

SECOND DIVISION

[G.R. No. 165443, April 16, 2009]

CALATAGAN GOLF CLUB, INC. PETITIONER, VS. SIXTO CLEMENTE, JR., RESPONDENT.

DECISION

TINGA, J.:

Seeking the reversal of the Decision^[1] dated 1 June 2004 of the Court of Appeals in CA-G.R. SP No. 62331 and the reinstatement of the Decision dated 15 November 2000 of the Securities and Exchange Commission (SEC) in SEC Case No. 04-98-5954, petitioner Calatagan Golf Club, Inc. (Calatagan) filed this Rule 45 petition against respondent Sixto Clemente, Jr. (Clemente).

The key facts are undisputed.

Clemente applied to purchase one share of stock of Calatagan, indicating in his application for membership his mailing address at "Phimco Industries, Inc. - P.O. Box 240, MCC," complete residential address, office and residence telephone numbers, as well as the company (Phimco) with which he was connected, Calatagan issued to him Certificate of Stock No. A-01295 on 2 May 1990 after paying P120,000.00 for the share.^[2]

Calatagan charges monthly dues on its members to meet expenses for general operations, as well as costs for upkeep and improvement of the grounds and facilities. The provision on monthly dues is incorporated in Calatagan's Articles of Incorporation and By-Laws. It is also reproduced at the back of each certificate of stock.^[3] As reproduced in the dorsal side of Certificate of Stock No. A-01295, the provision reads:

5. The owners of shares of stock shall be subject to the payment of monthly dues in an amount as may be prescribed in the by-laws or by the Board of Directors which shall in no case be less than [sic] P50.00 to meet the expenses for the general operations of the club, and the maintenance and improvement of its premises and facilities, in addition to such fees as may be charged for the actual use of the facilities x x x

When Clemente became a member the monthly charge stood at P400.00. He paid P3,000.00 for his monthly dues on 21 March 1991 and another P5,400.00 on 9 December 1991. Then he ceased paying the dues. At that point, his balance amounted to P400.00.^[4]

Ten (10) months later, Calatagan made the initial step to collect Clemente's back accounts by sending a demand letter dated 21 September 1992. It was followed by

a second letter dated 22 October 1992. Both letters were sent to Clemente's mailing address as indicated in his membership application but were sent back to sender with the postal note that the address had been closed.^[5]

Calatagan declared Clemente delinquent for having failed to pay his monthly dues for more than sixty (60) days, specifically P5,600.00 as of 31 October 1992. Calatagan also included Clemente's name in the list of delinquent members posted on the club's bulletin board. On 1 December 1992, Calatagan's board of directors adopted a resolution authorizing the foreclosure of shares of delinquent members, including Clemente's; and the public auction of these shares.

On 7 December 1992, Calatagan sent a third and final letter to Clemente, this time signed by its Corporate Secretary, Atty. Benjamin Tanedo, Jr. The letter contains a warning that unless Clemente settles his outstanding dues, his share would be included among the delinquent shares to be sold at public auction on 15 January 1993. Again, this letter was sent to Clemente's mailing address that had already been closed.^[6]

On 5 January 1993, a notice of auction sale was posted on the Club's bulletin board, as well as on the club's premises. The auction sale took place as scheduled on 15 January 1993, and Clemente's share sold for P64,000.^[7] According to the Certificate of Sale issued by Calatagan after the sale, Clemente's share was purchased by a Nestor A. Virata.^[8] At the time of the sale, Clemente's accrued monthly dues amounted to P5,200.00.^[9] A notice of foreclosure of Clemente's share was published in the 26 May 1993 issue of the *Business World*.^[10]

Clemente learned of the sale of his share only in November of 1997.^[11] He filed a claim with the Securities and Exchange Commission (SEC) seeking the restoration of his shareholding in Calatagan with damages.

On 15 November 2000, the SEC rendered a decision dismissing Clemente's complaint. Citing Section 69 of the Corporation Code which provides that the sale of shares at an auction sale can only be questioned within six (6) months from the date of sale, the SEC concluded that Clemente's claim, filed four (4) years after the sale, had already prescribed. The SEC further held that Calatagan had complied with all the requirements for a valid sale of the subject share, Clemente having failed to inform Calatagan that the address he had earlier supplied was no longer his address. Clemente, the SEC ruled, had acted in bad faith in assuming as he claimed that his non-payment of monthly dues would merely render his share "inactive."

Clemente filed a petition for review with the Court of Appeals. On 1 June 2004, the Court of Appeals promulgated a decision reversing the SEC. The appellate court restored Clemente's one share with a directive to Calatagan to issue in his a new share, and awarded to Clemente a total of P400,000.00 in damages, less the unpaid monthly dues of P5,200.00.

In rejecting the SEC's finding that the action had prescribed, the Court of Appeals cited the SEC's own ruling in SEC Case No. 4160, *Caram v. Valley Golf Country Club, Inc.*, that Section 69 of the Corporation Code specifically refers to unpaid subscriptions to capital stock, and not to any other debt of stockholders. With the

insinuation that Section 69 does not apply to unpaid membership dues in non-stock corporations, the appellate court employed Article 1140 of the Civil Code as the proper rule of prescription. The provision sets the prescription period of actions to recover movables at eight (8) years.

