

SECOND DIVISION

[G.R. No. 141510, August 13, 2004]

MANUEL L. MORATO, ANTONIO L. TAN, JR., JOSE THOMAS D. BELDIA, TRUMAN E. BECKER AND T.F. VENTURES, INC., PETITIONERS, VS. HON. COURT OF APPEALS, HON. SIMEON P. BADILLO, JR., AND YOSHITSUGU MATSUURA, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition filed "under Rule 45 and/or Rule 65 of the 1997 Revised Rules of Civil Procedure" of the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 49930 and the Resolution denying the motion for reconsideration thereon.

The Antecedents

On October 1, 1997, herein petitioners, Manuel L. Morato, Antonio L. Tan, Jr., Jose Thomas D. Beldia, Truman E. Becker, T.F. Ventures, Inc., and Atty. Dennis G. Manicad filed a petition with the Securities and Exchange Commission (SEC) against Alexander Poblador, Romeo F. Gaza, Yusuke Fukuzumi, Florence R. Valmonte, Virgilio R. Lazaga, Reza M. Arabpour, Ruben P. Jacinto and herein private respondent Yoshitsugu Matsuura, for declaration of nullity of stockholders' and directors' meetings and damages. The petition was docketed as SEC Case No. 10-97-5778 and referred to the Securities Investigation and Clearing Department (SICD) of the SEC for investigation and resolution. The petition was later amended to include a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.^[2]

The petitioners alleged therein, *inter alia*, that when petitioner T.F. Ventures, Inc. was organized and registered on April 25, 1984, the following were the stockholders and the amount of their respective subscriptions:

Name	Number of Shares	Amount of Subscription
MANUEL MORATO	23,500	2,350,000.00
ANTONIO L. TAN, JR.	26,500	2,650,000.00
JOSE THOMAS BELDIA	5,000	500,000.00
ALEXANDER POBLADOR	5,000	500,000.00
TRUMAN BECKER	5,000	500,000.00
YOSHITSUGU MATSUURA	20,000	2,000,000.00

MASAO OGURA	<u>15,000</u>	<u>1,500,000.00</u>
Total	100,000	PHP 10,000,000.00 ^[3]

Petitioner Atty. Manicad was the corporate secretary of T.F. Ventures, Inc., having been appointed to the said office by the members of the board of directors of the said corporation on August 7, 1996. On October 8, 1996, the SEC approved the amended Articles of Incorporation of T.F. Ventures, Inc. increasing the authorized capitalization from P10,000,000 to P100,000,000, as well as the subscription of Hiroshi Tanaka to P10,000,000 worth of shares. As of the said date, the total number of shares issued and outstanding was 500,000, at P100.00/per share, totaling P50,000,000. The stockholders on record and the number of shares subscribed by them, respectively, were as follows:

Name	Number of Shares	Worth
MANUEL MORATO	100,000	10,000,000.00
ANTONIO L. TAN, JR.	150,000	15,000,000.00
JOSE THOMAS BELDIA	25,000	2,500,000.00
ALEXANDER POBLADOR	25,000	2,500,000.00
TRUMAN BECKER	25,000	2,500,000.00
YOSHITSUGU MATSUURA	50,000	5,000,000.00
MASAO OGURA	25,000	2,500,000.00
HIROSHI TANAKA	<u>100,000</u>	<u>10,000,000.00</u>
Total	500,000	PHP 50,000,000.00 ^[4]

Following a dispute by and between the herein petitioners, who constituted the majority of the stockholders and directors of the petitioner corporation and respondent Matsuura, the latter had all the corporate records carted away from Suite 2112 Makati Prime Citadel Building, P. Burgos Street, Makati City, then the principal office of the corporation, to an unknown location. The said office was then padlocked and abandoned. The petitioners, thereafter, secured a search warrant against respondent Matsuura, his wife, and Jacinto, and were able to recover a substantial bulk of the petitioner corporation's records. Thereafter, in a Board Resolution dated April 30, 1997, respondent Matsuura and Jacinto were charged with qualified theft. The Board of Directors of the petitioner corporation then transferred the principal office address to its Project Site, the Delta Sunrise Hotel, at 7835 Makati Ave., corner Eduque St., Makati City.

