

## FIRST DIVISION

**[ G.R. NO. 164588, October 19, 2005 ]**

**NAUTICA CANNING CORPORATION, FIRST DOMINION PRIME HOLDINGS, INC. AND FERNANDO R. ARGUELLES, JR., PETITIONERS, VS. ROBERTO C. YUMUL, RESPONDENT.**

### D E C I S I O N

#### **YNARES-SANTIAGO, J.:**

Petitioners assail the September 26, 2001 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 61919, affirming *in toto* the Decision of the Securities and Exchange Commission (SEC) *En Banc* in SEC Case No. 10-96-5455, as well as the July 16, 2004 Resolution<sup>[2]</sup> denying the motion for reconsideration.

The facts of the case show that Nautica Canning Corporation (Nautica) was organized and incorporated on May 11, 1994 with an authorized capital stock of P40,000,000 divided into 400,000 shares with a par value of P100.00 per share. It had a subscribed capital stock of P10,000,000 with paid-in subscriptions from its incorporators as follows:<sup>[3]</sup>

Name	No. of Shares	Amount Subscribed	Amount Paid
ALVIN Y. DEE	89,991	P8,999,100	P4,499,100
JONATHAN Y. DEE	2200		200
JOANNA D. LAUREL	2200		200
DARLENE EDSA MARIE GONZALES	2200		200
JENNIFER Y. DEE	2200		200
ROBERTO C. YUMUL	1100		100
JERRY ANGPING	<u>10,000</u>	<u>1,000,000</u>	<u>500,000</u>
	100,000	P10,000,000	P5,000,000

On December 19, 1994, respondent Roberto C. Yumul was appointed Chief Operating Officer/General Manager of Nautica with a monthly compensation of P85,000 and an additional compensation equal to 5% of the company's operating profit for the calendar year.<sup>[4]</sup> On the same date, First Dominion Prime Holdings, Inc., Nautica's parent company, through its Chairman Alvin Y. Dee, granted Yumul an *Option to Purchase*<sup>[5]</sup> up to 15% of the total stocks it subscribed from Nautica.

On June 22, 1995, a *Deed of Trust and Assignment*<sup>[6]</sup> was executed between First Dominion Prime Holdings, Inc. and Yumul whereby the former assigned 14,999 of its subscribed shares in Nautica to the latter. The deed stated that the 14,999 "*shares were acquired and paid for in the name of the ASSIGNOR only for convenience, but actually executed in behalf of and in trust for the ASSIGNEE.*"

In March 1996, Nautica declared a P35,000,000 cash dividend, P8,250,000 of which was paid to Yumul representing his 15% share.

After Yumul's resignation from Nautica on August 5, 1996, he wrote a letter<sup>[7]</sup> to Dee requesting the latter to formalize his offer to buy Yumul's 15% share in Nautica on or before August 20, 1996; and demanding the issuance of the corresponding certificate of shares in his name should Dee refuse to buy the same. Dee, through Atty. Fernando R. Arguelles, Jr., Nautica's corporate secretary, denied the request claiming that Yumul was not a stockholder of Nautica.

On September 6, 1996<sup>[8]</sup> and September 9, 1996,<sup>[9]</sup> Yumul requested that the *Deed of Trust and Assignment* be recorded in the Stock and Transfer Book of Nautica, and that he, as a stockholder, be allowed to inspect its books and records.

Yumul's requests were denied allegedly because he neither exercised the option to purchase the shares nor paid for the acquisition price of the 14,999 shares. Atty. Arguelles maintained that the cash dividend received by Yumul is held by him only in trust for First Dominion Prime Holdings, Inc.

Thus, Yumul filed on October 3, 1996, before the SEC a petition for mandamus with damages, with prayer that the *Deed of Trust and Assignment* be recorded in the Stock and Transfer Book of Nautica and that the certificate of stocks corresponding thereto be issued in his name.<sup>[10]</sup>

On October 12, 2000, the SEC *En Banc* rendered the Decision,<sup>[11]</sup> the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondents, as follows:

1. Declaring petitioner as a stockholder of respondent Nautica;
2. Declaring petitioner as beneficial owner of 14,999 shares of Nautica under the Deed of Trust and Assignment dated June 22, 1995
3. Declaring petitioner to be entitled to the right of inspection of the books of the corporation pursuant to the pertinent provisions of the Corporation Code; and
4. Directing the Corporate Secretary of Nautica to recognize and register the Deed of Trust and Assignment dated June 22, 1995.

