

SECOND DIVISION

[G.R. No. 125469, October 27, 1997]

**PHILIPPINE STOCK EXCHANGE, INC., PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, SECURITIES AND EXCHANGE
COMMISSION AND PUERTO AZUL LAND, INC., RESPONDENTS.
D E C I S I O N**

TORRES, JR., J.:

The Securities and Exchange Commission is the government agency, under the direct general supervision of the Office of the President,^[1] with the immense task of enforcing the Revised Securities Act, and all other duties assigned to it by pertinent laws. Among its innumerable functions, and one of the most important, is the supervision of all corporations, partnerships or associations, who are grantees or primary franchise and/or a license or permit issued by the government to operate in the Philippines.^[2] Just how far this regulatory authority extends, particularly, with regard to the Petitioner Philippine Stock Exchange, Inc. is the issue in the case at bar.

In this Petition for Review of Certiorari, petitioner assails the resolution of the respondent Court of Appeals, dated June 27, 1996, which affirmed the decision of the Securities and Exchange Commission ordering the petitioner Philippine Stock Exchange, Inc. to allow the private respondent Puerto Azul Land, Inc. to be listed in its stock market, thus paving the way for the public offering of PALI's shares.

The facts of the case are undisputed, and are hereby restated in sum.

The Puerto Azul Land, Inc. (PALI), a domestic real estate corporation, had sought to offer its shares to the public in order to raise funds allegedly to develop its properties and pay its loans with several banking institutions. In January, 1995, PALI was issued a Permit to Sell its shares to the public by the Securities and Exchange Commission (SEC). To facilitate the trading of its shares among investors, PALI sought to course the trading of its shares through the Philippine Stock Exchange, Inc. (PSE), for which purpose it filed with the said stock exchange an application to list its shares, with supporting documents attached.

On February 8, 1996, the Listing Committee of the PSE, upon a perusal of PALI's application, recommended to the PSE's Board of Governors the approval of PALI's listing application.

On February 14, 1996, before it could act upon PALI's application, the Board of Governors of PSE received a letter from the heirs of Ferdinand E. Marcos, claiming that the late President Marcos was the legal and beneficial owner of certain properties forming part of the Puerto Azul Beach Hotel and Resort Complex which PALI claims to be among its assets and that the Ternate Development Corporation, which is among the stockholders of PALI, likewise appears to have been held and

continue to be held in trust by one Rebecco Panlilio for then President Marcos and now, effectively for his estate, and requested PALI's application to be deferred. PALI was requested to comment upon the said letter.

PALI's answer stated that the properties forming part of Puerto Azul Beach Hotel and Resort Complex were not claimed by PALI as its assets. On the contrary, the resort is actually owned by Fantasia Filipina Resort, Inc. and the Puerto Azul Country Club, entities distinct from PALI. Furthermore, the Ternate Development Corporation owns only 1.20% of PALI. The Marcoses responded that their claim is not confined to the facilities forming part of the Puerto Azul Hotel and Resort Complex, thereby implying that they are also asserting legal and beneficial ownership of other properties titled under the name of PALI.

On February 20, 1996, the PSE wrote Chairman Magtanggol Gunigundo of the Presidential Commission on Good Government (PCGG) requesting for comments on the letter of the PALI and the Marcoses. On March 4, 1996, the PSE was informed that the Marcoses received a Temporary Restraining Order on the same date, enjoining the Marcoses from, among others, "further impeding, obstructing, delaying or interfering in any manner by or any means with the consideration, processing and approval by the PSE of the initial public offering of PALI." The TRO was issued by Judge Martin S. Villarama, Executive Judge of the RTC of Pasig City in Civil Case No. 65561, pending in Branch 69 thereof.

In its regular meeting held on March 27, 1996, the Board of Governors of the PSE reached its decision to reject PALI's application, citing the existence of serious claims, issues and circumstances surrounding PALI's ownership over its assets that adversely affect the suitability of listing PALI's shares in the stock exchange.

On April 11, 1996, PALI wrote a letter to the SEC addressed to the then Acting Chairman, Perfecto R. Yasay, Jr., bringing to the SEC's attention the action taken by the PSE in the application of PALI for the listing of its shares with the PSE, and requesting that the SEC, in the exercise of its supervisory and regulatory powers over stock exchanges under Section 6(j) of P.D. No. 902-A, review the PSE's action on PALI's listing application and institute such measures as are just and proper and under the circumstances.

