

## SECOND DIVISION

**[ G.R. No. 129777, January 05, 2001 ]**

**TCL SALES CORPORATION AND ANNA TENG, PETITIONERS, VS.  
HON. COURT OF APPEALS AND TING PING LAY, RESPONDENTS.**

### D E C I S I O N

**QUISUMBING, J.:**

Before us is a petition for review on certiorari under Rule 45 assailing the decision<sup>[1]</sup> dated January 31, 1997 and the resolution<sup>[2]</sup> dated July 2, 1997 of the Court of Appeals in CA G.R. SP No. 42035 captioned "*TCL Sales Corporation, et al., vs. Ting Ping Lay.*" The decision and resolution of respondent court affirmed the en banc decision<sup>[3]</sup> of the Securities and Exchange Commission (SEC) dated June 11, 1996, which affirmed with modification the decision<sup>[4]</sup> of the SEC hearing officer dated July 20, 1994.

The facts as found by the Court of Appeals are as follows:

"Respondent TCL Corporation was organized and registered sometime in 1973. The incorporators were Teng Ching Lay, Henry Teng (son of Teng Ching Lay), Anna Teng (daughter of Teng Ching Lay), Ismaelita Maluto and Peter Chiu. The corporation started with an authorized capital stock of 5,000 shares valued at P1,000.00 per share with an aggregate value of P500,000.00. In 1974 the Articles of Incorporation was amended increasing its authorized capital stock to 20,000 shares valued at P2,000,000.00 of which 8,000 shares were subscribed and fully paid, as follows:

Teng Ching Lay	-	2,800 shares
Henry Teng	-	2,000 shares
Anna Teng	-	1,280 shares
Ismaelita Maluto	-	1,440 shares
Peter Chiu	-	480 shares
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Total		8,000 shares

On 2 February 1979, petitioner Ting Ping Lay (the brother of Teng Ching Lay) acquired by purchase four-hundred eighty (480) shares of stocks (sic) of the corporation from stockholder Peter Chiu.

On 22 September 1985, Ting Ping Lay purchased another one-thousand four-hundred (1,400) shares from his brother Teng Ching Lay.

On 2 September 1989, Ting Ping Lay acquired 1,440 more shares from Ismaelita Maluto.

Teng Ching Lay served as president and operations manager until his death in 1989. Respondent Anna Teng served as the Corporate Secretary.

Thereafter, Henry Teng took over the management of the company after his father's death.

On 31 August 1989, Ting Ping Lay in order to protect his shareholdings with the company requested Anna Teng to enter the transfer of shares of stocks (sic) for the proper recording of his acquisitions in the Stock and Transfer Book of the corporation. Likewise, he demanded the issuance of the new certificates of stock in his favor. However, respondents refused despite repeated demands.

Ting Ping Lay filed a petition for mandamus with the Securities and Exchange Commission against TCL Corporation and Anna T[e]ng which case was docketed as SEC Case No. 3990.

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After the trial, the hearing officer found for the petitioner, thus:

A. Ordering respondents to record in the Books of the Corporation the following shares:

1. 480 shares acquired by petitioner from Peter Chiu per Deed of Sales (sic) dated February 20, 1979;
2. 1,400 shares acquired by petitioner from Teng Ching Lay per Deed of Sale dated September 22, 1989;

B. Ordering respondents to issue corresponding new certificates of stocks (sic) in the name of the petitioner.

C. Ordering respondents to pay petitioner moral damages in the amount of One Hundred Thousand (P100,000.00) Pesos and Fifty Thousand (P50,000.00) Pesos for attorney's fees". (pp. 28-29 Rollo).

On 11 June 1996, the Commission en banc modified the aforequoted ruling by deleting the liability of TCL Corporation relative to the award of moral damages and attorney's fees. The attempt to reconsider said ruling likewise failed in an order dated 6 August 1996."<sup>[5]</sup>

Subsequently, herein petitioners filed with respondent Court of Appeals a petition for review of the Order of the SEC en banc dated June 11, 1996 and its Order dated August 23, 1996 denying their motion for reconsideration. On January 31, 1997, the Court of Appeals promulgated its decision dismissing said petition for being filed out of time.<sup>[6]</sup> It concluded:

"In fine, we find no cogent and justifiable grounds to disturb the findings of the SEC en banc.

WHEREFORE, the petition for review is DENIED due course and is hereby DISMISSED. The Clerk of Court is hereby directed to remand the records of the case to the SEC for the proper execution of the appealed orders."

SO ORDERED."<sup>[7]</sup>

Hence, the present petition, assigning the following questions for resolution:

"I. WHETHER OR NOT THE PERIOD FOR FILING PETITION FOR REVIEW WITH RESPONDENT COURT IS RECKONED FROM THE DATE THE QUESTIONED ORDER (ANNEX 'D') WAS RECEIVED BY PETITIONERS' PRESIDENT OR FROM THE DATE OF RECEIPT THEREOF BY PETITIONERS' COUNSEL.

II. WHETHER OR NOT THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER THE PETITION FOR MANDAMUS FILED BY PRIVATE RESPONDENT.

III. WHETHER OR NOT THE ALLEGED TRANSFER OF SHARES IN FAVOR OF PRIVATE RESPONDENT ARE VALID AND CAN BE ORDERED RECORDED.

IV. WHETHER OR NOT PETITIONER ANNA TENG'S FAILURE TO ACCEDE TO PRIVATE RESPONDENT'S REQUEST FOR TRANSFER OF SHARES IN HIS NAME AMOUNTS TO BAD FAITH AS WOULD WARRANT PAYMENT OF MORAL DAMAGES AND ATTORNEY'S FEES."<sup>[8]</sup>

Thus the Court must determine if (1) petitioners filed their petition for review with the Court of Appeals on time; (2) if the Securities and Exchange Commission (SEC) has jurisdiction over the petition for mandamus; and (3) if moral damages and attorney's fees may be granted for failure of petitioner Anna Teng to record the transfer of shares to private respondent. We shall resolve these questions *seriatim*.

Records reveal that petitioners received a copy of the decision of the SEC *en banc* on June 14, 1996. They had fifteen days from this date within which to file a petition for review with the Court of Appeals. This period was interrupted when petitioners, through Henry Teng, filed a motion for reconsideration on June 23, 1996, thirteen days into the fifteen-day reglementary period of appeal. The order denying this motion for reconsideration was received by Henry Teng on August 6, 1996, when he sent his representative to the SEC to obtain a copy thereof. Subsequently, a petition for review was filed by the petitioners with the Court of Appeals on September 25, 1996.

In its decision promulgated January 31, 1997 the Court of Appeals ruled that the petition for review was filed out of time. It tolled the remaining period to file said petition from August 6, 1996, the day Henry Teng received a copy of the decision denying the motion for reconsideration filed on June 23, 1996. The respondent court held that the petitioners should have filed the petition not later than August 21, 1996, or fifteen days after August 6, 1996.

The respondent court erred in making such ruling. August 6, 1996, was the date when petitioners themselves through Henry Teng received notice of the decision of

the SEC denying their motion for reconsideration, not counsel of record of said party. When a party is represented by counsel, service of process must be made on counsel and not on the party.<sup>[9]</sup> This well-settled rule applies to proceedings before the SEC, as the Rules of Court apply suppletorily thereto.<sup>[10]</sup> However, petitioners' counsel eventually received notice of the decision. Atty. Ruben V. Lopez, petitioners' counsel of record at the time, was aware of the order denying the motion for reconsideration on August 22, 1996, when his messenger, a certain Mario Ballesteros, verified the records of the case in the SEC on said date. Said counsel's motion requesting a copy of the August 6, 1996 decision manifests this.<sup>[11]</sup> Furthermore, the petition for review was prepared for filing and the verification affidavit was executed by Henry Teng both on September 13, 1996 or ten days before the alleged date of receipt by petitioners' counsel of the SEC order denying petitioners' motion for reconsideration.<sup>[12]</sup> These material dates in the record betray counsel's claim of receipt of notice of the SEC *en banc* decision only on September 23, 1996. When Atty. Lopez had notice of the SEC order through his messenger on August 22, 1996, petitioners had fifteen days from this date or until September 6, 1996, within which to file the petition for review with the Court of Appeals. Instead, petitioners filed their petition on September 25, 1996, or nineteen days after the last date for filing the petition. Petitioners thus filed their petition with the Court of Appeals way beyond the reglementary period, and it did not acquire jurisdiction over the case.

But even if the Court of Appeals had acquired jurisdiction over the case, the petition would still fail for lack of merit. The petitioners allege in the present petition that the SEC did not have jurisdiction over the petition for mandamus filed by Ting Ping Lay, as the same did not arise out of an intra-corporate controversy. They claim that Ting Ping Lay was not yet a stockholder of record of TCL Corporation. In the case of *Abejo vs. de la Cruz*,<sup>[13]</sup> this Court has ruled that jurisdiction over an action for *mandamus* lies with the SEC even if the proponent thereof is not yet a stockholder of record. Thus –

“...But as to the sale and transfer of the Abejos' shares, the Bragas cannot oust the SEC of its original and exclusive jurisdiction to hear and decide the case, by blocking through the corporate secretary, their son, the due recording of the transfer and sale of the shares in question and claiming that Telectronics is not a stockholder of the corporation – which is the very issue that the SEC is called upon to resolve. *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 court procedure. x x x” (Italics supplied)<sup>[14]</sup>