

SPECIAL FOURTEENTH DIVISION

[CA-G.R. CV NO. 85176, August 09, 2006]

**FINVEST SECURITIES CO., INC., PLAINTIFF-APPELLANT, VS.
ARMAND O. RAQUEL-SANTOS, ANNALISSA MALLARI AND THE
PHILIPPINE STOCK EX-CHANGE, INC., DEFENDANTS-
APPELLANTS.**

D E C I S I O N

BATO, JR., J.:

Before us are plaintiff-appellants partial appeal and defendants-appellants appeal of the April 28, 2003 Judgment^[1] of the Regional Trial Court of Makati City, Branch 138 in Civil Case No. 00-1589.

Plaintiff-appellant Finvest Securities Corporation Inc. (Finvest for brevity) is a stock brokerage corporation duly organized under the Philippine laws and is a member of the Philippine Stock Exchange Incorporated (PSE) with one membership seat pledged with the latter. Defendant-appellant Armand O. Raquel-Santos was Finvest's president and nominee to the PSE from February 20, 1990 to July 16, 1998. Defendant-appellant Annalissa Mallari was Finvest's administrative officer until December 31, 1998.

In the course of Finvest's operations, it incurred liabilities to PSE representing mandated clearing house obligations with corresponding fines and other penalties. PSE was also able to receive complaints that Finvest was not meeting its obligations to its clients. On June 17, 1998, PSE sent a letter to Finvest through its president, herein defendant-appellant Armand O. Raquel-Santos, demanding that Finvest settle its obligations to PSE and the claims of its clients within fifteen (15) days from receipt thereof. Upon failure of Finvest to comply with the June 17, 1998 letter, PSE sought authority from the Securities and Exchange Commission (SEC) to take over the operations of Finvest pursuant to Section 22(5) 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 and to continue preserving the latter's assets. Finvest was duly informed of the SEC's decision. On April 26, 1999, Finvest requested for a hearing to determine the exact amount of its commitments and for the resumption of its operations. PSE responded on April 29, 1999 by informing Finvest that they only have May 31, 1999 to settle all its obligations or else PSE will be forced to recommend to the SEC the liquidation of its assets and enforce the payment of its obligations by selling its seat at public auction. Finvest protested the imposition of the May 31, 1999 deadline for being arbitrary because the claims against it have not yet been established.

Faced with mounting complaints from clients and demands from PSE to settle its obligations, Finvest filed a complaint^[2] with the SEC for accounting and damages

with prayer for a temporary restraining order against defendants-appellants Armand O. Raquel-Santos and Annalissa Mallari, its former president and administrative officer respectively, imputing against them the commission of illegal acts causing severe damage to the company. Finvest also impleaded PSE as a defendant allegedly for violating its right to due process when it indefinitely suspended Finvest's operation and for illegally and arbitrarily imposing upon Finvest fines and penalties.

On February 4, 2000, the SEC through its hearing panel rendered a Partial Judgment^[3] holding defendants-appellants Raquel-Santos and Mallari jointly and severally liable and ruled that "the fact alone that respondents Raquel-Santos and Mallari could not account for the funds or proceeds of sale of shares of stock and for the stock certificates when only they had the custody of these assets, leads to the conclusion that they were guilty of gross negligence or bad faith for wrongful disposition of these assets".^[4] A motion to set aside the partial judgment was filed alleging non-receipt of summons, nonetheless, the partial judgment attained its finality and a writ of execution was issued. Two separate notices of garnishments and sale were issued against the Manila Golf Shares and Sta. Elena Golf Shares of Raquel-Santos. On June 5, 2000, the hearing panel issued a writ of preliminary injunction^[5] enjoining the PSE from initiating the liquidation of Finvest and from selling its membership seat. On June 29, 2000 herein parties entered into an agreement, which was approved by the SEC en banc in its July 11, 2000 order.^[6] Embodied in the agreement were the parties conformity to have the case remanded to the hearing panel for further proceedings, for Raquel-Santos not to dispose nor transfer the properties garnished and the writs of garnishment previously issued will remain in force during the pendency of the case.

