

## SECOND DIVISION

[ G.R. No. 167041, June 17, 2008 ]

**PROVIDENT INTERNATIONAL RESOURCES CORPORATION,  
REPRESENTED BY EDWARD T. MARCELO, CONSTANCIO D.  
FRANCISCO, ANNA MELINDA MARCELO-REVILLA, LYDIA J.  
CHUANICO, DANIEL T. PASCUAL, LINDA J. MARCELO, JOHN  
MARCELO, CELIA C. CABURNAY AND CELEDONIO P. ESCAÑO, JR.,  
AND CELEDONIO ESCAÑO, JR., PETITIONERS, VS. JOAQUIN T.  
VENUS, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III,  
LAZARO L. MADARA AND SANTIAGO ALVAREZ, JR.,  
RESPONDENTS.**

### DECISION

#### **QUISUMBING, J.:**

For review on certiorari are the Decision<sup>[1]</sup> dated December 13, 2004 and Resolution<sup>[2]</sup> dated February 3, 2005 of the Court of Appeals in CA-G.R. SP No. 77672, which set aside the Order<sup>[3]</sup> dated May 27, 2003, of the Securities and Exchange Commission (SEC) En Banc in CRMD-AA-Case No. 04-03-22.

The pertinent facts are as follows:

Petitioner Provident International Resources Corporation (PIRC) is a corporation duly organized under Philippine law. It was registered with the SEC on September 20, 1979. Edward T. Marcelo, Constancio D. Francisco, Lydia J. Chuanico, Daniel T. Pascual, and Jose A. Lazaro, collectively known as the Marcelo group, were its incorporators, original stockholders, and directors.<sup>[4]</sup>

Another group, known as the Asistio group, composed of Luis A. Asistio, Lazaro L. Madara, Alfredo D. Roa III, Joaquin T. Venus, and Jose Ma. Carlos L. Zumel, claimed that the Marcelo group acquired shares in PIRC as mere trustees for the Asistio group. The Marcelo group allegedly executed a waiver of pre-emptive right, blank deeds of assignment, and blank deeds of transfer; endorsed in blank their respective stock certificates over all of the outstanding capital stock registered in their names; and completed the blank deeds in 2002 to effect transfers to the Asistio group.

On August 6, 2002, the Company Registration and Monitoring Department (CRMD) of the SEC issued a certification<sup>[5]</sup> stating that verification made on the available records of PIRC showed failure to register its stock and transfer book (STB). It also appears that on April 21, 1998, the Supervision and Monitoring Department of the SEC had issued a show cause letter<sup>[6]</sup> to PIRC for its supposed failure to register its STB.

On August 7, 2002, the Asistio group registered PIRC's STB. Upon learning of this, PIRC's assistant corporate secretary, Celedonio Escaño, Jr., requested the SEC for a certification of the registration in 1979 of PIRC's STB. Escaño presented the 1979-registered STB bearing the SEC stamp and the signature of the officer in charge of book registration.

Meanwhile, on October 17, 2002, the Asistio group filed in the Regional Trial Court (RTC) of Muntinlupa City, a complaint<sup>[7]</sup> docketed as Civil Case No. 02-238 against the Marcelo group. The Asistio group prayed that the Marcelo group be enjoined from acting as directors of PIRC, from physically holding office at PIRC's office, and from taking custody of PIRC's corporate records.

Then, on October 30, 2002, the CRMD of the SEC issued a letter<sup>[8]</sup> recalling the certification it had issued on August 6, 2002 and canceling the 2002-registered STB. However, one Kennedy B. Sarmiento requested the SEC not to cancel the 2002-registered STB. The SEC thus scheduled a conference to determine which of the two STBs is valid. The parties were ordered to file their respective position papers. On February 12, 2003, the hearing officer ruled:

WHEREFORE, premises considered and finding the 1979 stock and transfer book authentic and duly executed, the Commission hereby recall the certification issued on 6 August 2002 and cancel the stock and transfer book registered on October 2002. Accordingly, the stock and transfer book registered on 25 September 1979 shall remain valid.

SO ORDERED.<sup>[9]</sup>

The Asistio group appealed to the SEC Board of Commissioners. They claimed that the issue of which of the two STBs is valid is intra-corporate in nature; hence, the RTC, not the SEC, has jurisdiction.

The SEC, in its assailed order, denied the appeal. The SEC ratiocinated that the determination of which of the two STBs is valid calls for regulatory, not judicial power and is therefore within its exclusive jurisdiction.

The Asistio group elevated the case to the Court of Appeals, which ruled in their favor. The Court of Appeals held that the issue of which of the two STBs is valid is intra-corporate and thus subject to the jurisdiction of the RTC. The appellate court reversed the SEC ruling, to wit:

**WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The Order of the Commission *en banc* dated May 27, 2003, is hereby **ANNULLED** and **SET ASIDE**.

SO ORDERED.<sup>[10]</sup>

The motion for reconsideration of the aforequoted decision was denied for lack of merit. Aggrieved, the Marcelo group filed the instant petition for review on certiorari raising the sole issue

WHETHER OR NOT THE SEC HAS THE JURISDICTION TO RECALL AND CANCEL A STOCK AND TRANSFER BOOK WHICH IT ISSUED IN 2002 BECAUSE OF ITS MISTAKEN ASSUMPTION THAT NO STOCK AND TRANSFER BOOK HAD BEEN PREVIOUSLY ISSUED IN 1979.<sup>[11]</sup>

Petitioners, consisting of the Marcelo group, contend that the Court of Appeals erred in ruling that the SEC has no jurisdiction over the case. Petitioners insist the issue in this case is not an intra-corporate dispute, but one that calls for the exercise of the SEC's regulatory power over corporations. Petitioners maintain that the recall and cancellation of the 2002-registered STB does not conflict with the proceedings in the civil case so as to violate the *sub judice* rule. Petitioners point out that a judgment has, in fact, been promulgated in the said civil case.

Respondents, composed of the Asistio group, counter that in resolving the question of which of the two STBs is valid, the issues of (1) falsification by corporate officers of corporate records and (2) the acquisition of shares by the Asistio group, must first be settled. Respondents thus claim that the real issue is intra-corporate and that whether the 2002-registered STB should be recalled is a mere consequence of the real controversies that should be heard by a regular court.

To resolve the issue of jurisdiction, it would be good to look at the powers and functions of the SEC.

The Securities Regulation Code (Republic Act No. 8799) provides:

*Sec. 5. Powers and Functions of the Commission.-* 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, . . . Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) *Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and /or a license or permit issued by the Government;*

(b) Formulate policies and recommendations in issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

(d) *Regulate, investigate or supervise the activities of persons to ensure compliance;*

(e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs;

(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;