

## **FIRST DIVISION**

**[ G.R. NO. 148004, January 22, 2007 ]**

**VINCENT E. OMICTIN, PETITIONER, VS. HON. COURT OF APPEALS (SPECIAL TWELFTH DIVISION) AND GEORGE I. LAGOS, RESPONDENTS.**

### **DECISION**

**AZCUNA, J.:**

This is a petition for certiorari<sup>[1]</sup> with prayer for a writ of preliminary injunction seeking the nullification of the decision rendered by the Court of Appeals (CA) on June 30, 2000, and its resolution, dated March 5, 2001 in CA-G.R. SP No. 55834 entitled "George I. Lagos v. Hon. Reinato G. Quilala, Presiding Judge of RTC, Br. 57, Makati, Hon. Elizabeth Tayo Chua, Asst. City Prosecutor, Makati City, and Vincent E. Omictin."

In its assailed decision, the CA declared the existence of a prejudicial question and ordered the suspension of the criminal proceedings initiated by petitioner Vincent E. Omictin on behalf of Saag Phils., Inc. against private respondent George I. Lagos, in view of a pending case before the Securities and Exchange Commission (SEC) filed by the latter against the former, Saag Pte. (S) Ltd., Nicholas Ng, Janifer Yeo and Alex Y. Tan.

The facts are as follows:

Petitioner Vincent E. Omictin, Operations Manager Ad Interim of Saag Phils., Inc., filed a complaint for two counts of estafa with the Office of the City Prosecutor of Makati against private respondent George I. Lagos. He alleged that private respondent, despite repeated demands, refused to return the two company vehicles entrusted to him when he was still the president of Saag Phils., Inc..

On February 26, 1999, public prosecutor Alex G. Bagaoisan recommended the indictment of private respondent, and on the same day, respondent was charged with the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code before the Regional Trial Court (RTC), Branch 57 of Makati City. The case was docketed as Criminal Case No. 99-633, entitled "People of the Philippines v. George I. Lagos."

On June 4, 1999, private respondent filed a motion to recuse praying that Presiding Judge Reinato G. Quilala inhibit himself from hearing the case based on the following grounds:

- a) In an order, dated May 28, 1999, the presiding judge summarily denied respondent's motion: 1) to defer issuance of the warrant of arrest; and 2) to order reinvestigation.

b) Immediately before the issuance of the above-mentioned order, the presiding judge and Atty. Alex Y. Tan, SAAG Philippines, Inc.'s Ad Interim President, were seen together.<sup>[2]</sup>

On June 24, 1999, private respondent filed a motion to suspend proceedings on the basis of a prejudicial question because of a pending petition with the Securities and Exchange Commission (SEC) involving the same parties.

It appears that on January 7, 1999, private respondent filed SEC Case No. 01-99-6185 for the declaration of nullity of the respective appointments of Alex Y. Tan and petitioner as President Ad Interim and Operations Manager Ad Interim of Saag Phils., Inc., declaration of dividends, recovery of share in the profits, involuntary dissolution and the appointment of a receiver, recovery of damages and an application for a temporary restraining order (TRO) and injunction against Saag (S) Pte. Ltd., Nicholas Ng, Janifer Yeo, Tan and petitioner. <sup>[3]</sup>

In the action before the SEC, private respondent averred that Saag (S) Pte. Ltd. is a foreign corporation organized and existing under the laws of Singapore, and is fully owned by Saag Corporation (Bhd). On July 1, 1994, he was appointed as Area Sales Manager in the Philippines by Thiang Shiang Hiang, Manager of Saag (S) Pte. Ltd. Pursuant to his appointment, respondent was authorized to organize a local joint venture corporation to be known as Saag Philippines, Inc. for the wholesale trade and service of industrial products for oil, gas and power industries in the Philippines.

On September 9, 1994, Saag Philippines, Inc. was incorporated with Saag (S) Pte. Ltd. as the majority stockholder. Private respondent was appointed to the board of directors, along with Rommel I. Lagos, Jose E. Geronimo, Gan Ching Lai and Thiang Shiang Hiang, and was elected president of the domestic corporation.

Later, due to intra-corporate disputes, Gan and Thiang resigned and divested their shares in Saag Corporation (Bhd), thereby resulting in a change in the controlling interest in Saag (S) Pte. Ltd.

Barely three months after, or on June 23, 1998, private respondent resigned his post as president of Saag Phils., Inc. while still retaining his position as a director of the company.<sup>[4]</sup> According to private respondent, the joint venture agreement (JVA) between him or Saag Phils., Inc. and Saag (S) Pte. Ltd. provided that should the controlling interest in the latter company, or its parent company Saag Corp. (Bhd), be acquired by any other person or entity without his prior consent, he has the option either to require the other stockholders to purchase his shares or to terminate the JVA and dissolve Saag Phils., Inc. altogether. Thus, pursuant to this provision, since private respondent did not give his consent as regards the transfer of shares made by Gan and Thiang, he made several requests to Nicholas Ng, who replaced Gan as director, and Janifer Yeo, Executive Director of Saag (S) Pte. Ltd., to call for a board meeting in order to discuss the following: a) implementation of the board resolution declaring dividends; b) acquisition of private respondent's shares by Saag (S) Pte. Ltd.; c) dissolution of Saag Phils., Inc.; and d) the termination of the JVA.

Ng and Yeo failed to appear, however, in the scheduled board meetings. Instead, on

September 30, 1998 they issued a letter appointing Alex Y. Tan as President Ad Interim of Saag Phils., Inc. Tan, in turn, appointed petitioner Omictin as the company's Operations Manager Ad Interim.

Citing as a reason the absence of a board resolution authorizing the continued operations of Saag Phils., Inc., private respondent retained his possession of the office equipment of the company in a fiduciary capacity as director of the corporation pending its dissolution and/or the resolution of the intra-corporate dispute. He likewise changed the locks of the offices of the company allegedly to prevent Tan and petitioner from seizing company property.

Private respondent stressed that Tan's appointment was invalid because it was in derogation of the company by-laws requiring that the president must be chosen from among the directors, and elected by the affirmative vote of a majority of all the members of the board of directors.<sup>[5]</sup> As Tan's appointment did not have the acquiescence of the board of directors, petitioner's appointment by the former is likewise allegedly invalid. Thus, neither has the power or the authority to represent or act for Saag Phils., Inc. in any transaction or action before the SEC or any court of justice.

The trial court, in an order dated September 8, 1999, denied respondent's motion to suspend proceedings and motion to recuse.

His motion for reconsideration having been denied by the trial court in its order issued on October 29, 1999, respondent filed with the CA the petition for *certiorari*<sup>[6]</sup> assailing the aforesaid orders.

On June 30, 2000, the CA rendered its challenged decision. The pertinent portion reads:

In a case for estafa, a valid demand made by an offended party is one of the essential elements. It appears from the records that the delay of delivery of the motor vehicles by petitioner to Saag Corporation is by reason of petitioner's contention that the demand made by Omictin and Atty. Tan to him to return the subject vehicles is not a valid demand. As earlier mentioned, petitioner filed a case with the SEC questioning therein private respondents' appointment.

If the SEC should rule that the dissolution of Saag Phils. is proper, or that the appointments of private respondents are invalid, the criminal case will eventually be dismissed due to the absence of one of the essential elements of the crime of estafa.

Based on the foregoing, it is clear that a prejudicial question exists which calls for the suspension of the criminal proceedings before the lower court.

WHEREFORE, in view of the foregoing, the assailed Order of September 8, 1999 and October 29, 1999, are hereby MODIFIED. The motion to suspend proceedings is hereby GRANTED and respondent court is hereby enjoined from hearing Criminal Case No. 99-633, entitled "People of the Philippines v. George I. Lagos," until the termination of the case with the

Securities and Exchange Commission. The denial of the motion to recuse is hereby AFFIRMED.

SO ORDERED.<sup>[7]</sup>

Incidentally, on January 18, 2001, the SEC case<sup>[8]</sup> was transferred to the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, pursuant to A.M. No. 00-11-03-SC<sup>[9]</sup> implementing the Securities and Regulation Code (Republic Act No. 8799)<sup>[10]</sup> enacted on July 19, 2000, vesting in the RTCs jurisdiction over intra-corporate disputes.<sup>[11]</sup>

Meanwhile, on March 5, 2001, the CA, addressing petitioner's motion for reconsideration of the aforementioned decision, issued its assailed resolution:

Considering that the petition for review on certiorari of the 30 June 2000 decision of this Court, filed by the Office of the Solicitor General before the Supreme Court has already TERMINATED on November 20, 2000 and a corresponding entry of judgment has already been issued by the High Court, that the same is final and executory, the private respondent's motion for reconsideration of the decision 30 June 2000 before this Court is NOTED for being moot and academic.

SO ORDERED.<sup>[12]</sup>

Hence, this petition raises the following issues:

## I

RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION -

A) WHEN IT DECREED THAT A PREJUDICIAL QUESTION EXISTS IN THE SEC CASE FILED BY PRIVATE RESPONDENT AGAINST SAAG (S) PTE. LTD., A FOREIGN CORPORATION, ALTHOUGH THE PRIVATE COMPLAINANT IN THE CRIMINAL CASE FOR ESTAFA (WHERE PRIVATE RESPONDENT IS THE ACCUSED THEREIN) IS ACTUALLY SAAG PHILIPPINES, INC. A DOMESTIC CORPORATION WITH A SEPARATE JURIDICAL PERSONALITY OF ITS OWN AND WHICH IS NOT EVEN A PARTY IN THE SEC CASE; AND,

B) WHEN IT ORDERED THE SUSPENSION OF THE PROCEEDINGS IN CRIMINAL CASE NO. 99-633 AGAINST PRIVATE RESPONDENT.

## II

THIS PETITION FOR CERTIORARI IS THE ONLY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE PREMISES.

In support of the above, petitioner argues, as follows:

1. The action before the SEC and the criminal case before the trial court do not involve any prejudicial question.<sup>[13]</sup> SEC Case No. 01-99-6185 mainly involves the