

## **THIRD DIVISION**

**[ G.R. No. 174986, July 07, 2009 ]**

**ARMAND O. RAQUEL-SANTOS AND ANNALISSA MALLARI,  
PETITIONERS, VS. COURT OF APPEALS AND FINVEST  
SECURITIES CO., INC., RESPONDENTS.**

**[G.R. NO. 175071]**

**PHILIPPINE STOCK EXCHANGE, INC., PETITIONER, VS. FINVEST  
SECURITIES CO., INC., RESPONDENT.**

**[G.R. NO. 181415]**

**FINVEST SECURITIES CO., INC., PETITIONER, VS. TRANS-PHIL  
MARINE ENT., INC. AND ROLAND H. GARCIA, RESPONDENTS.**

### **D E C I S I O N**

**NACHURA, J.:**

Three petitions, arising from related events, were consolidated by this Court: G.R. Nos. 174986 and 175071 are petitions for review assailing the Court of Appeals (CA) Decision<sup>[1]</sup> in CA-G.R. CV No. 85176 dated August 9, 2006, and Resolution dated October 11, 2006; and G.R. No. 181415 is a petition for review assailing the CA Decision<sup>[2]</sup> in CA-G.R. CV No. 85430 dated September 3, 2007, and Resolution dated January 24, 2008. These cases cropped up from the failure of Finvest Securities Co., Inc. (Finvest) to meet its obligations to its clients and the Philippine Stock Exchange (PSE), allegedly caused by mishandling of Finvest's funds and property by its officers.

#### **G.R. Nos. 174986 and 175071**

Finvest is a stock brokerage corporation duly organized under Philippine laws and is a member of the PSE with one membership seat pledged to the latter. Armand O. Raquel-Santos (Raquel-Santos) was Finvest's President and nominee to the PSE from February 20, 1990 to July 16, 1998.<sup>[3]</sup> Annalissa Mallari (Mallari) was Finvest's Administrative Officer until December 31, 1998.<sup>[4]</sup>

In the course of its trading operations, Finvest incurred liabilities to PSE representing fines and penalties for non-payment of its clearing house obligations. PSE also received reports that Finvest was not meeting its obligations to its clients.<sup>[5]</sup> Consequently, PSE indefinitely suspended Finvest from trading. The Securities and Exchange Commission (SEC) also suspended its license as broker.<sup>[6]</sup>

On June 17, 1998, PSE demanded from Finvest the payment of its obligations to the

PSE in the amount of P4,267,339.99 and to its (Finvest's) clients within 15 days.<sup>[7]</sup>  
PSE also ordered Finvest to replace its nominee, Raquel-Santos.<sup>[8]</sup>

Upon failure of Finvest to settle its obligations, PSE sought authority from the SEC to take over the operations of Finvest in accordance with PSE's undertaking pursuant to Section 22(a)(5)<sup>[9]</sup> of the Revised Securities Act. On July 22, 1998, SEC acted favorably on PSE's request and authorized it to take over the operations of Finvest in order to continue preserving the latter's assets. Finvest was duly informed of the SEC's decision and was advised to refrain from making any payment, delivery of securities, or selling or otherwise encumbering any of its assets without PSE's approval.<sup>[10]</sup>

As of August 11, 1998, Finvest's total obligation to PSE, representing penalties, charges and fines for violations of pertinent rules, was pegged at P5,990,839.99.<sup>[11]</sup> Finvest promised to settle all obligations to its clients and to PSE subject to verification of the amount due, but Finvest requested a deadline of July 31, 1999.<sup>[12]</sup> PSE granted Finvest's request, with the warning that, should Finvest fail to meet the deadline, PSE might exercise its right to sell Finvest's membership seat and use the proceeds thereof to settle its obligations to the PSE, its member-brokers and its clients.<sup>[13]</sup> On the same day, Finvest requested an appointment with PSE's concerned officer to reconcile, confirm and update the amount of the penalties, charges and fines due PSE. Finvest also advised PSE that it would be represented by Mr. Ernesto Lee, its consultant, during the said meeting.<sup>[14]</sup> After consultation with Mr. Lee, PSE revised its computation of the penalties, charges and fines and reduced the amount due to P3,540,421.17.<sup>[15]</sup>

In a Letter dated September 8, 1998, Finvest appealed to PSE for the approval of the following: (1) that it be given a period of up to March 30, 1999 to settle claims of clients, subject to proper documents and verification of balance; and (2) that it be allowed to settle its liabilities to PSE at an amount lower than P4,212,921.13 (representing penalties, charges and fines at P3,540,421.17 plus sanctions for violation of rules at P675,500.00), considering that it had never unduly exposed PSE to any legal and financial risks in connection with its clearing accounts.<sup>[16]</sup>