Upon the approval of the Securities Regulation Code, the instant case was transferred to the regional trial court. Before the court *a quo*, the parties filed several motions including Raquel-Santos' motion for lifting of garnishment on his Manila Golf Club shares, which was favorably acted upon as per court order^[7] dated October 2, 2001 emphasizing that no valid writ can be granted in the absence of proper accounting to determine the amount for which defendants are to be held jointly and severally liable to Finvest. PSE on the other hand filed a motion to dissolve the writ of preliminary injunction issued pursuant to the June 5, 2000 order of the SEC's hearing panel asserting that it has the legal obligation to make the appropriate recommendations to the SEC on whether or not it will be to the best interest of all concerned for Finvest to be liquidated at the soonest possible time. Spawned by the October 2, 2000 order were three more motions, to wit: (1) Omnibus motion for reconsideration and/or clarification with prayer for status quo order; (2) Motion to respect and/or enforce SEC en banc Order dated July 11, 2000, both filed by Finvest and (3) Third party claim to compel issuance of membership certificate filed by a certain Rodolfo Feliciano who purchased the Manila Golf shares of Raquel-Santos. The same were all denied by the court *a quo* in an order dated May 30, 2002.^[8]

Finvest then filed a petition for certiorari with a prayer for the issuance of temporary restraining order before the Court of Appeals.^[9] On December 9, 2002, the former fifth division of this Court granted the Finvest's petition and modified the October 2, 2001 decision of the court *a quo*, providing further that the sale of the share of

Raquel-Santos in the Manila Golf Club is 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.^[10]

On April 28, 2003, the court *a quo* issued the assailed judgment in Civil Case 00-1589, the dispositive portion of which reads:

“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.”^[11]

On September 12, 2003, Finvest sought a partial reconsideration of the April 28, 2003 judgment of the court *a quo*, praying therein: 1) for the correction of the date of issuance of the preliminary injunction mentioned in the judgment from June 21, 2000 to June 5, 2000; 2) that the indefinite suspension of Finvest by the PSE be lifted; 3) that Raquel-Santos and Mallari be ordered to render an accounting of the stock certificates listed in Annex “X” (instead of Annex “A” as written in the dispositive portion of the April 28, 2003 judgment) within a reasonable period of sixty (60) days from receipt of the ruling of the court *a quo*, and upon their failure to do so, to jointly and severally pay complainant the equivalent sum of eighteen million one hundred eighty four thousand eight hundred fifty-five pesos and eighty-nine centavos (P18,184,855.89) as of December 31, 1998; and 4) to order Raquel-Santos to liquidate his cash advances with Finvest amounting to three million one hundred forty-three thousand eight hundred twenty-three pesos and sixty-three centavos (P3,143,823.63) within a reasonable period of sixty (60) days from receipt of the ruling of the court or such amount of unliquidated cash advances in case of failure.^[12]

Acting on Finvest’s motion for partial reconsideration, the court *a quo* issued an Order^[13] dated February 1, 2005, the dispositive portion of which states:

“WHEREFORE, the 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 Corporation 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.”^[14]

Hence this appeal by the defendants PSE, Armand Raquel-Santos and Annalissa Mallari and partial appeal by plaintiff Finvest Securities Co., Inc.

Finvest raised the lone error, to *wit*: The trial court erred in not specifying the period and the amount of damages that the plaintiff-appellant may suffer should defendants-appellants Raquel-Santos and Mallari fail to render an accounting.^[15]

Defendants Raquel-Santos and Mallari on the other hand were not able to file their respective appellant’s brief. Thus, their appeal was considered abandoned by this

court in a resolution dated May 31, 2006.^[16]

For its part, PSE raised the following assignment of errors:

I

THE REGIONAL TRIAL COURT ERRED WHEN IT DID NOT CONSIDER THE PLEDGE AGREEMENT BETWEEN PLAINTIFF-APPELLEE AND DEFENDANT APPELLANT

II

THE REGIONAL TRIAL COURT ERRED WHEN IT HELD THAT PLAINTIFF-APPELLEE HAD NOT BEEN REMISS IN ADDRESSING ITS DISPUTE WITH THE PSE

III

THE REGIONAL TRIAL COURT ERRED WHEN IT HELD THAT, WHEN THE INTENT TO LIQUIDATE WAS MADE, THE ISSUES OF AMOUNT OF LIABILITY OF THE COMPLAINANT WAS STILL UNSETTLED

IV

THE HONORABLE REGIONAL TRIAL COURT ERRED WHEN IT DIRECTED THAT THE WRIT OF PRELIMINARY INJUNCTION ISSUED ON JUNE 21, 2000 BE DECLARED PERMANENT

V

THE HONORABLE REGIONAL TRIAL COURT ERRED WHEN IT DID NOT AWARD TO DEFENDANT-APPELLANT THE COMPULSORY COUNTERCLAIMS IT PRAYED FOR IN ITS ANSWER^[17]

We agree with Finvest that the court *a quo* erred in ruling that there is no need to provide for a period within which the defendants-appellants should render an accounting in view of Section 4 of Rule 39 of the Rules of Court, which states:

"SEC.4. Judgments not stayed by appeal. Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party."

There is nothing in the above-quoted provision that provides for a specific period within which the required accounting should be made. The rule simply provides for