Supreme Court E-Library

However, while the summary judgment of the RTC of Mandaue City, Branch 55, is not proper under the circumstances stated above, Civil Case No. MAN-2647 should not be dismissed. Instead, the case should be remanded to the trial court for further proceedings and proper disposition in accordance with a regular trial on the merits.

WHEREFORE, we *PARTLY GRANT* the petition. We *SET ASIDE* the Resolution of the Court of Appeals dated 30 September 2002 in CA-G.R. SP No. 68131 which affirmed the Summary Judgment dated 27 June 2000 of the Regional Trial Court of Mandaue City, Branch 55, in Civil Case No. MAN-2647. We *REMAND* the case to the Regional Trial Court of Mandaue City, Branch 55, for further proceedings in accordance with this Decision.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 158805. April 16, 2009]

VALLEY GOLF & COUNTRY CLUB, INC., *petitioner, vs.* **ROSA O. *VDA. DE* CARAM,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; SECTION 67 ON STOCK CORPORATION'S RECOURSE ON UNPAID SUBSCRIPTIONS, INAPT TO A NON-STOCK CORPORATION *VIS-À-VIS* A MEMBER'S OUTSTANDING

Supreme Court E-Library

DUES. — The procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation *vis-à-vis* a member's outstanding dues. The basic factual backdrops in the two situations are disperate. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share or shares of stock he subscribed to, thereby authorizing the stock corporation to call on the unpaid subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction.

2. ID.; ID.; NON-STOCK CORPORATIONS; TERMINATION OF MEMBERSHIP, CONSTRUED. — There is a specific provision under the Title XI, on Non-Stock Corporations of the Corporation Code dealing with termination of membership. Section 91 of the Corporation Code provides: SEC. 91. *Termination of membership.*—Membership shall **be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws.** Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone, as is the situation in this case.

3. ID.; ID.; ID.; ID.; POWER TO EFFECT TERMINATION WITHOUT CONSTITUTING LIEN ON MEMBERSHIP SHARE/ SELLING THE SAME AT PUBLIC AUCTION; IN CASE AT BAR, HOWEVER, MEMBERSHIP ADJUNCT TO OWNERSHIP OF SHARE REQUIRING DISPOSAL THEREOF TO TERMINATE MEMBERSHIP. — Generally in theory, a non-stock corporation has the power to effect the termination of a member without having to constitute a lien on the membership share or to undertake the elaborate process of selling the same at public auction. The articles of incorporation or the by-laws can very well simply provide that the failure of a member to pay the dues on time is cause for the board of directors to terminate membership. Yet Valley Golf was organized in such a way that membership is adjunct to ownership of a share in the club; hence the necessity to dispose of the share to terminate membership. Share ownership introduces another dimension to the case—the reality that termination of membership may

Supreme Court E-Library

also lead to the infringement of property rights. Even though Valley Golf is a non-stock corporation, as evinced by the fact that it is not authorized to distribute to the holder of its shares dividends or allotments of the surplus profits on the basis of shares held, the Golf Share has an assigned value reflected on the certificate of membership itself. Termination of membership in Valley Golf does not merely lead to the withdrawal of the rights and privileges of the member to club properties and facilities but also to the loss of the Golf Share itself for which the member had fully paid. The claim of Valley Golf is limited to the amount of unpaid dues plus incremental costs. On the other hand, Caram's loss may encompass not only the amount he had paid for the share but also the price it would have fetched in the market at the time his membership was terminated.

4. ID.; ID.; ID.; ID.; NOTICE TO MEMBER BEFORE SHARES PUT UP FOR SALE, NONE PROVIDED IN BY-LAWS IN CASE AT BAR; APPLICABLE RULES. — The by-laws does not provide for a mode of notice to the member before the board of directors puts up the Golf Share for sale, yet the sale marks the termination of membership. Does the Corporation Code permit the termination of membership without due notice to the member? The Code itself is silent on that matter, and the argument can be made that if no notice is provided for in the articles of incorporation or in the by-laws, then termination may be effected without any notice at all. Membership in Valley Golf, however, entails the acquisition of a property right. In turn, the loss of such property right could also involve the application of aspects of civil law, in addition to the provisions of the Corporation Code. To put it simply, when the loss of membership in a non-stock corporation also entails the loss of property rights, the manner of deprivation of such property right should also be in accordance with the provisions of the Civil Code. It has been held that a by-law providing that if a member fails to pay dues for a year, he shall be deemed to have relinquished his membership and may be excluded from the rooms of the association and his certificate of membership shall be sold at auction, and any surplus of the proceeds be paid over him, does not *ipso facto* terminate the membership of one whose dues are a year in arrears; the remedy given for non-payment of dues is not exclusive because the corporation, so long as he remains a member, may sue on his agreement and collect them.

