

## THIRD DIVISION

[ G.R. No. 170585, October 06, 2008 ]

**DAVID C. LAO AND JOSE C. LAO, PETITIONERS, VS. DIONISIO C. LAO, RESPONDENT.**

### DECISION

**REYES, R.T., J.:**

IS the mere inclusion as shareholder in the General Information Sheet of a corporation sufficient proof that one is a shareholder in such corporation?

This is the main question for resolution in this petition for review on *certiorari* of the Amended Decision<sup>[1]</sup> of the Court of Appeals (CA) affirming the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 11, Cebu City in CEB-25916-SRC.

#### The Facts

On October 15, 1998, petitioners David and Jose Lao filed a petition with the Securities and Exchange Commission (SEC) against respondent Dionisio Lao, president of Pacific Foundry Shop Corporation (PFSC). Petitioners prayed for a declaration as stockholders and directors of PFSC, issuance of certificates of shares in their name and to be allowed to examine the corporate books of PFSC.<sup>[3]</sup>

Petitioners claimed that they are stockholders of PFSC based on the General Information Sheet filed with the SEC, in which they are named as stockholders and directors of the corporation. Petitioner David Lao alleged that he acquired 446 shares in PFSC from his father, Lao Pong Bao, which shares were previously purchased from a certain Hipolito Lao. Petitioner Jose Lao, on the other hand, alleged that he acquired 333 shares from respondent Dionisio Lao himself.<sup>[4]</sup>

Respondent denied petitioners' claim. He alleged that the inclusion of their names in the corporation's General Information Sheet was inadvertently made. He also claimed that petitioners did not acquire any shares in PFSC by any of the modes recognized by law, namely subscription, purchase, or transfer. Since they were neither stockholders nor directors of PFSC, petitioners had no right to be issued certificates or stocks or to inspect its corporate books.<sup>[5]</sup>

On June 19, 2000, Republic Act 8799, otherwise known as the Securities Regulation Code, was enacted, transferring jurisdiction over all intra-corporate disputes from the SEC to the RTC. Pursuant to the law, the petition with the SEC was transferred to the RTC in Cebu City and docketed as Civil Case No. CEB-25916-SRC. The case was consolidated with another intra-corporate dispute, Civil Case No. CEB-25910-SRC, filed by the Heirs of Uy Lam Tiong against respondent Dionisio Lao.<sup>[6]</sup>

During pre-trial, the parties agreed to submit the case for resolution based on the evidence on record.<sup>[7]</sup>

### **RTC Disposition**

On December 19, 2001, the RTC rendered a Joint Decision<sup>[8]</sup> with the following pertinent disposition, thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court in these cases:

(a) Denying the petition of David C. Lao and Jose C. Lao to be recognized as stockholders and directors of Pacific Foundry Shop Corporation, to be issued certificates of stock of said corporation and to be allowed to exercise rights of stockholders of the same corporation.<sup>[9]</sup>

In denying the petition, the RTC ratiocinated:

x x x Thus, the petitioners David C. Lao and Jose C Lao do not appear to have become registered stockholders of Pacific Foundry Shop corporation, as they do not appear to have acquired shares of stock of the corporation either as subscribers or by purchase from a holder of outstanding shares or by purchase from the corporation of additionally issued shares.

x x x x

Secondly, the claim or contention of the petitioners David C. Lao and Jose C. Lao is wanting in merit because they have no stock certificates in their names. A stock certificate, as we very well know, is the evidence of ownership of corporate stock. If ever the said petitioners acquired shares of stock of the corporation, there is a need for their acquisition of said shares to be registered in the Stock and Transfer Book of the corporation. Registration is necessary to entitle a person to exercise the rights of a stockholder and to hold office as director or other offices (12 Fletcher 343). That is why it is explicitly provided in Section 63 of the Corporation Code of the Philippines that no transfer of shares of stock shall be valid until the transfer is recorded in the books of the corporation. An unregistered transfer is not valid as against the corporation (*Uson vs. Diosomito*, 61 Phil. 535). A transfer must be registered, or at least notice thereof given to the corporation for the purpose of registration, before the transferee can acquire any right as against the corporation other than the right to have the transfer registered (12 Fletcher 339). An unrecorded transferee can not enjoy the status of a stockholder, he can not vote nor he voted for (*Price & Sulu Development Corp. vs. Martin*, 58 Phil. 707). Until the transfer is registered, the transferee is not a stockholder but an outsider (*Rivera vs. Florendo*, G.R. No. L-57586, October 8, 1986). So, a person who has acquired or purchased shares of stock of a corporation, and who desires to be recognized as stockholder for the purpose of voting and exercising other rights of a stockholder, must secure such a standing by having the acquisition or transfer recorded in the corporate books (*Price & Sulu development Corp. vs. Martin*, supra). Unfortunately, in the cases at bench, the petitioners David