On the same date, or on April 11, 1996, the SEC wrote to the PSE, attaching thereto the letter of PALI and directing the PSE to file its comments thereto within five days from its receipt and for its authorized representative to appear for an "inquiry" on the matter. On April 22, 1996, the PSE submitted a letter to the SEC containing its comments to the April 11, 1996 letter of PALI.

On April 24, 1996, the SEC rendered its Order, reversing the PSE's decision. The dispositive portion of the said order reads:

"WHEREFORE, premises considered, and invoking the Commissioner's authority and jurisdiction under Section 3 of the Revised Securities Act, in conjunction with Section 3, 6(j) and 6(m) of the Presidential Decree No. 902-A, the decision of the Board of Governors of the Philippine Stock Exchange denying the listing of shares of Puerto Azul Land, Inc., is hereby set aside, and the PSE is hereby ordered to immediately cause

the listing of the PALI shares in the Exchange, without prejudice to its authority to require PALI to disclose such other material information it deems necessary for the protection of the investing public.

This Order shall take effect immediately.

SO ORDERED.”

PSE filed a motion for reconsideration of the said order on April 29, 1996, which was, however denied by the Commission in its May 9, 1996 Order which states:

“WHEREFORE, premises considered, the Commission finds no compelling reason to consider its order dated April 24, 1996, and in the light of recent developments on the adverse claim against the PALI properties, PSE should require PALI to submit full disclosure of material facts and information to protect the investing public. In this regard, PALI is hereby ordered to amend its registration statements filed with the Commission to incorporate the full disclosure of these material facts and information.”

Dissatisfied with this ruling, the PSE filed with the Court of Appeals on May 17, 1996 a Petition for Review (with application for Writ of Preliminary Injunction and Temporary Restraining Order), assailing the above mentioned orders of the SEC, submitting the following as errors of the SEC:

I. SEC COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN ISSUING THE ASSAILED ORDERS WITHOUT POWER, JURISDICTION, OR AUTHORITY; SEC HAS NO POWER TO ORDER THE LISTING AND SALE OF SHARES OF PALI WHOSE ASSETS ARE SEQUESTERED AND TO REVIEW AND SUBSTITUTE DECISIONS OF PSE ON LISTING APPLICATIONS;

II. SEC COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN FINDING THAT PSE ACTED IN AN ARBITRARY AND ABUSIVE MANNER IN DISAPPROVING PALI’S LISTING APPLICATION;

III. THE ASSAILED ORDERS OF SEC ARE ILLEGAL AND VOID FOR ALLOWING FURTHER DISPOSITION OF PROPERTIES IN CUSTODIA LEGIS AND WHICH FORM PART OF NAVAL/MILITARY RESERVATION; AND

IV. THE FULL DISCLOSURE OF THE SEC WAS NOT PROPERLY PROMULGATED AND ITS IMPLEMENTATION AND APPLICATION IN THIS CASE VIOLATES THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

On June 4, 1996, PALI filed its Comment to the Petition for Review and subsequently, a Comment and Motion to Dismiss. On June 10, 1996, PSE filed its Reply to Comment and Opposition to Motion to Dismiss.

On June 27, 1996, the Court of Appeals promulgated its Resolution dismissing the PSE’s Petition for Review. Hence, this Petition by the PSE.

The appellate court had ruled that the SEC had both jurisdiction and authority to look into the decision of the petitioner PSE, pursuant to Section 3^[3] of the Revised

Securities Act in relation to Section 6(j) and 6(m)^[4] of P.D. No. 902-A, and Section 38(b)^[5] of the Revised Securities Act, and for the purpose of ensuring fair administration of the exchange. Both as a corporation and as a stock exchange, the petitioner is subject to public respondent's jurisdiction, regulation and control. Accepting the argument that the public respondent has the authority merely to supervise or regulate, would amount to serious consequences, considering that the petitioner is a stock exchange whose business is impressed with public interest. Abuse is not remote if the public respondent is left without any system of control. If the securities act vested the public respondent with jurisdiction and control over all corporations; the power to authorize the establishment of stock exchanges; the right to supervise and regulate the same; and the power to alter and supplement rules of the exchange in the listing or delisting of securities, then the law certainly granted to the public respondent the plenary authority over the petitioner; and the power of review necessarily comes within its authority.