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

On appeal, the Court of Appeals affirmed the decision of the SEC *En Banc*. Petitioners' motion for reconsideration was denied in a Resolution dated July 16, 2004.

Hence, this petition.

At the outset, we note that petitioners' recourse to this Court via a "combined" petition under Rule 65 and an appeal under Rule 45 of the Rules of Court is

irregular. A petition for review under Rule 45 is the proper remedy of a party aggrieved by a decision of the Court of Appeals, which is not identical to a petition for certiorari under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals is appealed by filing a petition for review, which is a continuation of the appellate process over the original case.<sup>[13]</sup> On the other hand, the writ of *certiorari* under Rule 65 is filed when petitioner has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.

In this case, petitioners' speedy, available and adequate remedy is appeal via Rule 45, and not certiorari under Rule 65. Notwithstanding petitioners' procedural lapse, we shall treat the petition as one filed under Rule 45.

The petition is partly meritorious.

Petitioners contend that Yumul was not a stockholder of Nautica; that he was just a nominal owner of one share as the beneficial ownership belonged to Dee who paid for said share when Nautica was incorporated. They presented China Banking Corporation Check No. A2620636 and Citibank Check No. B82642 as proof of payment by Dee; a letter by Dee dated July 15, 1994 requesting the corporate secretary of Nautica to issue a certificate of stock in Yumul's name but in trust for Dee; and Stock Certificate No. 6 with annotation "ITF Alvin Y. Dee" which means that respondent held said stock "In Trust For Alvin Y. Dee".

We are not persuaded.

Indeed, it is possible for a business to be wholly owned by one individual. The validity of its incorporation is not affected when such individual gives nominal ownership of only one share of stock to each of the other four incorporators. This is not necessarily illegal.<sup>[14]</sup> But, this is valid only between or among the incorporators privy to the agreement. It does bind the corporation which, at the time the agreement is made, was non-existent. Thus, incorporators continue to be stockholders of a corporation unless, subsequent to the incorporation, they have validly transferred their subscriptions to the real parties in interest. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are.<sup>[15]</sup>

In the case at bar, the SEC and the Court of Appeals correctly found Yumul to be a stockholder of Nautica, of one share of stock recorded in Yumul's name, although allegedly held in trust for Dee. Nautica's Articles of Incorporation and By-laws, as well as the General Information Sheet filed with the SEC indicated that Yumul was an incorporator and subscriber of one share.<sup>[16]</sup> Even granting that there was an agreement between Yumul and Dee whereby the former is holding the share in trust for Dee, the same is binding only as between them. From the corporation's vantage point, Yumul is its stockholder with one share, considering that there is no showing that Yumul transferred his subscription to Dee, the alleged real owner of the share, after Nautica's incorporation.

We held in *Ponce v. Alsons Cement Corp.*<sup>[17]</sup> that:

... [A] transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.

Hence, without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the corporation may legally refuse the issuance of stock certificates[.]

Moreover, the contents of the articles of incorporation bind the corporation and its stockholders. Its contents cannot be disregarded considering that it was the basic document which legally triggered the creation of the corporation.<sup>[18]</sup>

The Court of Appeals, in affirming the factual findings of SEC, held that:

The evidence submitted by petitioners to establish trust is palpably incompetent, consisting mainly of the self-serving allegations by the petitioners and the China Banking Corporation checks issued as payment for the shares of stock of Nautica. Dee did not testify on the supposed trust relationship between him and Yumul. While Atty. Arguelles testified, his testimony is barren of probative value since he had no first-hand knowledge of the relationship in question. The isolated fact that Dee might have paid for the share in the name of Yumul did not by itself make the latter a man of straw. Such act of payment is so nebulous and equivocal that it can not yield the meaning which the petitioners would want to squeeze from it without the clarificatory testimony of Dee.<sup>[19]</sup>

We see no cogent reason to set aside the factual findings of the SEC, as upheld by the Court of Appeals. Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by the Supreme Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration,<sup>[20]</sup> moreso if the same has been upheld by the appellate court, as in this case.

Besides, other than petitioners' self-serving assertion that the beneficial ownership belongs to Dee, they failed to show that the subscription was transferred to Dee after Nautica's incorporation. The conduct of the parties also constitute sufficient proof of Yumul's status as a stockholder. On April 4, 1995, Yumul was elected during the regular annual stockholders' meeting as a Director of Nautica's Board of Directors.<sup>[21]</sup> Thereafter, he was elected as president of Nautica.<sup>[22]</sup> Thus, Nautica and its stockholders knowingly held respondent out to the public as an officer and a stockholder of the corporation.