

SECOND DIVISION

[G.R. No. 172023, July 09, 2010]

HEIRS OF SANTIAGO C. DIVINAGRACIA, PETITIONERS, VS. HONORABLE J. CEDRICK O. RUIZ, PRESIDING JUDGE, BRANCH 39, REGIONAL TRIAL COURT, ILOILO CITY; GERRY D. SUMACULUB, AS CLERK OF COURT OF THE REGIONAL TRIAL COURT; CBS DEVELOPMENT CORPORATION, INC. (CBSDC) REPRESENTED BY ITS PRESIDENT AND CHIEF EXECUTIVE OFFICER, ROGELIO M. FLORETE, SR., AND DIAMEL INC., REPRESENTED BY ROGELIO M. FLORETE, SR., RESPONDENTS.

DECISION

CARPIO, J.:

The Case

For review^[1] is the 6 October 2005 Decision^[2] and 22 February 2006 Resolution^[3] of the Court of Appeals in CA-G.R. CEB-SP No. 00040. The Court of Appeals dismissed the petition for certiorari filed by petitioners seeking the nullification of the 13 October 2004 Resolution^[4] and the 17 November 2004 writ of execution^[5] issued in Corporate Case No. 02-27050. In the assailed resolution, the Court of Appeals denied reconsideration.

The Antecedents

The present controversy originated from Corporate Case No. 02-27050, which involved a Petition for Mandamus and Nullification of Delinquency Call and Issuance of Unsubscribed Shares filed by Santiago C. Divinagracia (Santiago) before the Regional Trial Court of Iloilo City.

Santiago alleged that he was then a stockholder of respondent CBS Development Corporation, Inc. (CBSDC), owning 3,000 shares, and was issued CBSDC certificates of stock for 750 shares. In petitioners' Memorandum, they alleged that Santiago opposed a proposal to authorize respondent Rogelio Florete, in his capacity as President of CBSDC, to mortgage all or substantially all of CBSDC's real properties to secure the loan obtained by Newsounds Broadcasting Network, Inc. (NBN), Consolidated Broadcasting System (CBS), and People's Broadcasting Services, Inc. (PBS). However, despite Santiago's and the other stockholders' protest, a majority, representing more than 2/3 of the outstanding capital stock of CBSDC, voted and approved the grant of such authority to the Board.

Subsequently, Santiago, as a dissenting stockholder, wrote a letter objecting to the mortgage and exercising his appraisal right under Section 81 of the Corporation Code. In response, the corporate secretary informed Santiago that a majority of CBSDC's Board of Directors approved the exercise of his appraisal right.

Thereafter, Santiago surrendered his stock certificates to CBSDC and then demanded an appraisal of his shares. The Board indefinitely postponed action on Santiago's appraisal right, to which Santiago protested. The corporate secretary denied Santiago's protest and informed him that his CBSDC shares, including those for which he was issued Certificates of Stock, were declared delinquent and were to be sold on auction on 12 February 2002.

On 6 February 2002, Santiago filed with the Regional Trial Court of Iloilo City a Petition for Mandamus and Nullification of Delinquency Call and Issuance of Unsubscribed Shares.

On 12 February 2002, Santiago's CBSDC shares were sold on auction to respondent Diamel, Inc. Consequently, Santiago filed an amended petition on 10 June 2002.

Private respondents filed an Answer with Compulsory Counterclaim.

On 14 April 2004, Santiago died and his heirs substituted him in the case.

On 12 August 2004, respondent Judge rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing disquisitions, the instant "Petition" and/or "Amended Petition" is/are hereby DISMISSED for utter lack of merit.

The "Compulsory Counterclaim[s]" of the herein corporate respondents CBS Development Corporation, Inc. (CBSDC) and Diamel, Inc. (Diamel) are hereby given DUE COURSE and GRANTED. Consequently, the Heirs of Santiago Divinagracia, namely:

| <u>NAME</u> | <u>RESIDENCE</u> |
|------------------------------|---|
| 1. Ma. Elena R. Divinagracia | 23 Delgado St., Iloilo City |
| 2. Elsa R. Divinagracia | No., 1 st Street Paradise Village Banilad, Cebu City |
| 3. Ruth Marie Divinagracia | R.Unit 4-C, Torre de Salcedo, Salcedo St., Legaspi Village, Makati City |
| 4. Liane Grace Divinagracia | R.23 Delgado St., Iloilo City |
| 5. Ricardo R. Divinagracia | 16 Fajardo St., Jaro, Iloilo City |
| 6. Ma. Fe Emily Divinagracia | R.23 Delgado St., Iloilo City |

("Notice of Death And Substitution Of Parties," page 1) are hereby ordered, jointly and severally, to pay each of the aforementioned

corporations the following, to wit:

1. ONE HUNDRED THOUSAND PESOS (P100,000.00) as and for exemplary damages; and
2. ONE HUNDRED THOUSAND PESOS (P100,000.00) as and for attorney's fees.

No pronouncement as to costs.

SO ORDERED.^[6]

On 26 August 2004, petitioners filed a Notice of Appeal of the trial court's decision.

On the other hand, private respondents filed on 30 August 2004 a Motion for Immediate Execution of the trial court's decision, which petitioners opposed.

On 13 October 2004, respondent Judge issued a Resolution granting the motion and ordering the issuance of a writ of execution.

On 18 October 2004, petitioners filed a Petition for Certiorari^[7] with Prayer for Temporary Restraining Order and Writ of Injunction before the Court of Appeals-Cebu City assailing the 13 October 2004 Resolution.

Meanwhile, on 17 November 2004, the trial court issued a writ of execution.

On 6 October 2005, the Court of Appeals rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed resolution issued by the respondent judge on August 12, 2004^[8] in Corporate Case No. 02-27050.

SO ORDERED.^[9]

On 22 February 2006, the Court of Appeals denied the motion for reconsideration.

Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals found no grave abuse of discretion in respondent judge's granting of private respondents' motion for immediate execution of the 12 August 2004 decision in Corporate Case No. 02-27050. According to the Court of Appeals, respondent judge acted pursuant to Section 4, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) which provides that "all