

FIRST DIVISION

[G.R. No. 126891, August 05, 1998]

LIM TAY, PETITIONER VS., COURT OF APPEALS, GO FAY AND CO. INC., SY GUIOK, AND THE ESTATE OF ALFONSO LIM, RESPONDENTS.

DECISION

PANGANIBAN, J.:

The duty of a corporate secretary to record transfers of stocks is ministerial. However, he cannot be compelled to do so when the transferee's title to said shares has no *prima facie* validity or is uncertain. More specifically, a pledgee, prior to foreclosure and sale, does not acquire ownership rights over the pledged shares and thus cannot compel the corporate secretary to record his alleged ownership of such shares on the basis merely of the contract of pledge. Similarly, the SEC does not acquire jurisdiction over a dispute when a party's claim to being a shareholder is, on the face of the complaint, invalid or inadequate or is otherwise negated by the very allegations of such complaint. Mandamus will not issue to establish a right, but only to enforce one that is already established.

Statement of the Case

These are the principles used by this Court in resolving this Petition for Review on Certiorari before us assailing the October 24, 1996 Decision^[1] of the Court of Appeals^[2] in CA-GR SP No. 40832, the dispositive portion of which reads:

"IN THE LIGHT OF ALL THE FOREGOING, the Petition at bench is DENIED DUE COURSE and is hereby DISMISSED. With costs against the [p]etitioner."^[3]

By the foregoing disposition, the Court of Appeals effectively affirmed the March 7, 1996 Decision^[4] of the Securities and Exchange Commission (SEC) en banc:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the appeal on the ground that mandamus will only issue upon a clear showing of ownership over the assailed shares of stock, [t]he determination of which, on the basis of the foregoing facts, is within the jurisdiction of the regular courts and not with the SEC."^[5]

The SEC en banc upheld the August 16, 1993 Decision^[6] of SEC Hearing Officer Rolando C. Malabonga, which dismissed the action for mandamus filed by petitioner.

The Facts

As found by the Court of Appeals, the facts of the case are as follows:

"x x x On January 8, 1980, Respondent-Appellee Sy Guiok secured a loan from the [p]etitioner in the amount of P40,000 payable within six (6) months. To secure the payment of the aforesaid loan and interest thereon, Respondent Guiok executed a Contract of Pledge in favor of the [p]etitioner whereby he pledged his three hundred (300) shares of stock in the Go Fay & Company Inc., Respondent Corporation, for brevity's sake. Respondent Guiok obliged himself to pay interest on said loan at the rate of 10% per annum from the date of said contract of pledge. On the same date, Alfonso Sy Lim secured a loan from the [p]etitioner in the amount of P40,000 payable in six (6) months. To secure the payment of his loan, Sy Lim executed a 'Contract of Pledge' covering his three hundred (300) shares of stock in Respondent Corporation. Under said contract, Sy Lim obliged himself to pay interest on his loan at the rate of 10% per annum from the date of the execution of said contract.

Under said 'Contracts of Pledge,' Respondent[s] Guiok and Sy Lim covenanted, inter alia, that:

'3. In the event of the failure of the PLEDGOR to pay the amount within a period of six (6) months from the date hereof, the PLEDGEE is hereby authorized to foreclose the pledge upon the said shares of stock hereby created by selling the same at public or private sale with or without notice to the PLEDGOR, at which sale the PLEDGEE may be the purchaser at his option; and the PLEDGEE is hereby authorized and empowered at his option to transfer the said shares of stock on the books of the corporation to his own name and to hold the certificate issued in lieu thereof under the terms of this pledge, and to sell the said shares to issue to him and to apply the proceeds of the sale to the payment of the said sum and interest, in the manner hereinabove provided;

4. In the event of the foreclosure of this pledge and the sale of the pledged certificate, any surplus remaining in the hands of the PLEDGEE after the payment of the said sum and interest, and the expenses, if any, connected with the foreclosure sale, shall be paid by the PLEDGEE to the PLEDGOR;