In reply, PSE required Finvest to acknowledge within 30 days, in whole or in part, clients' claims that had been filed with the PSE and to settle all duly acknowledged claims by December 31, 1998. PSE resolved to consider the request for a reduction of its liabilities to PSE only after it had settled all duly acknowledged claims of its clients.<sup>[17]</sup>

On February 3, 1999, PSE inquired from Finvest if it had already settled all duly acknowledged claims of its clients and its liabilities to PSE.<sup>[18]</sup> PSE also demanded that Finvest settle its liabilities to it not later than March 31, 1999. Finvest responded by proposing that the amount of assessed penalties, charges and fines be reduced to 10%, that is, P354,042.17; and that full payment of the clients' claims be deferred to June 30, 1999.<sup>[19]</sup> Previously, Finvest had also requested a written clearance from PSE for renewal of the registration of its brokers and dealers with the SEC.<sup>[20]</sup>

In its Letter of February 23, 1999, PSE informed Finvest that it would only issue a written clearance after Finvest had settled its obligations to PSE and paid all acknowledged liabilities to various clients.<sup>[21]</sup> In response, Finvest repeated its appeal to be allowed to fully operate again and to pay a reduced amount on the ground that it had no adequate funds because it had been the victim of fraud committed by its employees.<sup>[22]</sup>

On April 21, 1999, PSE again sent a demand letter to Finvest, reminding the latter of the March 31, 1999 deadline.<sup>[23]</sup>

On April 26, 1999, Finvest requested a hearing to determine the amount of its liability and to exhaust the possibility of arriving at a reasonable solution, and reiterated its appeal for the resumption of its operations.<sup>[24]</sup> PSE brushed aside Finvest's request, urging it instead to settle all of its obligations by May 31, 1999; otherwise, PSE would be forced to recommend to the SEC the liquidation of its assets and sell its seat at public auction,<sup>[25]</sup> pursuant to its Pledge Agreement with Finvest. Finvest protested the imposition of the deadline for being arbitrary on the ground that the claims against it had not yet been established.<sup>[26]</sup>

At this juncture, Finvest filed a Complaint with the SEC for accounting and damages with prayer for a temporary restraining order and/or preliminary injunction and mandamus against Raquel-Santos, Mallari and PSE. The complaint alleged that Raquel-Santos and Mallari took undue advantage of their positions by diverting to their personal use and benefit the unaccounted stock certificates and sales proceeds referred to in Annex "X" of the complaint, which was a list of the claims of Finvest's clients as of December 31, 1998. Finvest prayed that Raquel-Santos and Mallari be ordered to account for the missing stock certificates and sales proceeds and to pay the profits that would have accrued to Finvest. As against PSE, the complaint alleged that PSE violated Finvest's right to due process by illegally and arbitrarily suspending Finvest's operations, thus compounding its inability to meet the demands of its clients; and by unilaterally and arbitrarily imposing upon Finvest fines and penalties, without a hearing. The complaint prayed that an injunction be issued to prevent PSE from initiating the liquidation of Finvest and selling Finvest's seat at public auction.

Alleging that Raquel-Santos and Mallari failed to file their Answer within the reglementary period, Finvest moved for a partial judgment against them.<sup>[27]</sup> On February 4, 2000, SEC, through a Hearing Panel, rendered a Partial Judgment<sup>[28]</sup> against Raquel-Santos and Mallari, ordering them to account for the missing stock certificates and pay the damages that Finvest may sustain.

Raquel-Santos and Mallari filed separate motions to set aside the partial judgment, alleging non-receipt of summons. In an Order dated April 10, 2000, SEC denied due course to the two motions.<sup>[29]</sup> Thereafter, the SEC Hearing Panel issued a writ of execution.<sup>[30]</sup>

Consequently, notices of garnishment and sale were issued against Raquel-Santos' Manila Golf Shares and Sta. Elena Golf Shares.<sup>[31]</sup> Raquel-Santos moved for the cancellation of the notice of sale, arguing that there was no basis for the sale of his shares as there was no money judgment involved, only an accounting of the

allegedly missing stock certificates. According to him, only after it is established that there were missing certificates should he be held accountable. In the same motion, Raquel-Santos also endeavored to make an accounting of the stock certificates through the following documents: (a) a 35-page Stock Ledger of an inventory of securities/stock certificates as of July 31, 1998; (b) a 24-page inventory as of July 31, 1998 of stocks in the vault of Finvest; and (c) a 5-page inventory of the securities on deposit with the Philippine Central Depository, Inc.<sup>[32]</sup>

On June 29, 2000, the parties entered into an Agreement,<sup>[33]</sup> approved by the SEC *en banc* in its Order<sup>[34]</sup> of July 11, 2000, to remand the case to the Securities Investigation and Clearing Division for service of summonses to Raquel-Santos and Mallari. In turn, Raquel-Santos and Mallari agreed not to dispose of or transfer the garnished properties in the meantime, but the writs of garnishment would remain in force during the pendency of the case.