Supreme Court E-Library

5. ID.; ID.; ID.; ID.; WHERE TERMINATION OF MEMBERSHIP LINKED TO DEPRIVATION OF PROPERTY RIGHTS OVER THE SHARES, SUBSTANTIAL JUSTICE MUST BE OBSERVED; CASE AT BAR.— It may be conceded that the actions of Valley Golf were, technically speaking, in accord with the provisions of its by-laws on termination of membership, vaguely defined as these are. Yet especially since the termination of membership in Valley Golf is inextricably linked to the deprivation of property rights over the Golf Share, the emergence of such adverse consequences make legal and equitable standards come to fore. It is unmistakably wise public policy to require that the termination of membership in a non-stock corporation be done in accordance with substantial justice. No matter how one may precisely define such term, it is evident in this case that the termination of Caram's membership betrayed the dictates of substantial justice. Valley Golf alleges in its present petition that it was notified of the death of Caram only in March of 1990, a claim which is reiterated in its Reply to respondent's Comment. Yet this claim is belied by the very demand letters sent by Valley Golf to Caram's mailing address. The letters dated 25 January 1987 and 7 March 1987, both of which were sent within a few months after Caram's death are both addressed to "Est. of Fermin Z. Caram, Jr.;" and the abbreviation "[e]st." can only be taken to refer to "estate." This is to be distinguished from the two earlier letters, both sent prior to Caram's death on 6 October 1986, which were addressed to Caram himself. Inexplicably, the final letter dated 3 May 1987 was again addressed to Caram himself, although the fact that the two previous letters were directed at the estate of Caram stands as incontrovertible proof that Valley Golf had known of Caram's death even prior to the auction sale. What do these facts reveal? Valley Golf acted in clear bad faith when it sent the final notice to Caram under the pretense they believed him to be still alive, when in fact they had very well known that he had already died. That it was in the final notice that Valley Golf had perpetrated the duplicity is especially blameworthy, since it was that notice that carried the final threat that his Golf Share would be sold at public auction should he fail to settle his account on or before 31 May 1987. x x x **at the time of the final notice, Valley Golf knew that Caram, having died and gone, would not be able to settle the obligation himself, yet they persisted in sending him notice to provide a**

Supreme Court E-Library

color of regularity to the resulting sale. That reason alone, evocative as it is of the absence of substantial justice in the sale of the Golf Share, is sufficient to nullify the sale and sustain the rulings of the SEC and the Court of Appeals. Moreover, the utter and appalling bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles Articles 19, 20 and 21 under the Chapter on Human Relations of the Civil Code. These provisions enunciate a general obligation under law for every person to act fairly and in good faith towards one another. Non-stock corporations and its officers are not exempt from that obligation.

6. ID.; ID.; ID.; ID.; LIEN ON MEMBERSHIP SHARE TO ANSWER FOR OBLIGATIONS TO THE CORPORATION FINDS APPLICABLE PARALLELS UNDER THE CIVIL CODE AS SHARES CONSIDERED PERSONAL PROPERTY THAT CAN BE CONSTITUTED AS SECURITY FOR PRINCIPAL OBLIGATION. — The arrangement provided for in the by-laws of Valley Golf whereby a lien is constituted on the membership share to answer for subsequent obligations to the corporation finds applicable parallels under the Civil Code. Membership shares are considered as movable or personal property, and they can be constituted as security to secure a principal obligation, such as the dues and fees. There are at least two contractual modes under the Civil Code by which personal property can be used to secure a principal obligation. The first is through a contract of pledge, while the second is through a chattel mortgage. A pledge would require the pledgor to surrender possession of the thing pledged, *i.e.*, the membership share, to the pledge in order that the contract of pledge may be constituted. If delivery of the share cannot be effected, the suitable security transaction is the chattel mortgage. Under Article 2124 of the Civil Code, movables may be the object of a chattel mortgage. The Chattel mortgage is governed by Act No. 1508, otherwise known The Chattel Mortgage Law, and the Civil Code.

7. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES JUSTIFIED BY THE PRESENCE OF BAD FAITH IN CASE AT BAR. — The award of damages sustained by the Court of Appeals was for moral damages in the sum of ₱50,000.00 and exemplary damages in the sum of ₱10,000.00. Both awards should

Supreme Court E-Library

be sustained. In pretending to give actual notice to Caram despite full knowledge that he was in fact dead, Valley Golf exhibited utter bad faith. The award of moral damages was based on a finding by the hearing officer that Valley Golf had "considerably besmirched the reputation and good credit standing of the plaintiff and her family," such justification having foundation under Article 2217 of the Civil Code. No cause has been submitted to detract from such award. In addition, exemplary damages were awarded "to [Valley Golf] defendant from repeating similar acts in the future and to protect the interest of its stockholders… and by way of example or correction for the public good." Such conclusion is in accordance with Article 2229 of the Civil Code, which establishes liability for exemplary damages.

APPEARANCES OF COUNSEL

Abejo & Partners Law Office for petitioner.

De Los Angeles Aguirre Olaguer & Sto. Domingo Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

May a non-stock corporation seize and dispose of the membership share of a fully-paid member on account of its unpaid debts to the corporation when it is authorized to do so under the corporate by-laws but not by the Articles of Incorporation? Such is the central issue raised in this petition, which arose after petitioner Valley Golf & Country Club (Valley Golf) sold the membership share of a member who had been delinquent in the payment of his monthly dues.

I.

The facts that preceded this petition are simple. Valley Golf & Country Club (Valley Golf) is a duly constituted non-stock, non-profit corporation which operates a golf course. The members and their guests are entitled to play golf on the said course and otherwise avail of the facilities and privileges provided by Valley

Supreme Court E-Library

Golf.[1] The shareholders are likewise assessed monthly membership dues.