5. Upon payment of the said amount and interest in full, the PLEDGEE will, on demand of the PLEDGOR, redeliver to him the said shares of stock by surrendering the certificate delivered to him by the PLEDGOR or by retransferring each share to the PLEDGOR, in the event that the PLEDGEE, under the option hereby granted, shall have caused such shares to be transferred to him upon the books of the issuing company.' (idem, supra)

Respondent Guiok and Sy Lim endorsed their respective shares of stock in blank and delivered the same to the [p]etitioner."^[7]

However, Respondent Guiok and Sy Lim failed to pay their respective loans and the accrued interests thereon to the [p]etitioner. In October, 1990, the [p]etitioner filed a 'Petition for Mandamus' against Respondent Corporation, with the SEC entitled '*Lim Tay versus Go Fay & Company, Inc., SEC Case No. 03894*', praying that:

'PRAYER

WHEREFORE, premises considered, it is respectfully prayed that an order be issued directing the corporate secretary of [R]espondent Go Fay & Co., Inc. to register the stock transfers and issue new certificates in favor of Lim Tay. It is likewise prayed that [R]espondent Go Fay & Co., Inc[.] be ordered to pay all dividends due and unclaimed on the said certificates to [P]laintiff Lim Tay.

Plaintiff further prays for such other relief just and equitable in the premises.’ (page 34, Rollo)

The [p]etitioner alleged, inter alia, in his Petition that the controversy between him as stockholder and the Respondent Corporation was intra-corporate in view of the obstinate refusal of the corporate secretary of Respondent Corporation to record the transfer of the shares of stock of Respondent Guiok and Sy Lim in favor of and under the name of the [p]etitioner and to issue new certificates of stock to the [p]etitioner.

The Respondent Corporation filed its Answer to the Complaint and alleged, as Affirmative Defense, that:

‘AFFIRMATIVE DEFENSE

7. Respondent repleads and incorporates herein by reference the foregoing allegations.

8. The Complaint states no cause of action against [r]espondent.

9. Complainant is not a stockholder of [r]espondent. Hence, the Honorable Commission has no jurisdiction to enter the present controversy since their [sic] is no intracorporate relationship between complainant and respondent.

10. Granting arguendo that a pledge was constituted over the shareholdings of Sy Guiok in favor of the complainant and that the former defaulted in the payment of his obligations to the latter, the same did not automatically vest [i]n complainant ownership of the pledged shares.’ (page 37, Rollo)

In the interim, Sy Lim died. Respondents Guiok and the Intestate Estate of Alfonso Sy Lim, represented by Conchita Lim, filed their Answer-In-Intervention with the SEC alleging, inter alia, that:

‘x x x

3. Deny specifically the allegation under paragraph 5 of the Complaint that, failure to pay the loan within the contract period automatically foreclosed the pledged shares of stocks and that the share of stocks are automatically purchased by the plaintiff, for being false and distorted, the truth being that pursuant to the [sic] paragraph 3 of the contract of pledges, Annexes ‘A’ and ‘B’, it is clear that upon failure to pay the amount within the stipulated period, the pledgee is authorized to foreclose the pledge and thereafter, to sell the same to satisfy the loan.

[H]owever, to this point in time, plaintiff has not performed any operative act of foreclosing the shares of stocks of [i]ntervenors in accordance with the Chattel Mortgage law, [n]either was there any sale of stocks -- by way of public or private auction -- made after foreclosure in favor of the plaintiff to speak about, and therefore, the respondent company could not be force[d] to [sic] by way of mandamus, to transfer the subject shares of stocks from the name of your [i]ntervenors to that of the plaintiff in the absence of clear and legal basis for such;

