

FIFTH DIVISION

[CA-G.R. SP NO. 87800, June 20, 2006]

MARILOU C. ADRIANO, PETITIONER, VS. HON. CESAR O. UNTALAN, IN HIS CAPACITY AS ACTING PRESIDING JUDGE OF PROMULGATED: BRANCH 142 OF THE REGIONAL TRIAL COURT OF MAKATI CITY, AND PHILIP K.C. NG, RESPONDENTS.

DECISION

BARRIOS, J.:

A complaint denominated to be for *Specific Performance with Accounting and Damages* was filed by the respondent Philip K. C. Ng (or hereafter Ng) against Philippine Laminates, Inc. (or PLI) and its stockholders, the petitioner Marilou C. Adriano (or Adriano), and Paul Daza (or Daza), Angeli Daza and Paul Yu (a.k.a. Yu Yung Shou) before the Regional Trial Court of Makati City (or RTC) where it was docketed as Civil Case No. 02-1301. Judgment was rendered adverse to PLI and its stockholders, hence this recourse but which was taken by Adriano alone.

In his complaint, Ng averred that he was the brain and moving factor in the organization of PLI, a corporation engaged in the business of distributing laminates and selling laminated products. Ng paid the initial paid-up capital of P62,500.00 and thereafter authorized Adriano and Daza and three others namely Eric Daza, Roldan Samson and Edmund Datuin, to act as incorporators. Also with Ng's conformity, Adriano and Daza became respectively the president and treasurer of PLI. As of December 1998, Ng had subscribed and paid for 7,000 shares or 70% of its authorized capital stock and had been receiving the corresponding dividends. But PLI's officers failed and refused to issue the corresponding stock certificates in his name and to recognize him as a stockholder in its transfer book. Too, they refused to amend PLI's Articles of Incorporation to delete the word "retail" in its primary purpose. Finally, they refused to acknowledge the advances they took from Ng prompting him to file the said Civil Case No. 02-1301.

PLI and its stockholders failed to answer despite the receipt of summons. Resultantly they were declared in default and Ng was allowed to present his evidence *ex-parte*.

Adriano subsequently moved for the lifting of the default. This was initially denied by the RTC but was reconsidered and Adriano was allowed to file her Answer.

In her traverse, Adriano denied the material allegations in the complaint and averred that the complaint failed to state cause of action. Adriano alleged that Ng is a Malaysian national prohibited by law from being a stockholder of PLI which is a corporation engaged in retail. Ng therefore cannot compel them to perform the illegal acts of recognizing him as a stockholder, registering his name in the transfer book and issuing him a certificate of stock. Also, whether PLI and its stockholders

would amend the primary purpose provided for in its Articles of Incorporation, is an exclusive prerogative of its Board of Directors and which the trial court cannot supplant with its own judgment.

Adriano further asseverated that Ng has no cause of action against them because Ng is neither an incorporator nor a stockholder of PLI. Finally, assuming that Ng has a valid claim, this is already barred by the Statute of Limitations. Adriano prayed for the dismissal of the complaint.

PLI and the Dazas also filed a joint Answer to the complaint, but this was not admitted by the trial court on the reasoning that they have lost their standing in court when they were declared in default and so could no longer file any answer to the complaint.

On October 29, 2001, the RTC rendered its Decision disposing that:

Accordingly, judgment is hereby rendered ordering defendant corporation Philippine Laminate, Inc. through its directors and officers, Paul Daza, Marilou Adriano, Angeli Daza, and Paul Yiu to do the following:

1. To recognize Philip K.C. Ng as a stockholder for 7,000 shares of stock which he fully paid for;
2. To issue stock certificates corresponding therefore;
3. To recognize his rights as a stockholder such as the right to recover further dividends, to receive payment for his advances in excess of the value of the 7,000 shares of stock, the right to inspection of corporate books and the right to vote and voted for;
4. To acknowledge through a written statement his total investment in PLI in the amount of P3,566,549 including payment for 7,000 shares; and
5. To the deletion of the word "retail" in the primary purpose of PLI's Articles of Incorporation by filing the necessary documents to effect the amendment with the SEC.

Moreover, defendants Paul R. Daza and Marilou C. Adriano are jointly and severally liable to the plaintiff the following:

1. To pay the amount of P500,000.00 as Moral damages;
2. To pay plaintiff the amount of P100,000.00 as Exemplary damages;
3. To pay plaintiff the amount of P50,000.00 as attorney's fees and costs of suit.

SO ORDERED. (p. 1132, record, Vol. 2)

Hence this petition where Adriano asserted in her original petition that:

A. THE CASE IS NOT COVERED BY THE RULES ON INTRA-CORPORATE CONTROVERSIES

- B. THE DECISION FORCES ADRIANO AND THE OTHER DEFENDANTS IN CIVIL CASE NO. 02-1301 TO VIOLATE THE RETAIL TRADE LAW
- C. THE DECISION SUBSTITUTES THE BUSINESS JUDGMENT OF PLI'S BOARD OF DIRECTORS TO ENGAGE IN THE BUSINESS OF RETAIL TRADE
- D. THE DECISION ORDERS THE RECONVEYANCE OF SHARES DESPITE THE FACT THAT STOCKHOLDERS WHOSE INTERESTS WILL BE AFFECTED ARE NOT PARTIES TO THE CASE (p. 6, rollo)

and in her supplemental petition argues that:

- A. THE EVIDENCE SUBMITTED BY NG IS INSUFFICIENT AND NOT WORTHY OF BELIEF
- B. AS A MALAYSIAN NATIONAL, NG IS PROHIBITED BY LAW FROM INVESTING IN OR PARTICIPATING IN THE MANAGEMENT OF PLI, A PHILIPPINE CORPORATION ENGAGED IN THE RETAIL BUSINESS
- C. THE COURT HAS NO AUTHORITY TO DELETE THE WORD "RETAIL" FROM THE PRIMARY PURPOSE OF PLI'S ARTICLES OF INCORPORATION
- D. NG HAS PRESENTED NO BASIS FOR HIS CLAIM TO ANY PLI SHARE
- E. THE HONORABLE COURT SHOULD DISMISS THE COMPLAINT DUE TO ABSENCE OF INDISPENSIBLE PARTIES. (p. 72, rollo)

It has to be mentioned beforehand that a *Motion To Dismiss* with an attached *Arbitration Agreement* (pp 340-352, rollo) has been submitted. We have already denied this in the Resolution dated February 10, 2006 (pp 357-358, rollo) because Adriano is not a party thereto and she is the petitioner in this case and an answering defendant in the source case.

That aside, We shall take up ahead the procedural issue raised by Ng, claiming as he does that this should have sufficed for the early dismissal of the petition. Ng assails the mode of appeal chosen by Adriano, and in the alternative asserts that even assuming that it were the proper mode of appeal, still the petition failed to comply with the requirements under Rule 43.

Indeed the petition originally filed before Us was denominated as one for *Injunction*. Nonetheless it complied with and fulfilled the requirements of Rule 43. It stated the full names of the parties and the material dates, showing that it was filed on time. Also it alleged pertinent facts necessary for the understanding of the case and the grounds relied upon in support thereof discussing each of the grounds, with a citation of the authorities relied upon. In the last paragraph, it specified the judgment and other reliefs sought. Attached to it is the certified true copy of the decision of the Regional Trial Court and a sworn certification against forum shopping. Hence, even without changing the designation of the pleading, it may be treated as one for petition for review.