

## **FIRST DIVISION**

**[ G.R. No. 137934, August 10, 2001 ]**

**BATANGAS LAGUNA TAYABAS BUS COMPANY, INC., DOLORES A. POTENCIANO, MAX JOSEPH A. POTENCIANO, MERCEDELIN A. POTENCIANO, AND DELFIN C. YORRO, PETITIONERS, VS. BENJAMIN M. BITANGA, RENATO L. LEVERIZA, LAUREANO A. SIY, JAMES A. OLAYVAR, EDUARDO A. AZUCENA, MONINA GRACE S. LIM, AND GEMMA M. SANTOS, RESPONDENTS.**

**[G.R. NO. 137936. AUGUST 10, 2001]**

**DANILO L. CONCEPCION, FE ELOISA GLORIA AND EDIJER A. MARTINEZ, IN THEIR CAPACITIES AS ASSOCIATE COMMISSIONERS OF THE SECURITIES AND EXCHANGE COMMISSION, BATANGAS LAGUNA TAYABAS BUS COMPANY, INC., MICHAEL A. POTENCIANO, CANDIDIO A. POTENCIANO, HENRY JOHN A. POTENCIANO, REYNALDO MAGTIBAY, LORNA NAVARRO AND RESTITUTO BAYLON, PETITIONERS, VS. THE COURT OF APPEALS, BATANGAS LAGUNA TAYABAS BUS COMPANY, INC., BENJAMIN M. BITANGA, RENATO L. LEVERIZA, LAUREANO A. SIY, JAMES A. OLAYVAR, EDUARDO A. AZUCENA, MONINA GRACE S. LIM, AND GEMMA M. SANTOS, RESPONDENTS.**

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

These cases involve the Batangas Laguna Tayabas Bus Company, Inc., which has been owned by four generations of the Potenciano family. Immediately prior to the events leading to this controversy, the Potencianos owned 87.5% of the outstanding capital stock of BLTB.<sup>[1]</sup>

On October 28, 1997, Dolores A. Potenciano, Max Joseph A. Potenciano, Mercedelin A. Potenciano, Delfin C. Yorro, and Maya Industries, Inc., entered into a Sale and Purchase Agreement,<sup>[2]</sup> whereby they sold to BMB Property Holdings, Inc., represented by its President, Benjamin Bitanga, their 21,071,114 shares of stock in BLTB. The said shares represented 47.98% of the total outstanding capital stock of BLTB.

The purchase price for the shares of stock was P72,076,425.00, the downpayment of which, in the sum of P44,354,723.00, was made payable upon signing of Agreement, while the balance of P27,721,702.00 was payable on November 26, 1997. The contracting parties stipulated that the downpayment was conditioned upon receipt by the buyer of certain documents upon signing of the Agreement, namely, the Secretary's Certificate stating that the Board of Directors of Maya Industries, Inc. authorized the sale of its shares in BLTB and the execution of the

Agreement, and designating Dolores A. Potenciano as its Attorney-in-Fact; the Special Power of Attorney executed by each of the sellers in favor of Dolores A. Potenciano for purposes of the Agreement; the undated written resignation letters of the Directors of BLTB, except Henry John A. Potenciano, Michael A. Potenciano and Candido A. Potenciano); a revocable proxy to vote the subject shares made by the sellers in favor of the buyer; a Declaration of Trust made by the sellers in favor of the buyer acknowledging that the subject shares shall be held in trust by the sellers for the buyer pending their transfer to the latter's name; and the duly executed capital gains tax return forms covering the sale, indicating no taxable gain on the same.<sup>[3]</sup>

Furthermore, the buyer guaranteed that it shall take over the management and operations of BLTB but shall immediately surrender the same to the sellers in case it fails to pay the balance of the purchase price on November 26, 1997.<sup>[4]</sup>

Barely a month after the Agreement was executed, on November 21, 1997, at a meeting of the stockholders of BLTB, Benjamin Bitanga and Monina Grace Lim were elected as directors of the corporation, replacing Dolores and Max Joseph Potenciano. Subsequently, on November 28, 1997, another stockholders' meeting was held, wherein Laureano A. Siy and Renato L. Leveriza were elected as directors, replacing Candido Potenciano and Delfin Yorro who had both resigned as such. At the same meeting, the Board of Directors of BLTB elected the following officers: Benjamin Bitanga as Chairman of the Board, President and Chief Executive Officer; Monina Grace Lim as Vice President for Finance and Supply and Treasurer; James Olayvar as Vice President for Operations and Maintenance; Eduardo Azucena as Vice President for Administration; Evelio Custodia as Corporate Secretary; and Gemma Santos as Assistant Corporate Secretary.<sup>[5]</sup>

During a meeting of the Board of Directors on April 14, 1998, the newly elected directors of BLTB scheduled the annual stockholders' meeting on May 19, 1998, to be held at the principal office of BLTB in San Pablo, Laguna. Before the scheduled meeting, on May 16, 1998, Michael Potenciano wrote Benjamin Bitanga, requesting for a postponement of the stockholders' meeting due to the absence of a thirty-day advance notice. However, there was no response from Bitanga on whether or not the request for postponement was favorably acted upon.