In 1961, the late Congressman Fermin Z. Caram, Jr. (Caram),[2] the husband of the present respondent, subscribed to purchased and paid for in full one share (Golf Share) in the capital stock of Valley Golf. He was issued Stock Certificate No. 389 dated 26 January 1961 for the Golf Share.[3] The Stock Certificate likewise indicates a par value of ₱9,000.00.

Valley Golf would subsequently allege that beginning 25 January 1980, Caram stopped paying his monthly dues, which were continually assessed until 31 June 1987. Valley Golf claims to have sent five (5) letters to Caram concerning his delinquent account within the period from 27 January 1986 until 3 May 1987, all forwarded to P.O. Box No. 1566, Makati Commercial Center Post Office, the mailing address which Caram allegedly furnished Valley Golf.[4] The first letter informed Caram that his account as of 31 December 1985 was delinquent and that his club privileges were suspended pursuant to Section 3, Article VII of the by-laws of Valley Golf.[5] Despite such notice of delinquency, the second letter, dated 26 August 1986, stated that should Caram's account remain unpaid for 45 days, his name would be "included in the delinquent list to be posted on the club's bulletin board."[6] The third letter, dated 25 January 1987, again informed Caram of his delinquent account and the suspension of his club privileges.[7] The fourth letter, dated 7 March 1987, informed Caram that should he fail to settle his delinquencies, then totaling ₱7,525.45, within ten (10) days from receipt thereof Valley Golf would exercise its right to sell the Golf Share to satisfy the outstanding amount, again pursuant

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[1] *Rollo*, p. 8.

[2] A former representative from Iloilo.

[3] SEC records, p. 61.

[4] *Rollo*, p. 60.

[5] *Id.* at 82.

[6] *Id.* at 83.

[7] *Id.* at 84.

Supreme Court E-Library

to the provisions of the by-laws.[8] The final letter, dated 3 May 1987, issued a final deadline until 31 May 1987 for Caram to settle his account, or otherwise face the sale of the Golf Share to satisfy the claims of Valley Golf.[9]

The Golf Share was sold at public auction on 11 June 1987 for ₱25,000.00 after the Board of Directors had authorized the sale in a meeting on 11 April 1987, and the Notice of Auction Sale was published in the 6 June 1987 edition of the *Philippine Daily Inquirer*.[10]

As it turned out, Caram had died on 6 October 1986. Respondent initiated intestate proceedings before the Regional Trial Court (RTC) of Iloilo City, Branch 35, to settle her husband's estate.[11] Unaware of the pending controversy over the Golf Share, the Caram family and the RTC included the same as part of Caram's estate. The RTC approved a project of partition of Caram's estate on 29 August 1989. The Golf Share was adjudicated to respondent, who paid the corresponding estate tax due, including that on the Golf Share.

It was only through a letter dated 15 May 1990 that the heirs of Caram learned of the sale of the Golf Share following their inquiry with Valley Golf about the share. After a series of correspondence, the Caram heirs were subsequently informed, in a letter dated 15 October 1990, that they were entitled to the refund of ₱11,066.52 out of the proceeds of the sale of the Golf Share, which amount had been in the custody of Valley Golf since 11 June 1987.[12]

Respondent filed an action for reconveyance of the share with damages before the Securities and Exchange Commission (SEC) against Valley Golf.[13] On 15 November 1996, SEC

[8] *Id.* at 85.

[9] *Id.* at 86.

[10] *Id.* at 59.

[11] *Id.* at 30.

[12] *Id.* at 59.

[13] Docketed as SEC Case No. 4160.

Supreme Court E-Library

Hearing Officer Elpidio S. Salgado rendered a decision in favor of respondent, ordering Valley Golf to convey ownership of the Golf Share or in the alternative to issue one fully paid share of stock of Valley Golf the same class as the Golf Share to respondent. Damages totaling ₱90,000.00 were also awarded to respondent.[14]

The SEC hearing officer noted that under Section 67, paragraph 2 of the Corporation Code, a share stock could only be deemed delinquent and sold in an extrajudicial sale at public auction only upon the failure of the stockholder to pay the unpaid subscription or balance for the share. The section could not have applied in Caram's case since he had fully paid for the Golf Share and he had been assessed not for the share itself but for his delinquent club dues. Proceeding from the foregoing premises, the SEC hearing officer concluded that the auction sale had no basis in law and was thus a nullity.

The SEC hearing officer did entertain Valley Golf's argument that the sale of the Golf Share was authorized under the by-laws. However, it was ruled that pursuant to Section 6 of the Corporation Code, "a provision creating a lien upon shares of stock for unpaid debts, liabilities, or assessments of stockholders to the corporation, should be embodied in the Articles of Incorporation, and not merely in the by-laws, because Section 6 (par.1) prescribes that the shares of stock of a corporation may have such rights, privileges and restrictions as may be stated in the articles of incorporation."[15] It was observed that the Articles of Incorporation of Valley Golf did not impose any lien, liability or restriction on the Golf Share or, for that matter, even any conditionality that the Golf Share would be subject to assessment of monthly dues or a lien on the share for non-payment of such dues.[16] In the same vein, it was opined that

[14] ₱50,000.00 in moral damages, ₱10,000.00 in exemplary damages, and ₱30,000.00 in litigation expenses and attorney's fees. *Rollo*, pp. 80-81.

[15] *Id.* at 76. Cited as authority for this holding was a textbook on Philippine Corporation Law (H. DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES*, p. 464 [1989 ed.]), which in turn cited an SEC Opinion dated 13 April 1981.

[16] *Id.*

Supreme Court E-Library

since Section 98 of the Corporation Code provides that restrictions on transfer of shares should appear in the articles of incorporation, by-laws and the certificate of stock to be valid and binding on any purchaser in good faith, there was more reason to apply the said rule to club delinquencies to constitute a lien on golf shares.[17]

The SEC hearing officer further held that the delinquency in monthly club dues was merely an ordinary debt enforceable by judicial action in a civil case. The decision generally affirmed respondent's assertion that Caram was not properly notified of the delinquencies, citing Caram's letter dated 7 July 1978 to Valley Golf about the change in his mailing address. He also noted that Valley Golf had sent most of the letters after Caram's death. In all, the decision concluded that the sale of the Golf Share was effectively a deprivation of property without due process of law.

On appeal to the SEC *en banc*,[18] said body promulgated a decision[19] on 9 May 2000, affirming the hearing officer's decision *in toto*. Again, the SEC found that Section 67 of the Corporation Code could not justify the sale of the Golf Share since it applies only to unpaid subscriptions and not to delinquent membership dues. The SEC also cited a general rule, formulated in American jurisprudence, that a corporation has no right to dispose of shares of stock for delinquent assessments, dues, service fees and other unliquidated charges unless there is an express grant to do so, either by the statute itself or by the charter of a corporation.[20] Said rule, taken in conjunction with Section 6 of the Corporation Code, militated against the validity of the sale

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[17] *Id.* at 76.

[18] Docketed as SEC-AC No. 595.

[19] Signed by SEC "Chair[person]" Lilia R. Bautista, and Associate Commissioners Fe Eloisa C. Gloria, Edijer A. Martinez and Rosalinda U. Casiguran. See *rollo*, p. 63.

[20] *Rollo*, pp. 61-62. Primary citation was made to another local textbook (R. Lopez, *The Corporation Code of the Philippines*, Vol. II, 1994 Ed.), which in turn cited *Schutch v. Farmers Union Milling and Grain Co*., 116 Neb. 14; 22 CRA (NS) 1015; and 18 AM. JUR., 2 Ed 880.

Supreme Court E-Library

of the Golf Share, the SEC stressed. In view of these premises, which according to the SEC entailed the nullity of the sale, the body found it unnecessary to rule on whether there was valid notice of the sale at public auction.

Valley Golf elevated the SEC's decision to the Court of Appeals by way of a petition for review.[21] On 4 April 2003, the appellate court rendered a decision[22] affirming the decisions of the SEC and the hearing officer, with modification consisting of the deletion of the award of attorney's fees. This time, Valley Golf's central argument was that its by-laws, rather than Section 67 of the Corporation Code, authorized the auction sale of the Golf Share. Nonetheless, the Court of Appeals found that the by-law provisions cited by Valley Golf are "of doubtful validity," as they purportedly conflict with Section 6 of the Code, which mandates that "rights privileges or restrictions attached to a share of stock should be stated in the articles of incorporation.[23] It noted that what or who had become delinquent was "was Mr. Caram himself and not his golf share," and such being the case, the unpaid account "should have been filed as a money claim in the proceedings for the settlement of his estate, instead of the petitioner selling his golf share to satisfy the account."[24]

The Court of Appeals also adopted the findings of the hearing officer that the notices had not been properly served on Caram or his heirs, thus effectively depriving respondent of property without due process of law. While it upheld the award of damages, the appellate court struck down the award of attorney's fees since there was no discussion on the basis of such award in the body of the decisions of both the hearing officer and the SEC.[25]

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[21] Docketed as CA-G.R. SP No. 59083.

[22] Penned by Justice Salvador J. Valdez, Jr., and concurred in by Justices Bienvenido L. Reyes and Danilo B. Pine.

[23] *Rollo*, p. 34.

[24] *Id.* at 35.

[25] *Id.* at 37.

Supreme Court E-Library

There is one other fact of note, mentioned in passing by the SEC hearing officer[26] but ignored by the SEC *en banc* and the Court of Appeals. Valley Golf's third and fourth demand letters dated 25 January 1987 and 7 March 1987, respectively, were both addressed to "Est. of Fermin Z. Caram, Jr." The abbreviation "Est." can only be taken to refer to "Estate." Unlike the first two demand letters, the third and fourth letters were sent after Caram had died on 6 October 1986. However, the fifth and final demand letter, dated 3 May 1987 or twenty-eight (28) days before the sale, was again addressed to Fermin Caram himself and not to his estate, as if he were still alive. The foregoing particular facts are especially significant to our disposition of this case.

II.

In its petition before this Court, Valley Golf concedes that Section 67 of the Corporation Code, which authorizes the auction sale of shares with delinquent subscriptions, is not applicable in this case. Nonetheless, it argues that the by-laws of Valley Golf authorizes the sale of delinquent shares and that the by-laws constitute a valid law or contractual agreement between the corporation and its stockholders or their respective successors. Caram, by becoming a member of Valley Golf, bound himself to observe its by-laws which constitutes "the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it."[27] It also points out that the by-laws itself had duly passed the SEC's scrutiny and approval.

