

SECOND DIVISION

[G.R. No. 189486, September 05, 2012]

SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, AND THE HEIRS OF THE LATE GRACE G. CHEU, PETITIONERS, VS. GILBERT G. GUY, RESPONDENT.

[G.R. NO. 189699]

SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, AND THE HEIRS OF THE LATE GRACE G. CHEU, PETITIONERS, VS. THE HON. OFELIA C. CALO, IN HER CAPACITY AS PRESIDING JUDGE OF THE RTC – MANDALUYONG CITY— BRANCH 211 AND GILBERT G. GUY, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

THE FACTS

With 519,997 shares of stock as reflected in Stock Certificate Nos. 004-014, herein respondent Gilbert G. Guy (Gilbert) practically owned almost 80 percent of the 650,000 subscribed capital stock of GoodGold Realty & Development Corporation (GoodGold),^[1] one of the multi-million corporations which Gilbert claimed to have established in his 30s. GoodGold's remaining shares were divided among Francisco Guy (Francisco) with 130,000 shares, Simny Guy (Simny), Benjamin Lim and Paulino Delfin Pe, with one share each, respectively.

Gilbert is the son of spouses Francisco and Simny. Simny, one of the petitioners, however, alleged that it was she and her husband who established GoodGold, putting the bulk of its shares under Gilbert's name. She claimed that with their eldest son, Gaspar G. Guy (Gaspar), having entered the Focolare Missionary in 1970s, renouncing worldly possessions,² she and Francisco put the future of the Guy group of companies in Gilbert's hands. Gilbert was expected to bring to new heights their family multimillion businesses and they, his parents, had high hopes in him.

Simny further claimed that upon the advice of their lawyers, upon the incorporation of GoodGold, they issued stock certificates reflecting the shares held by each stockholder duly signed by Francisco as President and Atty. Emmanuel Paras as Corporate Secretary, with corresponding blank endorsements at the back of each certificate – including Stock Certificate Nos. 004-014 under Gilbert's name.^[3] These certificates were all with Gilbert's irrevocable endorsement and power of attorney to have these stocks transferred in the books of corporation.^[4] All of these certificates were always in the undisturbed possession of the spouses Francisco and Simny, including Stock Certificate Nos. 004-014.^[5]

In 1999, the aging Francisco instructed Benjamin Lim, a nominal shareholder of GoodGold and his trusted employee, to collaborate with Atty. Emmanuel Paras, to redistribute GoodGold's shareholdings evenly among his children, namely, Gilbert, Grace Guy-Cheu (Grace), Geraldine Guy (Geraldine), and Gladys Guy (Gladys), while maintaining a proportionate share for himself and his wife, Simny.^[6]

Accordingly, some of GoodGold's certificates were cancelled and new ones were issued to represent the redistribution of GoodGold's shares of stock. The new certificates of stock were signed by Francisco and Atty. Emmanuel Paras, as President and Corporate Secretary, respectively.

The shares of stock were distributed among the following stockholders:

NAME	NO. OF SHARES
Francisco Guy [husband]	195,000
Simny G. Guy [wife]	195,000
Gilbert G. Guy [son]	65,000
Geraldine G. Guy [daughter]	65,000
Grace G.Cheu (or her heirs) [daughter]	65,000
Gladys G.Yao [daughter]	65,000
Total	650,000 ^[7]

In September 2004, or five years after the redistribution of GoodGold's shares of stock, Gilbert filed with the Regional Trial Court (RTC) of Manila, a Complaint for the "Declaration of Nullity of Transfers of Shares in GoodGold and of General Information Sheets and Minutes of Meeting, and for Damages with Application for a Preliminary Injunctive Relief," against his mother, Simny, and his sisters, Geraldine, Grace, and Gladys.^[8] Gilbert alleged, among others, that no stock certificate ever existed;^[9] that his signature at the back of the spurious Stock Certificate Nos. 004-014 which purportedly endorsed the same and that of the corporate secretary, Emmanuel Paras, at the obverse side of the certificates were forged, and, hence, should be nullified.^[10]

Gilbert, however, withdrew the complaint, after the National Bureau of Investigation (NBI) submitted a report to the RTC of Manila authenticating Gilbert's signature in the endorsed certificates.^[11] The NBI report stated:

FINDINGS:

Comparative analysis of the specimens submitted under magnification using varied lighting process and with the aid of photographic enlargements **disclosed the presence of significant and fundamental similarities in the personal handwriting habits existing between the questioned signatures of "GILBERT G. GUY" and "EMMANUEL C. PARAS," on one hand, and their corresponding standard specimen/exemplar signatures, on the other hand, such as**

in:

- Basic design of letters/elements;**
- Manner of execution/line quality;**
- Minute identifying details.**

CONCLUSION:

- A. **The questioned and the standard specimen/exemplar signatures [of] Gilbert G. Guy were written by one and the same person;**
- B. The questioned and the standard specimen/exemplar signatures [of] "EMMANUEL C. PARAS" were written by one and the same person. (Emphasis supplied)^[12]

The present controversy arose, when in 2008, three years after the complaint with the RTC of Manila was withdrawn, Gilbert again filed a complaint, this time, with the RTC of Mandaluyong, captioned as "Intra- Corporate Controversy: For the Declaration of Nullity of **Fraudulent** Transfers of Shares of Stock Certificates, Fabricated Stock Certificates, **Falsified** General Information Sheets, Minutes of Meetings, and Damages with Application for the Issuance of a Writ of Preliminary and Mandatory Injunction," docketed as **SEC-MC08-112**, against his mother, Simny, his sisters, Geraldine, Gladys, and the heirs of his late sister Grace.^[13]

Gilbert alleged that he never signed any document which would justify and support the transfer of his shares to his siblings and that he has in no way, disposed, alienated, encumbered, assigned or sold any or part of his shares in GoodGold.^[14] He also denied the existence of the certificates of stocks. According to him, "there were no certificates of stocks under [his] name for the shares of stock subscribed by him were never issued nor delivered to him from the time of the inception of the corporation."^[15]

Gilbert added that the Amended General Information Sheets (GIS) of GoodGold for the years 2000 to 2004 which his siblings submitted to the Securities and Exchange Commission (SEC) were spurious as these did not reflect his true shares in the corporation which supposedly totaled to 595,000 shares;^[16] that no valid stockholders' annual meeting for the year 2004 was held, hence proceedings taken thereon, including the election of corporate officers were null and void;^[17] and, that his siblings are foreign citizens, thus, cannot own more than forty percent of the authorized capital stock of the corporation.^[18]

Gilbert also asked in his complaint for the issuance of a Writ of Preliminary and Mandatory Injunction to protect his rights.^[19]

In an Order dated 30 June 2008,^[20] the RTC denied Gilbert's Motion for Injunctive Relief^[21] which constrained him to file a motion for reconsideration, and, thereafter, a Motion for Inhibition against Judge Edwin Sorongon, praying that the latter recuse

himself from further taking part in the case.

Meanwhile, Gilbert's siblings filed a manifestation claiming that the complaint is a nuisance and harassment suit under Section 1(b), Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies.

In an Order dated 6 November 2008,^[22] the RTC denied the motion for inhibition. The RTC also dismissed the case, declaring it a nuisance and harassment suit, *viz.*:

WHEREFORE, the court resolves:

- (1) To DENY as it is hereby DENIED [respondent's] Motion for Inhibition;
- (2) To DENY as it is hereby DENIED [respondent's] Motion for Reconsideration of the June 30, 2008 Order; and,
- (3) To declare as it is hereby declared the instant case as a **nuisance or harassment suit**. Accordingly, pursuant to Section 1(b), Rule 1 of the Interim Rules of Procedure for Intra-Corporate Dispute, the instant case is hereby DISMISSED. No pronouncement as to costs.^[23]

This constrained Gilbert to assail the above Order before the Court of Appeals (CA). The petition for review was docketed as CA-G.R. SP No. 106405.

In a Decision^[24] dated 27 May 2009, the CA upheld Judge Sorongon's refusal to inhibit from hearing the case on the ground that Gilbert failed to substantiate his allegation of Judge Sorongon's partiality and bias.^[25]

The CA, in the same decision, also denied Gilbert's Petition for the Issuance of Writ of Preliminary Injunction for failure to establish a clear and unmistakable right that was violated as required under Section 3, rule 58 of the 1997 Rules of Civil Procedure.^[26]

The CA, however, found merit on Gilbert's contention that the complaint should be heard on the merits. It held that:

A reading of the *Order, supra*, dismissing the [respondent's] complaint for being a harassment suit revealed that the court *a quo* relied heavily on the pieces of documentary evidence presented by the [Petitioners] to negate [Respondent's] allegation of fraudulent transfer of shares of stock, fabrication of stock certificates and falsification of General Information Sheets (GIS), *inter alia*. It bears emphasis that the [Respondent] is even questioning the genuineness and authenticity of the [Petitioner's] documentary evidence. To our mind, only a full-blown trial on the merits can afford the determination of the genuineness and authenticity of the documentary evidence and other factual issues which will ultimately resolve whether there was indeed a transfer of shares of stock.^[27]

Hence, these consolidated petitions.

G.R. No. 189486 is a Petition for Review under Rule 45 of the Rules of Court filed by Simny, Geraldine, Gladys, and the heirs of the late Grace against Gilbert, which prays that this Court declare Civil Case No. SECMC08- 112, a harassment or nuisance suit.

Meanwhile, during the pendency of G.R. No. 189486, the trial court set the pre-trial conference on the case subject of this controversy, constraining the petitioners to file a Motion to defer the pre-trial, which was, however, denied by the court *a quo* in an Order dated **11 September 2009**,^[28] viz.:

In a Resolution dated September 3, 2009, the Honorable Court of Appeals (CA) (Former Second Division) denied the Motion for Partial Reconsideration filed [by petitioners] herein. Inasmuch as there is no longer any impediment to proceed with the instant case and the fact that this court was specifically directed by the May 27, 2009 Decision of the CA Second Division to proceed with the trial on the merits with dispatch, this court resolves to deny the motion under consideration.

WHEREFORE, premises considered, the Motion to Defer Pre- Trial Conference and Further Proceedings filed by [petitioners] is hereby DENIED. Set the pre-trial on October 20, 2009, at 8:30 in the morning.

The denial of the petitioners' motion to defer pre-trial, compelled them to file with this Court a Petition for *Certiorari* with Urgent Application for the Issuance of TRO and/or A Writ of Preliminary Injunction, docketed as **G.R. No. 189699**. Because of the pendency of the G.R. No. 189486 before us, the petitioners deemed proper to question the said denial before us as an incident arising from the main controversy.^[29]

OUR RULING

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits.^[30]

An individual suit may be instituted by a stockholder against another stockholder for wrongs committed against him personally, and to determine their individual rights^[31] – this is an individual suit between stockholders. But an individual suit may also be instituted against a corporation, the same having a separate juridical personality, which by its own may be sued. It is of course, essential that the suing stockholder has a cause of action against the corporation.^[32]

Individual suits against another stockholder or against a corporation are remedies which an aggrieved stockholder may avail of and which are recognized in our jurisdiction as embedded in the Interim Rules on Intra- Corporate Controversy. Together with this right is the parallel obligation of a party to comply with the compulsory joinder of indispensable parties whether they may be stockholders or