In September 1997, petitioners Morato, Becker and Beldia received a notice of stockholders' meeting from respondent Atty. Poblador, set at 10:00 a.m. on September 22, 1997. Atty. Poblador had apparently illegally assumed and maliciously represented himself as corporate secretary without proper authority from the Board of Directors. Stockholders, petitioners Tan^[5] and Ogura,^[6] who each owned a substantial number of shares of stock, were not formally notified of the said meeting.

Petitioners Becker and Beldia then wrote Atty. Poblador, directing him to desist and refrain from proceeding with his intended actions. The meetings of stockholders and directors were nevertheless conducted on September 22, 1997 at 10:00 a.m. and 2:00 p.m., respectively.

According to the petitioners, Atty. Poblador's act of calling such stockholders' meeting was illegal and unauthorized for the following reasons: (a) the Board of Directors of T.F. Ventures, Inc., by virtue of a Board Resolution dated August 7, 1996, had already appointed Atty. Manicad as the new corporate secretary effective on the said date; (b) respondent Matsuura, even if he was Chairman of the Board of the Directors, could not, on his own, call for a stockholders' meeting, as the authority to do so was vested in the president, petitioner Morato, or, in the event that no annual stockholders' meeting would be held on the 1st Tuesday of March, the Board of Directors as stated in the by-laws;^[7] and, (c) the absence of the petitioner corporation's legitimate and existing stockholders on record negated the existence of a quorum.

According to the petitioners, the increase in the subscribed capital stock and issuance of the outstanding number of shares therefor without proper authority from the SEC was made by the petitioner corporation in violation of the Corporation Code and the Articles of Incorporation. The election of the Board of Directors during the said meeting was illegal, considering that, except for respondent Matsuura, the rest of the members of the Board of Directors elected in the said meeting were not even shareholders as appearing in the books of the corporation, and as certified by petitioner Atty. Manicad, the corporate secretary.

The petitioners prayed that, after due proceedings, judgment be rendered in their favor, *viz*:

- A. Declaring the alleged NOTICE FOR ANNUAL STOCKHOLDERS' MEETING as well as the alleged "ANNUAL STOCKHOLDERS' MEETING" conducted by the Respondents on 22 September 1997 [at] 10:00 a.m. as NULL and VOID from the very beginning, including the proceedings made therein, to include but not limited to the sham ELECTION of the alleged Members of the Board of Directors and the appointment of the EXTERNAL AUDITOR;
- B. Declaring the alleged "ORGANIZATIONAL MEETING" of the renegade Board of Directors conducted by the Respondents on 22 September 1997 at 2:00 p.m. as NULL and VOID from the very beginning, including all proceedings made therein, to include but not limited to the sham ELECTION of the alleged Officers of T.F. VENTURES, INC.;
- C. Declaring any or all acts of the Respondents conducted or made at or proceeding from the alleged "ANNUAL STOCKHOLDERS' MEETING" conducted by the Respondents on 22 September 1997 at 10:00 [a.m.] and "ORGANIZATIONAL MEETING" of the renegade Board of Directors conducted by the Respondents on 22 September 1997 at 2:00 p.m. as NULL and VOID.^[8]

The petitioners also prayed that the respondents be held, jointly and severally, liable to pay damages and attorney's fees, as follows:

- a) the sum of P25,000,000.00 representing the consequential damages suffered by Petitioners;

b) the sum of P5,000,000.00 representing moral damages and the sum of P2,000,000.00 as and for exemplary damages;

c) attorney's fees in the amount of P200,000.00 and expenses of suit in an amount of not less than P100,000.00 plus interest thereof from the date of the judgment;

d) cost of suit; and

e) interest on items (a) and (b) above from the date of filing of the Complaint until full payment thereof.^[9]

Traversing the material allegations of the amended petition, respondent Matsuura maintained in his answer to the petition that the meeting of the stockholders on September 22, 1997 and the election of the members of the Board of Directors on the said date were valid. He alleged that the petitioners held their own renegade stockholders' meeting on October 20, 1997 without notifying him as Chairman of the Board. He further alleged that petitioner Tan, whose outstanding shares had been assigned and transferred in his favor as early as January 20, 1997, was present and participated in the said meeting. Respondent Matsuura also alleged that petitioner Tan, then acting as the treasurer, falsely certified in the Treasurer's Affidavit dated September 29, 1993 that of the increase of P90,000,000 in the authorized capital stock, P40,000,000 was fully paid by the stockholders. He alleged that the original treasurer's affidavit notarized on September 29, 1997 was replaced under the same Doc. No. 457 in order to reach the required minimum deposit and change the mode of payment of paid-in capital, from "cash" to "offset of liability," to enable the petitioners to gain control of the corporation at practically zero cash outlay. Thereafter, the "renegade board" headed by petitioner Morato and former stockholder and ex-treasurer petitioner Tan concocted another Board Resolution on April 24, 1997, authorizing the opening of a new and secret account, with petitioner Morato as the sole signatory for the purpose of cashing in loan proceeds from another bank. Previous to that, the respondent further contends that petitioner Tan had already committed several misappropriations of both money and property belonging to the petitioner corporation.

