

SECOND DIVISION

[G.R. No. 172449, August 20, 2008]

LAZARO MADARA, ALFREDO D. ROA III, AND JOAQUIN T. VENUS, PETITIONERS, VS. HON. NORMA C. PERELLO, PRESIDING JUDGE OF BRANCH 276, REGIONAL TRIAL COURT, MUNTINLUPA CITY, FELIX M. FALCOTELO, SHERIFF-IN-CHARGE MUNTINLUPA CITY, PHILIPPINE AMUSEMENT AND GAMING CORPORATION, AND PROVIDENT INTERNATIONAL RESOURCES CORPORATION, REPRESENTED BY EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LYDIA J. CHUANICO, DANIEL T. PASCUAL, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY, CELEDONIO P. ESCANO, JR., AND THE REGISTER OF DEEDS OF MUNTINLUPA CITY, RESPONDENTS.

D E C I S I O N

BRION, J.:

Submitted for our decision is the Amended Petition for Review on *Certiorari*^[1] of the Decision of the Court of Appeals dated 20 December 2005^[2] and its Resolution dated 24 April 2006^[3] in **CA-G.R. SP No. 90821**,^[4] filed by the petitioners Lazaro Madara (*Madara*), Alfredo D. Roa III (*Roa*), and Joaquin T. Venus (*Venus*) [collectively, the *petitioners*].

THE ANTECEDENTS

The amended petition originated from two (2) separate amended complaints *purportedly* filed by Provident International Resources Corporation as plaintiff (***plaintiff PIRC***) with the Regional Trial Court of Muntinlupa City. [As the narration below will show, two groups claim to represent the PIRC; to distinguish between them when necessary, one is herein named the *plaintiff PIRC* while the other is the *real PIRC*.]

The **first amended complaint**, filed on 15 October 2002 and entitled *Provident International Resources Corporation v. Philippine Amusement and Gaming Corp. (PAGCOR), Mr. Efraim Genuino, as Chairman, Mr. Rafael Francisco, as President, JOHN DOES AND JANE DOES*, was docketed as Civil Case No. 02-228.^[5] The amended complaint states, among others, that: **(1)** the petitioners Madara, Roa and Venus, as well as Jose Ma. Carlos Zumel and Luis A. Asistio, were elected plaintiff PIRC's directors for the year 2002-2003 and that some of them, as well as a certain Santiago Alvarez (*Alvarez*) who was elected General Manager, were subsequently elected corporate officers; **(2)** despite information to PAGCOR (the lessee of one of the PIRC properties) of the election of the new set of directors and corporate officers, PAGCOR continued to remit its lease rentals to PIRC's *former* corporate officers. The amended complaint asks: **(1)** that PAGCOR be ordered to pay its

monthly lease rentals to Roa and/or Alvarez, and/or any of their authorized representatives and no other; and **(2)** for the issuance of a temporary restraining order and a writ of preliminary mandatory injunction. Roa, as the President of plaintiff PIRC, verified the complaint while Venus, in his capacity as plaintiff PIRC's Corporate Secretary, signed the Secretary's Certificate attesting to Roa's authority to institute the action.

An **Answer in Intervention**^[6] was filed also in the name of PIRC (*real PIRC*) and the herein private respondents Constancio D. Francisco (*Francisco*), Edward T. Marcelo (*Edward Marcelo*), Lydia J. Chuanico (*Chuanico*), Daniel T. Pascual (*Pascual*) and Anna Melinda Marcelo-Revilla (*Marcelo-Revilla*). The pleading essentially states that the private respondents, rather than the petitioners, are the *bona fide* directors and officers of PIRC and that the petitioners, Zumel, Asistio and Valdez are not even stockholders of PIRC - they are mere pretenders who intended to grab power and control of PIRC. The private respondents asked for: **(1)** the denial of the injunctive reliefs asked in the amended complaint; **(2)** the dismissal of the complaint; and **(3)** damages and attorney's fees.

The **second amended complaint**, filed on 5 December 2002, was docketed as Civil Case No. 02-238 and entitled *Provident International Resources Corporation v. Edward T. Marcelo, Constancio D. Francisco, Anna Melinda Marcelo-Revilla, Linda J. Marcelo, John J. Marcelo, Celia C. Caburnay and Celedonio P. Escaño, Jr.*^[7] The complaint essentially alleges that: (1) the original incorporators of PIRC - Chuanico, Francisco, Jose A. Lazaro, Edward Marcelo and Pascual - merely held the initial paid-up stockholdings in trust for the real stockholders - the petitioners, Zumel and Asistio; thus, the incorporators at the time of PIRC's incorporation in 1979 executed Deeds of Assignment in blank, Deeds of Transfer in blank, waiver of pre-emptive rights and endorsement in blank of their stock certificates; (2) on 7 August 2002, the blank deeds and transfer documents were completed to effect the transfer to the petitioners, Zumel and Asistio; (3) at a stockholder's meeting, it was agreed that the PIRC directors who have not voluntarily resigned shall be considered removed and an election of new directors conducted; at this election, the petitioners, Zumel and Asistio were elected new directors and following an organizational meeting, the new board elected a new set of PIRC officers; (4) despite the election of the new set of PIRC officers, the named defendants continue to unlawfully exercise possession of the PIRC office, misrepresent themselves as directors and officers of PIRC and unlawfully exercise acts on behalf of PIRC; all these malicious acts caused PIRC damage and prejudice.

The second complaint asks for the issuance of a temporary restraining order and a writ of preliminary injunction and/or preliminary mandatory injunction and also a permanent injunction to enjoin the named defendants from acting as directors and officers of PIRC and from taking custody of corporate records. As in the first amended complaint, the complaint was verified by Roa and the Secretary's Certificate attesting to Roa's authority was signed by Venus.

In their **Answer to the Amended Complaint in Civil Case No. 02-238** (i.e., to the second complaint), with **(1)** Motion to Implead the Real PIRC and the Fraudulent Interlopers as Indispensable Parties **(2)** Motion for Preliminary Hearing on Affirmative Defenses and **(3)** Compulsory Counterclaims,^[8] the named defendants (except PAGCOR and its officers) in both Civil Case No. 02-228 and Civil Case No.

02-238 maintained that they are the genuine directors and officers of PIRC. The named defendants asked for: **(1)** the addition of the petitioners, Zumel and Asistio as parties-plaintiffs and the **real PIRC** as party-defendant; **(2)** the dismissal of the complaint in Civil Case No. 02-238 after hearing on the affirmative defenses; **(3)** the issuance of a writ of permanent injunction against the petitioners, Zumel and Asistio; and **(4)** that they be ordered to solidarily pay the named defendants and real PIRC moral, exemplary, actual and nominal damages, attorney's fees, litigation expenses and treble costs.

The two amended complaints were consolidated and were raffled to Branch 256 of the RTC Muntinlupa City which issued a 20-day temporary restraining order. **PAGCOR complied with the temporary restraining order by remitting the rental to Alvarez. Thereafter, the Presiding Judge of Branch 256 inhibited himself from the case.** The case was thereafter assigned to Branch 276 of the RTC Muntinlupa City (RTC) which, in turn, issued the preliminary prohibitory injunction that the private respondents prayed for.^[9]

After trial and submission of all relevant evidence in the consolidated cases, the RTC ruled in favor of the intervenors-defendants (the private respondents herein), finding them to be the true and duly constituted members of the board of directors and the duly elected officers of PIRC. The RTC found as well that the petitioners were non-PIRC stockholders and therefore were not qualified for election either as directors or corporate officers. Having therefore no right to receive the lease rentals due from PAGCOR, the RTC ordered the petitioners to jointly return to the **real PIRC** the rental payments for the period covering October 19 to November 18, 2002. The petitioners, as well as Zumel and Asistio, were also ordered to pay the private respondents damages in the amount of P5,000,000.00, attorney's fees of P500,000.00 and the actual cost of litigation. The dispositive part of the **RTC decision** reads:

PRESCINDING, the PETITION FOR MANDATORY INJUNCTION is never denied (*sic*). But the Preliminary Prohibitory Injunction, issued for the INTERVENORS/DEFENDANTS is made permanent, and the Group of plaintiffs directed to permanently desists (*sic*) and stop from disturbing the operation of the Corporation by the same INTERVENOR/DEFENDANTS, who are found to be the true and duly constituted Officers of the Corporation, legally voted as such Officers and as Members of the Board of Directors. The Civil Complaint against them, Civil Case Nos. 02-238 is hereby dismissed.

It has been shown that the Group of Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. never had any right to receive rental from defendant PHILIPPINE AMUSEMENT AND GAMING CORPORATION. This Group of Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. are therefore directed to jointly and unilaterally return to the Corporation the rental payments for the month of October 19 to November 18, 20002, which they collectively receive, without any right to collect and receive such rental.

Since by reason of this suit it has been shown that the

Intervenors/Defendants, being EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, sustained injuries and damages not only to the reputation of the corporation but also personally as officers and members of the Corporation Board, damages is tolled against the Plaintiffs, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. which they must pay jointly and unilaterally to the Intervenors/Defendants, being EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, JR. in the sum of FIVE MILLION PESOS (P5,000,000.00).

Since Intervenors/Defendants EDWARD T. MARCELO, CONSTANCIO D. FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LINDA J. MARCELO, JOHN J. MARCELO, CELIA C. CABURNAY and CELEDONIO P. ESCAÑO, JR. were forced to litigate and defend themselves thru counsel, attorney's fees in the sum of FIVE HUNDRED THOUSAND PESOS (P 500,000.00) JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA, JOAQUIN T. VENUS and SANTIAGO ALVAREZ, JR. which they must pay jointly and unilaterally.

The actual cost of this litigation is also tolled against the Group of plaintiffs.

SO ORDERED.^[10]

The plaintiff PIRC filed a **Notice of Appeal** on 16 May 2005.^[11] The private respondents opposed on the ground that the petitioners had taken a wrong mode of review; under the Interim Rules and Procedures governing intra-corporate controversies, as amended by Resolution En Banc, A.M. No. 04-9-07, the party aggrieved by the decision of a commercial/corporate court has fifteen (15) days from receipt of the decision within which to file a Petition for Review under Rule 43 with the Court of Appeals, not a Notice of Appeal.^[12] The private respondents also filed a **Motion to Disregard Notice of Appeal and For Entry of Judgment**^[13] and a **Motion for Immediate Issuance of Writ of Execution**.^[14] The plaintiff PIRC's response was a **Manifestation, In lieu of Opposition** asking that the RTC consider its Notice of Appeal as withdrawn.^[15]

Roa, Madara, Venus and Alvarez, then filed a **Motion to Admit Petition for Review** with the attached **Petition for Review** dated June 13, 2005^[16] with the Court of Appeals. The petition was filed by the petitioners and Santiago Alvarez^[17] and was docketed **CA-G.R. SP No. 90147**. Via an Ex-Parte Manifestation and Motion dated 20 June 2005,^[18] they asked the Court of Appeals to consider their petition for review as withdrawn.

The petitioners then filed before the trial court a **Petition for Relief from Judgment** dated 28 June 2005,^[19] alleging that: **(1)** they were prevented from (a) presenting rebuttal evidence, or at the very least, taking an appeal from the supposed denial of their motion to present rebuttal evidence, (b) filing a

memorandum and (c) sufficiently proving their case through fraud, mistake or excusable negligence; and **(2)** they have good and substantial causes of action. They asked: **(1)** for the issuance of a temporary restraining order and/or preliminary injunction; **(2)** the setting aside of the RTC decision dated 23 April 2005; and **(3)** a permanent injunction enjoining the private respondents from acting as directors and officers of PIRC.

In an **Order dated 30 June 2005**^[20] that resolved the incidents pending before it (namely, the Notice of Appeal, the Opposition thereto, and private respondents' motion for the immediate issuance of the writ of execution), the RTC ruled that its decision had become final and executory and entry of judgment was in order. The RTC cited as basis the procedural errors the plaintiff PIRC committed in filing a notice of appeal instead of a petition for review, and in later filing a belated petition for review. The RTC also granted the private respondents' motion for the issuance of a writ of execution.

The RTC denied in its **Order dated 1 July 2005** the petition for relief from judgment for deficiency in form and substance.^[21]

Meanwhile, in a Resolution promulgated on 19 July 2005, the Court of Appeals granted the petitioners' ***Ex-Parte Manifestation and Motion in CA-G.R. SP No. 90147***, resulting in the withdrawal of the Petition for Review.

On July 19, 2005, the **plaintiff ROA group** filed a ***Very Urgent Motion [To Quash or Recall Writ of Execution]***.^[22] The petitioners then filed a **Motion for Reconsideration** dated 26 July 2005 of the RTC Order of July 1, 2005.^[23]

These RTC incidents were still pending resolution when the petitioners filed on August 10, 2005, a **Petition for Certiorari**^[24] under Rule 65 of the Revised Rules of Court with the Court of Appeals, assailing on the ground of grave abuse of discretion the following orders issued by the RTC and the various notices issued by the sheriff -

- a. Decision dated 23 April 2005
- b. **Order dated 30 June 2005**
- c. Writ of Execution dated 5 July 2005
- d. **Order dated 1 July 2005**
- e. Notice to Pay dated 7 July 2005
- f. Notice of Levy on Execution dated 14 July 2005
- g. Notice of Sale on Execution of Real Property dated 14 July 2005
- h. Notice to Parties of Sheriff's Auction Sale dated 17 July 2005

The petition was docketed as **CA-G.R. SP No. 90821**. The petition essentially imputed grave abuse of discretion on the public respondents for issuing the assailed