442 Phil. 98

SECOND DIVISION

[G.R. NO. 139802, December 10, 2002]

VICENTE C. PONCE, PETITIONER, VS. ALSONS CEMENT CORPORATION, AND FRANCISCO M. GIRON, JR., RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for review seeks to annul the decision[1] of the Court of Appeals, in CA-G.R. SP No. 46692, which set aside the decision[2] of the Securities and Exchange Commission (SEC) En Banc in SEC-AC No. 545 and reinstated the order[3] of the Hearing Officer dismissing herein petitioner's complaint. Also assailed is the CA's resolution[4] of August 10, 1999, denying petitioner's motion for reconsideration.

On January 25, 1996, plaintiff (now petitioner) Vicente C. Ponce, filed a complaint[5] with the SEC for mandamus and damages against defendants (now respondents) Alsons Cement Corporation and its corporate secretary Francisco M. Giron, Jr. In his complaint, petitioner alleged, among others, that:

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> 5. The late Fausto G. Gaid was an incorporator of Victory Cement Corporation (VCC), having subscribed to and fully paid 239,500 shares of said corporation.
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> 6. On February 8, 1968, plaintiff and Fausto Gaid executed a "Deed of Undertaking" and "Indorsement" whereby the latter acknowledges that the former is the owner of said shares and he was therefore assigning/endorsing the same to the plaintiff. A copy of the said deed/indorsement is attached as Annex "A".
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> 7. On April 10, 1968, VCC was renamed Floro Cement Corporation (FCC for brevity).
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> 8. On October 22, 1990, FCC was renamed Alsons Cement Corporation (ACC for brevity) as shown by the Amended Articles of Incorporation of ACC, a copy of which is attached as Annex "B".
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> 9. From the time of incorporation of VCC up to the present, no certificates of stock corresponding to the 239,500 subscribed and fully paid shares of Gaid were issued in the name of Fausto G. Gaid and/or the plaintiff. 10. Despite repeated demands, the defendants refused and continue to refuse without any justifiable reason to issue to plaintiff the certificates of stocks corresponding to the 239,500 shares of Gaid, in violation of plaintiff's right to secure the corresponding certificate of stock in his name.[6]

Attached to the complaint was the Deed of Undertaking and Indorsement[7] upon which petitioner based his petition for mandamus. Said deed and indorsement read as follows:

DEED OF UNDERTAKING

KNOW ALL MEN BY THESE PRESENTS:

I, VICENTE C. PONCE, is the owner of the total subscription of Fausto Gaid with Victory Cement Corporation in the total amount of TWO HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED (P239,500.00) PESOS and that Fausto Gaid does not have any liability whatsoever on the subscription agreement in favor of Victory Cement Corporation.

(SGD.) VICENTE C. PONCE

February 8, 1968

CONFORME:

(SGD.) FAUSTO GAID

INDORSEMENT

I, FAUSTO GAID is indorsing the total amount of TWO HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED (239,500.00) stocks of Victory Cement Corporation to VICENTE C. PONCE.

(SGD.) FAUSTO GAID

With these allegations, petitioner prayed that judgment be rendered ordering respondents (a) to issue in his name certificates of stocks covering the 239,500 shares of stocks and its legal increments and (b) to pay him damages.[8]

Instead of filing an answer, respondents moved to dismiss the complaint on the grounds that: (a) the complaint states no cause of action; mandamus is improper and not available to petitioner; (b) the petitioner is not the real party in interest; (c) the cause of action is barred by the statute of limitations; and (d) in any case, the petitioner's cause of action is barred by laches.[9] They argued, *inter alia*, that there being no allegation that the alleged "INDORSEMENT" was recorded in the books of the corporation, said indorsement by Gaid to the plaintiff of the shares of stock in question—assuming that the indorsement was in fact a transfer of stocks—was not valid against third persons such as ALSONS under Section 63 of the Corporation Code.[10] There was, therefore, no specific legal duty on the part of the respondents to issue the corresponding certificates of stock, and mandamus will not lie.[11]

Petitioner filed his opposition to the motion to dismiss on February 19, 1996 contending that: (1) mandamus is the proper remedy when a corporation and its corporate secretary wrongfully refuse to record a transfer of shares and issue the corresponding certificates of stocks; (2) he is the proper party in interest since he stands to be benefited or injured by a judgment in the case; (3) the statute of limitations did not begin to run until defendant refused to issue the certificates of stock in favor of the plaintiff on April 13, 1992.