C. Lao and Jose C. Lao did not secure such a standing. Consequently, their petition to be recognized as stockholders of Pacific Foundry Shop Corporation must fail.<sup>[10]</sup>

Petitioners appealed to the CA.

### **CA Disposition**

On May 27, 2005, the CA rendered a Decision<sup>[11]</sup> modifying that of the RTC, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered modifying the Joint Decision dated December 19, 2001 of the trial court in so far as it relates to Civil Case No. CEB-25916-SRC by:

(a) Declaring that petitioners have owned since 1987 shares of stock in Pacific Foundry Shop Corporation, numbering 446 for petitioner-appellant David C. Lao and 333 for petitioner-appellant Jose C. Lao;

(b) Ordering respondent-appellee through the corporate secretary to issue to petitioners-appellants the certificates of stock for the aforementioned number of shares;

(c) Ordering respondent-appellee, as President of Pacific Foundry Shop Corporation, to allow petitioners-appellants to exercise their rights as stock holders;

(d) Ordering respondent-appellee to call a stockholders meeting every fourth Saturday of January in accordance with the By-Laws of Pacific Foundry shop Corporation.<sup>[12]</sup>

The CA decision was penned by Justice Arsenio Magpale and concurred in by Justices Sesinando Villon and Enrico Lanzanas.

In modifying the RTC decision, the appellate court gave credence to the General Information Sheet submitted by petitioners that names them as stockholders of PFSC, thus:

The General Information Sheet of PFSC for the years 1987-1998 state that petitioners-appellants David C. Lao and Jose C. Lao own 446 and 333 shares, respectively, in PFSC. It is also indicated therein that David C. Lao occupied various key positions in PFSC from 1987-1998 and Jose C. Lao served as Director in PFSC from 1990-1998. The Sworn Statements of Uy Lam Tiong, former corporate secretary of the PFSC, also state that petitioners-appellants David C. Lao and Jose C. Lao, per corporate records of PFSC, own shares of stock numbering 446 and 333, respectively. The minutes of the Annual Stockholders Meeting of PFSC on January 28, 1988 at 3:00 o'clock p.m. shows that among those present were petitioners-appellants David C. Lao and Jose C. Lao. During the said meeting, petitioner-appellant David C. Lao was nominated and elected Director of PFSC. Withal, the Minutes of the Meeting of the Board of Directors of PFSC at its Office at Hipodromo, Cebu City, on January 28,

1988 at 4:00 p.m. disclose that petitioner-appellant David C. Lao was elected vice-president of PFSC. Both minutes were signed by the officers of PFSC including respondent-appellee.<sup>[13]</sup>

Respondent filed a motion for reconsideration<sup>[14]</sup> of the CA decision.

On July 11, 2005, respondent moved to inhibit<sup>[15]</sup> the *ponente* of the CA decision, Justice Magpale, from resolving his pending motion for reconsideration.

