

FIFTH DIVISION

[CA-G.R. SP NO. 70846, July 13, 2006]

**DOMINION ASIAN EQUITIES, INC. (NOW BELLE CORPORATION),
PETITIONER, VS. CIPRIANO AZADA, RESPONDENT.**

DECISION

BARRIOS, J.:

This Petition for Review under Rule 43 of the Revised Rules of Civil Procedure was filed by Dominion Asian Equities, Inc. (or hereafter Dominion Asian) assailing the Decision of the Securities and Exchange Commission (or SEC) in SEC Case No. 01-95-4960, favorable to the respondent Cipriano Azada (or Azada).

These are the antecedents of the case: Dominion Asian is a domestic corporation organized and existing under Philippine laws, and was formerly known as Colossal Mining and Exploration Corporation and now as Belle Corporation. One of the stockholders of Dominion Asian is Azada who owns 100,000 fully paid shares under Stock Certificate No. 3156. On August 23, 1974, Azada exercised his pre-emptive right under Subscription Agreement No. 1471 to subscribe to 200,000 shares of stock of Dominion Asian at P0.0125 per share or a total amount of P2,500.00. Azada paid P625.00 leaving a balance of P1,875.00 which was payable upon call by the Board of Directors.

On May 17, 1994, the Board of Directors approved a Resolution calling for the payment of all unpaid subscriptions not later than June 30, 1994. On June 24, 1994, Dominion Asian caused the issuance of a Notice of Call on all unpaid subscriptions and sent this by registered mail to all stockholders, including Azada. However, the notice sent to Azada was returned undelivered to Dominion Asian due to insufficient address.

On August 8, 1994, the Board of Directors after being informed that a total of 209,562,392 shares of stock remained unpaid as of August 1, 1994, declared these delinquent. A Resolution was then approved by the Board of Directors calling for the disposal of the shares in a delinquency sale to be held on September 9, 1994 at the Office of the Corporate Secretary. Dominion Asian thereafter caused the publication of the Notice of Delinquency Sale in the August 31 and September 7, 1994 issues of the newspaper *Malaya*.

The delinquency sale was conducted as scheduled on September 9, 1994, and among those included in the sale were the shares of stocks of Azada under Subscription Agreement No. 1471 the balance of which he failed to pay within the period provided in the Notice of Call. Then on November 25, 1994, Azada sent to Dominion Asian a manager's check in the amount of P1,875.00 as full payment of his said balance, attaching a letter advising of his change of address. The check was immediately returned by Dominion Asian with the explanation that the shares of

stock covered by Subscription Agreement No. 1471 were previously declared delinquent by the Board of Directors and already sold on September 9, 1994.

Azada again wrote to Dominion Asian on January 4, 1995 informing that he would like to subscribe to an additional 3,200,000 shares in accordance with his pre-emptive right at the rate of an additional sixteen (16) shares for every share held as provided in its Rights Offering, and enclosed a manager's check representing 25% of the subscription price of the 3,200,000 shares. Dominion Asian however returned the check to Azada explaining that he was not entitled to participate on the Rights Offering because his shares under Subscription Agreement No. 1471 had already been sold in a delinquency sale.

Consequently, Azada filed a petition to annul the delinquency sale of his shares of stocks conducted on September 9, 1994. He claimed that no Notice of Call was served upon him and the delinquency sale was conducted in violation of the provisions of the Corporation Code. He also contended that the price at which the delinquent shares were sold was grossly inadequate.

On December 26, 2000, the SEC rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the delinquency sale made by the respondent on 9 September 1994 is hereby declared null and void.

The respondent is Ordered:

- a) to accept the petitioner's payment for the unpaid balance and the accrued interest on his Subscription Agreement No. 1471, and to issue to him the certificate for the 200,000 shares under the said subscription agreement;
- b) to give due course to the petitioner's subscription to 3,200,000 shares of the respondent corporation and accept the amount of P8,000.00 payment for the 25% of the said subscription; and
- c) to pay the costs of suit.

SO ORDERED. (pp. 33-34, rollo)

The Motion for Reconsideration filed by Dominion Asian was defeated in the Order dated July 6, 2001.

Hence, this petition where in asking for its grant Dominion Asian contends that:

1. THE SEC ERRED IN FINDING THAT THE NOTICE OF CALL SENT BY PETITIONER TO RESPONDENT VIOLATED SEC. 67 OF THE CORPORATION CODE;
2. THE SEC ERRED IN FINDING THAT THE RESOLUTION ORDERING THE SALE OF DELINQUENT STOCKS VIOLATED SEC. 68 OF THE CORPORATION CODE;

3. THE SEC ERRED IN FINDING THAT THE NOTICE OF SALE VIOLATED SEC. 68 OF THE CORPORATION CODE;
4. THE SEC ERRED IN FINDING THAT THE MEETING OF THE BOARD HELD ON 8 AUGUST 1994 LACKS THE REQUIRED QUORUM AS PROVIDED UNDER SEC. 25 OF THE CORPORATION CODE;
5. THE SEC ERRED IN FINDING THAT THE PUBLIC AUCTION PRICE WAS GROSSLY INADEQUATE;
6. THE SEC ERRED IN HOLDING THAT THE DELINQUENCY SALE OF RESPONDENT'S SHARES OF STOCKS WITH PETITIONER TO BE NULL AND VOID;
7. THE SEC ERRED IN GIVING DUE COURSE TO RESPONDENT'S SUBSCRIPTION TO 3,200,000 SHARES OF PETITIONER AND IN ORDERING PETITIONER TO ACCEPT THE AMOUNT OF P8,000 PAYMENT FOR 25% OF SAID SUBSCRIPTION;
8. THE SEC ERRED IN IGNORING THE IRREFUTABLE FACT THAT THE CURRENT PAR VALUE, AS A RESULT OF THE MERGER, BECAME P1.00 PER SHARE, AND THEREFORE, THE SEC ERRED IN NOT RULING THAT PER CURRENT PAR VALUE, RESPONDENT SHOULD BE ENTITLED TO ONLY 2,500 SHARES ON HIS INITIAL SUBSCRIPTION AND 32,000 SHARES ON THE ADDITIONAL SUBSCRIPTION, ASSUMING THAT THE PUBLIC SALE WAS A NULLITY. (pp. 13-14, rollo)

In the first assigned error, Dominion Asian maintains that the SEC erred in finding that the Notice of Call violated Sec. 67 of the Corporation Code because it was not sent to the stockholders thirty (30) days before the deadline for payment of the unpaid subscription. This is because Sec. 67 of the Corporation Code provides that the unpaid subscription must be paid on a fixed date and if no payment is made within thirty (30) days from the deadline, then the delinquent shares can be sold at public auction. The thirty-day period provided in Section 67 of the Corporation Code is not a prior notice requirement as erroneously ruled by the SEC, but a grace period after the deadline for payment.

Dominion Asian is correct. The Notice of Call was validly issued, for Sec. 67 of the Corporation Code provides that:

Sec. 67. Payment of balance of subscription. -

x x x Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date stated in the call made by the board. Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance unless a different rate of interest is provided in the by-laws, computed from such date until full payment. **If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon become delinquent** and shall be subject to sale as