱500,000.00. In 1974 the Articles of Incorporation was amended increasing its authorized capital stock to 20,000 shares valued at ₱2,000,000.00 of which 8,000 shares were subscribed and fully paid, as follows:

Teng Ching Lay	-	2,800 shares
Henry Teng	-	2,000 shares
Anna Teng	-	1,280 shares
Ismaelita Maluto	-	1,440 shares
Peter Chiu	-	480 shares
Total		8,000 shares

On 2 February 1979, petitioner Ting Ping Lay (the brother of Teng Ching Lay) acquired by purchase four-hundred eighty (480) shares of stocks (sic) of the corporation from stockholder Peter Chiu.

On 22 September 1985, Ting Ping Lay purchased another one-thousand four-hundred (1,400) shares from his brother Teng Ching Lay.

On 2 September 1989, Ting Ping Lay acquired 1,440 more shares from Ismaelita Maluto.

Teng Ching Lay served as president and operations manager until his death in 1989. Respondent Anna Teng served as the Corporate Secretary.

Thereafter, Henry Teng took over the management of the company after his father's death.

On 31 August 1989, Ting Ping Lay in order to protect his shareholdings with the company requested Anna Teng to enter the

[4] *Id.* at 30-38.

Supreme Court E-Library

transfer of shares of stocks (sic) for the proper recording of his acquisitions in the Stock and Transfer Book of the corporation. Likewise, he demanded the issuance of the new certificates of stock in his favor. However, respondents refused despite repeated demands.

Ting Ping Lay filed a petition for *mandamus* with the Securities and Exchange Commission against TCL Corporation and Anna Teng which case was docketed as SEC Case No. 3990.

x x x x x x x x x

After the trial, the hearing officer found for the petitioner, thus:

> 'A. Ordering respondents to record in the Books of the Corporation the following shares:
>
> 1. 480 shares acquired by petitioner from Peter Chiu per Deed of Sales (sic) dated February 20, 1979;
>
> 2. 1,400 shares acquired by petitioner from Teng Ching Lay per Deed of Sale dated September 22, 1989;
>
> B. Ordering respondents to issue corresponding new certificates of stocks (sic) in the name of the petitioner.
>
> C. Ordering respondents to pay petitioner moral damages in the amount of One Hundred Thousand (₱100,000.00) Pesos and Fifty Thousand (₱50,000.00) Pesos for attorney's fees." (pp. 28-29 *Rollo*).

On 11 June 1996, the Commission *en banc* modified the aforequoted ruling by deleting the liability of TCL Corporation relative to the award of moral damages and attorney's fees. The attempt to reconsider said ruling likewise failed in an order dated 6 August 1996."[5]

Subsequently, herein petitioners filed with respondent Court of Appeals a petition for review of the Order of the SEC *en banc* dated June 11, 1996 and its Order dated August 23, 1996 denying their motion for reconsideration. On January 31, 1997, the Court of Appeals promulgated its decision dismissing said petition for being filed out of time.[6] It concluded:

---

[5] *Id.* at 54-56.

[6] *Supra* note 1.

Supreme Court E-Library

"In fine, we find no cogent and justifiable grounds to disturb the findings of the SEC *en banc*.

WHEREFORE, the petition for review is DENIED due course and is hereby DISMISSED. The Clerk of Court is hereby directed to remand the records of the case to the SEC for the proper execution of the appealed orders."

SO ORDERED."[7]

Hence, the present petition, assigning the following questions for resolution:

"I. WHETHER OR NOT THE PERIOD FOR FILING PETITION FOR REVIEW WITH RESPONDENT COURT IS RECKONED FROM THE DATE THE QUESTIONED ORDER (ANNEX 'D') WAS RECEIVED BY PETITIONERS' PRESIDENT OR FROM THE DATE OF RECEIPT THEREOF BY PETITIONERS' COUNSEL.

II. WHETHER OR NOT THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER THE PETITION FOR *MANDAMUS* FILED BY PRIVATE RESPONDENT.

III. WHETHER OR NOT THE ALLEGED TRANSFER OF SHARES IN FAVOR OF PRIVATE RESPONDENT ARE VALID AND CAN BE ORDERED RECORDED.

IV. WHETHER OR NOT PETITIONER ANNA TENG'S FAILURE TO ACCEDE TO PRIVATE RESPONDENT'S REQUEST FOR TRANSFER OF SHARES IN HIS NAME AMOUNTS TO BAD FAITH AS WOULD WARRANT PAYMENT OF MORAL DAMAGES AND ATTORNEY'S FEES."[8]

Thus the Court must determine if (1) petitioners filed their petition for review with the Court of Appeals on time; (2) if the Securities and Exchange Commission (SEC) has jurisdiction over the petition for *mandamus*; and (3) if moral damages and attorney's fees may be granted for failure of petitioner Anna Teng to record the transfer of shares to private respondent. We shall resolve these questions *seriatim*.

---

[7] *Id.* at 59.

[8] *Id.* at 15-16.

Supreme Court E-Library

Records reveal that petitioners received a copy of the decision of the SEC *en banc* on June 14, 1996. They had fifteen days from this date within which to file a petition for review with the Court of Appeals. This period was interrupted when petitioners, through Henry Teng, filed a motion for reconsideration on June 23, 1996, thirteen days into the fifteen-day reglementary period of appeal. The order denying this motion for reconsideration was received by Henry Teng on August 6, 1996, when he sent his representative to the SEC to obtain a copy thereof. Subsequently, a petition for review was filed by the petitioners with the Court of Appeals on September 25, 1996.

In its decision promulgated January 31, 1997 the Court of Appeals ruled that the petition for review was filed out of time. It tolled the remaining period to file said petition from August 6, 1996, the day Henry Teng received a copy of the decision denying the motion for reconsideration filed on June 23, 1996. The respondent court held that the petitioners should have filed the petition not later than August 21, 1996, or fifteen days after August 6, 1996.

The respondent court erred in making such ruling. August 6, 1996, was the date when petitioners themselves through Henry Teng received notice of the decision of the SEC denying their motion for reconsideration, not counsel of record of said party. When a party is represented by counsel, service of process must be made on counsel and not on the party.[9] This well-settled rule applies to proceedings before the SEC, as the Rules of Court apply suppletorily thereto.[10] However, petitioners' counsel *eventually received* notice of the decision. Atty. Ruben V. Lopez, petitioners' counsel of record at the time, was aware of the order denying the motion for reconsideration on August 22, 1996, when his messenger, a certain Mario Ballesteros, verified the records of the case in the SEC on said date. Said counsel's motion requesting a copy of the August 6, 1996 decision

---

[9] *NIA Consult, Inc. vs. National Labor Relations Commission*, 266 SCRA 17, 21 (1997).

[10] Rule XIII, Section 1, SEC Revised Rules of Procedure.

Supreme Court E-Library

manifests this.[11] Furthermore, the petition for review was prepared for filing and the verification affidavit was executed by Henry Teng both on September 13, 1996 or ten days before the alleged date of receipt by petitioners' counsel of the SEC order denying petitioners' motion for reconsideration.[12] These material dates in the record betray counsel's claim of receipt of notice of the SEC *en banc* decision only on September 23, 1996. When Atty. Lopez had notice of the SEC order through his messenger on August 22, 1996, petitioners had fifteen days from this date or until September 6, 1996, within which to file the petition for review with the Court of Appeals. Instead, petitioners filed their petition on September 25, 1996, or nineteen days after the last date for filing the petition. Petitioners thus filed their petition with the Court of Appeals way beyond the reglementary period, and it did not acquire jurisdiction over the case.

But even if the Court of Appeals had acquired jurisdiction over the case, the petition would still fail for lack of merit. The petitioners allege in the present petition that the SEC did not have jurisdiction over the petition for *mandamus* filed by Ting Ping Lay, as the same did not arise out of an intra-corporate controversy. They claim that Ting Ping Lay was not yet a stockholder of record of TCL Corporation. In the case of *Abejo vs. de la Cruz*,[13] this Court has ruled that jurisdiction over an action for *mandamus* lies with the SEC even if the proponent thereof is not yet a stockholder of record. Thus —

"x x x But as to the sale and transfer of the Abejos' shares, the Bragas cannot oust the SEC of its original and exclusive jurisdiction to hear and decide the case, by blocking through the corporate secretary, their son, the due recording of the transfer and sale of the shares in question and claiming that Telectronics is not a stockholder of the corporation — which is the very issue that the SEC is called upon to resolve. *As the SEC maintains 'There is no requirement that a stockholder of a corporation must be a registered*

---

[11] CA *Rollo*, p. 78.

[12] *Id.* at 14-15.

[13] 149 SCRA 654 (1987).

Supreme Court E-Library

one in order that the Securities and Exchange Commission may take cognizance of a suit seeking to enforce his rights as such stockholder.' This is because the SEC by express mandate has absolute jurisdiction, supervision and control over all corporations and is called upon to enforce the provisions of the Corporation Code, among which is the stock purchaser's right to secure the corresponding certificate in his name under the provisions of Section 63 of the Code. Needless to say, any problem encountered in securing the certificates of stock representing the investment made by the buyer must be expeditiously dealt with through administrative mandamus proceedings with the SEC, rather than through the usual tedious court procedure. x x x" (Italics supplied)[14]

Moreover, the SEC *en banc* found that the petitioners did not refute the validity of the transfers of shares of stock to Ting Ping Lay, insofar as those shares covered duly indorsed stock certificates were concerned.[15] Petitioners themselves conceded that they could not assail the documents evincing the transfer of the shares to Ting Ping Lay.[16]

In *Lim Tay vs. Court of Appeals,*[17] we held that the registration of shares in a stockholder's name, the issuance of stock certificates, and the right to receive dividends which pertain to the shares are all rights that flow from ownership. Respondent Ting Ping Lay was able to establish *prima facie* ownership over the shares of stocks in question, through deeds of transfer of shares of stock of TCL Corporation.[18] Petitioners could not repudiate these documents. Hence, the transfer of shares to him must be recorded on the corporation's stock and transfer book.

Noteworthy, Annex "F" of the petition before us contains a listing of the corporation's stockholders and their respective

---

[14] *Id.* at 668-669.

[15] CA *Rollo*, pp. 17-20.

[16] *Rollo*, pp. 41-42.

[17] 293 SCRA 634 (1998).

[18] *Supra*, note 15.

Supreme Court E-Library

shares before and after the execution of a certain deed of assignment.[19] Respondent Ting Ping Lay is listed as a stockholder of the corporation in this document. By this inclusion, petitioners have in effect rebutted their own claim in their petition that Ting Ping Lay "is not and has neither been an incorporator nor a stockholder of the corporation."[20] Undoubtedly then, the dispute is an intra-corporate controversy, involving as it does stockholders of TCL Corporation.

The determination of whether or not a shareholder is entitled to exercise the rights of a stockholder is within the jurisdiction of the SEC.[21]

As held by the Court, thru Justice A. Panganiban in *Lim Tay:*

"The duty of a corporate secretary to record transfers of stocks is ministerial. However, he cannot be compelled to do so when the transferee's title to said shares has no *prima facie* validity or is uncertain. More specifically, a pledgor, prior to foreclosure and sale, does not acquire ownership rights over the pledged shares and thus cannot compel the corporate secretary to record his alleged ownership of such shares on the basis merely of the contract of pledge. Similarly, the SEC does not acquire jurisdiction over a dispute when a party's claim to being a shareholder is, on the face of the complaint, invalid or inadequate or is otherwise negated by the very allegations of such complaint. *Mandamus* will not issue to establish a right, but only to enforce one that is already established."[22]

The fact that Ting Ping Lay is allegedly not yet a stockholder of record does not remove the case from the jurisdiction of the SEC, for it is precisely the right of recording and the right to be issued stock certificates that said respondent sought to enforce by *mandamus*.

---

[19] *Rollo*, p. 62.

[20] *Id.* at 9.

[21] 293 SCRA 634, 648 (1998).

[22] *Id.* at 639.

Supreme Court E-Library

In addition, even if Ting Ping Lay were not a stockholder, he is nonetheless a member of the public whose investment in the corporation the law seeks to protect and encourage, as his purchase of the shares of stock has been established.[23] After all, the principal function of the SEC is the supervision and control of corporations, partnerships and associations with the end in view that investments in these entities may be encouraged and protected, and their activities pursued for the protection of economic development.[24] In other words, the jurisdiction of the SEC should be construed in relation to its power of control and supervision over all corporations to encourage active public participation in the affairs of private corporations by way of investments.[25]

Petitioners are also barred from questioning the jurisdiction of the SEC. While it is a rule that a jurisdictional question may be raised at any time, this, however, admits of an exception where, as in this case, estoppel has supervened.[26] This Court has time and again frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[27] Instead of opposing the exercise of jurisdiction by SEC seasonably, petitioners invoked said jurisdiction by participating in the proceedings before it. Petitioners cannot now be allowed to adopt an inconsistent posture on this score.

Lastly, on issue of the propriety of moral damages and attorney's fees imposed on petitioners, the SEC *en banc* held that petitioners' refusal to record the transfer of shares to

---

[23] *Tolentino vs. Court of Appeals*, 280 SCRA 226,234 (1997).

[24] *Lozano vs. De los Santos*, 274 SCRA 452, 458 (1997).

[25] *Rivilla vs. IAC,* 175 SCRA 773,778 (1989).

[26] *Suarez vs. Court of Appeals,* 186 SCRA 339,342 (1990).

[27] *Korean Airlines, Co., Ltd. vs. Court of Appeals,* 247 SCRA 559,603 (1995); *Sesbreño vs. Court of Appeals*, 240 SCRA 606,612 (1995); *Bañaga vs. Commission on the Settlement of Land Problems*, 181 SCRA 599,608 (1990); *Tijam vs. Sibonghanoy,* 23 SCRA 29,36 (1968).

Supreme Court E-Library

respondent Ting Ping Lay was not based on any lawful and valid ground. As admitted by Henry Teng during the trial before the SEC hearing officer, what motivated petitioners to ignore Ting Ping Lay's request to record the transfer of the shares was the fact that they simply did not want to grant the same.[28] Such action, being capricious, whimsical and unwarranted, constitutes bad faith that must be sanctioned. However, the SEC *en banc* had modified and deleted the award of moral damages and attorney's fees imposed on petitioner corporation. The matter of damages now concerns only petitioner Anna Teng. For it was her refusal as corporate secretary to record the transfer of the shares, without evidence that such refusal was authorized by TCL's board of directors, that caused damage. On this point, no error was committed by respondent court in refusing to disturb the SEC's decision.

WHEREFORE, the petition is *DENIED*, and the Decision dated January 31, 1997 as well as the Resolution dated July 3, 1997 of respondent Court of Appeals are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

---

[28] *Rollo*, p. 44.