On the scheduled date of the meeting, May 19, 1998, a notice of postponement of the stockholders' meeting was published in the Manila Bulletin. Inasmuch as there was no notice of postponement prior to that, a total of two hundred eighty six stockholders, representing 87% of the shares of stock of BLTB, arrived and attended the meeting. The majority of the stockholders present rejected the postponement and voted to proceed with the meeting. The Potenciano group was re-elected to the Board of Directors,<sup>[6]</sup> and a new set of officers was thereafter elected.<sup>[7]</sup>

However, the Bitanga group refused to relinquish their positions and continued to act as directors and officers of BLTB. The conflict between the Potencianos and the Bitanga group escalated to levels of unrest and even violence among laborers and employees of the bus company.

On May 21, 1998, the Bitanga group filed with the Securities and Exchange Commission a Complaint for Damages and Injunction, docketed as SEC Case No.

05-98-5973.<sup>[8]</sup> Their prayer for the issuance of a temporary restraining order was, however, denied at the ex-parte summary hearing conducted by SEC Chairman Perfecto Yasay, Jr.

Likewise, the Potenciano group filed on May 25, 1998, a Complaint for Injunction and Damages with Preliminary Injunction and Temporary Restraining Order with the SEC, docketed as SEC Case No. 05-98-5978.<sup>[9]</sup> SEC Chairman Perfecto Yasay, Jr. issued a temporary restraining order enjoining the Bitanga group from acting as officers and directors of BLTB.

On June 8, 1998, the Bitanga group filed another complaint with application for a writ of preliminary injunction and prayer for temporary restraining order, seeking to annul the May 19, 1998 stockholders' meeting. The complaint was docketed as SEC Case No. 06-98-5994.

A Hearing Panel of the SEC conducted joint hearings of SEC Cases Nos. 05-98-5973 and 05-98-5978. On June 17, 1998, the SEC Hearing Panel granted the Bitanga group's application for a writ of preliminary injunction upon the posting of a bond in the amount of P20,000,000.00.<sup>[10]</sup> It declared that the May 19, 1998 stockholders' meeting was void on the grounds that, first, Michael Potenciano had himself asked for its postponement due to improper notice; and, second, there was no quorum, since BMB Holdings, Inc., represented by the Bitanga group, which then owned 50.26% of BLTB's shares having purchased the same from the Potenciano group, was not present at the said meeting. The Hearing Panel further held that the Bitanga Board remains the legitimate Board in a hold-over capacity.

The Potenciano group filed a petition for certiorari<sup>[11]</sup> with the SEC En Banc on June 29, 1998, seeking a writ of preliminary injunction to restrain the implementation of the Hearing Panel's assailed Order.

On July 21, 1998, the SEC En Banc set aside the June 17, 1998 Order of the Hearing Panel and issued the writ of preliminary injunction prayed for.<sup>[12]</sup>

The Bitanga group immediately filed a petition for certiorari<sup>[13]</sup> with the Court of Appeals on July 22, 1998, followed by a Supplemental Petition on August 10, 1998. The petition was docketed as CA-G.R. SP No. 48374.

Meanwhile, on July 29, 1998, the SEC En Banc issued a writ of preliminary injunction against the Bitanga group, after the Potencianos posted the required bond of P20,000,000.00.<sup>[14]</sup>

On November 23, 1998, the Court of Appeals rendered the now assailed Decision, reversing the assailed Orders of the SEC En Banc and reinstating the Order of the Hearing Panel ordered dated June 17, 1998.<sup>[15]</sup> The Court of Appeals denied the Motions for Reconsideration in a Resolution dated March 25, 1999.<sup>[16]</sup>

Petitioners Batangas Laguna Tayabas Bus Company, Inc., Dolores A. Potenciano, Max Joseph A. Potenciano, Mercedelin A. Potenciano and Delfin C. Yorro filed the instant petition for review, docketed as G.R. No. 137934, against respondents Benjamin M. Bitanga, Renato L. Leveriza, Laureano A. Siy, James A. Olayvar,

I

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED, CONTRARY TO WELL-ESTABLISHED JURISPRUDENCE, THE FACTUAL FINDINGS OF THE SEC WHICH IS A SPECIALIZED QUASI-JUDICIAL AGENCY, AND INVALIDATED THE PRELIMINARY INJUNCTION ISSUED BY THE LATTER. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR BECAUSE THERE IS NO SHOWING THAT THE SEC MADE ANY ERROR IN EITHER JURISDICTION OR JUDGMENT.