After respondents filed their reply, SEC Hearing Officer Enrique L. Flores, Jr. granted the motion to dismiss in an Order dated February 29, 1996, which held that:

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> Insofar as the issuance of certificates of stock is concerned, the real party in interest is Fausto G. Gaid, or his estate or his heirs. Gaid was an incorporator and an original stockholder of the defendant corporation who subscribed and fully paid for 239,500 shares of stock (Annex "B"). In accordance with Section 37 of the old Corporation Law (Act No. 1459) obtaining in 1968 when the defendant corporation was incorporated, as well as Section 64 of the present Corporation Code (Batas Pambansa Blg. 68), a stockholder who has fully paid for his subscription together with interest and expenses in case of delinquent shares, is entitled to the issuance of a certificate of stock for his shares. According to paragraph 9 of the Complaint, no stock certificate was issued to Gaid.
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> Comes now the plaintiff who seeks to step into the shoes of Gaid and thereby become a stockholder of the defendant corporation by demanding issuance of the certificates of stock in his name. This he cannot do, for two reasons: there is no record of any assignment or transfer in the books of the defendant corporation, and there is no instruction or authority from the transferor (Gaid) for such assignment or transfer. Indeed, nothing is alleged in the complaint on these two points.
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> In the present case, there is not even any indorsement of any stock certificate to speak of. What the plaintiff possesses is a document by which Gaid supposedly transferred the shares to him. Assuming the document has this effect, nevertheless there is neither any allegation nor any showing that it is recorded in the books of the defendant corporation, such recording being a prerequisite to the issuance of a stock certificate in favor of the transferee.[12]

Petitioner appealed the Order of dismissal. On January 6, 1997, the Commission En Banc reversed the appealed Order and directed the Hearing Officer to proceed with the case. In ruling that a transfer or assignment of stocks need not be registered first before it can take cognizance of the case to enforce the petitioner's rights as a stockholder, the Commission En Banc cited our ruling in *Abejo vs. De la Cruz*, 149 SCRA 654 (1987) to the effect that:

> xxx As the SEC maintains, "There is no requirement that a stockholder of a corporation must be a registered one in order that the Securities and Exchange Commission may take cognizance of a suit seeking to enforce his rights as such stockholder". This is because the SEC by express mandate has "absolute jurisdiction, supervision and control over all corporations" and is called upon to enforce the provisions of the Corporation Code, among which is the stock purchaser's right to secure the corresponding certificate in his name under the provisions of Section 63 of the Code. Needless to say, any problem encountered in securing the certificates of stock representing the investment made by the buyer must be

> expeditiously dealt with through administrative mandamus proceedings with the SEC, rather than through the usual tedious regular court procedure. xxx
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> Applying this principle in the case on hand, a transfer or assignment of stocks need not be registered first before the Commission can take cognizance of the case to enforce his rights as a stockholder. Also, the problem encountered in securing the certificates of stock made by the buyer must be expeditiously taken up through the so-called administrative mandamus proceedings with the SEC than in the regular courts.[13]

The Commission En Banc also found that the Hearing Officer erred in holding that petitioner is not the real party in interest.

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> As appearing in the allegations of the complaint, plaintiff-appellant is the transferee of the shares of stock of Gaid and is therefore entitled to avail of the suit to obtain the proper remedy to make him the rightful owner and holder of a stock certificate to be issued in his name. Moreover, defendant-appellees failed to show that the transferor nor his heirs have refuted the ownership of the transferee. Assuming these allegations to be true, the corporation has a mere ministerial duty to register in its stock and transfer book the shares of stock in the name of the plaintiff-appellant subject to the determination of the validity of the deed of assignment in the proper tribunal. [14]

Their motion for reconsideration having been denied, herein respondents appealed the decision[15] of the SEC En Banc and the resolution[16] denying their motion for reconsideration to the Court of Appeals.