Valley Golf further argues that it was error on the part of the Court of Appeals to rely, as it did, upon Section 6 of the Corporation Code "to nullify the subject provisions of the By-Laws."[28] Section 6 referrs to "restrictions" on the shares of

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[26] *Id.* at 74.

[27] *Id.* at 15.

[28] *Id.* at 16.

Supreme Court E-Library

stock which should be stated in the articles of incorporation, as differentiated from "liens" which under the by-laws would serve as basis for the auction sale of the share. Since Section 6 refers to restrictions and not to liens, Valley Golf submits that "liens" are excluded from the ambit of the provision. It further proffers that assuming that liens and restrictions are synonymous, Section 6 itself utilizes the permissive word "may," thus evincing the non-mandatory character of the requirement that restrictions or liens be stated in the articles of incorporation.

Valley Golf also argues that the Court of Appeals erred in relying on the factual findings of the hearing officer, which are allegedly replete with errors and contradictions. Finally, it assails the award of moral and exemplary damages.

III.

As found by the SEC and the Court of Appeals, the Articles of Incorporation of Valley Golf does not contain any provision authorizing the corporation to create any lien on a member's Golf Share as a consequence of the member's unpaid assessments or dues to Valley Golf. Before this Court, Valley Golf asserts that such a provision is contained in its by-laws. We required the parties to submit a certified copy of the by-laws of Valley Golf in effect as of 11 June 1987.[29] In compliance, Valley Golf submitted a copy of its by-laws, originally adopted on 6 June 1958[30] and amended on 26 November 1986.[31] The amendments bear no relevance to the issue of delinquent membership dues. The relevant provisions, found in Article VIII entitled "Club Accounts," are reproduced below:

Section 1. *Lien*.—The Club has the first lien on the share of the stockholder who has, in his/her/its name, or in the name of an assignee, outstanding accounts and liabilities in favor of the Club to secure the payment thereof.

x x x x x x x x x

[29] *Id.* at 168.

[30] *Id.* at 182.

[31] *Id.* at 174.

Supreme Court E-Library

Section 3. The account of any member shall be presented to such member every month. If any statement of accounts remains unpaid for a period forty-five (45) days after cut-off date, said member maybe (*sic*) posted as deliqnuent (*sic*). No delinquent member shall be entitled to enjoy the privileges of such membership for the duration of the deliquency (*sic*). After the member shall have been posted as delinquent, the Board may order his/her/its share sold to satisfy the claims of the club; after which the member loses his/her/its rights and privileges permanently. No member can be indebted to the Club at any time any amount in excess of the credit limit set by the Board of Directors from time to time. The unpaid account referred to here includes non-payment of dues, charges and other assessments and non-payment for subscriptions.[32]

To bolster its cause, Valley Golf proffers the proposition that by virtue of the by-law provisions a lien is created on the shares of its members to ensure payment of dues, charges and other assessments on the members. Both the SEC and the Court of Appeals debunked the tenability or applicability of the proposition through two common thrusts.

Firstly, they correctly noted that the procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation *vis-à-vis* a member's outstanding dues. The basic factual backdrops in the two situations are disperate. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share or shares of stock he subscribed to, thereby authorizing the stock corporation to call on the unpaid subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction.[33]

Secondly, the two bodies below concluded that following Section 6 of the Corporation Code, which provides:

The shares of stock of stock corporation may be divided into classes or series of shares, or both, any of which classes or series of shares

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[32] *Id.* at 181-182.

[33] See also CORPORATION CODE, Sec. 68.

Supreme Court E-Library

may have such rights, privileges or restrictions as may be stated in the articles of incorporation x x x [34]

the lien on the Golf Share in favor of Valley Golf is not valid, as the power to constitute such a lien should be provided in the articles of incorporation, and not merely in the by-laws.

However, there is a specific provision under the Title XI, on Non-Stock Corporations of the Corporation Code dealing with termination of membership. Section 91 of the Corporation Code provides:

SEC. 91. *Termination of membership.*—Membership shall **be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws**. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (Emphasis supplied)

Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone, as is the situation in this case. Thus, both the SEC and the appellate court are wrong in holding that the establishment of a lien and the loss of the Golf Share consequent to the enforcement of the lien should have been provided for in the articles of incorporation.

IV.

Given that the cause for termination of membership in a non-stock corporation may be established through the by-laws alone and need not be set forth in the articles of incorporation, is there any cause to invalidate the lien and the subsequent sale of the Golf Share by Valley Golf?

Former SEC Chairperson, Rosario Lopez, in her commentaries on the Corporation Code, explains the import of Section 91 in a manner relevant to this case:

The prevailing rule is that the provisions of the articles of incorporation or by-laws of termination of membership must be strictly

[34] CORPORATION CODE, Sec. 6.

Supreme Court E-Library

complied with and applied to the letter. Thus, an association whose member fails to pay his membership due and annual due as required in the by-laws, and which provides for the termination or suspension of erring members as well as prohibits the latter from intervening in any manner in the operational activities of the association, must be observed because by-laws are self-imposed private laws binding on all members, directors and officers of the corporation.[35]

Examining closely the relevant by-law provisions of Valley Golf,[36] it appears that termination of membership may occur when the following successive conditions are met: (1) presentation of the account of the member; (2) failure of the member to settle the account within forty-five days after the cut-off date; (3) posting of the member as delinquent; and (4) issuance of an order by the board of directors that the share of the delinquent member be sold to satisfy the claims of Valley Golf. These conditions found in by-laws duly approved by the SEC warrant due respect and we are disinclined to rule against the validity of the by-law provisions.