The Court of Appeals also pointed out that since that Calatagan's first two demand letters had been returned to it as sender with the notation about the closure of the mailing address, it very well knew that its third and final demand letter also sent to the same mailing address would not be received by Clemente. It noted the by-law requirement that within ten (10) days after the Board has ordered the sale at auction of a member's share of stock for indebtedness, the Corporate Secretary shall notify the owner thereof and advise the Membership Committee of such fact. Finally, the Court of Appeals ratiocinated that "a person who is in danger of the imminent loss of his property has the right to be notified and be given the chance to prevent the loss."^[12]

Hence, the present appeal.

Calatagan maintains that the action of Clemente had prescribed pursuant to Section 69 of the Corporation Code, and that the requisite notices under both the law and the by-laws had been rendered to Clemente.

Section 69 of the Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within six (6) months from the date of sale. As correctly pointed out by the Court of Appeals, Section 69 is part of Title VIII of the Code entitled "Stocks and Stockholders" and refers specifically to unpaid subscriptions to capital stock, the sale of which is governed by the immediately preceding Section 68.

The Court of Appeals debunked both Calatagan's and the SEC's reliance on Section 69 by citing another SEC ruling in the case of *Caram v. Valley Golf*. In connection with Section 69, Calatagan raises a peripheral point made in the SEC's *Caram* ruling. In *Caram*, the SEC, using as take-off Section 6 of the Corporation Code which refers to "such rights, privileges or restrictions as may be stated in the articles of incorporation," pointed out that the Articles of Incorporation of Valley Golf does not "impose any lien, liability or restriction on the Golf Share [of Caram]," but only its (Valley Golf's) By-Laws does. Here, Calatagan stresses that its own Articles of Incorporation does provide that the monthly dues assessed on owners of shares of the corporation, along with all other obligations of the shareholders to the club, "shall constitute a first lien on the shares... and in the event of delinquency such shares may be ordered sold by the Board of Directors in the manner provided in the By-Laws to satisfy said dues or other obligations of the shareholders."^[13] With its illative but incomprehensible logic, Calatagan concludes that the prescriptive period under Section 69 should also apply to the sale of Clemente's share as the lien that Calatagan perceives to be a restriction is stated in the articles of incorporation and not only in the by-laws.

We remain unconvinced.

There are fundamental differences that defy equivalence or even analogy between the sale of delinquent stock under Section 68 and the sale that occurred in this case.

At the root of the sale of delinquent stock is the non-payment of the subscription price for the share of stock itself. The stockholder or subscriber has yet to fully pay for the value of the share or shares subscribed. In this case, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. Perhaps the analogy could have been made if Clemente had not yet fully paid for his share and the non-stock corporation, pursuant to an article or by-law provision designed to address that situation, decided to sell such share as a consequence. But that is not the case here, and there is no purpose for us to apply Section 69 to the case at bar.

Calatagan argues in the alternative that Clemente's suit is barred by Article 1146 of the Civil Code which establishes four (4) years as the prescriptive period for actions based upon injury to the rights of the plaintiff on the hypothesis that the suit is purely for damages. As a second alternative still, Calatagan posits that Clemente's action is governed by Article 1149 of the Civil Code which sets five (5) years as the period of prescription for all other actions whose prescriptive periods are not fixed in the Civil Code or in any other law. Neither article is applicable but Article 1140 of the Civil Code which provides that an action to recover movables shall prescribe in eight (8) years. Calatagan's action is for the recovery of a share of stock, plus damages.

Calatagan's advertence to the fact that the constitution of a lien on the member's share by virtue of the explicit provisions in its Articles of Incorporation and By-Laws is relevant but ultimately of no help to its cause. Calatagan's Articles of Incorporation states that the "dues, together with all other obligations of members to the club, shall constitute a first lien on the shares, second only to any lien in favor of the national or local government, and in the event of delinquency such shares may be ordered sold by the Board of Directors in the manner provided in the By-Laws to satisfy said dues or other obligations of the stockholders."^[14] In turn, there are several provisions in the By-laws that govern the payment of dues, the lapse into delinquency of the member, and the constitution and execution on the lien. We quote these provisions:

ARTICLE XII - MEMBER'S ACCOUNT

SEC. 31. (a) Billing Members, Posting of Delinquent Members - The Treasurer shall bill all members monthly. As soon as possible after the end of every month, a statement showing the account of bill of a member for said month will be prepared and sent to him. If the bill of any member remains unpaid by the 20th of the month following that in which the bill was incurred, the Treasurer shall notify him that if his bill is not paid in full by the end of the succeeding month his name will be posted as delinquent the following day at the Clubhouse bulletin board. While posted, a member, the immediate members of his family, and his guests, may not avail of the facilities of the Club.

(b) Members on the delinquent list for more than 60 days shall be reported to the Board and their shares or the shares of the juridical entities they represent shall thereafter be ordered sold by the Board at auction to satisfy the claims of the Club as provided for in Section 32 hereon. A member may pay his overdue account at any time before the auction sale.