All in all, the court held that PALI complied with all the requirements for public listing, affirming the SEC's ruling to the effect that:

"x x x the Philippine Stock Exchange has acted in an arbitrary and abusive manner in disapproving the application of PALI for listing of its shares in the face of the following considerations:

1. PALI has clearly and admittedly complied with the Listing Rules and full disclosure requirements of the Exchange;
2. In applying its clear and reasonable standards on the suitability for listing of shares, PSE has failed to justify why it acted differently on the application of PALI, as compared to the IPOs of other companies similarly that were allowed listing in the Exchange;
3. It appears that the claims and issues on the title to PALI's properties were even less serious than the claims against the assets of the other companies in that, the assertions of the Marcoses that they are owners of the disputed properties were not substantiated enough to overcome the strength of a title to properties issued under the Torrens System as evidence of ownership thereof;
4. No action has been filed in any court of competent jurisdiction seeking to nullify PALI's ownership over the disputed properties, neither has the government instituted recovery proceedings against these properties. Yet the import of PSE's decision in denying PALI's application is that it would be PALI, not the Marcoses, that must go to court to prove the legality of its ownership on these properties before its shares can be listed."

In addition, the argument that the PALI properties belong to the Military/Naval Reservation does not inspire belief. The point is, the PALI properties are now titled. A property loses its public character the moment it is covered by a title. As a matter of fact, the titles have long been settled by a final judgment; and the final decree having been registered, they can no longer be re-opened considering that the one year period has already passed. Lastly, the determination of what standard to apply in allowing PALI's application for listing, whether the discretion method or the system of public disclosure adhered to by the SEC, should be addressed to the

Securities Commission, it being the government agency that exercises both supervisory and regulatory authority over all corporations.

On August 15, 1996, the PSE, after it was granted an extension, filed an instant Petition for Review on Certiorari, taking exception to the rulings of the SEC and the Court of Appeals. Respondent PALI filed its Comment to the petition on October 17, 1996. On the same date, the PCGG filed a Motion for Leave to file a Petition for Intervention. This was followed up by the PCGG's Petition for Intervention on October 21, 1996. A supplemental Comment was filed by PALI on October 25, 1997. The Office of the Solicitor General, representing the SEC and the Court of Appeals, likewise filed its Comment on December 26, 1996. In answer to the PCGG's motion for leave to file petition for intervention, PALI filed its Comment thereto on January 17, 1997, whereas the PSE filed its own Comment on January 20, 1997.

On February 25, 1996, the PSE filed its Consolidated Reply to the comments of respondent PALI (October 17, 1996) and the Solicitor General (December 26, 1996). On May 16, 1997, PALI filed its Rejoinder to the said consolidated reply of PSE.

PSE submits that the Court of Appeals erred in ruling that the SEC had authority to order the PSE to list the shares of PALI in the stock exchange. Under presidential decree No. 902-A, the powers of the SEC over stock exchanges are more limited as compared to its authority over ordinary corporations. In connection with this, the powers of the SEC over stock exchanges under the Revised Securities Act are specifically enumerated, and these do not include the power to reverse the decisions of the stock exchange. Authorities are in abundance even in the United States, from which the country's security policies are patterned, to the effect of giving the Securities Commission less control over stock exchanges, which in turn are given more lee-way in making the decision whether or not to allow corporations to offer their stock to the public through the stock exchange. This is in accord with the "business judgment rule" whereby the SEC and the courts are barred from intruding into business judgments of corporations, when the same are made in good faith. The said rule precludes the reversal of the decision of the PSE to deny PALI's listing application, absent a showing of bad faith on the part of the PSE. Under the listing rule of the PSE, to which PALI had previously agreed to comply, the PSE retains the discretion to accept or reject applications for listing. Thus, even if an issuer has complied with the PSE listing rules and requirements, PSE retains the discretion to accept or reject the issuer's listing application if the PSE determines that the listing shall not serve the interests of the investing public.

Moreover, PSE argues that the SEC has no jurisdiction over sequestered corporations, nor with corporations whose properties are under sequestration. A reading of *Republic of the Philippines vs. Sandiganbayan*, G.R. No. 105205, 240 SCRA 376, would reveal that the properties of PALI, which were derived from the Ternate Development Corporation (TDC) and the Monte del Sol Development Corporation (MSDC), are under sequestration by the PCGG, and the subject of forfeiture proceedings in the Sandiganbayan. This ruling of the Court is the "law of the case" between the Republic and the TDC and MSDC. It categorically declares that the assets of these corporations were sequestered by the PCGG on March 10, 1986 and April 4, 1988.

It is, likewise, intimidated that the Court of Appeals' sanction that PALI's ownership over its properties can no longer be questioned, since certificates of title have been