At the same time, two points warrant special attention.

A.

Valley Golf has sought to accomplish the termination of Caram's membership through the sale of the Golf Share, justifying the sale through the constitution of a lien on the Golf Share under Section 1, Article VIII of its by-laws. Generally in theory, a non-stock corporation has the power to effect the termination of a member without having to constitute a lien on the membership share or to undertake the elaborate process of selling the same at public auction. The articles of incorporation or the by-laws can very well simply provide that the failure of a member to pay the dues on time is cause for the board of directors to terminate membership. Yet Valley Golf was organized in such a way that membership is adjunct to ownership of a share in

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[35] R. LOPEZ, *III THE CORPORATION CODE OF THE PHILIPPINES* (1994 ed.), at 976; citing SEC Opinion dated 16 June 1992, Mr. Emerito Sematano.

[36] *Supra* note 32.

Supreme Court E-Library

the club; hence the necessity to dispose of the share to terminate membership.

Share ownership introduces another dimension to the case—the reality that termination of membership may also lead to the infringement of property rights. Even though Valley Golf is a non-stock corporation, as evinced by the fact that it is not authorized to distribute to the holder of its shares dividends or allotments of the surplus profits on the basis of shares held,[37] the Golf Share has an assigned value reflected on the certificate of membership itself.[38] Termination of membership in Valley Golf does not merely lead to the withdrawal of the rights and privileges of the member to club properties and facilities but also to the loss of the Golf Share itself for which the member had fully paid.

The claim of Valley Golf is limited to the amount of unpaid dues plus incremental costs. On the other hand, Caram's loss may encompass not only the amount he had paid for the share but also the price it would have fetched in the market at the time his membership was terminated.

There is an easy way to remedy what is obviously an unfair situation. Taking the same example, Valley Golf seizes the share, sells it to itself or a third person for ₱100.000.00, then refunds ₱99,000.00 back to the delinquent member. On its face, such a mechanism obviates the inequity of the first example, and assures that the loss sustained by the delinquent member is commensurate to the actual debt owed to Valley Golf. After all, applying civil law concepts, the pecuniary injury sustained by Valley Golf attributable to the delinquent member is only to the extent of the unpaid debt, and it would be difficult to foresee what right under law Valley Golf would have to the remainder of the sale's proceeds.

A refund mechanism may disquiet concerns of undue loss of property rights corresponding to termination of membership.

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[37] See CORPORATION CODE, Sec. 3.

[38] Caram's Certificate, issue din 1961, bore a stated par value of Nine Thousand Pesos. See Records, p. 61. According to respondent, as of 1999, the club share was being traded at 1.2 Million Pesos. *Id.* at 62.

Supreme Court E-Library

Yet noticeably, the by-laws of Valley Golf does not require the Club to refund to the discharged member the remainder of the proceeds of the sale after the outstanding obligation is extinguished. After petitioner had filed her complaint though, Valley Golf did inform her that the heirs of Caram are entitled to such refund.

B.

Let us now turn to the other significant concern.

The by-laws does not provide for a mode of notice to the member before the board of directors puts up the Golf Share for sale, yet the sale marks the termination of membership. Whatever semblance of a notice that is afforded is bare at best, ambiguous at most. The member is entitled to receive a statement of account every month; however, the mode by which the member is to receive such notice is not elaborated upon. If the member fails to pay within 45 days from the due date, Valley Golf is immediately entitled to have the member "posted as delinquent." While the assignation of "delinquent status" is evident enough, it is not as clear what the word "posted" entails. Connotatively, the word could imply the physical posting of the notice of delinquency within the club premises, such as a bulletin board, which we recognize is often the case. Still, the actual posting modality is uncertain from the language of the by-laws.

The moment the member is "posted as delinquent," Valley Golf is immediately enabled to seize the share and sell the same, thereby terminating membership in the club. The by-laws does not require any notice to the member from the time delinquency is posted to the day the sale of the share is actually held. The setup is to the extreme detriment to the member, who upon being notified that the lien on his share is due for execution would be duly motivated to settle his accounts to foreclose such possibility.

Does the Corporation Code permit the termination of membership without due notice to the member? The Code itself is silent on that matter, and the argument can be made that if no notice is provided for in the articles of incorporation or in

Supreme Court E-Library

the by-laws, then termination may be effected without any notice at all. Support for such an argument can be drawn from our ruling in *Long v. Basa*,[39] which pertains to a religious corporation that is also a non-stock corporation.[40] Therein, the Court upheld the expulsion of church members despite the absence of any provision on prior notice in the by-laws, stating that the members had "waived such notice by adhering to those by-laws[,] became members of the church voluntarily[,] entered into its covenant and subscribed to its rules [and by] doing so, they are bound by their consent."[41]

However, a distinction should be made between membership in a religious corporation, which ordinarily does not involve the purchase of ownership shares, and membership in a non-stock corporation such as Valley Golf, where the purchase of an ownership share is a condition *sine qua non*. Membership in Valley Golf entails the acquisition of a property right. In turn, the loss of such property right could also involve the application of aspects of civil law, in addition to the provisions of the Corporation Code. To put it simply, when the loss of membership in a non-stock corporation also entails the loss of property rights, the manner of deprivation of such property right should also be in accordance with the provisions of the Civil Code.

It has been held that a by-law providing that if a member fails to pay dues for a year, he shall be deemed to have relinquished his membership and may be excluded from the rooms of the association and his certificate of membership shall be sold at auction, and any surplus of the proceeds be paid over him, does not *ipso facto* terminate the membership of one whose dues are a year in arrears; the remedy given for non-payment of dues is not exclusive because the corporation, so long as he remains a member, may sue on his agreement and collect them.[42]

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[39] G.R. Nos. 134693-94, 27 September 2001, 366 SCRA 113.

[40] See CORPORATION CODE, Sec. 109.

[41] *Supra* note 39.

[42] R. AGPALO, *COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES*, p. 390; citing SEC Opinion dated 10 March 1987. The SEC Quarterly Bulletin, Vol. XXI, No. 1, March 1987, pp. 14-15.

Supreme Court E-Library

V.

With these foregoing concerns in mind, were the actions of Valley Golf concerning the Golf Share and membership of Caram warranted? We believe not.

It may be conceded that the actions of Valley Golf were, technically speaking, in accord with the provisions of its by-laws on termination of membership, vaguely defined as these are. Yet especially since the termination of membership in Valley Golf is inextricably linked to the deprivation of property rights over the Golf Share, the emergence of such adverse consequences make legal and equitable standards come to fore.

The commentaries of Lopez advert to an SEC Opinion dated 29 September 1987 which we can cite with approval. Lopez cites:

> [I]n order that the action of a corporation in expelling a member for cause may be valid, it is essential, in the absence of a waiver, that there shall be a hearing or trial of the charge against him, with reasonable notice to him and a fair opportunity to be heard in his defense. (Fletcher Cyc. Corp., *supra*) **If the method of trial is not regulated by the by-laws of the association, it should at least permit substantial justice.** The hearing must be conducted fairly and openly and the body of persons before whom it is heard or who are to decide the case must be unprejudiced. (SEC opinion dated September 29, 1987, Bacalaran-Sucat Drivers Association)

It is unmistakably wise public policy to require that the termination of membership in a non-stock corporation be done in accordance with substantial justice. No matter how one may precisely define such term, it is evident in this case that the termination of Caram's membership betrayed the dictates of substantial justice.

Valley Golf alleges in its present petition that it was notified of the death of Caram only in March of 1990,[43] a claim which is reiterated in its Reply to respondent's Comment.[44] Yet this

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[43] *Rollo*, p. 10.

[44] "Likewise, at the time of said sale, petitioner had no knowledge of Mr. Caram's recent death, nor did it receive any notice thereof from Mr. Caram's heirs or his estate administrator." See *id.* at 157.

Supreme Court E-Library

claim is belied by the very demand letters sent by Valley Golf to Caram's mailing address. The letters dated 25 January 1987 and 7 March 1987, both of which were sent within a few months after Caram's death are both addressed to "Est. of Fermin Z. Caram, Jr.;" and the abbreviation "[e]st." can only be taken to refer to "estate." This is to be distinguished from the two earlier letters, both sent prior to Caram's death on 6 October 1986, which were addressed to Caram himself. Inexplicably, the final letter dated 3 May 1987 was again addressed to Caram himself, although the fact that the two previous letters were directed at the estate of Caram stands as incontrovertible proof that Valley Golf had known of Caram's death even prior to the auction sale.

Interestingly, Valley Golf did not claim before the Court of Appeals that they had learned of Caram's death only after the auction sale. It also appears that Valley Golf had conceded before the SEC that some of the notices it had sent were addressed to the estate of Caram, and not the decedent himself.[45]

What do these facts reveal? Valley Golf acted in clear bad faith when it sent the final notice to Caram under the pretense they believed him to be still alive, when in fact they had very well known that he had already died. That it was in the final notice that Valley Golf had perpetrated the duplicity is especially blameworthy, since it was that notice that carried the final threat that his Golf Share would be sold at public auction should he fail to settle his account on or before 31 May 1987.

Valley Golf could have very well addressed that notice to the estate of Caram, as it had done with the third and fourth notices. That it did not do so signifies that Valley Golf was bent on selling the Golf Share, impervious to potential complications that would impede its intentions, such as the need

[45] The decision of the SEC Hearing Officer, in narrating the version of facts as presented by Valley Golf in its Answer, states: "That defendant had dutifully informed the late Congressman Fermin Caram, Jr. during his lifetime about the unpaid accounts with defendant and that the estate of the late Fermin Caram, Jr. was likewise informed that the share of the deceased had been posted delinquent…" See *rollo*, p. 71.