4. DENY specifically the allegations under paragraphs 6, 7 and 8 of the complaint as to the existence of the alleged intracorporate dispute between plaintiff and company for being without proper and legal basis. In the first place, plaintiff is not a stockholder of the respondent corporation; there was no foreclosure of shares executed in accordance with the Chattel Mortgage Law whatsoever; there were no sales consummated that would transfer to the plaintiff the subject shares of stocks and therefore, any demand to transfer the shares of stocks to the name of the plaintiff has no legal basis. In the second place, [i]ntervenors had been in the past negotiating possible compromise and at the same time, had tendered payment of the loan secured by the subject pledges but plaintiff refused unjustifiably to oblige and accept payment o[r] even agree on the computation of the principal amount of the loan and interest on top of a substantial amount offered just to settle and compromise the indebtedness of [i]ntervenors;

II. SPECIAL AFFIRMATIVE DEFENSES

Intervenors replead by way of reference all the foregoing allegations to form part of the special affirmative defenses;

5. This Honorable Commission has no jurisdiction over the person of the respondent and nature of the action, plaintiff having no personality at all to compel respondent by way of mandamus to perform certain corporate function[s];

6. The complaint states no cause of action;

7. That respondent is not [a] real party in interest;

8. The appropriation of the subject shares of stocks by plaintiff, without compliance with the formality of law, amounted to '[p]actum commis[s]orium' therefore, null and void;

9. Granting for the sake of argument only that there was a valid foreclosure and sale of the subject st[o]cks in favor of the plaintiff -- which [i]ntervenors deny -- still paragraph 5 of the contract allows redemption, for which intervenors are willing to redeem the share of stocks pledged;

10. Even the Chattel Mortgage law allowed redemption of the [c]hattel foreclosed;

11. As a matter of fact, on several occasions, [i]ntervenors had made representations with the plaintiff for the compromise and settlement of all the obligations secured by the subject pledges -- even offering to pay compensation over and above the value of the obligations, interest[s] and dividends accruing to the share of stocks but, plaintiff unjustly refused to accept the offer of payment;' (pages 39-42, Rollo)

The [r]espondents-[i]ntervenors prayed the SEC that judgment be rendered in their favor, as follows:

'IV. PRAYER

It is respectfully prayed to this Honorable Commission after due hearing, to dismiss the case for lack of merit, ordering plaintiff to accept payment for the loans secured by the subject shares of stocks and to pay plaintiff:

1. The sum of P50,000.00, as moral damages;
2. the sum of P50,000.00, as attorneys fees; and,
3. costs of suit.

Other reliefs just and equitable [are] likewise prayed for.' (pages 42-43, Rollo)

After due proceedings, the [h]earing [o]fficer promulgated a Decision dismissing [p]etitioner's Complaint on the ground that although the SEC had jurisdiction over the action, pursuant to the Decision of the Supreme Court in the case of 'Rural Bank of Salinas, et al. versus Court of Appeals, et al., 210 SCRA 510', he failed to prove the legal basis for the secretary of the Respondent Corporation to be compelled to register stock transfers in favor of the [p]etitioner and to issue new certificates of stock under his name (pages 67-77, Rollo). The [p]etitioner appealed the Decision of the [h]earing [o]fficer to the SEC, but, on March 7, 1996, the SEC promulgated a Decision, dismissing [p]etitioner's appeal on the grounds that: (a) the issue between the [p]etitioner and the [r]espondents being one involving the ownership of the shares of stock pledged by Respondent Guiok and Sy Lim, the SEC had no jurisdiction over the action filed by the [p]etitioner; (b) the latter had no cause of action for mandamus against the Respondent Corporation, the right of ownership of the [p]etitioner over the 300 shares of stock pledged by Respondent Guiok and Sy Lim not having been as yet, established, preparatory to the institution of said Petition for Mandamus with the SEC."

Ruling of the Court of Appeals

On the issue of jurisdiction, the Court of Appeals ruled:

"In ascertaining whether or not the SEC had exclusive jurisdiction over [p]etitioner's action, the [a]ppellate [c]ourt must delve into and ascertain: (a) whether or not there is a need to enlist the expertise and technical know-how of the SEC in resolving the issue of the ownership of the shares of stock; (b) the status of the relationships of the parties; [and] (c) the nature of the question that is the subject of the controversy. Where the controversy is purely a civil matter resolvable by