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THIRD DIVISION

[G.R. No. 157479, November 24, 2010]

PHILIP TURNER AND ELNORA TURNER, PETITIONERS, VS. LORENZO SHIPPING CORPORATION, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This case concerns the right of dissenting stockholders to demand payment of the value of their shareholdings.

In the stockholders' suit to recover the value of their shareholdings from the corporation, the Regional Trial Court (RTC) upheld the dissenting stockholders, herein petitioners, and ordered the corporation, herein respondent, to pay. Execution was partially carried out against the respondent. On the respondent's petition for *certiorari*, however, the Court of Appeals (CA) corrected the RTC and dismissed the petitioners' suit on the ground that their cause of action for collection had not yet accrued due to the lack of unrestricted retained earnings in the books of the respondent.

Thus, the petitioners are now before the Court to challenge the CA's decision promulgated on March 4, 2003 in C.A.-G.R. SP No. 74156 entitled *Lorenzo Shipping Corporation v. Hon. Artemio S. Tipon, in his capacity as Presiding Judge of Branch 46 of the Regional Trial Court of Manila, et al*.[1]

Antecedents

The petitioners held 1,010,000 shares of stock of the respondent, a domestic corporation engaged primarily in cargo shipping activities. In June 1999, the respondent decided to amend its articles of incorporation to remove the stockholders' pre-emptive rights to newly issued shares of stock. Feeling that the corporate move would be prejudicial to their interest as stockholders, the petitioners voted against the amendment and demanded payment of their shares at the rate of P2.276/share based on the book value of the shares, or a total of P2,298,760.00.

The respondent found the fair value of the shares demanded by the petitioners unacceptable. It insisted that the market value on the date before the action to remove the pre-emptive right was taken should be the value, or P0.41/share (or a total of P414,100.00), considering that its shares were listed in the Philippine Stock Exchange, and that the payment could be made only if the respondent had unrestricted retained earnings in its books to cover the value of the shares, which was not the case.

The disagreement on the valuation of the shares led the parties to constitute an appraisal committee pursuant to Section 82 of the *Corporation Code*, each of them nominating a representative, who together then nominated the third member who would be chairman of the appraisal committee. Thus, the appraisal committee came to be made up of Reynaldo Yatco, the petitioners' nominee; Atty. Antonio Acyatan, the respondent's nominee; and Leo Anoche of the Asian Appraisal Company, Inc., the third member/chairman.

On October 27, 2000, the appraisal committee reported its valuation of P2.54/share, for an aggregate value of P2,565,400.00 for the petitioners.[2]

Subsequently, the petitioners demanded payment based on the valuation of the appraisal committee, plus 2%/month penalty from the date of their original demand for payment, as well as the reimbursement of the amounts advanced as professional fees to the appraisers.[3]

In its letter to the petitioners dated January 2, 2001,[4] the respondent refused the petitioners' demand, explaining that pursuant to the *Corporation Code*, the dissenting stockholders exercising their appraisal rights could be paid only when the corporation had unrestricted retained earnings to cover the fair value of the shares, but that it had no retained earnings at the time of the petitioners' demand, as borne out by its Financial Statements for Fiscal Year 1999 showing a deficit of P72,973,114.00 as of December 31, 1999.

Upon the respondent's refusal to pay, the petitioners sued the respondent for collection and damages in the RTC in Makati City on January 22, 2001. The case, docketed as Civil Case No. 01-086, was initially assigned to Branch 132.[5]

On June 26, 2002, the petitioners filed their *motion for partial summary judgment*, claiming that:

> 7) xxx the defendant has an accumulated unrestricted retained earnings of ELEVEN MILLION NINE HUNDRED SEVENTY FIVE THOUSAND FOUR HUNDRED NINETY (P11,975,490.00) PESOS, Philippine Currency, evidenced by its Financial Statement as of the Quarter Ending March 31, 2002; xxx
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> 8) xxx the fair value of the shares of the petitioners as fixed by the Appraisal Committee is final, that the same cannot be disputed xxx
>
> 9) xxx there is no genuine issue to material fact and therefore, the plaintiffs are entitled, as a matter of right, to a summary judgment. xxx [6]

The respondent opposed the *motion for partial summary judgment*, stating that the determination of the unrestricted retained earnings should be made at the end of the fiscal year of the respondent, and that the petitioners did not have a cause of action against the respondent.

During the pendency of the *motion for partial summary judgment*, however, the Presiding Judge of Branch 133 transmitted the records to the Clerk of Court for re-raffling to any of the RTC's special commercial courts in Makati City due to the case being an intra-corporate dispute. Hence, Civil Case No. 01-086 was re-raffled to Branch 142.

Nevertheless, because the principal office of the respondent was in Manila, Civil Case No. 01-086 was ultimately transferred to Branch 46 of the RTC in Manila, presided by Judge Artemio Tipon,[7] pursuant to the *Interim Rules of Procedure on Intra-Corporate Controversies* (Interim Rules) requiring intra-corporate cases to be brought in the RTC exercising jurisdiction over the place where the principal office of the corporation was found.

