

## SECOND DIVISION

[ G.R. No. 178523, June 16, 2010 ]

**MAKATI SPORTS CLUB, INC., PETITIONER, VS. CECILE H. CHENG,  
MC FOODS, INC., AND RAMON SABARRE, RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated June 25, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 80631, affirming the decision<sup>[3]</sup> dated August 20, 2003 of the Regional Trial Court (RTC), Branch 138, Makati City in Civil Case No. 01-837.

The facts of the case, as narrated by the RTC and adopted by the CA, are as follows:

On October 20, 1994, plaintiff's Board of Directors adopted a resolution (Exhibit 7) authorizing the sale of 19 unissued shares at a floor price of P400,000 and P450,000 per share for Class A and B, respectively.

Defendant Cheng was a Treasurer and Director of plaintiff in 1985. On July 7, 1995, Hodreal expressed his interest to buy a share, for this purpose he sent the letter, Exhibit 13. In said letter, he requested that his name be included in the waiting list.

It appears that sometime in November 1995, McFoods expressed interest in acquiring a share of the plaintiff, and one was acquired with the payment to the plaintiff by McFoods of P1,800,000 through Urban Bank (Exhibit 3). On December 15, 1995, the Deed of Absolute Sale, Exhibit 1, was executed by the plaintiff and McFoods Stock Certificate No. A 2243 was issued to McFoods on January 5, 1996. On December 27, 1995, McFoods sent a letter to the plaintiff giving advise (sic) of its offer to resell the share.

It appears that while the sale between the plaintiff and McFoods was still under negotiations, there were negotiations between McFoods and Hodreal for the purchase by the latter of a share of the plaintiff. On November 24, 1995, Hodreal paid McFoods P1,400,000. Another payment of P1,400,000 was made by Hodreal to McFoods on December 27, 1995, to complete the purchase price of P2,800,000.

On February 7, 1996, plaintiff was advised of the sale by McFoods to Hodreal of the share evidenced by Certificate No. 2243 for P2.8 Million. Upon request, a new certificate was issued. In 1997, an investigation was conducted and the committee held that there is prima facie evidence to

show that defendant Cheng profited from the transaction because of her knowledge.

x x x x

Plaintiff's evidence of fraud are - [a] letter of Hodreal dated July 7, 1995 where he expressed interest in buying one (1) share from the plaintiff with the request that he be included in the waiting list of buyers; [b] declaration of Lolita Hodreal in her Affidavit that in October 1995, she talked to Cheng who assured her that there was one (1) available share at the price of P2,800,000. The purchase to be validated by paying 50% immediately and the balance after thirty (30) days; [c] Marian Punzalan, Head, Membership Section of the plaintiff declared that she informed Cheng of the intention of Hodreal to purchase one (1) share and she gave to Cheng the contact telephone number of Hodreal; and [d] the authorization from Sabarre to claim the stock certificate.<sup>[4]</sup>

Thus, petitioner sought judgment that would order respondents to pay the sum of P1,000,000.00, representing the amount allegedly defrauded, together with interest and damages.

After trial on the merits, the RTC rendered its August 20, 2003 decision, dismissing the complaint, including all counterclaims.

Aggrieved, Makati Sports Club, Inc. (MSCI) appealed to the CA, arguing that the RTC erred in finding neither direct nor circumstantial evidence that Cecile H. Cheng (Cheng) had any fraudulent participation in the transaction between MSCI and Mc Foods, Inc. (Mc Foods), while it allegedly ignored MSCI's overwhelming evidence that Cheng and Mc Foods confabulated with one another at the expense of MSCI.

After the submission of the parties' respective briefs, the CA promulgated its assailed Decision, affirming the August 20, 2003 decision of the RTC. Hence, this petition anchored on the grounds that--

*THE APPELLATE COURT ERRED IN UPHOLDING THE CONCLUSION OF THE TRIAL COURT THAT PETITIONER DID NOT PROFFER CLEAR AND CONVINCING EVIDENCE SHOWING THAT THE RESPONDENTS DEFRAUDED THE PETITIONER DESPITE OVERWHELMING EVIDENCE TO THE CONTRARY AS SHOWN BY THE FOLLOWING:*

(A) RESPONDENTS CHENG AND SABARRE'S OWN ADMISSIONS, MARIAN PUNZALAN'S AFFIDAVIT, AND OTHER PERTINENT DOCUMENTARY EVIDENCE ALL UNEQUIVOCALLY PROVE THAT RESPONDENT CHENG HAD INTIMATE

PARTICIPATION IN THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO MC FOODS, INC. FOR THE CONSIDERATION OF ONE MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00).

(B) RESPONDENT CHENG'S ADMISSIONS AND OTHER PERTINENT DOCUMENTARY EVIDENCE RELATED TO THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO RESPONDENT MC FOODS, INC. AND THE RESALE OF THE SAME TO SPOUSES HODREAL PROVE THAT THE SALE OF THE SAID UNISSUED SHARE TO MC FOODS, INC. AT ONE MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00) WAS MADE WITH A VIEW TO RESELL THE SAME AT A PROFIT TO THE HODREAL SPOUSES AT THE AMOUNT OF TWO MILLION EIGHT HUNDRED PESOS (PHP2,800,000.00); THE "RESALE" OF THE SAID SHARE TO THE SPOUSES HODREAL OCCURRING EVEN BEFORE MC FOODS, INC. GAINED OWNERSHIP OVER THE SAID UNISSUED SHARE.

(C) THE UTTER LACK OF DOCUMENTARY EVIDENCE SHOWING THAT MC FOODS, INC. EVINced A DESIRE TO PURCHASE PETITIONER'S UNISSUED SHARES CONCLUSIVELY PROVES THAT MC FOODS, INC. NEVER MADE ANY FORMAL OFFER TO BUY AN UNISSUED M[SC]I SHARE FROM PETITIONER'S BOARD OF DIRECTORS AND/OR MEMBERSHIP COMMITTEE, COURSING THE SAID TRANSACTION CLANDESTINELY THROUGH RESPONDENT CHENG.

(D) RESPONDENT CHENG'S OWN ADMISSIONS INDUBITABLY PROVE THAT SHE DELIBERATELY CONCEALED THE FACT THAT THERE WERE OTHER UNISSUED M[SC]I SHARES AVAILABLE FOR PURCHASE BY THE SPOUSES HODREAL, CHOOSING INSTEAD TO BROKER THE "RESALE" OF THE SHARE PURCHASED BY MC FOODS, INC. FROM MSCI TO THE SPOUSES HODREAL AT THE PRICE OF TWO MILLION EIGHT HUNDRED THOUSAND PESOS (PHP2,800,000.00) TO THE DETRIMENT OF THE PETITIONER.

(E) RESPONDENTS CHENG AND SABARRE'S ADMISSIONS, MSCI'S BY-LAWS AND DOCUMENTARY EVIDENCE RELATING TO THE TWO IRREGULAR SALES TRANSACTIONS ALL POINT TO THE CONCLUSION THAT MC FOODS, INC. IN RESELLING ITS MSCI SHARE TO SPOUSES HODREAL FAILED TO GIVE MSCI A CREDIBLE OPPORTUNITY TO REPURCHASE THE SAME IN ACCORDANCE WITH SECTION 30 (E) OF MSCI'S BY-LAWS.

(F) RESPONDENT CHENG'S OWN DOCUMENTARY EVIDENCE PROVES THAT RESPONDENTS FALSIFIED AN ENTRY IN MC FOODS, INC.'S "OFFER" TO SELL ITS SHARE TO MSCI IN AN EFFORT TO COAT THE RESELLING OF THE SAID SHARE TO SPOUSES HODREAL WITH A SEMBLANCE OF REGULARITY[.]

(G) FINALLY, PERHAPS THE MOST OVERLOOKED MATTER BY THE TRIAL COURT AND THE APPELLATE COURT IS THE SINGULAR UNDENIABLE FACT THAT RESPONDENT CHENG DURING THE PERIOD IN WHICH THE ABOVE-MENTIONED

TRANSACTIONS CAME INTO FRUITION WAS A MEMBER OF THE BOARD OF DIRECTORS AND THE TREASURER OF MSCl, THIS FACT ALONE TAINTS THE PARTICIPATION OF RESPONDENT CHENG IN THE SAID IRREGULAR TRANSACTIONS WITH BAD FAITH.[5]

The petition should be denied.

At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, such a petition shall raise only questions of law which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual.[6]

A perusal of the assignment of errors and the discussion set forth by MSCl would readily show that the petition seeks a review of all the evidence presented before the RTC and reviewed by the CA; therefore, the issue is factual. Accordingly, the petition should be dismissed outright, especially considering that the very same factual circumstances in this petition have already been ruled upon by the CA.