II

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENTS WERE DEPRIVED OF THEIR RIGHT TO DUE PROCESS BECAUSE: (1) A FULL-BLOWN HEARING WAS CONDUCTED ON 6 JULY 1998 WHERE THE PARTIES FULLY ARGUED THEIR POSITIONS AND WERE HEARD BY THE SEC EN BANC; (2) THE LAW DOES NOT REQUIRE A SEPARATE HEARING FOR THE FIXING OF THE AMOUNT OF THE INJUNCTION BOND; AND (3) IN ANY CASE, THE ALLEGED FAILURE OF THE SEC TO FIX THE AMOUNT OF THE INJUNCTION BOND IN ITS 21 JULY 1998 ORDER AND SUBSEQUENT FIXING THEREOF IN ITS 26 JULY 1998 ORDER IS NOT A FATAL ERROR.

III

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE 21 JULY 1998 ORDER OF THE SEC RESOLVED THE MAIN CASE. THE SEC, ACTING WITHIN THE BOUNDS OF ITS JURISDICTION, MERELY MADE A PRELIMINARY EVALUATION TO RESOLVE THE PRAYER FOR PRELIMINARY INJUNCTION, WHICH, BY ITS VERY NATURE, IS AN ANCILLARY REMEDY. THE MAIN PETITION REMAINS PENDING BEFORE THE SEC FOR THE RESOLUTION OF ITS MERITS.<sup>[17]</sup>

Another petition for review, docketed as G.R. No. 137936, was filed by petitioners Danilo L. Concepcion, Fe Eloisa Gloria and Edijer A. Martinez, in their capacities as Associate Commissioners of the Securities and Exchange Commission, Batangas Laguna Tayabas Bus Company, Inc., Dolores A. Potenciano, Max Joseph A. Potenciano, Michael A. Potenciano, Mercedelin A. Potenciano, Candido A. Potenciano, Henry John A. Potenciano, Delfin C. Yorro, Reynaldo Magtibay, Lorna Navarro and Restituto Baylon based on the following grounds:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE JULY 21, 1998 ORDER OF THE SEC IN SEC EN BANC

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE PRIVATE RESPONDENTS WERE DENIED THEIR RIGHT TO DUE PROCESS.

III

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE SEC ORDER OF JULY 21, 1998 IS VALID AND IN DISREGARDING THE FACTUAL FINDINGS OF THE SEC.<sup>[18]</sup>

The two petitions for review were consolidated.

We find that the petitions are impressed with merit. Contrary to the findings of the Court of Appeals, the Bitanga group was not deprived of due process when the SEC En Banc issued its Order dated July 21, 1998.

Due process, in essence, is simply an opportunity to be heard.<sup>[19]</sup> It cannot be denied that in the case at bar, a hearing on the prayer for injunction was held on July 9, 1998. Both parties were represented at the said hearing, and the Bitanga group presented its arguments in opposition to the injunctive relief. This alone negates any proposition that the Bitanga group was denied due process.

In applications for preliminary injunction, the requirement of hearing and prior notice before injunction may issue has been relaxed to the point that not all petitions for preliminary injunction must undergo a trial-type hearing, it being hornbook doctrine that a formal or trial-type is not at all times and in all instances essential to due process. Due process simply means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor. Accordingly, this Court has recently rejected a claim of denial of due process where such claimant was given the opportunity to be heard, having submitted his counter-affidavit and memorandum in support of his position.<sup>[20]</sup>

Much ado has been made over the fact that the injunction order was issued with "deliberate speed" even before the Bitanga group filed its Comment to the Potenciano group's Petition. However, the said Comment is rather directed to the petition of the Potenciano group; it is not essential to the resolution of the prayer for injunction. The Rules of Court do not require that issues be joined before preliminary injunction may issue. Preliminary injunction may be granted at any stage of an action or proceeding prior to the judgment or final order, ordering a party or a court, agency or a person to refrain from a particular act or acts. For as long as the requisites for its issuance are present in the case, the injunctive writ was properly issued.<sup>[21]</sup>

Respondents argue that the SEC En Banc's July 21, 1998 Order amounted to a ruling on the main case. We disagree.