In its decision, the Court of Appeals held that in the absence of any allegation that the transfer of the shares between Fausto Gaid and Vicente C. Ponce was registered in the stock and transfer book of ALSONS, Ponce failed to state a cause of action. Thus, said the CA, "the complaint for mandamus should be dismissed for failure to state a cause of action."[17] petitioner's motion for reconsideration was likewise denied in a resolution[18] dated August 10, 1999.

Hence, the instant petition for review on certiorari alleging that:

I. … THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT FOR ISSUANCE OF A CERTIFICATE OF STOCK FILED BY PETITIONER FAILED TO STATE A CAUSE OF ACTION BECAUSE IT DID NOT ALLEGE THAT THE TRANSFER OF THE SHARES (SUBJECT MATTER OF THE COMPLAINT) WAS REGISTERED IN THE STOCK AND TRANSFER BOOK OF THE CORPORATION, CITING SECTION 63 OF THE CORPORATION CODE.

II. … THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASES OF "ABEJO VS. DE LA CRUZ", 149 SCRA 654 AND "RURAL BANK OF SALINAS, INC., ET AL VS. COURT OF APPEALS, ET AL.", G.R. NO. 96674, JUNE 26, 1992.

III. … THE HONORABLE COURT OF APPEALS ERRED IN APPLYING A 1911 CASE, "HAGER VS. BRYAN", 19 PHIL. 138, TO DISMISS THE COMPLAINT FOR ISSUANCE OF A CERTIFICATE OF STOCK.[19]

At issue is whether the Court of Appeals erred in holding that herein petitioner has no cause of action for a writ of mandamus.

Petitioner first contends that the act of recording the transfer of shares in the stock and transfer book and that of issuing a certificate of stock for the transferred shares involves only one continuous process. Thus, when a corporate secretary is presented with a document of transfer of fully paid shares, it is his duty to record the transfer in the stock and transfer book of the corporation, issue a new stock certificate in the name of the transferee, and cancel the old one. A transferee who requests for the issuance of a stock certificate need not spell out each and every act that needs to be done by the corporate secretary, as a request for issuance of stock certificates necessarily includes a request for the recording of the transfer. Ergo, the failure to record the transfer does not mean that the transferee cannot ask for the issuance of stock certificates.

Secondly, according to petitioner, there is no law, rule or regulation requiring a transferor of shares of stock to first issue express instructions or execute a power of attorney for the transfer of said shares before a certificate of stock is issued in the name of the transferee and the transfer registered in the books of the corporation. He contends that *Hager vs. Bryan*, 19 Phil. 138 (1911), and *Rivera vs. Florendo*, 144 SCRA 643 (1986), cited by respondents, do not apply to this case. These cases contemplate a situation where a certificate of stock has been issued by the company whereas in this case at bar, no stock certificates have been issued even in the name of the original stockholder, Fausto Gaid.

Finally, petitioner maintains that since he is under no compulsion to register the transfer or to secure stock certificates in his name, his cause of action is deemed not to have accrued until respondent ALSONS denied his request.

Respondents, in their comment, maintain that the transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent insofar as the corporation is concerned and no certificate of stock can be issued in the name of the transferee. Until the recording is made, the transfer cannot be the basis of issuance of a certificate of stock. They add that petitioner is not the real party in interest, the real party in interest being Fausto Gaid since it is his name that appears in the records of the corporation. They conclude that petitioner's cause of action is barred by prescription and laches since 24 years elapsed before he made any demand upon ALSONS.

We find the instant petition without merit. The Court of Appeals did not err in ruling that petitioner had no cause of action, and that his petition for mandamus was properly dismissed.

There is no question that Fausto Gaid was an original subscriber of respondent corporation's 239,500 shares. This is clear from the numerous pleadings filed by either party. It is also clear from the Amended Articles of Incorporation[20] approved on August 9, 1995[21] that each share had a par value of P1.00 per share. And, it is undisputed that petitioner had not made a previous request upon the corporate