

## FIRST DIVISION

[ G.R. No. 185024, April 24, 2017 ]

### JOSELITO HERNAND M. BUSTOS, PETITIONER, VS. MILLIANS SHOE, INC., SPOUSES FERNANDO AND AMELIA CRUZ, AND THE REGISTER OF DEEDS OF MARIKINA CITY, RESPONDENTS.

#### DECISION

##### SERENO, C.J.:

Before this Court is a Rule 45 Petition<sup>[1]</sup> assailing the Decision and the Resolution<sup>[2]</sup> of the Court of Appeals (CA). The CA did not find any grave abuse of discretion on the part of the Regional Trial Court, Imus, Cavite, Branch 21 (RTC). The RTC had issued Orders<sup>[3]</sup> refusing to exclude the subject property in the Stay Order pertaining to assets under rehabilitation of respondent Millians Shoe, Inc. (MSI).

#### FACTS OF THE CASE

Spouses Fernando and Amelia Cruz owned a 464-square-meter lot covered by Transfer Certificate of Title (TCT) No. N-126668.<sup>[4]</sup> On 6 January 2004, the City Government of Marikina levied the property for nonpayment of real estate taxes. The Notice of Levy was annotated on the title on 8 January 2004. On 14 October 2004, the City Treasurer of Marikina auctioned off the property, with petitioner Joselito Hernand M. Bustos emerging as the winning bidder.

Petitioner then applied for the cancellation of TCT No. N-126668. On 13 July 2006, the Regional Trial Court, Marikina City, Branch 273, rendered a final and executory Decision ordering the cancellation of the previous title and the issuance of a new one under the name of petitioner.<sup>[5]</sup>

Meanwhile, notices of *lis pendens* were annotated on TCT No. N-126668 on 9 February 2005.<sup>[6]</sup> These markings indicated that SEC Corp. Case No. 036-04, which was filed before the RTC and involved the rehabilitation proceedings for MSI, covered the subject property and included it in the Stay Order issued by the RTC dated 25 October 2004.<sup>[7]</sup>

On 26 September 2006, petitioner moved for the exclusion of the subject property from the Stay Order.<sup>[8]</sup> He claimed that the lot belonged to Spouses Cruz who were mere stockholders and officers of MSL. He further argued that since he had won the bidding of the property on 14 October 2004, or before the annotation of the title on 9 February 2005, the auctioned property could no longer be part of the Stay Order.

The RTC denied the entreaty of petitioner. It ruled that because the period of redemption up to 15 October 2005 had not yet lapsed at the time of the issuance of the Stay Order on 25 October 2004, the ownership thereof had not yet been

transferred to petitioner.<sup>[9]</sup>

Petitioner moved for reconsideration,<sup>[10]</sup> but to no avail.<sup>[11]</sup> He then filed an action for certiorari before the CA. He asserted that the Stay Order undermined the taxing powers of the local government unit. He also reiterated his arguments that Spouses Cruz owned the property, and that the lot had already been auctioned to him.

In the assailed Decision dated 12 June 2008, the CA brushed aside the claim that the suspension orders undermined the power to tax. As regards petitioner's main contention, the CA ruled as follows:

In the case at bar, the delinquent tax payers were the Cruz Spouses who were the registered owners of the said parcel of land at the time of the delinquency sale. The sale was held on October 14, 2004 and the Cruz Spouses had until October 15, 2005 within which to redeem the parcel of land. The stay order was issued on October 25, 2004 and inscribed at the back of the title on February 9, 2005, which is within the redemption period. The Cruz Spouses were still the owners of the land at the time of the issuance of the stay order. The said parcel of land which secured several mortgage liens for the account of MSI remains to be an asset of the Cruz Spouses, who are the stockholders and/or officers of MSI, a close corporation. Incidentally, as an exception to the general rule, in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations. Thus, the Cruz Spouses being stockholders of MSI are personally liable for the latter's debt and obligations.

Petitioner unsuccessfully moved for reconsideration. The CA maintained its ruling and even held that his prayer to exclude the property was time-barred by the 10-day reglementary period to oppose rehabilitation petitions under Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation.

Before this Court, petitioner maintains three points: (1) the Spouses Cruz are not liable for the debts of MSI; (2) the Stay Order undermines the taxing power of Marikina City; and (3) the time bar rule does not apply to him, because he is not a creditor of MSI.<sup>[12]</sup>

In their Comment,<sup>[13]</sup> respondents do not contest that Spouses Cruz own the subject property. Rather, respondents assert that as stockholders and officers of a close corporation, they are personally liable for its debts and obligations. Furthermore, they argue that since the Rehabilitation Plan of MSI has been approved, petitioner can no longer assail the same.

### **ISSUE OF THE CASE**

The controlling issue in this case is whether the CA correctly considered the properties of Spouses Cruz answerable for the obligations of MSI.

If the answer is in the affirmative, then the courts *a quo* correctly ruled that the Stay Order involving the assets of MSI included the property covered by TCT No. N-126668. Petitioner would also be considered a creditor of MSI who must timely file

an opposition to the proposed rehabilitation plan of the corporation.

## **RULING OF THE COURT**

We set aside rulings of the CA for lack of basis.

In finding the subject property answerable for the obligations of MSI, the CA characterized respondent spouses as stockholders of a close corporation who, as such, are liable for its debts. This conclusion is baseless.

To be considered a close corporation, an entity must abide by the requirements laid out in Section 96 of the Corporation Code, which reads:

*Sec. 96. Definition and applicability of Title.* - A close corporation, within the meaning of this Code, is one whose **articles of incorporation** provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code. x x x. (Emphasis supplied)

In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*,<sup>[14]</sup> this Court held that a narrow distribution of ownership does not, by itself, make a close corporation. Courts must look into the articles of incorporation to find provisions expressly stating that (1) the number of stockholders shall not exceed 20; or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation; or (3) the listing of the corporate stocks in any stock exchange or making a public offering of those stocks is prohibited.

Here, neither the CA nor the RTC showed its basis for finding that MSI is a close corporation. The courts *a quo* did not at all refer to the Articles of Incorporation of MSI. The Petition submitted by respondent in the rehabilitation proceedings before the RTC did not even include those Articles of Incorporation among its attachments.<sup>[15]</sup>

In effect, the CA and the RTC deemed MSI a close corporation based on the allegation of Spouses Cruz that it was so. However, mere allegation is not evidence and is not equivalent to proof.<sup>[16]</sup> **For this reason alone, the CA rulings should be set aside.**

Furthermore, we find that the CA seriously erred in portraying the import of Section 97 of the Corporation Code. Citing that provision, the CA concluded that "in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations."<sup>[17]</sup>