Meanwhile, on June 5, 2000, the SEC Hearing Panel granted Finvest's motion for the issuance of a preliminary injunction to enjoin PSE from initiating the liquidation of Finvest and from selling its membership seat. The SEC Hearing Panel ratiocinated that PSE's plan to sell Finvest's membership seat at public auction, despite the fact that its claims against Finvest were yet to be determined in these proceedings, was reason enough for the issuance of a preliminary injunction.<sup>[35]</sup> Upon posting of the required bond, the SEC Hearing Panel issued a writ of preliminary injunction on June 21, 2000.<sup>[36]</sup>

With the enactment of the Securities Regulation Code, the case was transferred to the Regional Trial Court (RTC), Makati City, and docketed as Civil Case No. 00-1589.

On October 2, 2001, the RTC issued an Order lifting the garnishment of Raquel-Santos' Manila Golf Club share on the ground that there must be a proper accounting to determine the amount for which Raquel-Santos and Mallari were to be held jointly and severally liable to Finvest before a writ

of garnishment may be validly issued.<sup>[37]</sup> As a result, Finvest filed a motion for reconsideration and a motion to respect the SEC *en banc* Order dated July 11, 2000. The motions were denied by the RTC in its May 30, 2002 Order.<sup>[38]</sup> Through a petition for *certiorari*, the October 2, 2001 Order of the RTC was subsequently modified by the CA on December 9, 2002. The CA held that the sale of Raquel-Santos' share in Manila Golf Club was valid, subject to the outcome of the main case (Civil Case No. 00-1589). The parties were further enjoined to comply with their obligations under the July 11, 2000 Order of the SEC *en banc*.<sup>[39]</sup>

In the meantime, PSE filed a Motion to Dissolve the Writ of Preliminary Injunction and/or Motion for Reconsideration<sup>[40]</sup> on the ground that it had the legal obligation to make the appropriate recommendations to the SEC on whether or not it would be to the best interest of all concerned for Finvest to be liquidated at the soonest possible time.

On April 28, 2003, the RTC issued a judgment in Civil Case No. 00-1589 in favor of Finvest:

WHEREFORE, judgment is rendered directing that the writ of preliminary injunction issued on June 21, 2000 be declared permanent. Respondents Raquel-Santos and Mallari are ordered to render an accounting of the stock certificates listed in Annex A of the Complaint.

SO ORDERED.<sup>[41]</sup>

The trial court noted that Finvest had not been remiss in addressing its dispute with the PSE. When PSE manifested its intent to liquidate Finvest and sell its seat at public auction, the amount of Finvest's liability was still unsettled, which thus makes it doubtful whether Section 22(a)(5) would apply. On the issue between Finvest and its officers (Raquel-Santos and Mallari), the trial court held that Finvest could rightfully demand an accounting from them and hold them liable for unaccounted securities since Raquel-Santos exercised control and supervision over the trading operations of Finvest and he and Mallari had custody of all securities traded.

On September 12, 2003, Finvest sought a partial reconsideration of the RTC Judgment praying that: (a) Finvest's indefinite suspension by PSE be lifted; (b) Raquel-Santos and Mallari be ordered to render an accounting of the stock certificates within 60 days from receipt of the judgment, and upon failure to do so, to jointly and severally pay Finvest P18,184,855.89, the value of the stocks as of December 31, 1998; and (c) Raquel-Santos be ordered to liquidate his cash advances amounting to P3,143,823.63 within 60 days from receipt of the judgment or, in case of failure to do so, to consider the same as unliquidated cash advances.

<sup>[42]</sup>

On the prayer to lift the indefinite suspension of Finvest by PSE, the trial court found that there was, in fact, a need to allow Finvest's operation to continue to enable it to negotiate the terms and modes of payments with its claimants, settle its obligations and fully ascertain its financial condition. On the prayer to set a period within which to render the accounting, the trial court held that there was no need to set a period as Section 4, Rule 39 of the Rules on Civil Procedure already directs when such kind of judgment is enforceable. Accordingly, the RTC modified its earlier decision in its Order dated February 1, 2005, thus:

WHEREFORE, plaintiff's Motion for Partial Reconsideration is partially granted as follows -

a) The indefinite suspension of operation of plaintiff Finvest Corporation by the defendant Philippine Stock Exchange is lifted; and

b) The "Annex A" in the dispositive portion of the Judgment dated April 28, 2003 is modified to read as "Annex X."

All other reliefs are denied.<sup>[43]</sup>

PSE appealed to the CA. Finvest likewise filed a partial appeal. Raquel-Santos and Mallari also filed an appeal with the CA but the same was deemed abandoned when they failed to file their appellants' brief.<sup>[44]</sup> The appeals of Finvest and PSE were docketed as CA-G.R. CV No. 85176.

On August 9, 2006, the CA rendered a Decision granting Finvest's petition, thus: