THIRD DIVISION

[G.R. No. 195215, March 06, 2019]

EMPIRE INSURANCE, INC., MARIO A. REMOROSA (IN HIS CAPACITY AS APPROVING OFFICER OF EMPIRE INSURANCE COMPANY), VIRGINIA BELINDA S. OCAMPO, JOSE AUGUSTO G. SANTOS, AND KATRINA G. SANTOS, PETITIONERS, VS. ATTY. MARCIANO S. BACALLA, JR., ATTY. EDUARDO M. ABACAN, ERLINDA U. LIM, FELICITO A. MADAMBA, PEPITO M. DELGADO, AND THE FEDERATION OF INVESTORS TULUNGAN, INC., RESPONDENTS.

DECISION

REYES, A., JR., J.:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court which assails the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 95754, respectively, dated September 30, 2010 and January 17, 2011, which, in turn, affirmed the issuance of the assailed Orders by the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in a complaint for securities fraud, annulment, specific performance, and preliminary injunction.

The Facts

This case is an offshoot of the liquidation proceedings of the Tibayan Group of Companies (Tibayan Group), involving the recovery of 650,225 Prudential Bank common shares allegedly acquired in fraud of the Tibayan Group's investor-creditors, 230,225 shares of which formed part of the assets of TMG Holdings and 420,000 shares formed part of the assets of Cielo Azul Holdings Corporation. Both entities were allegedly dummy corporations used by the Tibayan Group to dispose of assets in fraud of creditors by using illegally transferred assets to buy and sell shares of stock, some of which were acquired by petitioner Empire Insurance, Inc. (EII), Virginia Belinda S. Ocampo, Jose Augusto G. Santos, and Katrina G. Santos.

On September 24, 2004, the RTC of Las Pinas City, Branch 253 granted the petition in Civil Case No. LP-04-0082, entitled *In the matter of the Petition for Involuntary Dissolution with Prayer for the Appointment of a Receiver and Management Committee, Eduardo M. Abacan, et al. v. Tibayan Group of Investment Company, et al.* The dispositive portion of the Decision[4] reads:

> WHEREFORE, premises considered, finding merit to the instant petition for involuntary dissolution, the same is GRANTED.
>
> Accordingly, judgment is rendered declaring the dissolution of the hereunder-named respondent corporations pursuant to the provisions of Sections 121 and 122 of the *Corporation Code of the Philippines*:

Tibayan Group of Investment Company, Inc.
Tibayan Management Group International Holdings Co. Ltd.
TG Asset Management Corporation
MATCOR Holdings Company Ltd.
JETCOR Equity Company Ltd.
Sta. Rosa Management and Trading Corporation
Westar Royalty Management and Trading Corporation
Starboard Management and Trading Corporation
United Alpa Management and Trading Corporation
Global Progress Management and Trading Corporation
Athon Management and Trading Corporation
Diamond Star Management and Trading Corporation

Likewise, all claims of the petitioners herein and all other creditors shall be paid, as far as practicable, out of the assets and other properties of respondents Jesus V. Tibayan, Palmy B. Tibayan, the above-named corporations and all other officers and directors, nominees and / or dummies.

Furthermore, the Receiver Atty. Marciano S. Bacalla, Jr. is ordered to immediately effect the liquidation process pursuant to Section 122 of the Corporation Code and exercise any and all of the powers enumerated under Section 5, Rule 9 of the *Interim Rules Governing Intra-Corporate Controversies under RA 8799*, and such other powers as may be deemed necessary, just and equitable under the premises and / or circumstances.

Furnish a copy of this Decision to the Securities and Exchange Commission for its information and appropriate action.

SO ORDERED.[5]

On August 25, 2005, Atty. Marciano S. Bacalla, Jr. (Bacalla), in his capacity as the court-appointed receiver of the Tibayan Group, filed a "Very Urgent" application for injunctive relief before the trial court, seeking to enjoin the holders of the Prudential Bank shares from selling or otherwise disposing the same to other parties. The trial court, in its Resolution dated September 15, 2005, granted the application and further authorized Bacalla to prosecute an action to recover the shares.

Bacalla, together with certain Tibayan Group investors who filed the dissolution suit (hereinafter referred to as the Bacalla group), thus filed a case for securities fraud, declaration of nullity, and specific performance with prayer for issuance of writ of preliminary injunction before the RTC of Las Pinas City, impleading the Tibayan Group and its officers,[6] its alleged dummy corporations, the stock brokerage firms which brokered the sales,[7] and the subsequent buyers of the Prudential Bank shares,[8] as defendants.[9] The complaint,[10] dated October 14, 2005, alleged that the shares were originally acquired by TMG Holdings and Cielo Azul Holdings Corporation (CAHC) using the Tibayan Group's corporate funds; and were then sold by these dummy corporations to the defendants, in fraud of the investor-creditors of the Tibayan Group. To support the prayer for a writ of preliminary injunction, the complaint further alleged that the shares are in danger of being dissipated because the Securities and Exchange Commission (SEC) has received a tender offer to purchase them from the defendants, which would place them beyond the reach of

the Bacalla group. Thus, it was prayed *inter alia* that the trial court issue a writ of preliminary injunction to enjoin and prohibit the defendants from selling or otherwise disposing of the shares in dispute to other persons until the final resolution of the case. In computing the amount of filing fees, the clerk of court used the par value of the shares (Php 100.00) as basis.

In their answer, defendants countered that: 1) the filing fees were deficient because the correct basis of computation should have been the market value of the shares, which was alleged to be at Php 400.00 to 700.00, thus, the trial court did not acquire jurisdiction; 2) the complaint failed to state a cause of action; 3) Bacalla and the Federation of Investors Tulungan, Inc. (FITI) were not real parties-in-interest; and 4) the sales of the shares by the alleged Tibayan Group dummies to the defendants were valid.

On November 29, 2005, the trial court issued an Order[11] granting the Bacalla group's prayer for a writ of preliminary injunction, ruling that they were able to substantiate the bases for the grant of such relief in their favor. The trial court relied mainly on the findings of the SEC, which previously issued a Cease-and-Desist Order directing the Tibayan Group to stop dealing in securities; and the memorandum issued by the Philippine Stock Exchange (PSE) notifying stockbrokers that Prudential Bank shares in the name of the corporations linked with Tibayan Group shall not be traded until further notice. The trial court also took into account the difficulty of the factual and legal issues involved in the case and the need to preserve the status quo during the pendency of the main case.

As regards the alleged deficiency in the payment of filing fees, the trial court refused to disturb the clerk of court's computation thereof, invoking the presumption of regularity in the performance of official duties.

Of the 46 defendants before the trial court, only EII, Mario A. Remorosa, Virginia Belinda S. Ocampo, Jose Augusto G. Santos, and Katrina G. Santos (hereinafter referred to the Empire group) filed a motion for reconsideration seeking to have the Order dated November 29, 2005 set aside. However, both the trial court[12] and, on petition for *certiorari*, the CA,[13] refused to do so, essentially ruling that the Bacalla group was able to establish the existence of a material and substantial invasion of a clear and unmistakable right in their favor, which would cause them serious damage if not stopped through a writ of preliminary injunction.

On the issue of the correct amount of filing fees to be paid, the CA upheld par value as the basis for the computation of the filing fees. It held that the market value of the shares was only mentioned as part of the complaint's narration of facts. In contrast, the par value is the nominal value of the shares as stated in the stock certificates.

On the issue of the propriety of the grant of preliminary injunctive relief, the CA held that the Bacalla group had a clear and unmistakable right stemming from the final and executory decision in the petition for dissolution, under which the Bacalla group were entitled to the return of any and all assets of the Tibayan Group. The CA held that there was a "traceable connection" from the Tibayan Group to TMG Holdings and CAHC; and a "discernible flow of assets" from the Tibayan Group to the defendants, as Tibayan Group member companies transferred some of their assets

to the dummy corporations, which then used the assets to buy the shares in dispute, which were in turn sold to the defendants. The CA, therefore, concluded that the further disposition of the shares in dispute would result in further dissipation and dispersal of the assets originally held by the Tibayan Group, which would cause serious damage to the Bacalla group as they would be compelled to trace and pool back the assets.

Aggrieved, the Empire group sought recourse before this Court, still seeking to set aside the Order dated November 29, 2005, on the following grounds:

> I. THE CA COMMITTED AN ERROR OF LAW IN UPHOLDING THE TRIAL COURT'S ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION, DESPITE THE BACALLA GROUP'S FAILURE TO PAY THE CORRECT FILING FEES; and
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> II. THE CA COMMITTED AN ERROR OF LAW IN REFUSING TO RECOGNIZE THAT THE EMPIRE GROUP WAS DENIED DUE PROCESS OF LAW WHEN THE INJUNCTION WAS ISSUED.[14]

Ruling of the Court

The Court affirms the rulings of the lower courts.

Correct amount of filing fees

The settled rule is that a case is deemed filed only upon the payment of the filing fee. The court acquires jurisdiction over the case only upon full payment of such prescribed filing fee. The computation of the correct amount of filing fees to be paid rests upon a determination of the nature of the action. Thus, in a money claim or a claim involving property, the filing fee is computed in relation to the value of the money or property claimed;[15] while in an action incapable of pecuniary estimation, the Rules prescribe a determinate amount as filing fees.[16]

Jurisprudence has laid down the "primary objective" test to determine if an action is incapable of pecuniary estimation. This test is explained in the 1968 case of *Lapitan v. Scandia, Inc., et al.*,[17] *viz*.:

> A review of the jurisprudence of this Court indicates that in determining ' whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the **criterion of first ascertaining the nature of the principal action or remedy sought**. If it is *primarily* for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, **where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of the principal relief sought** like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable

> exclusively by courts of first instance. The rationale of the rule is plainly that the second class [of] cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction.[18] (Citations omitted and emphases Ours)

In *Lu v. Lu Ym, Sr., et al.*,[19] the Court held that an action for "Declaration of Nullity of Share Issue, Receivership and Dissolution" was incapable of pecuniary estimation, because "*the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action;*"[20] and the plaintiffs therein "*do not claim to be the owners thereof entitled to be the transferees of the shares of stock. The mention of the real value of the shares of stock, over which* [plaintiffs] *do not, it bears emphasis, interpose a claim of right to recovery, is merely narrative or descriptive in order to emphasize the inequitable price at which the transfer was effected*."[21]

The Court further noted in *Lu* that actions assailing the legality of a conveyance or for annulment of contract have been considered incapable of pecuniary estimation.[22] This ruling, which is further reiterated in a catena of cases,[23] also finds mooring in *Lapitan*[24] where the Court, speaking through the eminent jurist J.B.L. Reyes, explained that:

> [N]o cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of "specific performance." In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract, in the same manner that courts of first instance would have to make findings of fact and law **in actions not capable of pecuniary estimation** expressly held to be so by this Court, **arising from issues like** x x x **the legality or illegality of the conveyance sought for** and the determination of the validity of the money deposit made; x x x validity of a judgment; x x x validity of a mortgage; x x x the relations of the parties, the right to support created by the relation, etc., in actions for support; x x x **the validity or nullity of documents upon which claims are predicated**. Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits.[25] (Emphases Ours)