Supreme Court E-Library

to pursue the claim before the estate proceedings of Caram. By pretending to assume that Caram was then still alive, Valley Golf would have been able to capitalize on his previous unresponsiveness to their notices and proceed in feigned good faith with the sale. Whatever the reason Caram was unable to respond to the earlier notices, the fact remains that **at the time of the final notice, Valley Golf knew that Caram, having died and gone, would not be able to settle the obligation himself, yet they persisted in sending him notice to provide a color of regularity to the resulting sale.**

That reason alone, evocative as it is of the absence of substantial justice in the sale of the Golf Share, is sufficient to nullify the sale and sustain the rulings of the SEC and the Court of Appeals.

Moreover, the utter and appalling bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles 19, 20 and 21 under the Chapter on Human Relations of the Civil Code.[46] These provisions enunciate a general obligation under law for every person to act fairly and in good faith towards one another. Non-stock corporations and its officers are not exempt from that obligation.

VI.

Another point. The by-laws of Valley Golf is discomfiting enough in that it fails to provide any formal notice and hearing procedure before a member's share may be seized and sold. The Court would have been satisfied had the by-laws or the articles of incorporation established a procedure which assures that the member would in reality be actually notified of the

[46] Art. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Supreme Court E-Library

pending accounts and provide the opportunity for such member to settle such accounts before the membership share could be seized then sold to answer for the debt. As we have emphasized, membership in Valley Golf and many other like-situated non-stock corporations actually involves the purchase of a membership share, which is a substantially expensive property. As a result, termination of membership does not only lead to loss of bragging rights, but the actual deprivation of property.

The Court has no intention to interfere with how non-stock corporations should run their daily affairs. The Court also respects the fact that membership is non-stock corporations is a voluntary arrangement, and that the member who signs up is bound to adhere to what the articles of incorporation or the by-laws provide, even if provisions are detrimental to the interest of the member. At the same time, in the absence of a satisfactory procedure under the articles of incorporation or the by-laws that affords a member the opportunity to defend against the deprivation of significant property rights in accordance with substantial justice, the terms of the by-laws or articles of incorporation will not suffice. There will be need in such case to refer to substantive law. Such a flaw attends the articles of incorporation and by-laws of Valley Golf. The Court deems it judicious to refer to the protections afforded by the Civil Code, with respect to the preservation, maintenance, and defense from loss of property rights.

The arrangement provided for in the afore-quoted by-laws of Valley Golf whereby a lien is constituted on the membership share to answer for subsequent obligations to the corporation finds applicable parallels under the Civil Code. Membership shares are considered as movable or personal property,[47] and they can be constituted as security to secure a principal obligation, such as the dues and fees. There are at least two contractual modes under the Civil Code by which personal property can be used to secure a principal obligation. The first is through a contract of pledge,[48] while the second is through a chattel

[47] See CIVIL CODE, Art. 414.

[48] See CIVIL CODE, Art. 2085 in relation to Arts. 2093 & 2095.

Supreme Court E-Library

mortgage.[49] A pledge would require the pledgor to surrender possession of the thing pledged, *i.e.*, the membership share, to the pledge in order that the contract of pledge may be constituted.[50]

Is delivery of the share cannot be effected, the suitable security transaction is the chattel mortgage. Under Article 2124 of the Civil Code, movables may be the object of a chattel mortgage. The Chattel mortgage is governed by Act No. 1508, otherwise known The Chattel Mortgage Law,[51] and the Civil Code.

In this case, Caram had not signed any document that manifests his agreement to constitute his Golf Share as security in favor of Valley Golf to answer for his obligations to the club. There is no document we can assess that it is substantially compliant with the form of chattel mortgages under Section 5 of Act No. 1508. The by-laws could not suffice for that purpose since it is not designed as a bilateral contract between Caram and Valley Golf, or a vehicle by which Caram expressed his consent to constitute his Golf Share as security for his account with Valley Golf.

VII.

We finally turn to the matter of damages. The award of damages sustained by the Court of Appeals was for moral damages in the sum of ₱50,000.00 and exemplary damages in the sum of ₱10,000.00. Both awards should be sustained. In pretending to give actual notice to Caram despite full knowledge that he was in fact dead, Valley Golf exhibited utter bad faith.

The award of moral damages was based on a finding by the hearing officer that Valley Golf had "considerably besmirched the reputation and good credit standing of the plaintiff and her family," such justification having foundation under Article 2217 of the Civil Code. No cause has been submitted to detract from such award. In addition, exemplary damages were awarded

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[49] See CIVIL CODE, Art. 2124.

[50] See CIVIL CODE, Art. 2093.

[51] Act No. 1508, as amended.

Supreme Court E-Library

"to [Valley Golf] defendant from repeating similar acts in the future and to protect the interest of its stockholders… and by way of example or correction for the public good." Such conclusion is in accordance with Article 2229 of the Civil Code, which establishes liability for exemplary damages.

WHEREFORE, the petition is *DENIED*. Costs against petitioners.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 158819. April 16, 2009]

ANTERO LUISTRO, *petitioner, vs.* **COURT OF APPEALS and FIRST GAS POWER CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; RESOLUTION OF MOTION; CLEAR AND DISTINCT DECLARATION OF REASONS THEREFOR; ABSENT IN CASE AT BAR.— Section 3, Rule 16 of the 1997 Rules of Civil Procedure provides: Sec. 3. *Resolution of motion*. - After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading. The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. In every case, the resolution shall state clearly and distinctly the reasons therefor. The Rules prescribe that the resolution of the motion to dismiss shall clearly and distinctly declare the reasons therefor. The