On July 22, 2005, Justice Magpale issued a Resolution<sup>[16]</sup> voluntarily inhibiting himself from further participating in the resolution of the pending motion for reconsideration. Justice Magpale stated:

Although the undersigned *ponente* does not agree with the imputations of respondent-appellee and that the same are not any of those grounds mentioned in Rule 137 of the Revised Rules of Court, nonetheless the *ponente* voluntarily inhibits himself from further handling this case in order to free the entire court of the slightest suspicion of bias and prejudice against the respondent-appellee.<sup>[17]</sup>

### **Amended Decision**

On August 31, 2005, the CA rendered an Amended Decision<sup>[18]</sup> affirming that of the RTC, with a *fallo* reading:

IN VIEW OF THE FOREGOING, the May 27, 2005 Decision of this Court is hereby SET ASIDE and the Decision of the Regional Trial Court, Branch 11, Cebu City with respect to Civil Case No. 25916-SRC is hereby AFIRMED *in toto*.<sup>[19]</sup>

The Amended Decision was penned by Justice Enrico Lanzas and concurred in by Justices Seginando Villon and Vicente Yap. The CA stated:

Petitioners-appellants maintain that they acquired their shares of stocks through transfer - the third mode mentioned by the trial court. David C. Lao claims that he acquired his 446 shares through his father, Lao Pong Bao, when the latter purchased said shares from Hipolito Lao. On the other hand, Jose C. Lao asserts that he acquired his 333 shares through Dionisio C. Lao himself from the original 1,333 shares of stocks of the latter.

Petitioner-appellants asseverations are unavailing. To substantiate their statements, they merely relied on the General Information Sheets submitted to the Securities and Exchange Commission for the year 1987 to 1998, as well as on the Minutes of the Stockholders Meeting and Board of Directors Meeting held on January 28, 1988. They did not adduce evidence that would indubitably show that there was indeed a valid transfer of stocks, i.e. endorsement and delivery, from the transferors, Hipolito Lao and Dionisio Lao, to them as transferees.

To our mind, David C. Lao utterly failed to confute the argument posited by respondent-appellee or demonstrate compliance with any of the statutory requirements as to warrant a favorable ruling on his part. No proof was ever shown that there was endorsement and delivery to him of the stock certificates representing the 446 shares of Hipolito Lao. Neither was the transfer registered in PFSC's Stock and Transfer Book. Conversely, Dionisio C. Lao was able to show conformity with the aforementioned requirements. Accordingly, it is but logical to conclude that the certificate of stock covering 446 shares of Hipolito Lao was in fact endorsed and delivered to Dionisio C. Lao and as such is reflected in PFSC's Stock and Transfer Book x x x.

In fact, it is a rule that private transactions are presumed to have been faire and regular and that the regular course of business is presumed to have been followed. Thus, the transfer made by Hipolito Lao of the 446 shares of stocks to Dionisio C. Lao is deemed to have been valid and well-founded unless proven otherwise. David C. Lao's mere allegation that Dionisio Lao illegally appropriated upon himself the 446 shares failed to hurdle such presumption. In this jurisdiction, neither fraud nor evil is presumed and the record does not show either as to establish by clear and sufficient evidence that may lead Us to believe such allegation. The party alleging the same has the burden of proof to present evidence necessary to establish his claim, unfortunately however petitioners failed to do so. The General Information Sheets and the Minutes of the Meetings adduced by petitioners-appellants do not prove such allegation of fraud or deceit. In the absence thereof, the presumption remains that private transactions have been fair and regular.

As for the alleged shares of Jose C. Lao, We find his position identically situated with David C. Lao. There is also no evidence on record that would clearly establish how he acquired said shares of PFSC. Jose C. Lao failed to show that there was endorsement and delivery to him of the stock certificates or any documents showing such transfer or assignment. In fact, the 333 shares being claimed by him is still under the name of Dionisio C. Lao was reflected by the Certificate of Stock as well as in PFSC's Stock and Transfer Book. Corollary, Jose C. Lao could not be considered a stockholder of PFSC in the absence of support reflecting his right to the 333 shares other than the inclusion of his name in the General Information Sheets from 1987 to 1998 and the Minutes of the Stockholder's Meeting and Board of Director's Meeting.<sup>[20]</sup>

Petitioners moved for reconsideration but their motion was denied.<sup>[21]</sup> Hence, the present petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

### **Issues**

Petitioners raise five (5) issues for Our consideration, thus:

1. Whether or not the inhibition of Justice Arsenio J. Magpale is proper when there is no "extrinsic evidence of bias, bad faith, malice, or