After the conference in Civil Case No. 01-086 set on October 23, 2002, which the petitioners' counsel did not attend, Judge Tipon issued an order,[8] granting the petitioners' *motion for partial summary judgment*, stating:

> As to the motion for partial summary judgment, there is no question that the 3-man committee mandated to appraise the shareholdings of plaintiff submitted its recommendation on October 27, 2000 fixing the fair value of the shares of stocks of the plaintiff at P2.54 per share. Under Section 82 of the Corporation Code:
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>> "The findings of the majority of the appraisers shall be final, and the award shall be paid by the corporation within thirty (30) days after the award is made."
>>
>> "The only restriction imposed by the Corporation Code is-"
>>
>> "That no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earning in its books to cover such payment."
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> The evidence submitted by plaintiffs shows that in its quarterly financial statement it submitted to the Securities and Exchange Commission, the defendant has retained earnings of P11,975,490 as of March 21, 2002. This is not disputed by the defendant. Its only argument against paying is that there must be unrestricted retained earning at the time the demand for payment is made.
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> This certainly is a very narrow concept of the appraisal right of a stockholder. The law does not say that the unrestricted retained earnings must exist at the time of the demand. Even if there are no retained earnings at the time the demand is made if there are retained earnings later, the fair value of such stocks must be paid. The only restriction is that there must be sufficient funds to cover the creditors after the dissenting stockholder is paid. No such allegations have been made by the defendant.[9]

On November 12, 2002, the respondent filed a *motion for reconsideration*.

On the scheduled hearing of the *motion for reconsideration* on November 22, 2002, the petitioners filed a *motion for immediate execution* and a *motion to strike out* *motion for reconsideration.* In the latter motion, they pointed out that the *motion for reconsideration* was prohibited by Section 8 of the Interim Rules*.* Thus, also on November 22, 2002, Judge Tipon denied the *motion for reconsideration* and granted the petitioners' *motion for immediate execution*.[10]

Subsequently, on November 28, 2002, the RTC issued a *writ of execution*.[11]

Aggrieved, the respondent commenced a special civil action for *certiorari* in the CA to challenge the two aforecited orders of Judge Tipon, claiming that:

> A.
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> JUDGE TIPON GRAVELY ABUSED HIS DISCRETION IN GRANTING SUMMARY JUDGMENT TO THE SPOUSES TURNER, BECAUSE AT THE TIME THE "COMPLAINT" WAS FILED, LSC HAD NO RETAINED EARNINGS, AND THUS WAS COMPLYING WITH THE LAW, AND NOT VIOLATING ANY RIGHTS OF THE SPOUSES TURNER, WHEN IT REFUSED TO PAY THEM THE VALUE OF THEIR LSC SHARES. ANY RETAINED EARNINGS MADE A YEAR AFTER THE "COMPLAINT" WAS FILED ARE IRRELEVANT TO THE SPOUSES TURNER'S RIGHT TO RECOVER UNDER THE "COMPLAINT", BECAUSE THE WELL-SETTLED RULE, REPEATEDLY BROUGHT TO JUDGE TIPON'S ATTENTION, IS "IF NO RIGHT EXISTED AT THE TIME (T)HE ACTION WAS COMMENCED THE SUIT CANNOT BE MAINTAINED, ALTHOUGH SUCH RIGHT OF ACTION MAY HAVE ACCRUED THEREAFTER.
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> B.
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> JUDGE TIPON IGNORED CONTROLLING CASE LAW, AND THUS GRAVELY ABUSED HIS DISCRETION, WHEN HE GRANTED AND ISSUED THE QUESTIONED "WRIT OF EXECUTION" DIRECTING THE EXECUTION OF HIS PARTIAL SUMMARY JUDGMENT IN FAVOR OF THE SPOUSES TURNER, BECAUSE THAT JUDGMENT IS NOT A FINAL JUDGMENT UNDER SECTION 1 OF RULE 39 OF THE RULES OF COURT AND THEREFORE CANNOT BE SUBJECT OF EXECUTION UNDER THE SUPREME COURT'S CATEGORICAL HOLDING IN *PROVINCE OF PANGASINAN VS. COURT OF APPEALS.*

Upon the respondent's application, the CA issued a temporary restraining order (TRO), enjoining the petitioners, and their agents and representatives from enforcing the *writ of execution*. By then, however, the *writ of execution* had been partially enforced.

The TRO lapsed without the CA issuing a writ of preliminary injunction to prevent the execution. Thereupon, the sheriff resumed the enforcement of the *writ of execution.*

The CA promulgated its assailed decision on March 4, 2003,[12] pertinently holding:

> However, it is clear from the foregoing that the Turners' appraisal right is subject to the legal condition that no payment shall be made to any

dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover such payment. Thus, the Supreme Court held that:

> The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock.

In the instant case, it was established that there were no unrestricted retained earnings when the Turners filed their Complaint. In a letter dated 20 August 2000, petitioner informed the Turners that payment of their shares could only be made if it had unrestricted earnings in its books to cover the same. Petitioner reiterated this in a letter dated 2 January 2001 which further informed the Turners that its Financial Statement for fiscal year 1999 shows that its retained earnings ending December 31, 1999 was at a deficit in the amount of P72,973,114.00, a matter which has not been disputed by private respondents. Hence, in accordance with the second paragraph of sec. 82, BP 68 supra, the Turners' right to payment had not yet accrued when they filed their Complaint on January 22, 2001, albeit their appraisal right already existed.

In Philippine American General Insurance Co. Inc. vs. Sweet Lines, Inc., the Supreme Court declared that:

> Now, before an action can properly be commenced all the essential elements of the cause of action must be in existence, that is, the cause of action must be complete. All valid conditions precedent to the institution of the particular action, whether prescribed by statute, fixed by agreement of the parties or implied by law must be performed or complied with before commencing the action, unless the conduct of the adverse party has been such as to prevent or waive performance or excuse non-performance of the condition.
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> It bears restating that a right of action is the right to presently enforce a cause of action, while a cause of action consists of the operative facts which give rise to such right of action. The right of action does not arise until the performance of all conditions precedent to the action and may be taken away by