However, MSCl seeks to evade this rule that the findings of fact made by the trial court, particularly when affirmed by the appellate court, are entitled to great weight and even finality, claiming that its case falls under two of the well-recognized exceptions, to wit: (1) that the judgment of the appellate court is premised on a misapprehension of facts or that it has failed to consider certain relevant facts which, if properly considered, will justify a different conclusion; and (2) that the findings of fact of the appellate court are ostensibly premised on the absence of evidence, but are contradicted by the evidence on record.[7]

MSCl insists that Cheng, in collaboration with Mc Foods, committed fraud in transacting the transfers involving Stock Certificate No. A 2243 (Certificate A 2243) on account of the following circumstances--(1) on November 24, 1995, Joseph L. Hodreal (Hodreal) paid the first installment of P1,400,000.00 for the purchase of a Class "A" share in favor of Mc Foods;[8] (2) on November 28, 1995, Mc Foods deposited to MSCl's account an Allied Banking Corporation manager's check for the purchase of the same share in the amount of P1,800,000.00,[9] sans an official receipt from MSCl;[10] (3) on December 15, 1995, MSCl and Mc Foods executed a Deed of Sale for the purchase of a Class "A" share;[11] (4) on December 27, 1995, Hodreal paid the last installment of P1,400,000.00 to Mc Foods;[12] (5) on December 27, 1995, Mc Foods sent a letter to MSCl, offering to sell its purchased share of stock in the amount of P2,800,000.00;[13] (6) on January 5, 1996, Certificate A 2243 was issued to Mc Foods by MSCl;[14] and (7) on January 29,

1996, Mc Foods and Hodreal executed a Deed of Sale for the same share of stock.  
[15]

Based on the above incidents, MSCI asserts that Mc Foods never intended to become a legitimate holder of its purchased Class "A" share but did so only for the purpose of realizing a profit in the amount of P1,000,000.00 at the expense of the former. MSCI further claims that Cheng confabulated with Mc Foods by providing it with an insider's information as to the status of the shares of stock of MSCI and even, allegedly with unusual interest, facilitated the transfer of ownership of the subject share of stock from Mc Foods to Hodreal, instead of an original, unissued share of stock. According to MSCI, Cheng's fraudulent participation was clearly and overwhelmingly proven by the following circumstances: (1) sometime in October 1995, Lolita Hodreal, wife of Hodreal, talked to Cheng about the purchase of one Class "A" share of stock and the latter assured her that there was already an available share for P2,800,000.00; [16] (2) the second installment payment of P1,400,000.00 of spouses Hodreal to Mc Foods was received by Cheng on the latter's behalf; [17] (3) Marian N. Punzalan (Punzalan), head of MSCI's membership section, informed Cheng about Hodreal's intention to purchase a share of stock and Cheng asked her if there was a quoted price for it, and for Hodreal's contact number; [18] and (4) on January 29, 1996, Cheng claimed Certificate A 2243 on behalf of Mc Foods, [19] per letter of authority dated January 26, 1996, executed by Mc Foods in favor of Cheng. [20]

The Court is not convinced.

It is noteworthy that, as early as July 7, 1995, Hodreal already expressed to the MSCI Membership Committee his intent to purchase one Class "A" share and even requested if he could be included in the waiting list of buyers. However, there is no evidence on record that the Membership Committee acted on this letter by replying to Hodreal if there still were original, unissued shares then or if he would indeed be included in the waiting list [21] of buyers. All that Punzalan did was to inform Cheng of Hodreal's intent and nothing more, even as Cheng asked for Hodreal's contact number. It may also be observed that, although established by Punzalan's affidavit that she informed Cheng about Hodreal's desire to purchase a Class "A" share and that Cheng asked for Hodreal's contact number, it is not clear when Punzalan relayed the information to Cheng or if Cheng indeed initiated contact with Hodreal to peddle Mc Foods' purchased share.

While Punzalan declared that, in December 1995, she received a Deed of Absolute Sale between MSCI and Mc Foods of a Class "A" share for P1,800,000.00 signed by Atty. Rico Domingo and Cheng, in their respective capacities as then President and Treasurer of MSCI, and by Ramon Sabarre, as President of Mc Foods, what she merely did was to inquire from her immediate superior Becky Peñaranda what share to issue; and the latter, in turn, replied that it should be an original share. Thereafter, Punzalan prepared a letter, signed by then corporate secretary, Atty. Rafael Abiera, to be sent to MSCI's stock transfer agent for the issuance of the corresponding certificate of stock. Then, Certificate A 2243 was issued in favor of Mc Foods on January 5, 1996.

Also in point are the powers and duties of the MSCI's Membership Committee, viz.: