

## THIRD DIVISION

[ G.R. No. 136821, October 17, 2002 ]

**ROVELS ENTERPRISES, INC., PETITIONER, VS. EMMANUEL B. OCAMPO, JOSE M. SILVA, SR., THE HEIRS OF EXPEDITO LEVISTE, SR., \* CONRADO CALALANG, AND FRANCISCO CARREON, SR., RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> is the Decision of the Court of Appeals dated June 5, 1998<sup>[2]</sup> in CA-G.R. SP No. 43260, affirming the Decision of the Securities and Exchange Commission (SEC) in SEC Case No. 09-95-5135 dismissing the petition to be declared the majority stockholder of Tagaytay Taal Tourist Development Corporation (TTTDC). The petition was filed by Rovels Enterprises, Inc. (Rovels), herein petitioner. Rovels is a domestic corporation engaged in construction work. Its President is Eduardo Santos. TTTDC was among Rovels' clients.

In payment for the services rendered by Rovels, the Board of Directors of TTTDC passed a Resolution on December 29, 1975 providing as follows:

**"RESOLVED, as it is hereby resolved that payment for professional fees and services rendered by x x x Rovels' Enterprises x x x be made in cash if funds are available, or its equivalent number of shares of stock of the corporation at par value, and should said creditors elect the latter mode of payment, it is further resolved that the President and/or his Secretary be authorized as they are hereby authorized, to issue the corresponding unissued shares of stock of the corporation."**<sup>[3]</sup> (emphasis added)

The Resolution was signed by three of TTTDC's directors, namely, Victoriano Leviste, Bienvenido Cruz, Jr., and Roberto Roxas. Roberto Roxas is the President of TTTDC and stockholder of Rovels at the same time. Noticeably, the signatures of the other two (2) TTTDC directors – Jose Silva, Jr. and Emmanuel Ocampo – do not appear in the subject Resolution despite their presence in the December 29, 1975 Board meeting.<sup>[4]</sup>

On February 23, 1976, Eduardo Santos, President of Rovels, on behalf of TTTDC, filed with the SEC an application for exemption from registration of TTTDC's unissued shares of stock transferred to it (Rovels) as payment for its services worth One Hundred Eight Thousand Pesos (P108,000.00). This was done because under Section 4 (a) of the Revised Securities Act, no shares of stocks shall be transferred unless first registered with the SEC or permitted to be sold.<sup>[5]</sup>

On May 7, 1976, the SEC, in its Resolution No. 260,<sup>[6]</sup> granted Eduardo Santos' application.

On March 1, 1976, the TTTDC Board of Directors passed another Resolution<sup>[7]</sup> repealing its Resolution of December 29, 1975, thus:

"RESOLVED, as it is hereby resolved, that **the Resolution of December 29, 1975 authorizing the payment of creditors with unissued shares of the corporation be as it is hereby repealed**: Resolved further that the matter as well as the amount of the creditors' claims be given adequate study and consideration by the Board." (emphasis added)

In view of the December 29, 1975 TTTDC Board Resolution transferring to Rovels the said shares of stock as construction fee, TTTDC Directors Jose Silva, Jr. and Emmanuel Ocampo filed a complaint with the SEC against Roberto Roxas, TTTDC President, and Eduardo Santos, Rovels' President, docketed as SEC Case No. 1322. In their complaint, Silva and Ocampo alleged that there was no meeting of the TTTDC's Board of Directors on December 29, 1975; that they did not authorize the transfer of TTTDC's shares of stock to Rovels; that they never signed the alleged minutes of the meeting; and that the signatures of the other two (2) Directors, Victoriano Leviste and Bienvenido Cruz, Jr., as well as that of TTTDC's Secretary Francisco Carreon, Jr., were obtained through fraud and misrepresentation. They also alleged that the TTTDC Board Resolution dated December 29, 1975 was repealed by the March 1, 1976 Resolution. They thus prayed that the transfer of TTTDC's shares of stock to Rovels pursuant to Resolution dated December 29, 1975 be annulled.

On March 17, 1979, SEC Hearing Officer Eugenio E. Reyes issued a Decision<sup>[8]</sup> in favor of Silva and Ocampo, the dispositive portion of which reads:

"Considering that the (December 29, 1975) board resolution which authorizes the corporation to pay its creditors with its unissued shares of stock x x x **had been expressly revoked or repealed on March 1, 1976** as earlier pointed out, Commission Resolution No. 260 (granting Santos' application for exemption from registration of the unissued shares), when issued on May 7, 1976 x x x had lost its legal basis. **Consequently, the corresponding issuance of shares was without authority of the board of directors.**"

X X X X X X X X

"WHEREFORE, premises considered, this Commission finds and so holds that **the purported board resolution of December 29, 1975, not having been properly passed upon at a duly constituted board meeting, cannot be recognized as valid and hence, without legal force and effect. Consequently, the issuance of shares of stock to corporate creditors of the Tagaytay Taal Tourist Development Corporation is null and void.** In view thereof, the shares in question are still considered unissued and remain part of the authorized capital stocks of the Tagaytay Taal Tourist Development Corporation. This is without prejudice to the rights of said corporate creditors as against Tagaytay Taal Tourist Development Corporation for the latter's contractual obligations." (emphasis added)

On appeal by Roberto Roxas and Eduardo Santos, the SEC *en banc*, in its Decision dated September 2, 1982 in SEC-AC No. 049,<sup>[9]</sup> affirmed the Decision of the SEC Hearing Officer. This Court, in its Decision of June 20, 1983 in G.R. No. 61863,<sup>[10]</sup> likewise affirmed the Decision of the SEC *en banc*. The Decision of this Court became final and executory on September 2, 1983.<sup>[11]</sup>

Subsequently, TTTDC, Jose Silva, Emmanuel Ocampo, Victoriano Leviste, Francisco Carreon, Jr., and Expedito Leviste, Sr., another stockholder of TTTDC, (the SILVA GROUP, now respondents), filed with the SEC a petition against Eduardo Santos, Sylvia S. Veloso, Josefina Carballo, Augusto del Rosario, Reynaldo Alcantara and Lauro Sandoval (the SANTOS GROUP), docketed as SEC Case No. 3806. (The SANTOS GROUP were nominees of Rovels who, by virtue of the shares of stock issued pursuant to the December 29, 1975 Resolution, proceeded to act as directors and officers of TTTDC). In their petition, the SILVA GROUP prayed that **they be declared the true and lawful stockholders and incumbent directors and officers of TTTDC.**

On July 6, 1993, SEC Hearing Officer Alberto P. Atas rendered a Decision<sup>[12]</sup> in favor of the SILVA GROUP, thus:

“WHEREFORE, judgment is hereby rendered in favor of the petitioners (**SILVA GROUP**) and against the respondents (**SANTOS GROUP**), as follows:

- a. Declaring petitioners as the lawful stockholders, directors and officers of Tagaytay Taal Tourist Development Corporation;
- b. Declaring respondents, to be not stockholders of Tagaytay Taal Tourist Development Corporation;
- c. Declaring respondents to be not directors or officers of Tagaytay Taal Tourist Development Corporation;
- d. The writ of preliminary injunction issued on November 6, 1990 is hereby made permanent; and
- e. Ordering the Records Division of this Commission to purge the records of Tagaytay Taal Tourist Development Corporation of all papers and documents filed by respondents purportedly in behalf of Tagaytay Taal Tourist Development Corporation.”  
(emphasis and words in parentheses added)

The above Decision became final and executory on September 1, 1994<sup>[13]</sup> as no appeal was interposed by either the SILVA GROUP or the SANTOS GROUP.

However, Rovels, to whom the TTTDC shares of stock (worth P108,000.00) were transferred, claimed that it became aware of the July 6, 1993 SEC Decision only in June of 1995. So on September 6, 1995, it filed a petition with the SEC,<sup>[14]</sup> docketed as SEC Case No. 09-95-5135, praying that it be declared the majority stockholder of TTTDC as against respondents Ocampo, Silva, Leviste, Sr., Calalang and Carreon (belonging to the SILVA GROUP). The material allegations of the petition state that: (1) TTTDC passed a Resolution dated December 29, 1975

authorizing the transfer of its unissued shares to Rovels as the latter's construction fee;<sup>[15]</sup> (2) Pursuant to that Resolution, TTTDC shares of stock worth P692,000.00 were transferred to Rovels;<sup>[16]</sup> (3) While TTTDC, in its March 1, 1976 Resolution, repealed the December 29, 1975 Resolution, such repeal does not bind Rovels for lack of notice;<sup>[17]</sup> (4) Several "interrelated cases" (SEC Case Nos. 1322 and 3806) were filed with the SEC involving the SILVA and SANTOS GROUPS;<sup>[18]</sup> (5) Rovels is not bound by the SEC Decisions since it was not impleaded as a party in said cases.<sup>[19]</sup>

Forthwith, the SILVA GROUP filed a motion to dismiss<sup>[20]</sup> the petition on the following grounds: (1) Rovels has no cause of action since TTTDC's December 29, 1975 Board Resolution was repealed by its March 1, 1976 Resolution;<sup>[21]</sup> (2) the petition is barred by the prior SEC Decisions in SEC Case No. 1322 declaring that the issuance of TTTDC's shares of stock to Rovels is valid, and the SEC Decision in 3806 declaring the SILVA GROUP as the lawful stockholders of TTTDC;<sup>[22]</sup> and (3) the petition is barred by estoppel, prescription and laches since it was filed long after Rovels was notified of the repeal of the December 29, 1975 TTTDC Resolution.<sup>[23]</sup>

In an Order dated April 22, 1996<sup>[24]</sup> in SEC Case No. 09-95-5135, SEC Hearing Officer Manuel P. Perea dismissed Rovels' petition on the grounds of lack of cause of action, *res judicata*, estoppel, laches and prescription. This Order was affirmed by the SEC *en banc* in its Decision dated January 20, 1997<sup>[25]</sup> in SEC AC No. 560.

Upon a petition for review, docketed as CA-G.R. SP. No. 43260, the Court of Appeals, in its Decision dated June 5, 1998,<sup>[26]</sup> affirmed the January 20, 1997 SEC *en banc* Decision. Rovels' motion for reconsideration was likewise denied.<sup>[27]</sup>

Hence, the instant petition for review on *certiorari*,<sup>[28]</sup> alleging that the Court of Appeals erred:

## I

IN HOLDING THAT PETITIONER ROVELS HAS NO CAUSE OF ACTION AGAINST PRIVATE RESPONDENTS; and

## II

IN HOLDING THAT THE PETITION IN SEC CASE NO. 09-95-5135 IS BARRED BY PRIOR JUDGMENT (*RES JUDICATA*), LACHES, PRESCRIPTION AND ESTOPPEL.<sup>[29]</sup>

The petition is unmeritorious.

On the first assigned error, we find that the Court of Appeals is correct in affirming the dismissal of Rovels' petition in SEC Case No. 09-955135 for lack of cause of action.

A cause of action is defined as the delict or wrongful act or omission committed by a person in violation of the right of another.<sup>[30]</sup> A cause of action exists if the following

elements are present: (1) a right in favor of the plaintiff, (2) the correlative obligation of the defendant to respect such right, and (3) the act or omission of the defendant in violation of plaintiff's right.<sup>[31]</sup> The test is whether the material allegations of the complaint, assuming them to be true, state ultimate facts which constitute plaintiff's cause of action, such that plaintiff is entitled to a favorable judgment as a matter of law.<sup>[32]</sup>

The pertinent portions of Rovels petition filed with the SEC read:

x x x x x x x x

"5. x x x. On December 29, 1975, TTTDC in a Resolution signed by majority members of the Board of Directors resolved that TTTDC pay its creditors through a 'debt-to-equity swap;'

x x x x x x x x

"9. x x x the relation between the **Silva faction** and the **Santos faction** became adversarial. The Silva faction attempted to form an alleged new board of directors and **repealed the Board Resolution dated December 29, 1975** Resolution regarding the 'debt' to equity swap. Thus, it resolved:

'RESOLVED, as it is hereby resolved, that **the Resolution of December 29, 1975 authorizing the payment of creditors with unissued shares of the corporation be as it is hereby repealed**: Resolved further that the matter as well as the amount of the creditor's claims be given adequate study and consideration by the Board. x x x'

"10. That what is clear from the **above Resolution of March 1, 1976** is the admission that indeed TTTDC owes certain amount of money from its creditors. The creditors became stockholders of record as a result of shares of stock issued in implementation of the 'debt to equity' conversion. Corresponding shares of stock were issued and signed by then president of the corporation Roberto Roxas and then corporate secretary Francisco N. Carreon, Jr.

"Copy of said Certificate of Stocks are hereto attached and marked as Annexes 'D' to 'P' and made an integral part hereof.

x x x x x x x x

"12. That **several interrelated cases were filed by Eduardo L. Santos (SEC Case No. 1322), on one hand, and Exposito M. Leviste, Francisco Carreon, Felicisimo Ocampo and Jose M. Silva (SEC Case No. 3806) and vice versa on the other**. Petitioner, Rovels Enterprises, Inc. was **never made a party in any of these cases** and its nominees in the Board of Directors of TTTDC continued to exercise its function from 1976.

x x x x x x x x

"19. That to implement the **decision in SEC CASE 3806, which declared the Silva Group as the duly authorized directors and**