Respondent Matsuura, thus, interposed the following affirmative defenses:

THE STOCKHOLDERS' MEETING HELD AT THE PRINCIPAL OFFICE ON SEPTEMBER 22, 1997 IS VALID, LEGAL AND MUST SUBSIST, THE SAME HAVING BEEN CONDUCTED WITH DUE NOTICE TO ALL PARTIES CONCERNED INCLUDING PAID AND UNPAID STOCKHOLDERS OF RECORD.

IN COMPARISON, THE STOCKHOLDERS' MEETING OF OCTOBER 20, 1997 SPEARHEADED BY COMPLAINANTS, WHO DID NOT PAY THEIR SUBSCRIPTION, AND WITHOUT NOTICE TO THE CHAIRMAN AND THE PAID-UP SUBSCRIBERS, IS PATENTLY ILLEGAL, VOID AND WITHOUT EFFECT.

COROLLARILY, ALL BOARD RESOLUTIONS PASSED BY THE UNPAID SUBSCRIBERS AMONG THEMSELVES, WITHOUT NOTICE TO THE CHAIRMAN AND THE OFFICIAL CORPORATE SECRETARY ON RECORD,

ARE VOID AND UNENFORCEABLE. THEREFORE, THE SAME MUST BE STRICKEN OUT.

MOST IMPORTANTLY, THE APPROVAL FOR THE APPLICATION FOR INCREASED CAPITALIZATION IN THE AMOUNT OF P100,000,000.00 MUST BE RECALLED FOR FAILURE OF CONSIDERATION (OF STOCKHOLDERS TO PAY THEIR SUBSCRIPTIONS).^[10]

The respondent prayed that, after due proceedings, judgment in his favor be rendered as follows:

a) To UPHOLD the VALIDITY of the stockholders' meeting held on September 22, 1997 at the principal office of T.F. VENTURES, INC., and, consequently, lift the temporary restraining order initially granted to complainants.

b) To DECLARE the stockholders' meeting subsequently held by complainants on October 20, 1997 as NULL AND VOID, as well as all Board Resolutions certified by one Dennis Manicad as "Corporate Secretary" for being false, sham and consisting of ultra vires acts.

c) To RECALL and NULLIFY the approval of application for increased capitalization in the amount of P100,000,000.00 due to failure of consideration.

d) To ISSUE a TEMPORARY RESTRAINING ORDER against the private complainants from further issuing board resolutions and any alleged corporate acts in behalf of T.F. VENTURES, INC. and, thereafter, to issue a permanent WRIT OF PRELIMINARY INJUNCTION against complainants.

e) To order complainants to pay MORAL DAMAGES in an amount not less than ONE MILLION PESOS, Actual or Compensatory and Exemplary Damages as may be determined by the Honorable Investigator, plus interests.

f) To order private complainants/petitioners to pay ATTORNEY'S FEES amounting to P200,000.00 and LITIGATION EXPENSES amounting to P100,000.00, plus interest.^[11]

On October 14, 1997, Hearing Officer Manolito S. Soller issued an Order granting a temporary restraining order prayed for by the petitioner.^[12] On November 12, 1997, an Order was issued granting the writ of preliminary injunction prayed for by the petitioners on a bond of P400,000.^[13]

In the meantime, respondent Matsuura wrote Director Otillo C. San Diego of the Examiners and Appraisers Department of the SEC, requesting for an examination of the basis for the capital increase of T.F. Ventures, Inc. from P10,000,000 to P100,000,000, alleging the commission of devices, schemes and criminal acts. Thus:

The undersigned Chairman of the Board of T.F. VENTURES, INC., in his capacity as such and as a stockholder, with the assistance of Counsel,